



**U.S. Customs and  
Border Protection**

**MAY 08 2015**

Carolyn N. Lerner  
Special Counsel  
Office of Special Counsel  
1730 M Street, Suite 300  
Washington, D.C. 20036-4505

Commissioner

Re: OSC File No. DI-14-0666

Dear Ms. Lerner:

The enclosed report is in response to your referral of allegations that employees of the U.S. Department of Homeland Security (DHS), U.S. Customs and Border Protection (CBP), Office of Internal Affairs in Headquarters (HQ) CBP engaged in conduct that may constitute violations of law, rule, or regulation, gross mismanagement, a gross waste of funds, and an abuse of authority. The Office of Special Counsel (OSC) received these allegations from an anonymous whistleblower who alleged that HQ OIA employees regularly claim Administratively Uncontrollable Overtime (AUO) but fail to perform duties that qualify for AUO. I am the designated official responsible for providing your office DHS' report pursuant to 5 U.S.C. § 1213.

On December 13, 2013, OSC referred the above allegations and a request for an investigation to DHS Acting Secretary Rand Beers. The DHS Office of Inspector General received these allegations and the investigation was completed on February 12, 2015. It revealed that the HQ OIA employees' documentation of activities performed during AUO hours was too brief and too vague to permit an independent reviewer to determine whether the sample employees would have been negligent had they not stayed beyond regular duty hours. HQ OIA employees varied in their knowledge of AUO requirements.

The findings are included in the enclosed report. On January 27, 2014, DHS Secretary Jeh Johnson issued a memorandum suspending the use and payment of AUO for all DHS headquarters employees. However, the OIG investigation revealed that HQ OIA employees continued to receive AUO payments after Secretary Johnson's suspension. Once this matter was brought to my attention in July 2015, I immediately directed the suspension of all AUO payments for HQ OIA employees and it has complied.

If you require further information regarding this matter, please contact Philip Carpio in the Office of Chief Counsel at 202-344-2940.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Gil Kerlikowske". The signature is written in a cursive style with a prominent initial "R" and a long, sweeping underline.

R. Gil Kerlikowske  
Commissioner  
U.S. Customs and Border Protection

Enclosures

cc: Secretary, Department of Homeland Security  
Deputy Secretary, Department of Homeland Security  
Chief Human Capital Officer, Department of Homeland Security  
General Counsel, Department of Homeland Security

**OFFICE OF INSPECTOR GENERAL**

**Evaluation of Alleged AUO  
Misuse at U.S. Customs and  
Border Protection, Office of  
Internal Affairs  
(OSC File No. DI-14-0666)**



Homeland  
Security

**February 12, 2015**

**OIG-15-36**



# HIGHLIGHTS

## *Evaluation of Alleged AUO Misuse at U.S. Customs and Border Protection, Office of Internal Affairs (OSC File No. DI-14-0666)*

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February 12, 2015

### What We Found

### Why This Matters

We conducted this evaluation in response to a whistleblower disclosure concerning employees in U.S. Customs and Border Protection's (CBP) Office of Internal Affairs. The whistleblower alleged that Office of Internal Affairs employees claimed administratively uncontrollable overtime (AUO) daily, but failed to perform duties that qualify for AUO.

Federal regulations allow agencies to pay AUO annually to employees in positions that require substantial amounts of irregular or occasional overtime work and in which the hours of duty cannot be controlled administratively. Employees must remain on duty not merely because it is desirable, but because of compelling reasons inherently related to continuance of their duties, and of such a nature that failure to carry on would constitute negligence.

CBP's Office of Internal Affairs did not have sufficient AUO documentation to allow us to specifically identify a violation of law, rule, or regulation. However, much of the work performed during AUO hours appears to have been administratively controllable.

Further, OIA did not suspend AUO pay for its headquarters employees until approximately six months after Secretary Johnson issued a memorandum ordering the immediate suspension of AUO for employees working in component headquarters offices.

The report contains no recommendations.

#### **For Further Information:**

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

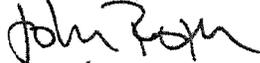


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Department of Homeland Security

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

February 12, 2015

MEMORANDUM FOR: The Honorable Stevan E. Bunnell  
General Counsel  
Department of Homeland Security

FROM: John Roth   
Inspector General

SUBJECT: *Evaluation of Alleged AUO Misuse at U.S.  
Customs and Border Protection, Office of Internal  
Affairs (OSC File No. DI-14-0666)*

The U.S. Office of Special Counsel (OSC) received a whistleblower disclosure concerning employees in U.S. Customs and Border Protection's (CBP) Office of Internal Affairs. The whistleblower alleged that Office of Internal Affairs employees claim administratively uncontrollable overtime (AUO) daily, but fail to perform duties that qualify for AUO.

On December 13, 2013, OSC referred this allegation to DHS Acting Secretary Rand Beers. The Department subsequently requested our assistance with this allegation and several other AUO-related allegations from other DHS components. We assembled a taskforce of auditors, program analysts, investigators, and attorneys to review these allegations. Given time constraints and limited resources, we determined that a limited-scope review of the components' use of AUO in 2013 and 2014 would yield the most useful results.

The attached report contains the results of our evaluation on the alleged misuse of AUO at CBP's Office of Internal Affairs. Your office provided technical comments on an earlier version of this report, which we incorporated in this report as appropriate. We intend to publish this report on our website within 90 days of the date of this memorandum. We issued the results of our evaluations of the alleged misuse of AUO at other components in separate reports.

Please call me with any questions, or your staff may contact John E. McCoy II, Assistant Inspector General, Office of Integrity and Quality Oversight, at (202) 254-4100.

Attachment



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## **Summary of Results**

CBP's Office of Internal Affairs (OIA) did not have sufficient AUO documentation to allow us to specifically identify a violation of law, rule, or regulation. However, much of the work OIA employees performed during AUO hours appears to have been administratively controllable. Further, OIA did not suspend AUO pay for its headquarters employees until approximately six months after Secretary Johnson issued a memorandum ordering the immediate suspension of AUO for employees working in component headquarters offices.

## **Background**

An anonymous whistleblower, who previously worked for OIA, alleged that, "For at least the past seven years, OIA employees, including Division Directors, Deputy Division Directors, and Assistant Directors" have claimed AUO on a daily basis but fail to perform duties that qualify for AUO. OSC concluded, "there is a substantial likelihood that the information the whistleblower provided to OSC discloses a violation of law, rule, or regulation, gross mismanagement, and gross waste of funds."

CBP's OIA is charged with promoting the security and integrity of the CBP workforce. Employees in four of OIA's seven divisions received AUO in 2013:

1. Integrity Programs Division (IPD): Only the IPD Director, who is located at headquarters in Washington, DC, received AUO. IPD performs data and trend analysis of enforcement actions and strategic factors to increase the productivity of research projects, enhance internal investigations, and support pre-employment screening operations. IPD also delivers integrity awareness and anti-corruption training to CBP employees and international customs administrations.
2. Office of Field Testing Division (OFTD): Eleven of OFTD's 12 employees received AUO. OFTD assesses and evaluates the integrity of CBP's multilayered security systems employed at U.S. ports of entry, between ports of entry, and at foreign seaports participating in CBP's Container Security Initiative. Through covert testing, OFTD employees work to identify vulnerabilities, systemic weaknesses, and best practices in CBP operations.



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3. Credibility Assessment Division (CAD): About 70 CAD employees received AUO. CAD promotes the integrity of the CBP workforce by resolving issues identified during the conduct of background investigations, providing polygraph support during investigations of alleged corruption and serious misconduct involving CBP employees, and conducting counterintelligence screening polygraph examinations for personnel who need to comply with program access requirements. CAD also provides polygraph support to other Federal investigative agencies and DHS components.
4. Investigative Operations Division (IOD): More than 200 IOD employees received AUO. IOD documents and investigates alleged criminal and serious, noncriminal misconduct by CBP employees. IOD coordinates its investigative activities with other DHS components and numerous Federal, state, and local law enforcement authorities. IOD is responsible for the Joint Intake Center and the National CBP Fact Finder program. IOD staff also participate in border corruption and public corruption task forces.

OIA has issued seven reports on IOD investigations of allegations of AUO misuse in various CBP offices. According to the reports, for each allegation, OIA determined AUO was not properly implemented. OIA identified issues such as failure to properly document and certify AUO hours and rates, as well as AUO hours claimed for tasks that did qualify for AUO under Federal regulations.

According to data provided by CBP, OIA employees received approximately \$6.9 million in AUO pay in 2013.

On August 20, 2014, CBP Commissioner R. Gil Kerlikowske sent a memorandum on "Use of Administratively Uncontrollable Overtime" to Deputy Secretary Alejandro Mayorkas. The memorandum presented CBP's Office of Human Resources Management's (HRM) *Report of Review and Findings* on CBP's use of AUO, which was completed in June 2014. According to the report, HRM determined that "the nature of the duties and overtime work performed by just over 1,900 CBP employees in positions designated as eligible to receive AUO do not meet the qualifying requirements for AUO." HRM also determined that positions in OIA's CAD, OFTD, IPD, as well as those assigned to CBP headquarters, do not meet the eligibility requirements for AUO. According to HRM, only IOD field positions "require the performance of work that meets the eligibility criteria for AUO."



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**Relevant Regulations**

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According to 5 Code of Federal Regulations (CFR) § 550.151, agencies are authorized to pay AUO annually "... to an employee in a position which the hours of duty cannot be controlled administratively and which requires substantial amounts of irregular or occasional overtime work with the employee generally being responsible for recognizing without supervision, circumstances which require the employee to remain on duty."

Further, 5 CFR § 550.153(c), defines what it means in §550.151 that an employee is "generally responsible for recognizing, without supervision, circumstances which require him to remain on duty:

- (1) The responsibility for an employee remaining on duty when required by circumstances must be a definite, official, and special requirement of his position.
- (2) The employee must remain on duty not merely because it is desirable, but because of compelling reasons inherently related to continuance of his duties, and of such a nature that failure to carry on would constitute negligence.
- (3) The requirement that the employee is responsible for recognizing circumstances does not include such clear-cut instances as for example, when an employee must continue working because a relief fails to report as scheduled."

**Relevant Policies**

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OIA follows two legacy policies from the United States Customs Service governing AUO, Chapter 8 of the *Customs Issuance System Handbook 5300-09* of 1993 (handbook) and Customs Directive No. 51550-004A of 2000. According to Chapter 8 of the handbook:

- Employees who qualify for AUO pay will be paid at one of the following percentages of his or her rate of basic pay. All irregular overtime worked by an employee should be considered when making this determination.
  - 10 Percent - a position requiring an average of at least 3, but not more than 5 hours a week of irregular overtime work.



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- 15 Percent - a position requiring an average of over 5, but not more than 7 hours a week of irregular overtime work.
- 20 Percent - a position requiring an average of over 7, but not more than 9 hours a week of irregular overtime work.
- 25 Percent - a position requiring an average of over 9 hours per week of irregular overtime work.

Customs Directive 51550-004A provides guidance for approving, certifying, and paying AUO:

- The Assistant Commissioner of Internal Affairs has policy oversight for AUO management controls, certification reviews, and payments. Policy oversight includes review and analyses of the validity of requests for AUO and accurate and complete documentation justifying AUO.
- Supervisors are responsible for:
  - reviewing and approving or disapproving monthly AUO reports, CBP Form 203, to ensure that reported irregular overtime hours were performed, are sufficiently documented, and are eligible for credit toward AUO;
  - discontinuing AUO when it is no longer appropriate or when an employee is not able to perform the minimum number of irregular overtime hours for certification;
  - reviewing and recertifying positions for AUO in January of each calendar year;
  - reviewing and, if necessary, adjusting the AUO rates at the beginning of each quarter or at any time that it is clear the AUO rate has changed for the balance of the quarter; and
  - discontinuing AUO at any time if the employee is not meeting the requirements to continue AUO.
- Employees receiving AUO are accountable for submitting monthly AUO reports, CBP Form 203, which document in sufficient detail the nonroutine, irregular overtime work performed in order to justify supervisory approval and establish a basis for oversight review and audit.

Appendix A contains a sample *Administratively Uncontrollable Overtime Report* (CBP Form 203). OIA employees also record the number of AUO hours they work each pay period in the CBP Overtime Scheduling System (COSS). Appendix B shows the percentage of time OIA employees



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recorded various AUO increments (e.g., 1 hour, 1.5 hours, and 2 hours) in COSS.

## **Finding**

OIA did not have sufficient AUO documentation to allow us to specifically identify a violation of law, rule, or regulation. Based on our review of AUO documentation and our interviews with OIA employees, many of the tasks that OIA employees performed during AUO hours generally appeared to be “regular, predictable, and controllable” as alleged by the whistleblower.

Further, OIA did not suspend AUO pay for its headquarters employees until approximately six months after Secretary Johnson issued a memorandum ordering the immediate suspension of AUO for employees working in component headquarters offices.

## **Summary of Evidence Obtained**

### **AUO Documentation**

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The 119 CBP Forms 203 we obtained from OIA, which OIA employees used to document AUO, did not contain enough detail for an independent reviewer to determine whether there were compelling reasons for AUO. In addition, some tasks described on the forms appeared to be “regular, predictable, and controllable” as alleged by the whistleblower. Appendix C contains examples of activities described by OIA employees on the CPB Forms 203.

According to 5 CFR § 550.153(c), the “employee must remain on duty not merely because it is desirable, but because of compelling reasons inherently related to continuance of his duties, and of such a nature that failure to carry on would constitute negligence.” The CBP Forms 203 that we reviewed often contained vague descriptions of tasks performed during AUO hours, such as “Internal Affairs activities,” “DHS HQ tasking,” and “supervisor duties.” Based on these vague descriptions, an independent reviewer could not determine whether the employee would have been negligent if he or she had not stayed beyond regular duty hours to complete the task.

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**Summary of AUO Documentation Forms and Employee Interviews**

The whistleblower alleged that some of OIA's "Divisions Directors, Deputy Division Directors, Assistant Directors, as well as rank and file employees claim and receive AUO on a daily basis at the highest (25 %) level." We reviewed 119 CBP Forms 203 and interviewed 16 supervisors and 18 nonsupervisors in Houston, Texas; Miami, Florida; Tucson, Arizona; and Washington, DC, to determine the tasks they typically performed during AUO hours.

**CAD**

Based on our review of CAD employees' CBP Forms 203 and interviews, we agree with HRM's finding that polygraph examiners' work is "administrative and routine in nature...can be controlled through normal administrative means...planned in advance and controllable...predictable...and can be compensated under FEPA [Federal Employees Pay Act]." The CAD CBP Forms 203 we reviewed included descriptions of administratively controllable duties, such as "schedule exams," "TECS training," and "CAD Admin." During interviews, nonsupervisors described AUO tasks as any activities performed after normal hours, such as continuing or completing a polygraph exam, writing reports, submitting reports, scheduling exams, preparing for an upcoming exam, or training. CAD supervisors said their AUO tasks included reviewing charts, fielding phone calls from examiners, responding to questions, correcting errors in the polygraph tracking system, and providing information to CAD management. According to the CAD Director's sworn statement, he would charge AUO hours "for a variety of reasons, including ongoing polygraph examinations and investigations occurring within CBP and in conjunction with other agencies that have investigative responsibilities inside and outside DHS." He would also "respond to time sensitive tasking from the Assistant Commissioner for Internal Affairs, the CBP Commissioner, DHS, and other entities."

According to the CAD Director's sworn statement, "CAD employees have a goal/requirement to conduct 900 polygraph examinations each month. This requirement is principally driven by the *Anti-Border Corruption Act of 2010* that requires all law enforcement applicants to CBP to undergo a polygraph examination before they can be hired, and congressionally mandated hiring levels for BPAs [border patrol agents] and CBPOs [CBP officers] within CBP." In addition to the CAD Director, five CAD employees interviewed mentioned the monthly exam requirement, which



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equates to an average of 14 to 16 exams per employee per month. As a result, employees said they do not have time to conduct administrative activities, such as scheduling exams or filing reports. According to the CAD Director, “it would be impossible for CAD to produce 900 polygraph examinations per month at our current staffing level without using AUO. CAD could meet the 900 exam quota if we had additional staff, but many of those examinations would still spill over into hours outside the normal eight hour day, thus creating a continuing need for overtime regardless of the number of polygraph examiners available.”

**OFTD**

Based on our review of OFTD employees’ CBP Forms 203 and interviews, we agree with HRM’s finding that OFTD employees’ work “involves activities that can be managed administratively through planning, work scheduling, and other administrative means.” According to their CBP Forms 203 and interviews, OFTD employees’ AUO tasks include preparing for, travelling to and from, conducting, and reporting on covert tests. According to the OFTD Deputy Director’s sworn statement, in addition to claiming AUO for covert testing in the field, “AUO has been claimed while working in the office on operational matters beyond the core hours and the work was unscheduled and couldn’t wait until the next business day.” The OFTD Director expanded upon that in a sworn statement saying, “There are some scenarios where staff may earn AUO at headquarters, e.g. working on unplanned taskers received from senior management related to recent covert tests conducted, or work performed on covert operational plans due to unforeseen circumstances.” The OFTD Director added that “once a covert test begins, there is no way of predicting when the covert test will end, to include collection of data and relevant interviews of law enforcement personnel.” As HRM found, OFTD’s assessments of CBP personnel, policies and procedures, systems and technologies involve activities that can be managed administratively.

**IPD**

Based on our interview with the IPD Director and review of his CBP Forms 203, we agree with HRM’s finding that he mainly performed management and administrative duties that do not meet the eligibility criteria for AUO. The only two activities documented on the two CBP Forms 203 we reviewed were “Review Reports” and “Respond to Email.” The IPD Director said that AUO is used for unanticipated issues that come up at night or early in the morning. For example, the director may have to provide details about a critical incident to the Commissioner of



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CBP in a timely manner or he may have to edit the Commissioner's morning briefing.

**IOD**

Although HRM found that work performed by IOD investigative program specialists "require the performance of work that meets the eligibility criteria for AUO," we found that many activities documented on CBP Forms 203 and described in interviews appear to have been administratively controllable. IOD'S CBP Forms 203 included descriptions such as "LAR meeting," "prep for subj intrvw," "paperwork/meetings," "office move-in," "supervisor duties," "Duty/Review Records," "Standby Duty," and "IA Admin tasking." Other duties documented on the forms appeared to be related to law enforcement activities such as "Laredo Duty Call," "interviewing," "surveillance," "RGV Operation," and "Collateral Case." However, the CBP Forms 203 did not contain sufficient detail about the law enforcement-related activities for us to determine whether the IOD employees had a compelling reason to perform them.

During interviews, IOD employees described AUO activities that appeared to be law enforcement-related, as well as activities that appeared to be administratively controllable because they are scheduled in advance and required by management.

IOD nonsupervisors described tasks performed during AUO hours as all activities performed after an 8-hour day, including responding to and making phone calls; responding to unanticipated events such as an employee arrest, shooting, or other critical incident; preparing for the Commissioner's morning briefing; responding to technology issues; scheduling; traveling to and from and conducting interviews; firearms qualifications; and working on interagency taskforces. IOD supervisors said they performed tasks such as calling the U.S. Attorney, reviewing reports and affidavits, responding to duty calls, informing headquarters in real time, 24-7 about events in the field, and liaising with outside agencies. According to their sworn statements, the IOD Acting Director and Deputy Director typically use AUO hours for any unscheduled task related to any investigation or operation involving OIA personnel, as well as obtaining any available information on the investigation or operation and advising the Assistant Commissioner and Deputy Assistant Commissioner of OIA.



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According to the IOD Acting Director's sworn statement, "There is an expectation that CBP IA will serve as the 'eyes and ears' for CBP field office and headquarters personnel, including the Commissioner's Office and senior management officials...the expectation also extends to all employee arrests or detentions, as well as any significant seizures or enforcement activities that could be linked to potential corruption. IOD personnel are expected to respond to messages and call-outs outside of regular working hours and on weekends and holidays and report back relevant information as soon as practicable to ensure the DAC [Deputy Assistant Commissioner of OIA] and AC [Assistant Commissioner of OIA] are fully informed and continually updated on all critical/significant incidents and other matters." Employees must include information on incidents that occur after the regular work day in the IOD Daily Report, which is due to the front office by 8:00 a.m. on weekdays.

IOD employees said they are required to be on call 24-7. One IOD location we visited schedules employees to be "on-duty" and "back-up duty." These employees are the first individuals called in the event of an incident, but employees said they may still have to respond to an incident if the employees on-duty and back-up duty are otherwise occupied. This location schedules who is on-duty or back-up duty in advance. Nonsupervisors and supervisors said that employees are assigned to on-duty and back-up duty for one week, beginning at 8 AM on Friday morning. While on duty or back up duty, employees are compensated with AUO for any waking hours outside of their regular shifts. They are not compensated for time sleeping, unless they have to respond to a call.

**AUO Documentation and Review Considered "Administrivia"**

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None of the four OIA divisions consistently submitted, reviewed, or approved, the required AUO documentation. CBP policy requires that employees sign and submit, and supervisors review and approve, CBP Forms 203 on a monthly basis. It also requires quarterly reviews of AUO percentages based on hours worked and annual re-certifications for all those who earn AUO. AUO supporting documentation shows that OIA did not follow these policies.

In February 2014, OIA senior management requested that all AUO supporting documentation be submitted to headquarters for review. Multiple employees, including OIA management, disclosed that, in response to the request, they recreated CBP Forms 203. In a sworn statement, the CAD Director said that employees did not backdate any



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recreated forms; the OFTD Deputy Director said that he had his employees recreate forms from COSS. The Deputy Director for IOD said he reprinted his CBP Forms 203 from a thumb drive and asked his employees to also reprint forms. About 40 percent of the 119 forms we reviewed had not been signed by both the employee and the supervisor by the end of the following month. One director said in a sworn statement he considered reviewing and approving AUO supporting documentation “administrivia.” An employee in another division signed and submitted a Form 203, subsequently signed by a supervisor, with “Mickey Mouse” in the name field (see appendix D).

According to the *Customs Issuance System Handbook 5300-09*, certifying officials are to review the eligibility and rate of AUO pay for all employees at the beginning of each quarter. Only one of 15 supervisors we interviewed said he regularly conducted quarterly reviews. Another supervisor told us he did not review any of his employees’ Forms 203 or conduct any quarterly reviews. This resulted in one of his employees being decertified for 2014 because he had not properly documented the AUO hours he had worked, and as a result, he did not have enough recorded AUO hours. Without completing these periodic reviews, OIA supervisors and management cannot be sure that employees were receiving the proper amount of AUO, or whether they qualified for AUO at all.

**AUO Continued to be Paid after Secretary’s Suspension of AUO**

OIA headquarters employees improperly received AUO for approximately six months. On January 27, 2014, DHS Secretary Johnson issued a memorandum suspending the use and payment of AUO for certain classes of DHS employees. In particular, the memorandum immediately suspended AUO for DHS employees considered headquarters employees. According to the memorandum, agency heads could “waive these AUO suspensions in writing for specific positions or work units after personally reviewing the matter to confirm AUO use is consistent with applicable law and after consulting with OGC [Office of General Counsel] and the Management Directorate (MGMT).” The memorandum allowed component heads to delay the suspension of AUO during the time of pending waiver requests only for positions subject to the waiver request, provided the component waiver decision was made and presented to OGC and MGMT within 30 days of the date of the memorandum.

OIA had 23 employees who worked at headquarters and earned AUO. IOD, CAD, and IPD all submitted waiver requests through the Assistant



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Commissioner of CBP to the Acting Commissioner of CBP requesting that their headquarters employees be allowed to continue to receive AUO. However, the Acting Commissioner of CBP did not submit any waiver requests to OGC or MGMT within the 30 days. Thus, all OIA headquarters employees should have stopped receiving AUO as of January 27, 2014.

In the four pay periods following the Secretary's memorandum, although not eligible, headquarters employees were paid about \$73,000 in AUO. Based on those figures, an estimated \$219,000 in AUO was improperly paid out from January 27 to July 13, 2014, to OIA headquarters employees.

We interviewed and obtained sworn written statements from five OIA headquarters officials regarding the continued payment of AUO to headquarters employees. Two directors reported that they were advised by OIA's Assistant Commissioner and Deputy Assistant Commissioner to continue to claim AUO after the Secretary's January 27, 2014 memorandum. Another director said that after the Secretary's memorandum was issued, he instructed his employees not to change anything they had routinely been doing regarding AUO. He also advised his supervisors, including the Assistant Commissioner of OIA, "of that philosophy."

In a sworn statement, taken three months after the 30-day period for submitting a waiver to the Department (OGC and MGMT) had expired, one director noted, "The only subsequent instructions received were to take care recording the hours and duties performed." Likewise, another director revealed, "In the interim, I haven't received any specific instruction or guidance regarding the continuation of AUO, other than general comments that 'we'll have an answer by the end of February,...we should have an answer within a couple of weeks,...We'll have an answer in April'...and so on."

In his sworn statement, the Deputy Assistant Commissioner of OIA indicated that CBP's Office of Chief Counsel reviewed the waiver requests and determined "the overtime work performed by employees assigned to the [O]IA headquarters positions in CAD, IOD and IPD did not qualify for AUO." The Deputy Assistant Commissioner believed there was a time established for an appeal of this determination, but the appeal meeting was rescheduled multiple times and did not occur before the Assistant Commissioner of OIA was reassigned in June 2014. He further explained "there was no clear, distinct decision made by any one individual to



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continue AUO” for OIA headquarters employees after the Department’s deadline for waiver submissions had passed. In May 2014, he asked the Assistant Commissioner of OIA whether AUO should be suspended for headquarters personnel. The Assistant Commissioner subsequently informed him that “he conferred with HRM and was informed [O]IA should take no action as the waiver/appeal process was continuing and no final decisions had been reached regarding the [O]IA positions.”

On July 17, 2014, we informed the Acting Assistant Commissioner for Internal Affairs of OIA’s noncompliance with the Secretary’s January 27, 2014 memorandum. On July 23, 2014, the Deputy Assistant Commissioner for Internal Affairs acknowledged that headquarters employees were still receiving AUO, but rather than discontinue AUO payments immediately, CBP planned to discontinue them within 45 days. On July 28, 2014, we sent a memorandum to CBP Commissioner Kerlikowske advising that CBP should immediately discontinue AUO for OIA headquarters employees and rectify erroneous AUO payments.

According to CBP, 3 of the 23 headquarters employees stopped receiving AUO before our July 28, 2014 memorandum; 4 were decertified on August 10, 2014; 14 were decertified on August 24, 2014; 1 was transferred to a position that was not certified to receive AUO; and 1 was transferred to a field location that is certified to continue receiving AUO.

### **AUO Training and Guidance**

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CBP offered an online training course on AUO (TRAEN 059710) through its Virtual Learning Center. When asked about AUO guidance and training, 12 of the 38 OIA employees we interviewed mentioned that they had taken the online training; 3 of the 12 were from OFTD and 9 were from IOD. According to IOD’s Acting Director, “IOD certified full compliance with the training requirement in September 2012.”

Formal written guidance on AUO appears to have been minimal. Several directors and supervisors mentioned the legacy customs directive (Customs Directive 51550-004A) and payroll handbook; others could not recall receiving any specific written guidance. Few nonsupervisors remembered receiving formal written policies or procedures before the Secretary’s January 27, 2014 memorandum suspending AUO.

The Deputy Assistant Commissioner acknowledged that although he had not personally disseminated AUO policy or procedure documents to OIA staff, he “communicated with his direct reports about the necessity to



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ensure AOU was properly worked and documented.” Almost all of the directors we interviewed said they provided some form of AOU guidance to their staff.

**Actions Taken and Planned**

According to Commissioner Kerlikowske’s August 20, 2014 memorandum, “CBP is pursuing a series of actions to ensure the appropriate use and payment of AOU. These include de-authorizing AOU for those positions it has been determined that AOU is not the appropriate means of overtime compensation.” Based on HRM’s recommendation, CBP decertified 81 employees on August 10, 2014; 21 employees on August 24, 2014; and 12 employees on September 7, 2014 —164 employees remained eligible for AOU. According to a CBP official, the AOU decertifications were processed on different days because employees were notified of the decertification at different times.

According to data provided by CBP on August 29, 2014, more than 98 percent of OIA employees still eligible for AOU after the HRM study continued to receive AOU at the highest rate (25 percent).



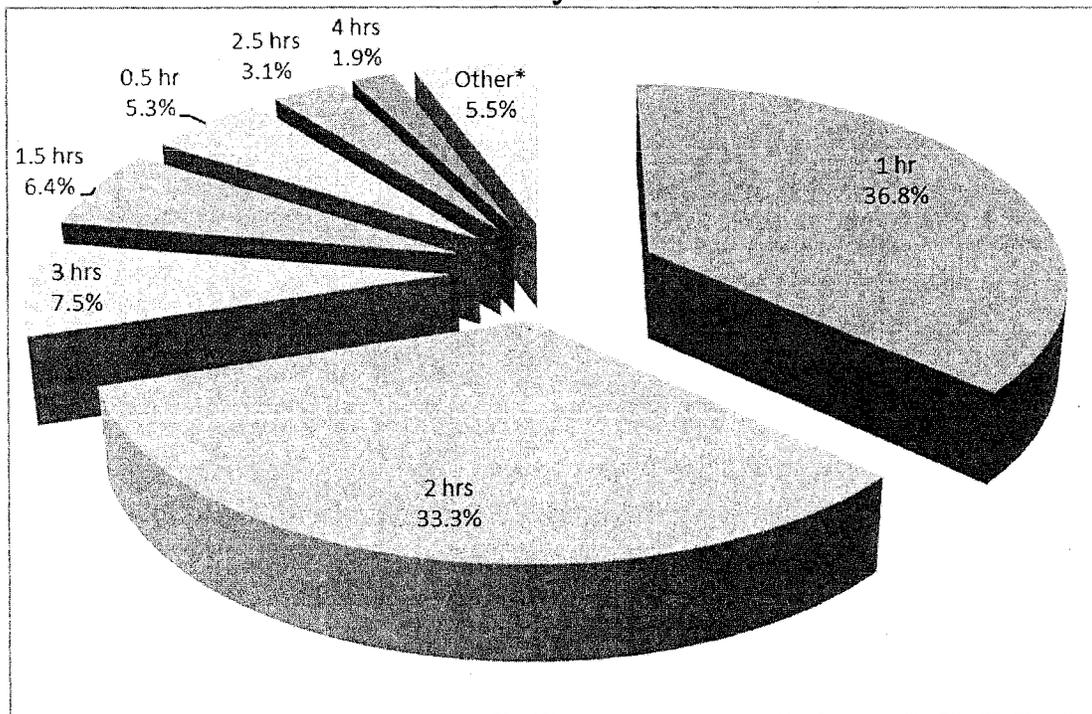




## Appendix B Frequency of AUO Time Increments Recorded

OIA employees record AUO hours in 15-minute increments. The chart below depicts the percentage of time each AUO increment was recorded in COSS. For example, OIA employees recorded 2 hours of AUO about 33.3 percent of the time.

**Increments of AUO Hours Recorded in COSS October 2012 – February 2014<sup>1</sup>**



Source: DHS OIG analysis of CBP data

\*Other: Any increment of AUO hours recorded less than 1 percent of the time.

<sup>1</sup> Percentages were rounded to the nearest tenth of a percent for clarity. As a result, percentages add to 99.8 percent.



**Appendix C: Examples of AUO Tasks Recorded on  
CBP Forms 203 Completed in 2013**

<b>Descriptions of AUO Activities (Facsimiles)</b>			
<b>CAD</b>	Polygraph Examination Quarterly Qualls Schedule Exams Monitor Intern	Internal Affairs Activities TECS training TDY Prep Union Teleconf	Polygraph Exam, Report & Prep PR TDY Operational Set up ASAIC Duties CAD Admin
<b>IOD</b>	LAR meeting Prep for subj intrvw Paperwork/meetings Office Move-In Supervisor Duties	ASAIC meeting Duty/Review Records emails/Duty call Case Review Standby Duty	Interview witness C1 & C2 Duties Staff meeting/paperwork IA Admin Tasking FI Range Duties
<b>OFTD</b>	Conduct Covert Test BA and HQ inquiry Ops Planning	DHS HQ Tasking 2012 status report Debrief/Travel	IAP HQ Call Brief JFK Joint Exercise Fraud doc CR
<b>IPD</b>	Review Reports	Respond to emails	



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**Appendix D**  
**Mickey Mouse CBP Form 203**

DEPARTMENT OF HOMELAND SECURITY  
U.S. Customs and Border Protection  
**ADMINISTRATIVELY UNCONTROLLABLE OVERTIME REPORT**  
Directive 51550-004A

Page 1 of 2

(Complete all fields)

Employee Name: <b>Mickey Mouse</b>	Title: Special Agent	Month/Year: Jan/2013
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Office and Location

Immigration and Customs Enforcement Division, 225 E. John Carpenter Freeway, Suite 800, Irving, TX 75062

DATE	Shift		AUO		Case Number/Other Identifying Information	Description of Duties In Non-Technical Language (Do not repeat the identifying phrase below)	Duty Code	Total AUO Hours
	Start	End	Start	End				
1/1/13	HOLIDAY							0.00
1/2/13	0700	1530				A/L		0.00
1/3/13	0700	1530				A/L		0.00
1/4/13	0700	1530				A/L		0.00
1/5/13	RDO							
1/6/13	RDO							
1/7/13	0700	1530	1530	1830		Pre-Employment Polygraph		3.00
1/8/13	0700	1530	1530	1730		Pre-Employment Polygraph		2.00
1/9/13	0700	1530	1530	1630		Pre-Employment Polygraph		1.00
1/10/13	0700	1530	1530	1830		Pre-Employment Polygraph		3.00
1/11/13	0700	1530	1530	1730		DLC Training/Dallas FO		2.00
1/12/13	RDO							
1/13/13	RDO							
1/14/13	0700	1530	1530	1730		Pre-Employment Polygraph		2.00
1/15/13	0700	1530	1530	1630		DLC Training/Dallas FO		2.00
1/16/13	0700	1530	1630	1830		Pre-Employment Polygraph		2.00
1/17/13	0700	1530	1730	1830		Administrative/Scheduling/DLC		1.00
1/18/13	0700	1530	1530	1730		Pre-Employment Polygraph		2.00
1/19/13	RDO							
1/20/13	RDO							
1/21/13	HOLIDAY							
<b>SUB-TOTAL</b>								<b>20.00</b>

CBP Form 203 (09/03)



## Appendix E Conduct of the Review

Objective and Scope: The objective of this evaluation was to assess, to the extent possible given limited resources, the validity of the whistleblower's allegation that CBP OIA employees did not perform duties justifying their AUO claims. Our objectives included determining the amount of AUO paid to CBP OIA employees, the justifications for receiving AUO pay, and whether CBP OIA's use of AUO was consistent with Federal regulations. The scope of this evaluation was FYs 2013 and 2014. We did not include a determination of the cause or effect of improper use of AUO in the scope.

Regulations and Policies Governing AUO: We reviewed the CFR, specifically 5 CFR § 550.151 and 5 CFR § 550.153(c); Customs Directive No. 51550-004A, *Administratively Uncontrollable Overtime (AUO) Pay*; and Chapter 8 of the *Customs Issuance System Handbook 5300-09*.

Judgmental Sample of Administratively Uncontrollable Overtime Report forms (CBP Forms 203): We selected a judgmental sample of CBP Forms 203 for 17 supervisory and 44 nonsupervisory OIA employees in five of OIA's 34 offices located in four cities; Houston, Texas; Miami, Florida; Tucson, Arizona; and Washington, DC (headquarters and Washington field office). The sample included two random forms from 2013 and one from 2014.

Review of CBP Forms 203: We reviewed 119 of OIA's CBP Forms 203 from 2013 to determine the tasks employees performed during AUO hours. We also reviewed the forms to determine whether they had been signed in a timely manner, as required by CBP policy.

Review of Payroll Records: CBP provided data from COSS that included the number of hours of AUO documented and the amount of AUO paid to OIA employees. We analyzed the number of AUO hours recorded in COSS to determine whether there was a pattern of AUO hours claimed each day (as shown in appendix C). We also used CBP's data to estimate the amount of AUO that had been paid to headquarters employees after the Secretary suspended AUO.

Interviews of OIA Employees: We judgmentally selected employees from each OIA division to determine what duties they typically performed during AUO hours, their understanding of AUO, and how they completed CBP Forms 203. We interviewed 19 supervisors and 19 nonsupervisors



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between April 21 and June 30, 2014. We also obtained sworn written statements from 7 of the 19 supervisors, including the CAD, IOD, and OFTD Directors, as well as the Deputy Security Officer and the Deputy Assistant Commissioner for Internal Affairs. We conducted these interviews to obtain information about the decision to continue AUO for headquarters employees after the Secretary had suspended it. We also discussed AUO policies, procedures, and guidance. Not every interviewee answered every question on our prepared list of questions.

Evaluation Standards: We conducted this review under the authority of the *Inspector General Act of 1978*, and according to the Quality Standards for Inspection and Evaluation issued by the Council of the Inspectors General on Integrity and Efficiency, dated January 2012.

## ADDITIONAL INFORMATION AND COPIES

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