



December 2014

DEPARTMENT OF HOMELAND SECURITY

Continued Action Needed to Strengthen Management of Administratively Uncontrollable Overtime

GAO Highlights

Highlights of [GAO-15-95](#), a report to congressional requesters

Why GAO Did This Study

DHS had approximately 29,000 employees earning AUCO, a type of premium pay intended to compensate eligible employees for substantial amounts of irregular, unscheduled overtime. DHS components' use of AUCO has been a long-standing issue since at least 2007, when reviews identified the inappropriate use of AUCO in DHS. GAO was asked to review DHS components' use and implementation of AUCO.

This report addresses, among other things, how much DHS spent on AUCO from fiscal year 2008 through March 2014 (the most current data available) and the extent to which DHS components implemented AUCO appropriately. GAO analyzed AUCO payments data from components that have regularly used AUCO, which included U.S. Customs and Border Protection, U.S. Immigration and Customs Enforcement, U.S. Secret Service, National Protection and Programs Directorate, U.S. Citizenship and Immigration Services, and Office of the Chief Security Officer. When calculating annual averages, GAO used the last full fiscal year of available data (2013). GAO also analyzed component AUCO policies and procedures to assess compliance with federal regulations and guidance.

What GAO Recommends

GAO recommends that DHS develop and execute a department-wide mechanism to ensure components implement AUCO appropriately. Congress should consider requiring DHS to report annually on components' progress remediating AUCO implementation deficiencies. DHS concurred with the recommendation.

View [GAO-15-95](#). For more information, contact David C. Maurer at (202) 512-9627 or maurerd@gao.gov.

December 2014

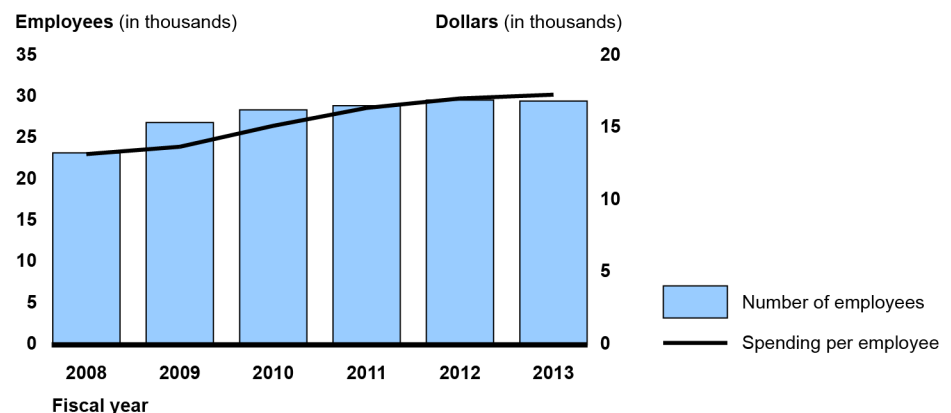
DEPARTMENT OF HOMELAND SECURITY

Continued Action Needed to Strengthen Management of Administratively Uncontrollable Overtime

What GAO Found

Department of Homeland Security (DHS) components spent \$512 million on administratively uncontrollable overtime (AUCO) payments in fiscal year 2013 and \$255 million through March 2014, mostly on Border Patrol agents. DHS's AUCO expenditures increased from fiscal years 2008 through 2013, in part because of higher payments per earner. The average annual AUCO payment per employee increased by about 31 percent, or from about \$13,000 to about \$17,000 from fiscal years 2008 through 2013, as shown in the figure below.

Figure: Department of Homeland Security (DHS) Administratively Uncontrollable Overtime (AUCO) Total Earners and Average Amount Spent per Earner Fiscal Years 2008 through 2013



Source: GAO analysis of DHS AUCO payments data. | GAO-15-95

Some DHS component policies are not consistent with certain provisions of federal regulations or guidance, and components have not regularly followed their respective AUCO policies and procedures, contributing to widespread AUCO administration and oversight deficiencies. For example, components have not consistently reviewed hours claimed and employee eligibility for AUCO. In response, in 2014, DHS issued two memorandums. One required the suspension of AUCO for certain employees. The other required components to submit plans to address deficiencies, which most DHS components have done. DHS also plans to issue a department-wide AUCO directive and to monitor component implementation of corrective actions through its ongoing human resource office assessments every 3 to 4 years, among other things. However, this monitoring is too general and infrequent to effectively monitor or evaluate DHS components' progress. Given the department's long-standing and widespread AUCO administration and oversight deficiencies, developing and executing a department-wide oversight mechanism to ensure components implement AUCO appropriately on a sustained basis, and in accordance with law and regulation, could better position DHS to monitor components' progress remediating AUCO deficiencies. Further, DHS's reporting annually to Congress on the extent to which DHS components have made progress in remediating AUCO implementation deficiencies could provide Congress with reasonable assurance that DHS components have sustained effective and appropriate use of AUCO in accordance with law and regulation.

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Abbreviations

AUO	administratively uncontrollable overtime
CBP	U.S. Customs and Border Protection
CSR	Commissioner's Situation Room
DHS	Department of Homeland Security
DOJ	Department of Justice
ERO	Enforcement and Removal Operations
FEPA	Federal Employees Pay Act
FLETC	Federal Law Enforcement Training Center
FLSA	Fair Labor Standards Act
GS	General Schedule
ICE	U.S. Immigration and Customs Enforcement
INS	U.S. Immigration and Naturalization Service
ISCD	Infrastructure Security Compliance Division
LEAP	Law Enforcement Availability Pay
NPPD	National Protection and Programs Directorate
OCHCO	Office of the Chief Human Capital Officer
OCIO	Office of the Chief Information Officer
OCSO	Office of the Chief Security Officer
OIG	Office of Inspector General
OPM	Office of Personnel Management
OPR	Office of Professional Responsibility
OSC	Office of Special Counsel
OSI	Office of Security and Integrity
OTD	Office of Training and Development
USCIS	U.S. Citizenship and Immigration Services
USCS	U.S. Customs Service
USSS	U.S. Secret Service

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December 17, 2014

The Honorable Jeanne Shaheen
Chairman, Subcommittee on Legislative Branch
Committee on Appropriations
United States Senate

The Honorable Thomas R. Carper
Chairman, Committee on Homeland Security
and Governmental Affairs
United States Senate

The Department of Homeland Security (DHS) and its components had approximately 29,000 employees receiving a type of overtime pay known as administratively uncontrollable overtime (AUO), as of March 2014. DHS components' use of AUO has been a long-standing issue since at least 2007, when allegations surfaced and investigations began regarding the inappropriate use of AUO in the department. For example, the Office of Special Counsel (OSC) has referred, over the past 7 years, numerous whistle-blower allegations of AUO misuse to DHS components and the DHS Office of Inspector General (OIG) for investigation.¹ The resulting investigations generally substantiated the allegations of AUO misuse, finding, for example, that employees across multiple DHS components—including U.S. Customs and Border Protection (CBP), the component with the largest number of employees earning AUO—improperly claimed and received AUO pay for performing duties that did not qualify for AUO. These investigations also found that supervisors knowingly authorized employees to claim hours for work that was ineligible for compensation as AUO, among other findings of inappropriate use of AUO. In reaction to these findings and to findings of other reviews, DHS components began

¹OSC is an independent federal investigative and prosecutorial agency with a primary mission to safeguard the merit system by protecting federal employees and applicants from prohibited personnel practices, especially reprisal for whistle-blowing.

suspending use of AUO in November 2013 and deauthorizing AUO for certain employees and positions in January 2014.²

AUO is a type of premium pay intended to compensate eligible federal employees for substantial amounts of irregular, unscheduled overtime that cannot be controlled administratively. Consistent with law and in accordance with federal regulations and guidance issued by the Office of Personnel Management (OPM), an agency may pay AUO to an employee in a position in which the duty hours cannot be controlled administratively and the employee is generally responsible for recognizing circumstances that require the employee to remain on duty.³ In general, AUO is paid as a percentage of an employee's base pay, ranging from 10 to 25 percent, after considering previous AUO worked and the expectation of such hours to be worked in the future. For example, a 25 percent AUO pay rate is authorized for an employee in a position that requires an average of over 9 hours per week of irregular or occasional overtime.

A key tenet of AUO is that an agency should authorize an employee to earn AUO only if that employee's duties require substantial amounts of irregular or occasional overtime work that cannot be scheduled in advance.⁴ The AUO regulations describe the responsibilities of an investigator of criminal activities—whose hours of duty are dependent upon the behavior of criminals or suspected criminals, which cannot be controlled administratively—as a typical example of a position that meets these requirements.⁵ Specifically, these responsibilities may include

²Components use different terms to describe the cessation of AUO within their respective components. For the purposes of this report, we use "suspension" of AUO when addressing components' actions to completely stop use of AUO for all employees without a formal written determination as to a particular employee's or position's AUO eligibility, and use "deauthorization" of AUO when addressing components' actions to identify specific employees or positions as no longer AUO eligible.

³See 5 U.S.C. § 5545(c); 5 C.F.R. §§ 550.151-550.154; OPM, *Memorandum for Directors of Personnel (CPM 97-5: Guidance on AUO Pay* (June 13, 1997)).

⁴For example, the regulations provide that AUO is appropriate when "an employee must remain on duty not merely because it is desirable, but because of compelling reasons inherently related to continuance of his [or her] duties, and of such a nature that failure to carry on would constitute negligence" but that it is not appropriate in circumstances where an employee must continue working because relief fails to report as scheduled. § 550.153(c)(2)-(3).

⁵§ 550.153(a).

shadowing suspects, working incognito among those under suspicion, searching for evidence, meeting informers, making arrests, and interviewing persons having knowledge of criminal or alleged criminal activities. In such circumstances, the hours of duty cannot be controlled through administrative means such as hiring additional personnel, rescheduling hours of duty, and granting compensatory time-off duty to offset overtime hours required.

You asked us to review DHS's use of AUO, including how much DHS has spent on AUO annually and whether DHS components have appropriately used AUO as compensation for overtime. This report examines (1) how much DHS components have spent on AUO from fiscal year 2008 through March 2014, (2) the extent to which DHS components have implemented AUO appropriately, and (3) how recent AUO suspensions and deauthorizations at selected DHS components have affected their use of overtime.

To address these questions, we assessed DHS's use of AUO for those components that compensated employees with AUO from fiscal year 2008 to March 22, 2014—the most currently available data for fiscal year 2014 at the time of our data request. However, when calculating annual averages, we used the last full year of available data—fiscal year 2013. Specifically, these components are CBP, U.S. Immigration and Customs Enforcement (ICE), National Protection and Programs Directorate (NPPD), U.S. Citizenship and Immigration Services (USCIS), U.S. Secret Service (USSS), and DHS's Office of the Chief Security Officer (OCSO).⁶ We selected fiscal year 2008 as the starting point for our analysis because OSC first reported allegations of AUO abuse at DHS in 2007.

To determine how much each DHS component spent on AUO from fiscal year 2008 (October 2007) through March 2014, we collected DHS component AUO payments data for this time period. These data included AUO payments made by DHS components to employees by pay period, as well as occupational characteristics, such as pay grade, position title,

⁶We include OCSO in our scope when we refer to DHS components throughout this report. In addition, the Federal Law Enforcement Training Center (FLETC) compensated 1 employee with AUO from July 2010 to October 2011, and the Office of the Chief Information Officer (OCIO) compensated 4 employees with AUO from April 2012 to May 2013. We did not include FLETC and OCIO in our review because their use of AUO was limited to fewer than 10 employees, for about 1 year.

location, and program office. We analyzed the AUO payments data to determine total AUO paid and characteristics of AUO recipients.

To determine the extent to which DHS components implemented AUO appropriately, we reviewed DHS components' AUO policies and procedures and compared them with relevant federal regulations and guidance on AUO pay. We also examined relevant DHS OIG and OSC-referred component investigations and reviews on the use of AUO within DHS. These reports were results of investigations or reviews that were based on referrals or otherwise begun from May 2007 through January 2014. We also met with officials from DHS components that compensated employees with AUO, as well as with OPM, to obtain their perspectives on DHS components' AUO policies and procedures as well as on federal regulations and guidance. To determine actions DHS and its components have taken to strengthen AUO policies and procedures and to improve implementation of these policies and procedures since 2007, we reviewed DHS's January 23, 2014, and May 23, 2014, memorandums on AUO administration.

To determine how recent AUO suspensions and deauthorizations at selected DHS components have affected their use of overtime as a means of compensation, we analyzed information from USCIS and OCSO, the DHS components that suspended AUO for all of their employees earning AUO in November 2013.⁷ We analyzed overtime data for those employees who had received AUO pay at USCIS and OCSO. Specifically, we compared overtime hours worked and overtime paid for these employees 13 pay periods prior to and after the AUO suspension. In addition, we interviewed officials from USCIS and OSCO to obtain their perspectives on the effect that the AUO suspension had on their ability to fulfill mission-critical tasks. We also analyzed information from the DHS components that deauthorized AUO for certain employees or positions—specifically, CBP, ICE, and NPPD. These components deauthorized employees from AUO in response to a January 27, 2014, memorandum from the Secretary of DHS ordering that AUO be suspended for specified categories of individuals.

⁷USCIS suspended AUO for all AUO-earning employees in November 2013, and subsequently deauthorized AUO for all employees and positions in the component in July 2014.

We assessed the reliability of the payments data for determining how much components spent on AUO and how AUO suspensions and deauthorizations have affected overtime payments by interviewing knowledgeable component officials about the completeness and reliability of the data and controls in place for the data, among other things. We also tested the data we received in various ways, such as looking for missing data, duplicate payment entries, negative payments, out-of-range entries, and other entries that appeared to be unusual. We determined that the payments data were sufficiently reliable for the purposes of determining AUO pay amounts and occupational characteristics of AUO recipients. Additional details on our scope and methodology are contained in appendix I.

We conducted this performance audit from January 2014 to December 2014 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

DHS Components with AUO-Earning Employees

DHS has several components with employees who earned AUO as overtime compensation. Table 1 describes the various components with employees earning AUO at the start of fiscal year 2014.

Table 1: Department of Homeland Security (DHS) Components and Offices with Employees Earning Administratively Uncontrollable Overtime (AUO) in Fiscal Year 2014

DHS component	Mission	Component offices with employees earning AUO
U.S. Customs and Border Protection (CBP)	To keep terrorists and their weapons out of the United States, while upholding a responsibility for securing and facilitating international trade and travel.	Office of Air and Marine Office of Border Patrol Office of Field Operations Office of Internal Affairs Office of Training and Development Other offices ^a
U.S. Immigration and Customs Enforcement	To promote homeland security and public safety through the criminal and civil enforcement of federal laws governing border control, customs, trade, and immigration.	Enforcement and Removal Operations Homeland Security Investigations Office of Professional Responsibility

DHS component	Mission	Component offices with employees earning AUO
U.S. Secret Service	To safeguard the nation's financial infrastructure and payment systems to preserve the integrity of the economy, and to protect national leaders, visiting heads of state and government, designated sites and National Special Security Events.	Office of Investigations Office of Protective Operations Office of Technical Development and Mission Support
National Protection and Programs Directorate	To lead the national effort to protect and enhance the resilience of the nation's physical and cyber infrastructure.	Federal Protective Service Infrastructure Security Compliance Division Protective Security Coordination Division
U.S. Citizenship and Immigration Services (USCIS)	To secure America's promise as a nation of immigrants by providing accurate and useful information to its customers, granting immigration and citizenship benefits, promoting an awareness and understanding of citizenship, and ensuring the integrity of the immigration system.	Office of Security and Integrity
Directorate for Management	To ensure that DHS's employees have well-defined responsibilities and that managers and their employees have efficient means of communicating with one another, with other governmental and nongovernmental bodies, and with the public they serve.	Office of the Chief Security Officer

Source: GAO analysis of DHS components' use of AUO. | GAO-15-95

^aCBP Offices of Intelligence and Investigative Liaison, International Affairs, and Technology Innovation and Acquisition, as well as the Joint Operations Directorate and Joint Field Command, also had relatively limited numbers of employees earning AUO so far in fiscal year 2014.

AUO Eligibility and Compensation

Employees who work hours in addition to their regularly scheduled workweek may be entitled to compensation for the work performed, in accordance with applicable statutory and regulatory requirements.⁸ AUO is intended to compensate eligible federal employees in positions that require substantial amounts of irregular, unscheduled overtime that cannot be controlled through administrative means—such as by hiring additional personnel, rescheduling the hours of duty, or granting compensatory time-off duty to offset overtime hours required.⁹ To earn AUO, the employee must be in such a position that requires the employee

⁸See, e.g., 5 C.F.R. pt. 550, subpt. A.

⁹§ 550.153(a). Other types of premium pay—defined in regulation as the dollar value of work performed in addition to an employee's base salary, but excluding overtime paid under the Fair Labor Standards Act (FLSA) and compensatory time off earned in lieu of such overtime pay—include compensation for overtime, night, Sunday, or holiday work, or for standby or availability duty. See 5 U.S.C. §§ 550.103(a), 550.111-550.144.

to be generally responsible for recognizing, without supervision, circumstances that require him or her to remain on duty.¹⁰

The regulations include additional language addressing the circumstances under which an employee may be deemed eligible to earn AUO. Among other factors, circumstances must require that the employee remain on duty not merely because it is desirable, but for compelling reasons inherently related to continuance of his or her duties such that failure to carry on would constitute negligence.¹¹ This would not include, for example, such circumstances as when an employee must continue working because shift relief fails to report as scheduled. In addition, circumstances under which an employee may earn AUO must be in continuation of the full scheduled workday or the resumption of a full workday in accordance with a prearranged plan or an awaited event, and require that the employee have no choice as to when or where he or she may perform the work.¹² For example, when an employee has an option to take work home, may complete it at the office, or has latitude in working hours to begin work later in the morning in order to work later in the evening, such additional hours should not be compensated using AUO.

The regulations further specify that agencies are responsible for determining which employees are eligible to earn AUO.¹³ As noted earlier, an employee is eligible to earn AUO if the duties of his or her position require the employee to perform substantial amounts of irregular or occasional overtime work. As the regulations prescribe, this means the employee in such a position must work an average of at least 3 hours a week of irregular or occasional overtime and that such overtime work is a continual requirement of the position, generally averaging more than once a week. There must also be a definite basis for anticipating that such

¹⁰§ 550.151.

¹¹§ 550.153(c) (providing also that responsibility for an employee remaining on duty when required by circumstances must be a definite, official, and special requirement of his or her position).

¹²§ 550.153(d).

¹³§ 550.161(b).

irregular or occasional overtime work will continue with a duration and frequency to meet the minimum requirements for eligibility.¹⁴

Agencies are to determine the appropriate AUO pay rate as a percentage of an employee's annual rate of locality-adjusted base pay, and it is paid as part of the employee's annual salary rather than on an hourly basis as with other types of overtime compensation.¹⁵ For example, if an employee in an AUO-eligible position worked 8 hours of irregular or occasional overtime per week on average, that employee is to receive AUO premium pay at a rate of 20 percent of his or her base pay, in addition to his or her regular pay. If an employee in this scenario has a base rate of pay of \$50,000 per year, his or her AUO pay would equal an additional \$10,000 per year or about an additional \$385 per pay period. Table 2 shows the appropriate rates of pay established in regulation and the corresponding requisite number of eligible overtime hours worked.

Table 2: Regulatory Standards for Administratively Uncontrollable Overtime (AUO) Premium Pay Rate Calculations

Employee's weekly average of AUO hours	Rate of AUO
At least 3 but not more than 5 hours	10 percent
Over 5 but not more than 7 hours	15 percent
Over 7 but not more than 9 hours	20 percent
Over 9 hours	25 percent

Source: 5 C.F.R. § 550.154. | GAO-15-95

Note: Locality-adjusted pay refers to the General Schedule salary for an employee after it is adjusted for the employee's location of employment. An agency may propose, and OPM may approve, a rate of pay on an annual basis at a different rate if unusual conditions make the applicable rates of pay unsuitable. See 5 C.F.R. § 550.154(b).

In addition to determining employees' AUO eligibility and pay rates, agencies are responsible for reviewing AUO pay determinations at appropriate intervals, and revising AUO pay rates or discontinuing such

¹⁴§ 550.153(b)(3). Agencies may determine the number of expected hours of irregular or occasional overtime work to be customarily required in positions based on available records of past work, and any other information bearing on the number of duty hours that may be reasonably expected in the future.

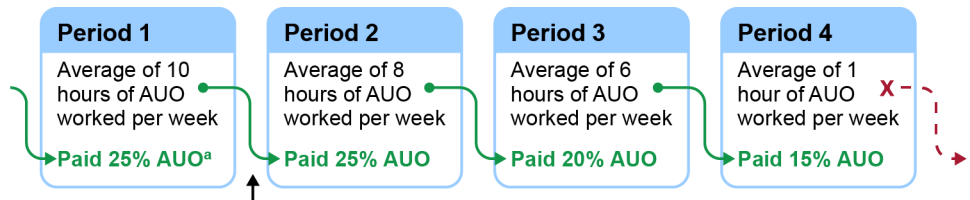
¹⁵See §§ 550.154 (establishing AUO rates of premium pay), 550.163(d)(2) (providing further that AUO is included as part of an employee's base pay for, among other things, calculating federal retirement benefits).

payments when necessary.¹⁶ Federal regulations and guidance provide that to establish an employee's AUO pay rate, agencies should review a period of AUO-eligible hours worked by each employee over a period of time and consider any other information bearing on the number of hours that the employee may reasonably be expected to work in the future. Agencies may make any adjustments to an existing AUO rate of pay as appropriate—these are known as rates reviews.¹⁷ For example, in one quarter, an employee may earn AUO at a 25 percent rate of pay because that employee worked over 9 AUO hours every week on average during the previous quarter or was expected to work those hours during the current quarter. However, if the agency policy is to review the number of overtime hours each quarter to determine the average number of overtime hours worked, and an employee worked fewer overtime hours during that quarter (and there is no reasonable expectation that additional AUO hours per week will be required in the subsequent quarter), the agency should adjust that employee's AUO pay rate down for the next quarter. In other words, the employee's AUO pay rate may change from one quarter to the next depending on the number of overtime hours worked in previous quarters and the number of overtime hours expected in future quarters. See figure 1 for an example of AUO pay based on a review period of one quarter.

¹⁶See § 550.161.

¹⁷Agencies may define the AUO pay rates reviews period for its employees. In the example cited in fig. 1, the agency has a quarterly AUO review period.

Figure 1: Example of Review Periods by Which Administratively Uncontrollable Overtime (AUO) Pay Is Based



AUO pay is based on previous period's AUO hours worked and a reasonable expectation that AUO hours would be worked in subsequent period

Legend

→ AUO pay received in next period

✗ - → AUO pay not received in next period if no expectation of AUO hours

Source: GAO analysis of AUO regulations and policies. | GAO-15-95

^aEmployee was eligible for AUO and either worked AUO the previous period or had a reasonable expectation that AUO hours would be required during Period 1.

OPM has issued guidance on AUO, most recently in June 1997, to assist agencies in implementing their AUO practices that reiterates AUO requirements, elaborates on certain regulatory provisions, and recommends practices that agencies should consider adopting.¹⁸ For example, OPM guidance urges agencies to conduct independent reviews of AUO administration—to include assessing rates reviews, among other things—at least once every 5 years. The guidance also provides examples of potential abuses of an agency's AUO pay authority, which include payment of AUO to an employee who typically works in a supervised office environment rather than in the field and whose duties are clerical or administrative in nature. The guidance states that such

¹⁸See Omnibus Consolidated Appropriations Act, 1997, Pub. L. No. 104-208, § 650(b), 110 Stat. 3009, 3009-368 (1996) (requiring the inspectors general of each department or agency using AUO to conduct an audit and submit a report on AUO use within their respective departments and agencies and that OPM, based on its review of the reports, issue revised guidelines that limit the use of AUO to eligible employees and that expressly prohibit the use of AUO for customary or routine work duties and work duties that are primarily administrative in nature or occur in noncompelling circumstances). The inspectors general reports submitted pursuant to the statute highlighted implementation issues with AUO and the need for OPM guidance.

duties can be easily scheduled in advance, and do not involve independent investigative or other administratively uncontrollable work.¹⁹

Once an employee is approved for and compensated under AUO, any irregular or occasional overtime worked, regardless of whether such overtime is controllable, will generally be included as part of the employee's existing AUO pay. In addition, an employee earning AUO may also be compensated for overtime ordered or scheduled in advance (or that should have been scheduled in advance) by a supervisor pursuant to the overtime provisions of the Federal Employees Pay Act (FEPA) or the Fair Labor Standards Act (FLSA).²⁰ A principal difference between AUO and FEPA or FLSA overtime—referred to also as “regular” or “scheduled” overtime—is that under AUO the employee is generally responsible for recognizing, without supervision, circumstances that require remaining on duty. Under FEPA or FLSA overtime, the employee's supervisor must generally direct or approve any overtime work in advance of the employee performing the work.²¹ Unlike AUO, scheduled overtime is paid on an hourly basis rather than as a percentage of the employee's annual salary.

Another type of premium pay that is used to compensate law enforcement officers at DHS and other agencies is known as Law Enforcement Availability Pay (LEAP). First authorized in 1994, LEAP provides mandatory payment of 25 percent of base pay to federal criminal investigators for working or being available to work an annual average of

¹⁹According to OPM position classifications, clerical work typically involves general office or program support duties such as maintaining office records or processing transactions, and administrative work typically involves analyzing and developing basic programs, policies, or procedures that facilitate the work of an office or program.

²⁰See generally 5 U.S.C. § 5542 (FEPA) and 29 U.S.C. § 207 (FLSA). Overtime under FEPA may also be referred to as Title 5 or 45 Act overtime. Certain employees, such as persons employed as bona fide executive, administrative, professional, and outside sales employees, are considered FLSA exempt and are not subject to the overtime compensation and other provisions of the FLSA. See 29 U.S.C. § 213.

²¹See, e.g., 5 C.F.R. § 550.111(a) (describing overtime as work in excess of 40 hours in an administrative workweek that is officially ordered or approved). Under FLSA, however, there are circumstances under which an employee may be entitled to compensation for overtime not scheduled or approved in advance. See, e.g., 29 C.F.R. § 778.223 (requiring that an employee be compensated for nonproductive time during which an employee is “suffered or permitted” to work even if not required to do so). AUO-earning employees who are also eligible to earn overtime under FLSA may earn FLSA overtime for irregular and occasional overtime hours worked beyond 85.5 in a pay period.

2 hours or more of unscheduled duty per regular workday.²² As a result, LEAP superseded AUO for criminal investigators or other approved law enforcement officers as the appropriate means for earning premium pay—that is, employees earning LEAP are not eligible to earn AUO.²³

Past Reviews of DHS Components' Use of AUO

Various entities have reviewed the use of AUO by DHS components, including reviews of current DHS components that existed prior to the formation of DHS in 2003. For example, pursuant to a provision of the Omnibus Consolidated Appropriations Act, 1997, the inspectors general of each federal department or agency that used AUO were required to conduct audits and report their findings on the use of AUO.²⁴ The reviews conducted in satisfaction of this requirement encompassed legacy entities, such as the U.S. Border Patrol, that are now part of DHS.²⁵ The Department of Justice (DOJ) OIG reported in 1997 that 6,900 mostly Border Patrol employees within the former Immigration and Naturalization Service (INS) received AUO in fiscal year 1996. The OIG also reported that its review of the records for a sample of 202 employees did not substantiate that the overtime worked was uncontrollable for 95 percent of the sample.²⁶ More recently, the DHS OIG and DHS components' offices of internal affairs, in response to allegations referred by OSC,

²²See 5 U.S.C. § 5545a; 5 C.F.R. §§ 550.181-550.187.

²³See 5 C.F.R. § 550.186(a). Employees earning annualized premium pay in the form of standby duty pay under 5 U.S.C. § 5545(c)(1) are likewise not eligible to also earn AUO. See § 550.163(a).

²⁴See Pub. L. No. 104-208, § 650(a), 110 Stat. at 3009-368.

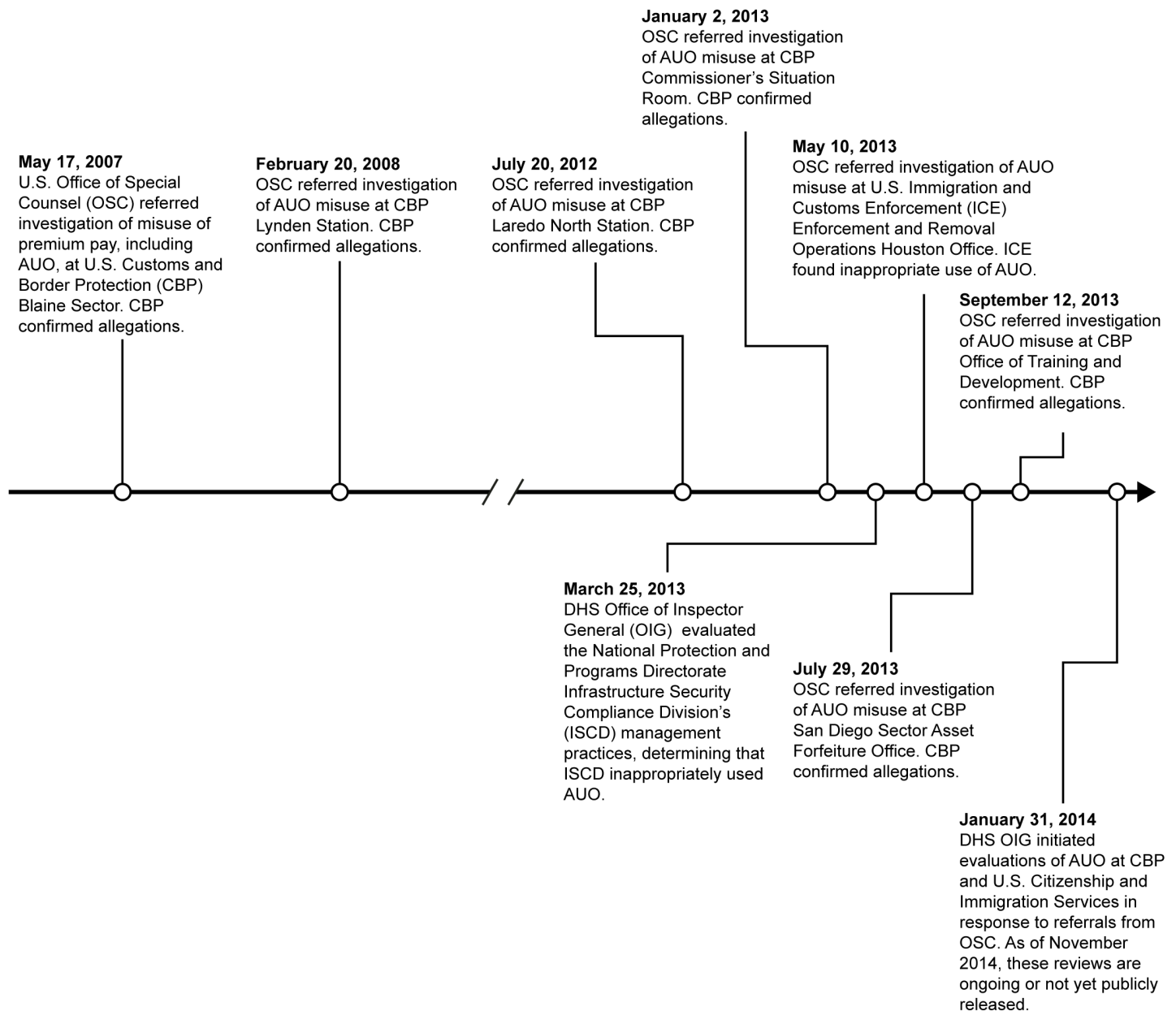
²⁵See Homeland Security Act of 2002, Pub. L. No. 107-296, §§ 101, 441, 116 Stat. 2135, 2142, 2192 (2002) (establishing DHS and transferring, among other entities, U.S. Border Patrol from the Immigration and Naturalization Service (INS) to DHS).

²⁶Department of Justice, Office of Inspector General, *Use of Administratively Uncontrollable Overtime in the Department of Justice*, Audit Report 97-09 (Washington, D.C.: January 1997). The DOJ OIG recommended that INS reevaluate INS AUO policy in order to determine whether employees in upper grades should remain eligible for AUO; design and implement a review process to ensure that office heads maintain certificates of eligibility at the duty locations for all employees who receive AUO, and recertify these every year; establish and implement procedures to ensure employees earn AUO only for uncontrollable work; and require office heads to ensure that supervisors approve time and attendance records and time and effort reports of employees under their supervision.

have conducted reviews and investigations of AUO at DHS.²⁷ See figure 2 for a timeline of selected AUO reviews and investigations related to AUO use at DHS.

²⁷Part of OSC's responsibilities include providing a secure channel through which federal employees may disclose information about various workplace improprieties, including violation of law, rule, or regulation, gross mismanagement and waste of funds, abuse of authority, or substantial danger to public health or safety. OSC refers these allegations to the relevant department and requests that an investigation occur. The department may then assign the investigation to its office of inspector general or to the relevant component's office of internal affairs for investigation.

Figure 2: Timeline of Selected Reviews of Department of Homeland Security (DHS) Components' Use of Administratively Uncontrollable Overtime (AUO)



Source: GAO analysis of select reviews of DHS's use of AUO. | GAO-15-95

Collectively, these reviews highlighted two broad issues related to the use of AUO at DHS:

- DHS components have not appropriately reviewed and documented overtime hours as being administratively uncontrollable. For example, in reviewing OSC-referred allegations of misuse at Border Patrol locations, CBP found that the overtime work performed by Border Patrol agents at these locations was controllable in that the duties were necessary every day to complete agents' shifts. CBP also found that employees at these locations did not document AUO hours in accordance with applicable regulations.
- DHS components have determined positions to be AUO-eligible when the positions' job duties did not warrant AUO eligibility. For example, in reviewing OSC-referred allegations of misuse, CBP found that Border Patrol agents on temporary detail earned AUO even though the duties of the positions to which they were detailed did not satisfy applicable regulatory requirements for AUO pay. Similarly, DHS OIG reported in 2013 that NPPD's Infrastructure Security Compliance Division (ISCD) inappropriately used AUO as compensation for the chemical security inspectors. See appendix II for further details on previous reviews of AUO.

DHS Components Averaged \$434 Million Annually in AUO Payments from Fiscal Years 2008 through 2013, Mostly for Border Patrol Agents

DHS components paid an average of \$434 million in AUO per year from fiscal years 2008 through 2013—the last full year of available data.²⁸

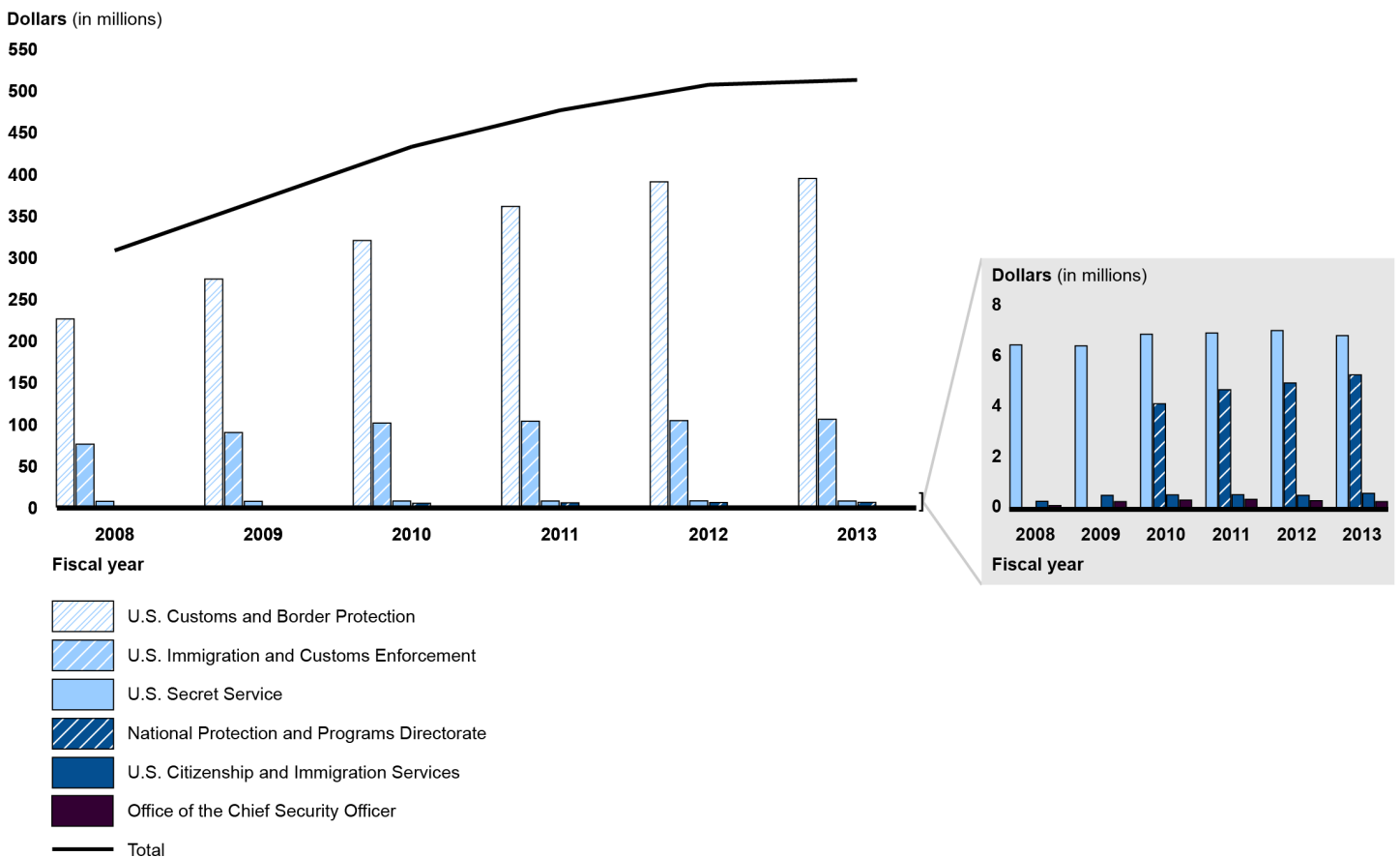
Across DHS, annual AUO expenditures increased from \$307 million in fiscal year 2008 to \$512 million in fiscal year 2013, or an increase of approximately \$205 million. According to our analysis, this increase in expenditures occurred because of an approximately 22 percent increase in AUO earners from fiscal years 2008 through 2010 and an increase in AUO payments per employee because of average increases in salary. Since fiscal year 2011, the number of employees earning AUO increased by less than 2 percent, while AUO expenditures increased by about 8 percent. The majority of these AUO-earning employees are nonsupervisory Border Patrol agents within CBP, and are employed along the southwest border of the United States.

²⁸As previously stated, we analyzed DHS components' AUO payments data through the most current available for fiscal year 2014—March 22, 2014. However, when calculating averages, we used the last full year of available data—fiscal year 2013.

AUO Expenditures within DHS Have Increased since Fiscal Year 2008 because of Higher Payments per Earner and Greater Overall Numbers of Earners

DHS components spent increasing amounts on AUO each year from fiscal year 2008 through fiscal year 2013. Specifically, AUO payments increased on average 11 percent each year, from approximately \$307 million in fiscal year 2008 to approximately \$512 million in fiscal year 2013—the last full fiscal year of AUO payments data—as shown in figure 3. In the first half of fiscal year 2014, AUO payments totaled \$255 million, and are on pace to equal fiscal year 2013 payments.

Figure 3: Department of Homeland Security (DHS) Administratively Uncontrollable Overtime (AUO) Spending, Fiscal Years 2008 through 2013



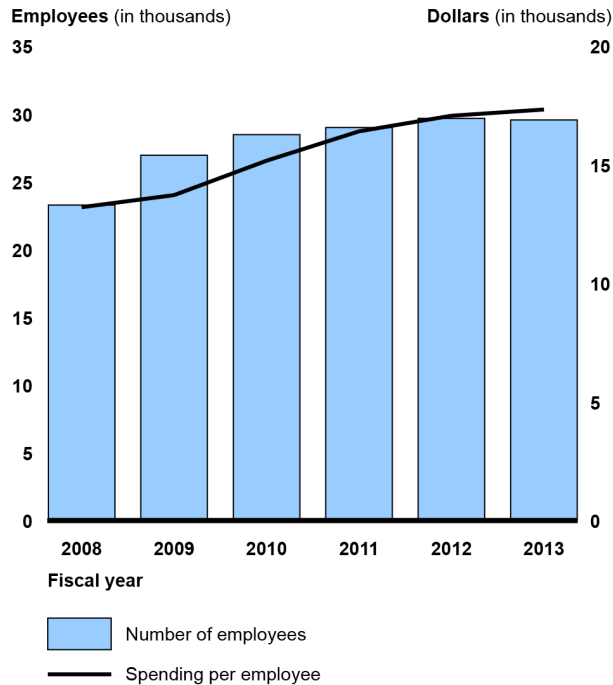
Source: GAO analysis of DHS AUO payments data. | GAO-15-95

Note: The National Protection and Programs Directorate's data were available for fiscal years 2010 through 2013. U.S. Secret Service data for 2008 through 2010 are for calendar years, not fiscal year.

According to our analysis, in fiscal years 2008 through 2010, an increase in the number of AUO earners drove the increase of AUO payments more than the spending per employee. The number of AUO-earning employees within DHS rose from approximately 23,000 in fiscal year 2008 to approximately 28,000 in 2010, an increase of about 22 percent. From fiscal years 2011 through 2013, the number of AUO-earning employees within DHS rose at a slower pace, increasing less than 2 percent during this time period. As of March 2014, the number of AUO-earning employees within DHS was near the fiscal year 2013 total of about 29,000.

Our analysis indicates that since 2011, the rate of increase in the amount of AUO paid per individual outpaced the rate of growth of the total number of AUO earners, and contributed to an overall increase in AUO expenditures of 8 percent. Overall, from fiscal year 2008 through fiscal year 2013, the average annual AUO payment per employee increased by about 31 percent, or from about \$13,000 in fiscal year 2008 to about \$17,000 in fiscal year 2013, as shown in figure 4. CBP officials stated that this increase in the amount of AUO paid per individual was a result of an increase in average annual salary, since AUO is paid as a percentage of an employee's base salary, and not necessarily because of increases in the AUO rates of pay authorized.

Figure 4: Department of Homeland Security (DHS) Administratively Uncontrollable Overtime (AUO) Total Earners and Average Amount Spent per Earner Fiscal Years 2008 through 2013



Source: GAO analysis of DHS AUO payments data. | GAO-15-95

Note: The National Protection and Program Directorate's data were available for fiscal years 2010 through 2014. We included data through fiscal year 2013 in fig. 4 because it was the last full year of data available at the time of our request. U.S. Secret Service data for 2008 through 2010 are for calendar years, not fiscal year.

CBP accounts for the majority of AUO expenditures within DHS, accounting for nearly 77 percent (\$394 million of \$512 million) of all AUO paid by DHS in fiscal year 2013. This is because CBP also has approximately 77 percent of the AUO-earning employees within DHS—primarily Border Patrol agents, who numbered approximately 21,500 in fiscal year 2013. CBP spent on average \$327 million annually on AUO from fiscal years 2008 through 2013. CBP accounted for most of the department's increase in AUO expenditures as well—with its AUO expenditures growing 75 percent from fiscal years 2008 through 2013. According to CBP officials, a CBP hiring initiative from 2005 through 2010, and the new hires' subsequent career ladder progression to higher-

compensated grades, drove the increased AUO expenditures, along with an increase of one grade for all Border Patrol agents compensated at General Schedule (GS)-11 and GS-12 levels in 2010.²⁹

ICE accounted for the next largest percentage of AUO expenditures and AUO earners, constituting 21 percent (\$105 million of \$512 million) of all AUO expenditures in DHS in fiscal year 2013 and approximately 21 percent of AUO-earning employees within DHS that year. ICE increased its expenditures by a total of about 40 percent from fiscal years 2008 through 2013, spending approximately \$96 million on AUO on average each year during this time period. USSS accounted for about 1 percent of AUO expenditures within DHS in fiscal year 2013 as well, and spent an average of \$6.8 million in AUO each year from fiscal years 2008 through 2013. USSS AUO expenditures increased by about 6 percent from fiscal years 2008 through 2013. NPPD accounted for about 1 percent of AUO expenditures in fiscal year 2013, and its AUO expenditures increased by about 27 percent from fiscal years 2008 through 2013. NPPD spent an annual average of about \$4.8 million during this time frame.

USCIS and OCSO each accounted for less than 1 percent of total AUO expenditures within DHS in fiscal year 2013. Each spent on average less than \$1 million on AUO each year from fiscal years 2008 through 2013. See table 3 for additional information on DHS expenditures on AUO since fiscal year 2008.

²⁹The General Schedule refers to the federal position classification and pay system established under title 5, chapter 51 and subchapter III of chapter 53 of the U.S. Code. See generally 5 C.F.R. pt. 531.

Table 3: Expenditures on Administratively Uncontrollable Overtime (AUO) from Fiscal Years 2008 through 2014 by Department of Homeland Security (DHS) Components

Dollars in millions							
	2008	2009	2010	2011	2012	2013	2014 ^a
U.S. Customs and Border Protection	\$225.2	\$273.2	\$319.3	\$360.1	\$389.7	\$393.7	\$178.2
U.S. Immigration and Customs Enforcement	75.1	89.0	100.4	102.7	103.4	105.0	70.0
U.S. Secret Service (USSS) ^b	6.5	6.5	6.9	7.0	7.1	6.9	4.2
National Protection and Programs Directorate (NPPD) ^c	-	-	4.2	4.7	5.0	5.3	2.5
U.S. Citizenship and Immigration Services (USCIS)	0.3	0.5	0.6	0.6	0.5	0.6	< 0.1 ^d
DHS Office of the Chief Security Officer (OCSO)	0.1	0.3	0.4	0.4	0.3	0.3	< 0.1 ^d
Total	\$307.3^e	\$369.5^e	\$431.7	\$475.5	\$506.1	\$511.8	\$255.1

Source: GAO analysis of DHS AUO payments data. | GAO-15-95

Note: Discrepancies in totals are due to rounding.

^aFiscal year 2014 data are through the second quarter, March 2014.

^bUSSS data for 2008 through 2010 are for calendar years, not fiscal year.

^cNPPD data available for fiscal years 2010 through 2013.

^dOSCO and USCIS ended all AUO payments prior to January 1, 2014.

^eData do not include NPPD.

The Majority of AUO Earners within DHS Work in Nonsupervisory Positions along the Southwest Border

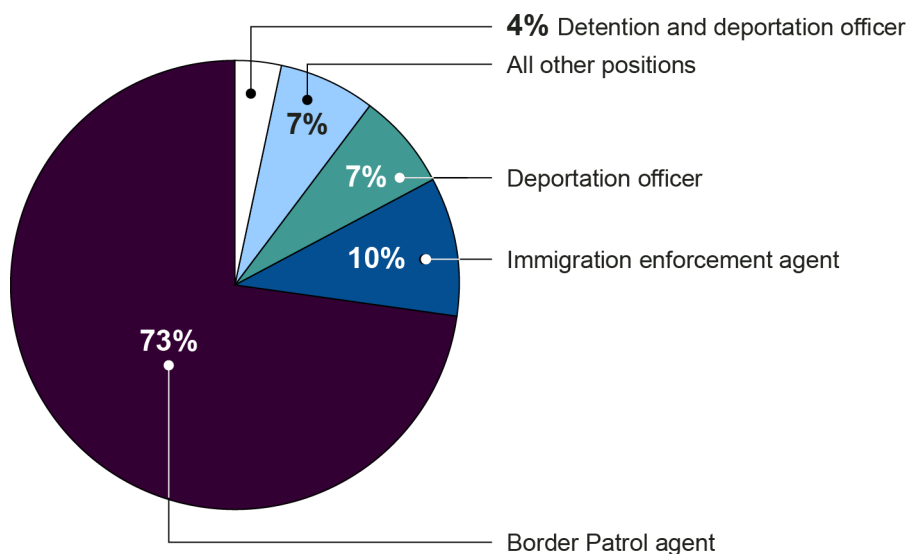
Most AUO earners within DHS are CBP and ICE employees with responsibilities that involve the interdiction or removal of illegal entrants or deportable aliens. Given that these activities are more prevalent along the southwest border of the United States than elsewhere, most of the employees earning AUO are located at duty stations in this region. In fiscal year 2013, most AUO earners were located in Texas, followed by Arizona, California, and New Mexico. In total, at least 20,627, or 70 percent, of the approximately 29,500 AUO earners in DHS worked in these states in fiscal year 2013.³⁰ Four position titles accounted for about 93 percent of all AUO earners across DHS in fiscal year 2013:

- Border Patrol agent: Duties for this position include preventing the entry of terrorists, and the smuggling and unlawful entry of undocumented aliens, among other things. In fiscal year 2013, about 94 percent of AUO earners within CBP were Border Patrol agents.

³⁰CBP's AUO data did not include about 8.7 percent of AUO recipients' duty locations. Therefore, the 21,000 number is the minimum value for recipients in those four states.

- Immigration enforcement agent: Duties for this position include investigation, identification, and arrest of aliens in the interior of the United States, among other things. In fiscal year 2013, about 48 percent of AUO earners within ICE were immigration enforcement agents.
- Deportation officer: Duties for this position primarily include conducting legal research to support decisions on deportation cases, and assisting attorneys in representing the government in court. In fiscal year 2013, about 33 percent of AUO earners within ICE were deportation officers.
- Detention and deportation officer: Duties for this position primarily include directing, coordinating, and executing detention and removal activities. In fiscal year 2013, about 17 percent of AUO earners within ICE were detention and deportation officers. See figure 5 for DHS AUO earners by position title in fiscal year 2013.

Figure 5: Department of Homeland Security (DHS) Administratively Uncontrollable Overtime (AUO) Earners by Position Title in Fiscal Year 2013



Source: GAO analysis of DHS AUO payments data. | GAO-15-95

Note: Percentages do not total 100 percent because of rounding.

Outside of these four primary AUO-earning positions, we identified 169 other unique position titles under which employees within DHS have received AUO pay from fiscal years 2008 through 2013.

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- At CBP, other AUO-earning positions included information technology specialists, paralegal specialists, management and program analysts, account managers, congressional liaison officers, human resources assistants, and attorney-advisors.³¹
 - At ICE, other AUO-earning positions included technical enforcement officers, criminal investigators, intelligence officers, and cooks.³²
 - At USSS, the position most commonly compensated using AUO was physical security specialist. Other AUO-earning positions include information technology specialists, protective support technicians, and photographers.
 - At NPPD, the positions most commonly compensated using AUO were chemical security inspectors and protective security advisors.³³
 - At USCIS, the only position compensated using AUO was investigative specialist.
 - At OCSO, the only position compensated using AUO was physical security specialist.

Most AUO earners within CBP, ICE, USSS, USCIS, and OCSO are in nonsupervisory positions—compensated at the GS-13 level or below—while the majority of NPPD AUO earners are above the GS-13 level.³⁴ According to NPPD officials, the duties of NPPD’s AUO earners, in

³¹According to CBP officials, with the exception of congressional liaison officer, these positions were not authorized for AUO but received AUO either as a result of an error that was later corrected through collection of overpayments, or because the employees had moved from AUO-authorized positions and were receiving back pay from when they had previously occupied the AUO-authorized positions.

³²According to ICE officials, payments of AUO to cooks and criminal investigators occurred as a result of position changes. In the case of cooks, individuals moved to AUO-earning positions from the cook position, but their position information was not immediately updated in the pay system. In the case of criminal investigators, individuals moved from AUO-earning positions to criminal investigator positions, and ICE continued to compensate them with AUO instead of the proper overtime mechanism, LEAP. According to ICE officials, ICE has taken corrective measures in these instances.

³³As shown in fig. 3, NPPD provided data from fiscal year 2010 (October 2010) onward. Thus, we did not include analysis of NPPD positions compensated with AUO during fiscal years 2008 through 2009.

³⁴On the basis of our review of DHS component personnel data and for purposes of this report, we identify employees compensated at the GS-13 level and below as a proxy to indicate employees not likely to be in a supervisory role, and employees compensated above the GS-13 level as a proxy to indicate employees likely to be in a supervisory role. Although employees in supervisory roles may be eligible to earn AUO depending on their specific duties, in general AUO is most appropriate for employees in nonsupervisory positions.

positions such as chemical security inspectors and protective security advisors, are generally of an operational and nonsupervisory nature. In fiscal year 2013, employees within DHS components at GS-14 or -15 levels earned a total of about \$41 million in AUO, or 8 percent of total DHS AUO expenditures while accounting for 6 percent of all DHS AUO earners. Whether or not a position is supervisory, or if an individual in a position functions in a supervisory capacity, does not itself render the individual in the position ineligible to earn AUO. Rather it is the specific functions and responsibilities of a position that determine eligibility. However, employees working in supervisory capacities generally are less likely to be performing the type of work that is eligible, such as independent investigative functions and responsibilities described in federal regulations and guidance as appropriate for compensation as AUO.

DHS Components Have Begun to Address Significant AUO Administration and Oversight Deficiencies, but Additional Department-wide Oversight Is Needed

DHS components have not implemented AUO appropriately. Specifically, some DHS component-level policies are not consistent with certain provisions of federal regulations or guidance. In addition, components have not regularly followed their AUO policies and procedures, contributing to significant and widespread AUO administration and oversight deficiencies across the department. DHS and component officials have acknowledged significant management problems with the administration and oversight of AUO and have recently started taking actions to address these problems, including suspending and deauthorizing AUO. Further, in May 2014, the DHS Deputy Secretary issued a memorandum on AUO administration directing all components using AUO to submit corrective action plans detailing efforts to strengthen AUO administration and oversight. Although these component plans could facilitate better management of AUO, DHS does not currently have sufficient oversight mechanisms in place to help ensure components implement their AUO policies appropriately and in accordance with law and regulation. In addition, DHS does not have a plan to report to Congress on its progress to remediate AUO implementation deficiencies.

DHS Components Have More than 20 AUO Policies and Procedures that Vary in How They Implement Oversight and Other Requirements

At the time of our review, DHS did not have a department-wide AUO policy or directive.³⁵ Instead, DHS components have administered AUO under more than 20 policies and procedures.³⁶ Specifically,

- CBP has about 10 directives, memorandums, and standard operating procedures, 6 of which predate the creation of DHS in 2003;
- ICE has at least 5 instructions and memorandums, 3 of which predate the creation of DHS;³⁷
- NPPD consolidated its AUO policies and procedures, which included adapted ICE policies, into 1 instruction in September 2012;³⁸
- USCIS has 1 directive and 1 standard operating procedure;
- USSS has 3 directives and 1 memorandum; and
- OCSO has 1 policy, which is described in a training document.

Within CBP, offices use different AUO policies, some of which were developed and in place prior to the formation of DHS. For example, the U.S. Border Patrol and Office of Training and Development use a legacy AUO policy issued by INS in 1975 from when it operated under DOJ. Likewise, the Offices of Field Operations and Air and Marine generally use a legacy U.S. Customs Service (USCS) AUO policy dated 2000 from when it operated under the Department of the Treasury.³⁹ These legacy policies used at the CBP program office level differ in administrative requirements. For example, these policies vary in the frequency with which offices are to review AUO pay rates—every 12 pay periods (or 24 weeks) per INS policy or every quarter (or 12 weeks) per USCS policy. According to CBP officials responsible for human resources, the policies also require employees to complete, and supervisors to review, different

³⁵DHS plans to issue a department-wide directive, which we discuss later in the report.

³⁶In addition to these 20 policies and procedures, DHS components identified other documents as AUO policies and procedures that included, for example, training documents that summarized policies and procedures. We generally did not include these types of documents in our count of component AUO policies and procedures, and accordingly, these totals are approximate.

³⁷In general, CBP and ICE have not updated most of these legacy policies.

³⁸According to NPPD officials, NPPD consolidated its AUO policies and procedures in response to an ongoing OIG investigation, among other things. OIG reviewed NPPD's ISCD from 2007 through 2012 and found, among other things, that numerous NPPD AUO guidances contributed to inconsistent AUO use within NPPD.

³⁹According to CBP officials, offices use these legacy AUO policies and procedures in addition to several other AUO policies and procedures, as previously discussed.

forms for documenting AUO hours and activities. These officials also stated that variations in AUO policies within CBP have at times resulted in supervisor and employee confusion regarding which policy to follow, which could contribute to inconsistent oversight of AUO.

Recognizing the challenges with having multiple AUO policies and procedures across the component, as well as in response to OSC-referred investigations on CBP's use of AUO, CBP officials stated that in 2008 they began developing a component-wide AUO policy. CBP halted this policy development in 2009 while considering possible legislative changes that would replace AUO with a new type of overtime compensation structure for Border Patrol agents, the vast majority of CBP's AUO-earning workforce. According to CBP officials, this initial effort to reform Border Patrol pay was never officially proposed in Congress, and in response to other AUO misuse allegations in 2011, CBP officials stated that CBP recommenced efforts to develop and implement a component-wide AUO policy. As of October 2014, CBP had not issued its component-wide AUO policy.⁴⁰ More recently, legislation passed by both houses of Congress would replace AUO as a means for compensating Border Patrol agents with a system by which agents elect into a specified overtime compensation level, among other things.⁴¹ While testifying on AUO use in January 2014, the Deputy Chief of the U.S. Border Patrol stated that AUO no longer meets the current needs of the Border Patrol, in part because AUO does not provide flexibility or ensure continuous agent coverage of ports of entry and borders. For example, an agent's patrol area that is over an hour away from the Border Patrol station extends the agent's workday by the amount of time it takes for the

⁴⁰According to CBP officials, they plan to issue this policy after DHS issues its department-wide AUO directive, which we discuss later in this report.

⁴¹See Border Patrol Agent Pay Reform Act of 2014, S. 1691, 113th Cong. (2d Sess. 2014) (passed by Senate on September 18, 2014, and by the House of Representatives on December 10, 2014). See also, Border Patrol Pay Reform Act of 2013, H.R. 3463, 113th Cong. (1st Sess. 2013). Under both bills, the overtime compensation levels Border Patrol agents elect into will correspond with the amount of time an agent is available for unscheduled work based on CBP's needs. In addition, both bills would exempt Border Patrol agents from the minimum wage and maximum hour requirements of FLSA.

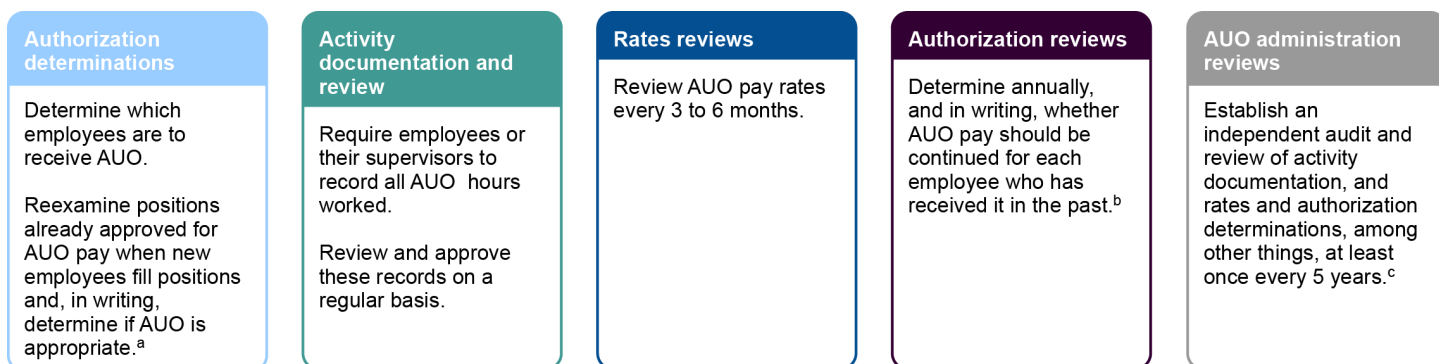
relief agent to reach the patrol area and the outgoing agent to reach the station.⁴²

DHS components' AUO policies and procedures reflect inconsistent approaches to implementing and applying federal AUO regulations and guidance. For example, federal regulations require, and component policies and procedures include, provisions regarding employee AUO eligibility and agency reviews of AUO rates at appropriate intervals.⁴³ Component AUO policies or procedures also include most provisions described in OPM's 1997 guidance on AUO, which OPM encourages agencies to consider implementing but are not specifically required by federal regulation. For example, as shown in figure 6, OPM guidance urges agencies to conduct an independent review of AUO administration—to include assessing rates reviews, among other things—at least once every 5 years. CBP, ICE, NPPD, and USCIS policies or procedures include these provisions. However, OCSO and USSS policies do not include provisions for independent AUO administration reviews. According to USSS officials, they instead rely on alternative oversight mechanisms that assess general management controls. Similarly, OCSO officials stated that its AUO policy does not include such administration reviews because they based the policy on other component AUO policies, such as those legacy policies of ICE. Although the alternative oversight mechanisms assess several component management practices, they are not designed to independently assess the component's administration of AUO.

⁴²CBP utilizes a three-shift rotation, with each shift lasting 8 hours to ensure 24 hours a day coverage. Border Patrol agents generally begin and end their shifts at a Border Patrol station to retrieve and return equipment, among other things. As shift changes are routine and schedulable, earning AUO for such time is not consistent with federal regulation and guidance.

⁴³See 5 C.F.R. §§ 550.153, 550.161.

Figure 6: Office of Personnel Management (OPM) Guidance on Oversight Mechanisms for Administratively Uncontrollable Overtime (AUO) that Are Generally Included in Component Policies or Procedures



Source: GAO analysis of Department of Homeland Security component AUO policies and procedures and OPM guidance. | GAO-15-95

^aNational Protection and Programs Directorate (NPPD) and U.S. Secret Service (USSS) policies do not specifically require a reexamination of positions already approved for AUO pay when new employees fill positions, and the Office of the Chief Security Officer (OCSO) policy does not require that the reexaminations be in writing.

^bNPPD policies do not specifically require that authorization reviews are to be conducted annually and in writing; OCSO and U.S. Citizenship and Immigration Services (USCIS) policies do not require these reviews in writing; and USSS policies do not require these reviews to be conducted annually.

^cOCSO and USSS AUO policies and procedures do not require independent administration reviews of AUO. U.S. Immigration and Customs Enforcement's (ICE) AUO policies and procedures did not require independent reviews prior to its July 2014 guide on premium pay.

Further, some DHS component policies calculate AUO rates in a manner that is inconsistent with federal regulations and guidance. As described in OPM's 1997 AUO guidance, the regulations governing AUO generally do not authorize components to exclude certain days from AUO rates calculation periods (referred to as excludable days) for purposes of AUO pay rates calculations.⁴⁴ However, CBP, ICE, OCSO, and USCIS policies provide for excludable days during periods of leave including annual or sick leave, or for periods of leave without pay.⁴⁵ (See app. III for more information on how AUO oversight mechanisms, including rates reviews, vary by component.) Notwithstanding OPM's 1997 guidance, these component policies provide for excludable days because, in general, they

⁴⁴In accordance with federal regulations, periods of time for which AUO-earning employees are temporarily detailed to positions that are not eligible for AUO may be excluded for the purpose of AUO pay rates calculations. See §§ 550.154(c), 550.162(c), (g).

⁴⁵NPPD and USSS policies do not provide for excludable days.

Administratively Uncontrollable Overtime (AUO) Rates Calculations with and without Excludable Days

Assume a full-time employee authorized to receive AUO pay works a total of 8 AUO hours (2 hours a day, for 4 days), and uses paid leave (such as annual leave) 1 day each week.

Example 1 (excludable days):

5 work days – 1 excludable day because of annual leave
= 4 AUO eligible days
8 total AUO hours / 4 AUO eligible days
= 2 average daily AUO hours
2 average daily AUO hours x 5 total workweek days
= 10 average weekly AUO hours
Over 9 average weekly AUO hours
= 25 percent AUO rate

Example 2 (without excludable days):

8 total AUO hours / 5 AUO eligible days
= 1.6 average daily AUO hours
1.6 average daily AUO hours x 5 total workweek days
= 8 average weekly AUO hours
7 to 9 average weekly AUO hours
= 20 percent AUO rate

Source: GAO analysis of DHS component AUO policies and procedures and federal AUO regulation and guidance. GAO-15-95

continue to rely upon legacy practices and policies in place prior to the formation of DHS that permit the use of excludable days.⁴⁶

OPM's guidance clarified that, under federal regulations, agencies should determine AUO pay rates by calculating the average number of AUO-eligible hours worked by an employee per week (see text box).⁴⁷ For example, the regulations establish a 25 percent rate of AUO pay for a position that requires an average of over 9 hours a week of AUO-eligible work.

The regulations and guidance also provide that agencies must calculate the number of weeks correctly. As previously discussed, agencies are to determine an employee's AUO rate based on the AUO hours the employee claims each week, on average, during a review period. Specifically, agencies are required to review AUO rates at appropriate intervals, or review periods, which within DHS range from 7 to 24 weeks.⁴⁸ For example, according to ICE policy, ICE determines an employee's AUO rate by calculating the average weekly AUO hours claimed for the past 24 weeks, minus any excludable days. However, according to the federal guidance, in determining the number of weeks in a review period, agencies are not to reduce the number of weeks by subtracting hours or days of paid leave (such as annual leave or sick leave), unpaid leave (such as leave without pay), or excused absence

⁴⁶According to OCSO officials, OCSO relied on legacy AUO policies, such as from ICE, when developing OCSO's AUO policy. Notwithstanding OPM's 1997 AUO guidance, CBP officials identified decisions of the Federal Labor Relations Authority that, according to CBP officials, impeded CBP efforts to address the potential elimination of excludable days. See, e.g., *United States Dep't of Homeland Security, Customs and Border Protection, El Paso, Texas*, 61 FLRA 741 (2006) (explaining that by informing the grievant (a Border Patrol agent and union representative) that official time for part of a day used to represent an employee at a grievance meeting could not be claimed as an excludable day, the agency violated the parties' collective bargaining agreement because, among other things, not allowing the grievant to exclude the day would adversely affect the grievant's AUO pay rate calculation and, as a result, the grievant could suffer a loss of pay in violation of the collective bargaining agreement). GAO did not independently evaluate the permissibility of excluding days for purposes of calculating AUO pay rates.

⁴⁷See § 550.154.

⁴⁸See § 550.161. Specifically, such determinations are to be based on consideration of available records of AUO-eligible work required in the past, and any other information bearing on the number of hours of duty that may be reasonably expected to be required in the future.

with pay, among other circumstances.⁴⁹ AUO pay rates depend on an employee's weekly average of AUO hours worked, and excluding certain days from AUO review periods could result in higher weekly AUO averages and potentially higher AUO rates than would otherwise be appropriate. DHS has begun to take action to ensure that component AUO policies do not provide for excludable days, which we discuss later in the report.

DHS Components Have Not Followed AUO Policies and Procedures or Provided Adequate Oversight of AUO

Although DHS component AUO policies and procedures include a variety of oversight mechanisms, components have not regularly followed these policies and, as a result, have not provided adequate oversight of AUO. In assessing overall implementation of AUO across the department, DHS's Deputy Secretary stated in a May 2014 memorandum that the administration of AUO is in a poor state in many parts of the department. Specifically, not all DHS components have regularly conducted AUO authorization and rates reviews, consistently documented AUO hours and activities or provided supervisory review, or routinely performed AUO administration reviews, in accordance with their AUO policies and procedures.

Not all components have regularly conducted AUO authorization and rates reviews: DHS's May 2014 AUO administration memorandum stated that most components have not regularly conducted AUO authorization reviews in compliance with OPM guidance. In addition, OIG and CBP reviews found that certain components made AUO payments to employees for work that did not qualify for AUO, in part because they did not conduct authorization reviews. For example:

⁴⁹OPM guidance clarifies that an agency may, within the scope of the regulations, take steps to ensure that an employee's AUO rate of pay is not adversely affected by an extended absence from performing normal duties. As an example, the guidance explains that an agency could decide to make an exception to its AUO policy and vary the length of the normal AUO rates review period so as to accommodate such unusual circumstances as they arise (e.g., the agency could end the previous review period for the employee at the commencement of his or her approved, extended period of leave without pay and provide that the next review period begin when the employee resumes his or her position for which AUO had been previously authorized). According to the guidance, an agency policy permitting gaps between AUO review periods in such limited circumstances is permitted because the regulations provide that agencies must review AUO rates at appropriate intervals but do not prescribe the length of these intervals. Within a review period, however, agencies may not create such exceptions (i.e., exclude days).

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- A March 2013 OIG inspection found that because NPPD did not conduct AUO authorization reviews, NPPD paid chemical security inspectors about \$2 million in AUO in fiscal year 2012 for work that did not qualify for AUO.⁵⁰ At the time of the review, NPPD disagreed with the OIG's recommendation to deauthorize AUO for the chemical security inspectors, but in June 2014, NPPD determined that it would suspend AUO for its employees, including chemical inspectors, as of September 2014.⁵¹
 - A September 2013 investigation conducted by CBP's Office of Internal Affairs on referral from OSC found that one CBP office improperly paid AUO to seven employees and three supervisors because office managers did not conduct AUO authorization reviews for these employees. The employees and supervisors—although authorized to receive AUO pay in their regular positions—were not eligible to receive AUO pay during the time frame under investigation because the office they were temporarily detailed to involved work that was controllable and administrative in nature.⁵²

⁵⁰Specifically, the OIG found that NPPD paid AUO to employees for work performed in a supervised office environment that did not require administratively uncontrollable work. To determine the amount NPPD improperly paid chemical facility inspectors in fiscal year 2012, the OIG used the fiscal year 2012 base salary (excluding locality area adjustments) for the average grade level of a chemical security inspector. In fiscal year 2012, the base salary (excluding locality area adjustments) for a GS-13, Step 1, was \$71,674. A 25 percent AUO level of premium pay would therefore add \$17,918.50 to the base salary. According to 2012 NPPD audit results, 4 of the 115 inspectors claiming AUO in the first quarter of fiscal year 2012 qualified for 25 percent AUO. Assuming that all chemical security inspectors receive 25 percent AUO, the OIG determined that this would result in approximately \$2 million spent on AUO in fiscal year 2012 for inspectors who did not meet these requirements. See Department of Homeland Security, Office of Inspector General, *Effectiveness of the Infrastructure Security Compliance Division's Management Practices to Implement the Chemical Facility Anti-Terrorism Standards Program*, OIG-13-55 (Washington, D.C.: March 2013).

⁵¹NPPD disagreed with the OIG's recommendation because NPPD determined that there could be legitimate reasons for chemical security inspectors to use AUO. For example, NPPD officials explained that inspectors may conduct inspections of chemical facilities that last beyond 8 hours for reasons beyond the inspector's control. According to NPPD officials, NPPD decided to suspend rather than deauthorize AUO in response to DHS's May 2014 AUO administration memorandum, which we discuss later in this report.

⁵²The regulations outline the circumstances under which an agency may continue to pay an employee AUO while temporarily detailed to a position that is not eligible for AUO. See § 550.162(c), (g). For example, an agency may generally continue to pay an employee AUO if temporarily detailed to a non-AUO-eligible position for no more than 10 consecutive workdays. § 550.162(c)(1).

DHS component officials stated that they did not regularly conduct authorization reviews because they thought that reviewing AUO rates to determine amount of pay provided sufficient oversight. For example, the results of a rates review could find that an employee's AUO rate should be decreased to 0 percent, based on the hours of AUO the employee worked in the prior review period. However, rates reviews do not provide components with sufficient information to determine whether those employees who worked enough hours of AUO to qualify for AUO should continue to receive AUO pay. Authorization reviews are to examine whether each employee who has received AUO pay in the past should continue to receive AUO. For example, authorization reviews should consider past and future expected work duties to ensure that they are administratively uncontrollable, among other things.⁵³ Because DHS components have not regularly conducted AUO authorization reviews, components are limited in their ability to ensure that employees are in positions—and performing work—eligible for AUO. In addition, conducting regular authorization reviews could help agencies identify AUO-earning employees temporarily detailed to positions not authorized for AUO pay and who should have their AUO pay discontinued. DHS has begun to take action to ensure that components regularly conduct authorization reviews, which we discuss later in the report.

In addition to not regularly conducting AUO authorization reviews, one DHS component—ICE—has also not regularly conducted AUO rates reviews. Specifically, ICE has not conducted these reviews bimonthly, in accordance with its policies, nor has it consistently adjusted AUO rates in response to the reviews it did conduct. For example, a December 2012 inspection conducted by ICE's Office of Professional Responsibility (OPR) found that ICE did not complete AUO pay rates reviews for the 199 employees authorized for AUO pay at one Enforcement and Removal Operations (ERO) field office.⁵⁴ Furthermore, ICE's Office of Human Capital found during its June 2014 review of AUO rates that the rates for 629 employees should have been decreased based on the number of AUO hours these employees reported having worked the previous 24

⁵³See § 550.161(d).

⁵⁴According to OPR, its review did not explore effects of incomplete AUO pay rates reviews, including improper AUO payments.

weeks.⁵⁵ The rates review also found that an additional 64 employees should be deauthorized from AUO, because they did not report the required minimum number of AUO hours. According to the rates review report, ICE field offices were to adjust these AUO rates by July 13, 2014, or within 4 pay periods of the review. However, we found that ICE did not do so for 22 percent (140 of 629) of the employees identified for a rate decrease across more than 20 ICE field offices. In addition, ICE did not adjust the AUO rate to 0 percent for 55 percent (35 of 64) of the employees identified for deauthorization. We determined that as a result of not adjusting AUO rates, ICE paid about \$76,000 to these employees using AUO as opposed to compensating them with more appropriate forms of overtime, as applicable.⁵⁶

According to ICE officials, field office management—which is responsible for implementing AUO rates adjustments—has not regularly lowered AUO rates in response to these rates reviews, and ICE human capital officials did not have a mechanism in place to track the disposition of rates reviews. As a result, ICE did not have reasonable assurance that it was paying the appropriate AUO rate to applicable employees. In response to the findings of its June 2014 review, in July 2014, the ICE Office of Human Capital began disseminating biweekly reports to ICE headquarters and field office management detailing required AUO rates changes and deauthorizations to provide greater oversight and to track these adjustments. In addition, ICE has plans to develop standard operating procedures specific to the AUO rates change process to assist in clarifying and codifying expectations and processes, which could provide ICE more assurance that it is paying appropriate AUO rates to employees.⁵⁷

⁵⁵Specifically, ICE's Office of Human Capital reviewed AUO rates for the last 2 pay periods of calendar year 2013 and the first 10 pay periods of calendar year 2014, or for a total of 24 weeks.

⁵⁶To determine the amount of AUO paid, we calculated the average nonpremium pay per ICE AUO earner per fiscal year 2014 pay period. We then multiplied this number by each employee's change in AUO rate to estimate the improper AUO payments paid over four pay periods, or 8 weeks. We did not independently evaluate which other type of overtime, if any, would have been more appropriate for ICE to compensate these employees.

⁵⁷According to ICE officials, ICE plans to finalize the standard operating procedures once DHS finalizes its department-wide AUO directive.

Components have not consistently documented and reviewed AUO hours and activities: Insufficient documentation of AUO hours and activities has been a long-standing problem at DHS, according to findings from numerous reviews and investigations over the past 7 years. For example, a May 2008 investigation conducted by CBP's Office of Internal Affairs on referral from OSC found that employees at two CBP locations did not document AUO activities in accordance with CBP policies, in part, because employees did not understand or were not aware of the documentation requirement. Investigations and reviews conducted by ICE, CBP, and USCIS also found that employees have not consistently provided sufficient information in AUO documentation forms. For example, employees recorded justifications such as "writing memos," "file review," or "supervisory duties" without further explanation. Similarly, we reviewed examples of NPPD activity documentation from December 2013 and found AUO activity descriptions, such as "team meeting" or "report writing," that did not provide additional information to determine if the activities were administratively uncontrollable.

Furthermore, according to DHS's May 2014 AUO administration memorandum, many supervisors and managers do not consistently review AUO hours claimed to ensure work performed was (1) necessary overtime, (2) that the amount of time claimed was appropriate, and (3) that duties were administratively uncontrollable. For example, a January 2014 ICE investigation found that some supervisors conducted inconsistent reviews of AUO documentation because of minimal AUO guidance from ERO headquarters and the field office investigated. The investigation report noted that one supervisor may ask for additional clarification for AUO documentation that stated "cleaned up paperwork," while another supervisor may consider it a sufficient justification of AUO duties.

Because many supervisors do not consistently review AUO hours, AUO rates generally remained steady, often at the maximum level, for much of the department's workforce authorized for AUO, according to the DHS May 2014 AUO administration memorandum. Our review of components' AUO payments data found that, in fiscal year 2013, 88 percent (5,314 of 6,052) of ICE employees earning AUO and 90 percent (19,776 of 21,961) of CBP employees earning AUO received the maximum 25 percent of

AUO pay.⁵⁸ The DHS memorandum further stated that a particular challenge is that supervisors may routinely approve 2 hours of AUO for the same employees performing the same tasks at the same time on the same days of the week, and that work that is steady and consistent is not uncontrollable. According to testimony from OSC's Special Counsel at a January 2014 congressional hearing, using AUO routinely, and every day, is an entrenched part of the culture at DHS components.⁵⁹ In addition, officials from the department's Office of the Chief Human Capital Officer (OCHCO) stated that certain employees were accustomed to using AUO without much oversight, and that this use of AUO has become part of the department's culture. For example, a February 2013 investigation conducted by CBP's Office of Internal Affairs, on referral by OSC, found that Border Patrol agents assigned to the Commissioner's Situation Room regularly remained at the duty station 2 hours beyond the end of regularly scheduled shifts to transition between scheduled shifts.

According to DHS's May 2014 memorandum on AUO administration, without sufficient documentation, managers cannot adequately evaluate hours claimed or differentiate between uncontrollable and scheduled overtime. In addition, clear and complete AUO activity documentation and review of that documentation permit components to actively manage overtime expenditures, such as by varying schedules or staggering shifts to minimize overtime costs. The memorandum further states that when supervisors approve claimed AUO hours without appropriately reviewing activity documentation, employees receive inflated rates of AUO pay based on the approval of work that should have been scheduled in advance or completed the next working day. DHS has begun to take action to ensure that components consistently document and review AUO activities and hours, which we discuss later in the report.

Components have not routinely conducted AUO administration reviews: Most DHS components have not routinely conducted

⁵⁸In May 2014, we reported that CBP reduced AUO payments in response to fiscal year 2013 sequestration. See GAO, *2013 Sequestration: Selected Federal Agencies Reduced Some Services and Investments, While Taking Short-Term Actions to Mitigate Effects*, [GAO-14-452](#) (Washington, D.C.: May 28, 2014).

⁵⁹*Examining the Use and Abuse of Administratively Uncontrollable Overtime at the Department of Homeland Security, Before the S. Sub. Comm. on the Efficiency and Effectiveness of Federal Programs and the Federal Workforce*, 113th Cong. 9-12 (2014) (statement of Special Counsel of the U.S. Office of Special Counsel Carolyn Lerner).

independent reviews of AUO administration. Federal guidance suggests that these independent reviews are to include reviews of authorization and rates reviews and AUO activity documentation, among other things. As previously discussed, OCSO's and USSS's AUO policies do not include a mechanism to independently review AUO administration, and accordingly, these reviews have not been conducted. ICE's AUO policies did not previously include such a mechanism until ICE updated its policy to include independent AUO administration reviews in July 2014. USCIS policy calls for annual AUO administration reviews; however, USCIS conducted them twice from 2008 to 2013. According to USCIS officials, USCIS did not conduct annual reviews because its response to the 2008 review recommended enhanced AUO administration controls, and the agency was implementing these controls before assessing AUO again in 2013.

CBP and NPPD have conducted AUO administration reviews at least once every 5 years in accordance with component policies and consistent with OPM guidance. In particular, CBP's Office of Internal Affairs inspects 30 to 50 offices' management practices annually, which includes a review of AUO administration focused on time and attendance. Since fiscal year 2011, the Office of Internal Affairs has identified 31 instances of noncompliance with component AUO policies, and CBP offices have implemented more than 80 percent of related recommendations.⁶⁰

According to NPPD officials, NPPD conducted a compliance review of 2013 AUO administration, in accordance with its 2012 AUO policy. NPPD found that, among other things, most of the duties NPPD employees claimed for AUO did not meet the criteria for AUO. DHS components that have routinely conducted AUO administration reviews are better positioned to identify AUO deficiencies, such as supervisors inconsistently reviewing AUO activity documentation, and to provide recommendations to improve these deficiencies. DHS has begun to take action to ensure that components routinely conduct AUO administration reviews, which we discuss later in the report.

⁶⁰As part of its annual management review, the Office of Internal Affairs assesses compliance with time and attendance requirements, including those for AUO. These reviews include AUO authorization and rates reviews, employee activity documentation and supervisory review, and time and attendance records to identify any improper AUO payments.

DHS and Its Components Have Recently Started Taking Actions to Better Manage AUO, but Do Not Have Plans for Mechanisms to Monitor or Report on Progress

DHS has taken actions to address long-standing administration and oversight deficiencies related to the use of AUO within the department, but has limited plans to monitor component progress going forward. DHS issued two memorandums, one calling for components to suspend AUO for certain employees and one requiring components using AUO to develop and submit corrective action plans to improve AUO administration. First, on the basis, in part, of interim findings from a DHS Office of the General Counsel review of AUO practices initiated in October 2013, the DHS Secretary issued a January 2014 memorandum. This memorandum required DHS components to suspend AUO for those employees (1) engaged as full-time training instructors, (2) working in component headquarters' offices, or (3) for whom prior internal investigations had found to be inappropriately provided AUO pay. In addition, the memorandum clarified that employees working in active operational capacities, and whose duties meet the requirements for AUO, may continue to earn AUO pay. In response, CBP, ICE, and NPPD subsequently deauthorized AUO for over 700 employees.⁶¹ According to USSS officials, they did not have any employees earning AUO who were training instructors or in positions ineligible for AUO, and that its employees based in headquarters were used in an operational capacity. Officials from DHS's OCHCO stated that components were to manage the January 2014 memorandum's implementation, because officials outside of the component could not judge who was in a headquarters position.

Second, on May 23, 2014, the DHS Deputy Secretary issued a memorandum outlining additional actions for components to take to improve AUO administration and oversight. This memorandum directed all components using AUO to develop and submit within 30 days corrective action plans to improve AUO administration, and for DHS to develop a department-wide AUO directive.⁶² According to the memorandum, these requirements were, in part, in response to findings from the Office of the General Counsel's final AUO review, which

⁶¹As previously discussed, OCSO and USCIS suspended AUO for their employees in November 2013.

⁶²The component plans were due to DHS's Office of the Deputy Secretary and Office of General Counsel and, according to DHS officials, were subsequently shared with OCHCO. According to the May 2014 memorandum, components that had suspended AUO were not required to submit plans, but must do so prior to any decision to reinstate the use of AUO in the future.

indicated that DHS and its components were not in full compliance with the rules governing AUO. The memorandum also noted that components could decide, after weighing the costs and benefits of appropriate AUO management, to eliminate the use of AUO in favor of other forms of overtime compensation. According to the memorandum, to improve components' administration and oversight of AUO, the corrective action plans are to, among other things,

- update any existing policies and practices that exclude certain days from AUO calculation review periods;
- ensure that mechanisms are in place to continually evaluate position and employee AUO authorizations, including those for employees assigned to temporary or long-term details;
- improve existing documentation of AUO duties and hours with regard to completeness and clarity; and
- strengthen supervisor reviews of AUO hours claimed, particularly for those supervisors that routinely approve AUO for the same employees performing the same tasks at the same time on the same days of the week, among other things.

According to a senior OCHCO official, CBP, ICE, and USSS submitted draft AUO corrective action plans to the Deputy Secretary on or closely to June 23, 2014. In lieu of a corrective action plan, NPPD submitted a memorandum detailing its intention to suspend AUO for its employees, which it implemented in September 2014. As of October 2014, the plans were not final because, according to the senior OCHCO official, OCHCO and the Office of the General Counsel are in the process of providing feedback to components on the draft AUO corrective action plans. The official added that components are to finalize these plans after DHS implements its department-wide AUO directive so that the plans may incorporate requirements from the directive, as appropriate.

DHS components have already started taking some actions to strengthen AUO administration and oversight. For example:

- In April 2013, CBP began a review of all 187 positions authorized for AUO, and completed this review in June 2014. CBP deauthorized AUO for more than 1,900 employees in 139 positions on September 7, 2014. The authorization review found that 48 positions were still eligible for AUO based on the nature of work duties, and proposed next steps such as revising current position descriptions, issuing new position descriptions detailing AUO-qualifying duties performed by employees in those positions, and pursuing the recovery of instances of improper AUO payments. In addition, CBP officials responsible for

human resources reported that they were in the process of updating AUO employee documentation forms from requiring one supervisory signature to requiring supervisors to sign each line describing AUO activities. Officials stated that this change could help supervisors better ensure that activities are appropriate for AUO, as opposed to a different type of overtime.

- According to ICE human capital officials, ICE also has actions under way to strengthen its AUO administration and oversight in addition to actions taken in response to the June 2013 OPR inspection of AUO misuse. These actions include, among other things, conducting a comprehensive review of position descriptions to determine eligibility for AUO authorization, which began in April 2014. As of December 2014, ICE reported that the review had not yet been finalized. Further, in July 2014, ICE issued a memorandum to all ICE supervisors regarding their responsibility to review the accuracy of subordinates' time and attendance records—specifically with regard to AUO—and issued a *Premium Pay Guide*, which summarizes relevant statutory and regulatory requirements, requires independent AUO reviews and audits every 5 years, and provides examples of AUO-eligible duties, among other things.
- DHS officials reported that USSS has issued a series of messages to employees and supervisors regarding AUO eligibility, among other things.

In addition to calling for corrective action plans, DHS's May 2014 memorandum directed OCHCO to develop a department-wide AUO directive applicable to all DHS components using AUO by no later than 60 days from the date of the memorandum. A senior OCHCO official reported that OCHCO submitted the directive to components for comment within this time frame, and that, as of October 2014, officials were in the process of reviewing component comments. According to the May 2014 memorandum, the department-wide AUO directive is to include specific requirements to strengthen AUO administration and oversight, including designating OCHCO with ensuring consistent application of AUO policies and procedures across components. Specifically, the directive is to, among other things,

- prohibit the practice of excluding certain days, and provide guidance on accounting for extended employee absences from the performance of normal duties;
- require component-wide reviews of all AUO-certified positions every 3 years;

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- establish roles and responsibilities for identifying; documenting; and, if necessary, temporarily discontinuing AUO pay for employees temporarily reassigned to other offices or duties;
 - mandate that all time sheets used to record AUO hours require detailed descriptions of the work performed sufficient to permit supervisors to determine whether and how the work is administratively uncontrollable; and
 - require all components using AUO to arrange for an annual, independent, third-party audit and to report the results of each audit to OCHCO.⁶³

Further, the directive is to provide central, department-wide oversight of AUO use, by charging OCHCO and the Office of the General Counsel with monitoring components' progress in remediating AUO deficiencies, among other things.⁶⁴ After DHS issues the directive, components will be able to finalize their corrective action plans and move forward with implementing any additional actions to improve AUO administration and oversight.

Although these planned component and department actions could facilitate better management of AUO, DHS does not have a sufficient oversight mechanism in place to ensure components implement AUO appropriately and in accordance with law and regulation. *Standards for Internal Control in the Federal Government* states that policies and procedures should provide reasonable assurance that ongoing monitoring and evaluation are institutionalized in an agency's operations.⁶⁵ According to a senior OCHCO official, OCHCO plans to monitor components' progress in addressing AUO deficiencies by adding AUO reviews to its ongoing human resource office assessments of components that occur every 3 to 4 years. The OCHCO official added that as part of these assessments, OCHCO plans to review AUO policies and procedures and

⁶³The directive is also to, for example, provide guidance on component roles and responsibilities for designating positions as eligible, or authorized, for AUO and assign responsibility within each component to particular, designated officials for overseeing other AUO oversight mechanisms, such as administration reviews or audits.

⁶⁴The May 2014 memorandum also states that after DHS issues the AUO directive, components may—with concurrence of OCHCO to ensure consistency with the department-wide directive and the Office of the General Counsel for legality—issue component- or office-specific AUO guidance.

⁶⁵GAO, *Standards for Internal Control in the Federal Government*, [GAO/AIMD-00-21.3.1](#) (Washington, D.C.: Nov. 1, 1999).

confirm that components are implementing AUO oversight mechanisms, such as rates reviews. However, these human resources assessments are broad and cover multiple aspects of a component's human resource functions, and occur relatively infrequently. Given DHS components' long-standing and pervasive problems with AUO administration and oversight, including AUO reviews as part of general human resources assessments provides the department with limited assurance that it can effectively monitor and evaluate components' progress in addressing AUO deficiencies on a sustained basis. Developing and executing a department-wide oversight mechanism to ensure components implement AUO appropriately on a sustained basis, and in accordance with law and regulation, could better position DHS to monitor components' progress remediating AUO deficiencies.

Although the May 2014 memorandum states that the department-wide directive will require components to arrange for annual third-party audits of AUO and report the results to OCHCO, DHS does not plan to report these results or progress with remediating AUO deficiencies to Congress. A senior OCHCO official stated that the department does not have plans to report oversight results to Congress because DHS management has demonstrated its commitment to improving AUO administration and oversight through its plans to issue a department-wide AUO directive.⁶⁶ However, given the long-standing and extensive nature of AUO administration and oversight deficiencies across DHS components, and AUO payments in excess of \$500 million in fiscal year 2013 to compensate employees for overtime work performed, additional oversight by Congress would help hold DHS accountable for ensuring that its planned actions resolve the challenges the department has faced with managing AUO. If Congress is not kept apprised, in a timely manner, of DHS's department-wide efforts to administer and oversee AUO, it will not have all the pertinent information necessary to oversee the department's progress, if any, in this area. Submitting regular reports to Congress on

⁶⁶The committee report accompanying the Department of Homeland Security Appropriations Bill, 2015, H.R. 4903, 113th Cong. (2d Sess. 2014), directs DHS to, no later than 15 days after the enactment of the act, submit to the congressional committees of jurisdiction, the results of the DHS Office of General Counsel's AUO review and the results of the Office of Special Counsel's investigations, as applicable, and report to the committees on the compliance plans and internal controls and safeguards developed pursuant to the Deputy Secretary's AUO memorandum. See H.R. Rpt. No. 113-481, at 14 (2014). As of the date of publication, a fiscal year 2015 spending bill for DHS had not been passed.

the department's progress in remediating AUO deficiencies could provide assurance that components have made progress remediating AUO implementation deficiencies and have sustained effective and appropriate use of AUO in accordance with law and regulation.

DHS Components Have Suspended and Deauthorized AUO for Certain Offices and Positions, Reducing Overtime Hours Worked and Overtime Expenditures

In November 2013, USCIS and OCSO suspended AUO for all their AUO-eligible employees, or approximately 30 and 15 employees, respectively, in part because of various challenges with the administration of AUO across the department or within its respective component. Following these suspensions of AUO, the number of employees earning any overtime payments, the overall overtime hours worked per pay period, and the amount of overtime compensation decreased in USCIS and OCSO.⁶⁷ According to officials from USCIS and OCSO, these decreases in employees' receiving AUO and the decreases in hours of total overtime worked have contributed to investigation case backlogs for USCIS and decreased employee morale for both components. In addition, other DHS components responded to the Secretary's January 2014 memorandum by deauthorizing AUO for over 700 employees in specific positions—mostly within CBP and ICE. These components were compensating these employees with AUO at an annual rate of approximately \$16 million in AUO at the time. According to CBP officials, these deauthorizations may lead to issues with recruiting for headquarters-based and instructor positions from elsewhere in the component, and CBP and ICE officials stated they may also contribute to a decrease in employee morale.

Overtime Hours Worked and Overtime Expenditures Have Been Reduced following USCIS and OCSO Suspensions of AUO

Following USCIS and OCSO suspensions of AUO, the total number of overtime hours worked and the total amounts of overtime expenditures decreased for both components. USCIS and OCSO officials stated that these reductions have affected the backlog of investigation cases and affected employee morale, respectively. However, officials stated that they should be able to mitigate these impacts on both components. Prior to USCIS suspending AUO effective November 19, 2013, approximately 30 USCIS employees were eligible to earn AUO—specifically,

⁶⁷This analysis is not generalizable to all DHS components or offices using AUO, but provides potential insights into the impacts of AUO suspensions and deauthorizations.

investigators within the Office of Security and Integrity (OSI).⁶⁸ These investigators' responsibilities, as part of OSI, include internal investigations. Prior to the suspension of AUO, 1 employee who received AUO payments also received compensation for scheduled overtime. Therefore, USCIS primarily compensated OSI investigators for overtime work using AUO pay. Since the suspension, USCIS has compensated employees on an hourly basis for any overtime worked.⁶⁹ Table 4 shows the differences between USCIS use of AUO prior to the suspension and the use of scheduled overtime following suspension.

Table 4: U.S. Citizenship and Immigration Services' (USCIS) Use of Administratively Uncontrollable Overtime (AUO) and Scheduled Overtime under the Federal Employees Pay Act (FEPA) prior to and following the November 19, 2013, Suspension of AUO

	AUO (13 pay periods prior to suspension, June to November 2013)	FEPA (13 pay periods after suspension, November 2013 to June 2014)^a
Average number of employees earning payments per pay period	22	9
Average overtime hours worked per pay period	364 (16 hours per employee)	80 (9 hours per employee)
Average overtime payments per pay period	\$24,968 (\$1,131 per employee)	\$4,094 (\$471 per employee)
Total overtime payments for 13 pay periods	\$327,225	\$53,224

Source: GAO analysis of USCIS overtime payments data and documents. | GAO-15-95

Note: Discrepancies in averages per employee are due to rounding.

^aPrior to USCIS's November 2013 suspension of AUO, one employee received both AUO payments and FEPA payments. Following the suspension, no employees received AUO.

With a drop in the number of employees earning overtime payments, and an approximate 78 percent drop in the average number of overtime hours worked per pay period, USCIS saw a decrease in total overtime payments of about \$274,000 when comparing the 13 pay periods before and the 13 pay periods after the suspension of AUO. According to USCIS officials, the drop in the average number of employees earning overtime

⁶⁸OSI, created in 2007, leads the USCIS effort to deter and detect employee misconduct. OSI's mandate includes other duties, such as administering the USCIS personnel, physical, and administrative security programs.

⁶⁹All USCIS and OCSO employees that were earning AUO were exempt from FLSA. Federal agencies may compensate FLSA-exempt employees on an hourly basis for regular or scheduled overtime under FEPA. Pursuant to FEPA, an employee's supervisor must generally direct or approve overtime work in advance.

payments following USCIS's November 2013 suspension of AUO may be partly a result of supervisors' reluctance to approve overtime requests and is not reflective of the amount of work that needs to be accomplished. For example, in the 3 pay periods immediately following the suspension of AUO, 2 OSI employees claimed any overtime hours, while the rest claimed none. During the fourth through seventh pay periods after the AUO suspensions, an average of 21 employees earned overtime, closer to the average of employees earning AUO payments prior to the suspension. However, for the remaining 6 pay periods that we analyzed, the number of employees that earned overtime fell to an average of 4.

Since the suspension of AUO, and USCIS's subsequent deauthorization of AUO in July 2014, employees have been using scheduled overtime in accordance with USCIS requirements on when overtime can be approved, according to USCIS officials. USCIS officials stated that they have seen an increase in the case backlog—the number of open investigation cases compared with the number of new cases—although the backlog increase could also be due to other factors in addition to the suspension of AUO, such as new quality assurance processes and an increased number of cases being investigated per employee. According to USCIS, the number of open cases has increased from 268 in the fourth quarter of fiscal year 2013, just before the suspension of AUO, to 346 in the third quarter of fiscal year 2014. The number of new cases has decreased from 102 in the fourth quarter of fiscal year 2013 to 59 in the third quarter of fiscal year 2014. USCIS officials stated that USCIS management has addressed the case backlog by authorizing more personnel resources in fiscal year 2014 and may increase resources for fiscal year 2015. This may provide some relief for the overall amount of work that is required to address the case backlog.

Prior to OCSO suspending AUO effective November 22, 2013, approximately 15 OCSO employees working in the force protection and technical services branches earned AUO.⁷⁰ According to OCSO officials, these employees' responsibilities include force protection, investigation, and technical security countermeasures, and these employees must be available after hours to respond to emergent events. Following the AUO suspension, OCSO used scheduled overtime to compensate these

⁷⁰OCSO develops, implements, and oversees DHS security policies, programs, and standards; delivers security training and education to DHS personnel; and provides security support to DHS components.

employees. Table 5 shows the differences between OCSO use of AUO prior to the suspension and the use of directed or scheduled overtime following the suspension.

Table 5: Department of Homeland Security's Office of the Chief Security Officer's (OCSO) Use of Administratively Uncontrollable Overtime (AUO) and Scheduled Overtime under the Federal Employees Pay Act (FEPA) prior to and following the November 22, 2013, Suspension of AUO

	AUO (13 pay periods prior to suspension, June to November 2013)	FEPA (13 pay periods after suspension, November 2013 to June 2014)^a
Average number of employees earning payments per pay period	15	9
Average overtime hours worked per pay period	189 (12 hours per employee)	112 (12 hours per employee)
Average overtime payments per pay period	\$11,954 (\$797 per employee)	\$5,992 (\$666 per employee)
Total overtime payments for 13 pay periods	\$155,400	\$77,889

Source: GAO analysis of OCSO overtime payments data and documents. | GAO-15-95

Note: Discrepancies in averages per employee are due to rounding.

^aPrior to OCSO's November 2013 suspension of AUO, no employees received both AUO payments and FEPA payments. Following the suspension, no employees received AUO.

According to OCSO officials, fewer employees worked overtime after the suspension of AUO because OCSO has implemented budget efficiencies and some employees have opted out of working any overtime. However, the average number of overtime hours worked per employee remained the same—approximately 12 hours per pay period before and after the suspension of AUO. With a drop in the average number of employees earning overtime payments and about a 41 percent decrease in the total overtime hours worked per pay period, OCSO saw a decrease in total overtime payments of about \$77,500 when comparing the 13 pay periods before suspension and the 13 pay periods after suspension. According to OCSO officials, employee morale has dropped for those affected by the AUO suspension, because of a decrease in pay and a sense that the suspension came with no warning and with no suggestion of wrongdoing on the part of OCSO in administering AUO or of OCSO employees in using AUO. As shown in table 7, the average employee's additional overtime pay decreased from about \$797 per pay period to about \$666 per pay period following OCSO's AUO suspension. To OCSO officials' knowledge, no employees have resigned because of the AUO suspension. OCSO officials said there have not been any significant operational impacts resulting from the suspension of AUO, and overtime work is still done, as needed and appropriate, with approval by the supervisor in charge.

DHS Components Deauthorized AUO for Over 700 Employees Who Remain Eligible for Other Appropriate Means of Overtime Compensation

In response to the DHS Secretary's January 27, 2014, memorandum, CBP, ICE, and NPPD collectively deauthorized AUO for over 700 AUO-earning employees by March 2014. However, these employees are still able to earn other types of overtime, and deauthorizing AUO for these employees does not indicate that the hours worked prior to the memorandum should not have been compensable. In general, DHS's January 2014 memorandum called for the suspension of AUO payments to individuals (1) working in component headquarters offices (unless in an operational, AUO-eligible capacity), (2) working as full-time training instructors, and (3) determined as having been inappropriately provided AUO pay.⁷¹ Employees located in headquarters and full-time instructors are more likely to be employed in supervised office environments, not performing independent investigative tasks that could be uncontrollable as described in federal regulation and guidance. For example, these employees may still be able to earn regular and scheduled overtime under FEPA and FLSA in a manner similar to those employees in USCIS and OCSO discussed previously. Table 6 shows CBP, ICE, and NPPD's total number of employees deauthorized from AUO in response to DHS's January 2014 memorandum.

Table 6: Deauthorizations of Administratively Uncontrollable Overtime (AUO) Earners by Reason in Response to January 27, 2014, Department of Homeland Security (DHS) Memorandum

	Headquarters location	Instructor position	Improper classification	Total employees for whom AUO was deauthorized ^a	Total annualized AUO pay of deauthorized employees ^b
U.S. Customs and Border Protection	383	176	6	565	\$11.9 million
U.S. Immigration and Customs Enforcement	13	57	111	181	4.5 million
National Protection and Programs Directorate	3	0	0	3	54,500
Total	399	233	117	749	\$16.5 million

Source: GAO analysis of DHS components deauthorization and AUO payments data. | GAO-15-95

⁷¹Although DHS's January 2014 memorandum called for suspension of AUO, component officials stated that they took actions to specify individual employees or positions as no longer eligible for AUO—that is, these employees or positions were deauthorized from earning AUO.

^aOur analysis reflects deauthorizations for employees that were receiving AUO payments at the time of the Department of Homeland Security Secretary's January 27, 2014, memorandum. Employees that were deauthorized and not earning AUO as of the date of the memorandum are not included, which explains why components may report different numbers. According to component officials, CBP reports that a total of 587 individuals were deauthorized, while ICE reports that 185 individuals were deauthorized in total.

^bWe calculated the total annualized AUO pay of deauthorized employees by using the employees' AUO rate of pay received during the first pay period of 2014, around the time of January 27, 2014, memorandum, and assuming their salaries and AUO rates would remain constant, multiplied that payment amount by 26.

As shown in table 6, CBP deauthorized AUO for 565 employees in CBP headquarters and at other locations, who received a total of approximately \$11.9 million per year in AUO pay assuming their salaries and AUO rates remained constant. This translates to about \$21,000 per employee per year. ICE deauthorized AUO for 181 employees, including 111 employees whose positions were improperly classified as eligible for AUO. According to ICE officials, these improperly classified employees were authorized for AUO based on legacy designations from INS, and were not previously identified as being improperly authorized because ICE did not conduct annual reviews of position descriptions. In total, these ICE employees received approximately \$4.5 million (or about \$25,000 per employee) per year in AUO pay, assuming their salaries and AUO rates remained constant. NPPD deauthorized AUO for 3 employees who received approximately \$54,500 (or about \$18,000 per employee) per year in AUO pay, assuming their salaries and AUO rates remained constant. USSS officials stated that they did not suspend or deauthorize AUO for any employees because of the January 2014 memorandum. According to USSS officials, all USSS employees earning AUO perform in an operational, not administrative, capacity and remain eligible for AUO. CBP officials stated that these deauthorizations of AUO may affect recruitment of high-caliber employees into temporary details to headquarters-based or instructor positions because these employees may see a decrease in earnings as compared with earnings in field positions that remain eligible for AUO. ICE officials stated that they have not seen any discernible changes in attrition or recruitment related to the deauthorizations of AUO for headquarters-based and instructor positions.

Conclusions

DHS employees perform critical missions on behalf of the American public. DHS components owe their employees and the public assurance that public funds, including those spent on AUO work, are used in a manner consistent with applicable law, regulation, and policy. Because certain positions and duties in DHS may require occasional or irregular overtime that cannot be scheduled in advance or controlled through administrative means, such as staggering shifts or hiring additional

personnel, AUO provides DHS components with flexibility to compensate such AUO-eligible employees. The flexibility of AUO, however, requires the department and components to provide rigorous oversight of the use of AUO—including careful and consistent review of hours claimed and employee eligibility, among other things, so that AUO is appropriately used. Reviews as far back as 1997 show that current DHS entities—such as U.S. Border Patrol—have not properly managed AUO, partly because of a culture throughout DHS that employees in certain positions may use AUO without much oversight and regardless of whether AUO is the appropriate compensation for the work being performed. Furthermore, extensive AUO oversight deficiencies have continued since the formation of DHS in 2003 because DHS components have not implemented AUO in a manner consistent with federal law, regulation, and guidance, and component policies.

DHS is taking actions to improve the management of AUO as detailed in the Deputy Secretary's May 23, 2014, memorandum that requires components to develop and implement corrective action plans and requires DHS to develop a department-wide directive on AUO. Until the directive is finalized, it is unclear what provisions will be included, and whether oversight mechanisms will be robust enough and sufficient to address the myriad of deficiencies identified with AUO administration and oversight. Given the department's total spending on AUO payments of over \$500 million in fiscal year 2013 and DHS's long-standing and widespread AUO administration and oversight deficiencies, ensuring accountability and safeguarding the expenditure of public funds is paramount. By developing and executing a department-wide oversight mechanism to ensure components implement AUO appropriately on a sustained basis, and in accordance with law and regulation, DHS could be better positioned to monitor components' progress remediating AUO deficiencies. In addition, by DHS reporting annually to Congress on the extent to which DHS components have made progress in remediating AUO implementation deficiencies, including information from annual third-party AUO audits or other department AUO oversight efforts, Congress could have reasonable assurance that DHS components have sustained effective and appropriate use of AUO in accordance with law and regulation.

Matter for Congressional Consideration

To ensure that DHS components have sustained effective and appropriate use of AUO in accordance with law and regulation, Congress should consider requiring DHS to report annually to Congress on the use of AUO within the department, including the extent to which DHS components have made progress remediating AUO implementation deficiencies and information from annual third-party AUO audits or other department AUO oversight efforts.

Recommendation for Executive Action

To better position DHS to monitor components' progress remediating AUO deficiencies, we recommend that the Secretary of DHS develop and execute a department-wide oversight mechanism to ensure components implement AUO appropriately on a sustained basis, and in accordance with law and regulation.

Agency Comments and Our Evaluation

We provided a draft of this report to DHS for review and comment. DHS provided written comments, which are reprinted in appendix IV. In its comments, DHS agreed with the recommendation and outlined actions to address it. Specifically:

- DHS stated its forthcoming department-wide AUO policy will require 1) annual third-party audits of components' use of AUO that will measure compliance with DHS policy, component requirements, and related regulations; 2) components to provide a copy of each completed annual third-party audit to component leadership and the DHS Chief Human Capital Officer; and 3) component heads to certify annually that their AUO-eligible positions meet statutory, regulatory, and DHS policy requirements.
- DHS further stated that the DHS Chief Human Capital Officer is to inform the DHS Under Secretary for Management of the results of these annual audits. If the audits identify any concerns, the Under Secretary for Management is to facilitate their resolution or elevate them to more senior leadership to ensure they are addressed.
- DHS reported that its department-wide AUO policy is going through final internal coordination and will be distributed to national labor unions for review and comment before publication. DHS estimates the AUO policy will be finalized and implemented by June 30, 2015.

If fully implemented, these actions will address the intent of our recommendation. DHS also provided technical comments on a draft of this report, which we incorporated as appropriate.

We are sending copies of this report to the appropriate congressional committees, the Secretary of Homeland Security and other interested parties. In addition, the report is available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff have any questions, please contact me at (202) 512-9627 or maurerd@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made significant contributions to this report are listed in appendix V.

A handwritten signature in black ink, reading "David C. Maurer". The signature is fluid and cursive, with the first name "David" and last name "Maurer" clearly legible.

David C. Maurer
Director, Homeland Security and Justice

Appendix I: Objectives, Scope, and Methodology

This report addresses the following three questions:

1. How much has the Department of Homeland Security (DHS) spent on administratively uncontrollable overtime (AUO) pay from fiscal year 2008 through March 2014?
2. To what extent have DHS components implemented AUO appropriately?
3. How have recent AUO suspensions and deauthorizations at selected DHS components affected their use of overtime?

For this report, we assessed DHS's use of AUO for those components that compensated employees with AUO from fiscal year 2008 (October 2007) to March 22, 2014—the most currently available data for fiscal year 2014 at the time of our data request. However, when calculating annual averages, we used the last full year of available data—fiscal year 2013. Specifically, these components included U.S. Customs and Border Protection (CBP), U.S. Immigration and Customs Enforcement (ICE), National Protection and Program Directorate (NPPD), U.S. Citizenship and Immigration Services (USCIS), U.S. Secret Service (USSS), and the Office of the Chief Security Officer (OCSO). We include OCSO in our scope when we refer to DHS components throughout this report. We selected this time frame because the Office of Special Counsel (OSC) first raised allegations of AUO abuse within DHS in 2007. We omitted the Federal Law Enforcement Training Center (FLETC) and DHS's Office of the Chief Information Officer (OCIO) because they previously used AUO on a limited basis to fewer than 10 employees, for about 1 year. Specifically, FLETC compensated 1 employee with AUO from July 2010 to October 2011, and OCIO compensated 4 employees with AUO from April 2012 to May 2013.

To determine how much each DHS component spent on AUO from fiscal year 2008 through March 2014, we collected AUO payments data for all DHS components that paid AUO since October 2007. These data included AUO payments to individual employees within each component per pay period as well as occupational characteristics such as grade, series, position title, salary, location, and program office. These data allowed us to calculate, for each component and in aggregate for DHS, the total amount of AUO paid per fiscal year; the average amount of AUO pay per employee; the number of recipients of AUO; and the counts of AUO recipients by location, grade, and position title. We assessed the reliability of the AUO payments data by (1) interviewing agency officials about the data sources, the systems' controls, and any quality assurance

steps performed by officials before data were provided from the systems and (2) testing the data for missing data, duplicates, negative dollar amounts or payments, entries with values beyond expected ranges, or other entries that appeared to be unusual.¹ We identified limitations to the data including incomplete duty location information for CBP, incomplete date ranges for NPPD, as well as missing AUO payments and other variables for several components. The missing locations data for CBP affected about 9 percent of all records that we received, and we included caveats in the report where relevant. In addition, NPPD was unable to provide AUO payments from fiscal years 2008 through 2009 because its system does not allow access to older years' information at the level of detail requested. NPPD accounted for about 1 percent of all AUO payments during the years of data available to us, so we believe the absence of the fiscal years 2008 and 2009 of NPPD AUO payments data likely resulted in a minimal impact on our reported overall expenditures for those years. We included caveats in the report where relevant related to NPPD's AUO payments data. Additionally, USSS was able to provide calendar year payments data only for 2008 through 2010, resulting in a 3 month overlap with the last 3 months of calendar year 2010 with the first 3 months of fiscal year 2011. Since USSS constitutes a relatively small amount of total AUO payments any impacts on the aggregate data are likely minimal. We found the components' data sufficiently reliable and complete for providing descriptive information on the amount of AUO that DHS components paid and on the occupational characteristics of employees earning AUO payments.

To determine the extent to which DHS components implemented AUO appropriately, we reviewed AUO policies and procedures for those DHS components that compensated employees with AUO from fiscal year 2008 through March 2014—CBP, ICE, NPPD, USSS, OCSO, and USCIS.² We analyzed these policies and procedures to determine the

¹We found negative values for AUO payments in several data sets. We discussed these instances with agency officials. They explained that negative numbers are the result of previous overpayments of AUO being corrected.

²According to USCIS officials, USCIS suspended AUO for all of its AUO-earning employees in November 2013, as a result of an internal AUO review that found that supervisors may not have adequate evidence that employee activities are administratively uncontrollable when approving AUO hours, among other things. In addition, according to OCSO officials, OCSO also suspended AUO for all of its AUO-earning employees in November 2013, following a House Committee on Oversight and Government Reform hearing that discussed widespread abuse of AUO throughout DHS.

extent to which they comply with relevant federal regulations and incorporate Office of Management and Personnel (OPM) guidance.³ We also interviewed OPM officials about these regulations and guidance to better inform our understanding of components' AUO policies and procedures. To describe the extent to which AUO policies and procedures may have contributed to inappropriate implementation of AUO, we reviewed relevant Office of Inspector General (OIG) and OSC-referred component investigation and review reports that were based on referrals or otherwise begun between May 2007 and January 2014. We reviewed the Department of Justice's OIG's sampling methodology for its 1997 review of Border Patrol employees' use of AUO, and found it sufficiently sound to report the results. In addition, to assess the extent to which ICE consistently adjusted AUO rates, we compared AUO rates changes for employees identified by ICE with personnel actions to decrease AUO rates, and thereby AUO payments, for identified employees. We selected ICE because officials indicated that AUO rates adjustments were not carried out in a timely fashion by field office officials. Further, we reviewed AUO activity documentation submitted by NPPD employees from December 1 through 14, 2013, because NPPD stores this documentation electronically and it was the most recently available documentation at the start of our review.⁴

We also met with agency officials from component program offices that compensated employees with AUO to obtain their perspectives on AUO policies and procedures, as well as implementation of these policies and procedures, including (1) DHS's Office of the Chief Human Capital Officer (OCHCO); (2) CBP's U.S. Border Patrol, Office of Internal Affairs, Office of Field Operations, Office of Training and Development, and Office of Air and Marine; (3) ICE's Office of Human Capital, Enforcement and Removal Operations, Homeland Security Investigations, and Office of Professional Responsibility; (4) NPPD's Infrastructure Security Compliance Division, Protective Security Coordination Division, and Federal Protective Service; (5) USCIS's Office of Security and Integrity; (6) USSS's Management and Organization Division, Office of

³See 5 C.F.R. §§ 550.151-550.164; OPM, *Memorandum for Directors of Personnel (CPM 97-5): Guidance on AUO Pay* (June 13, 1997).

⁴We did not review corresponding documentation from CBP and ICE employees because, according to officials, these components store paper copies of AUO activity documentation at respective field offices.

Investigations, Office of Protective Operations, and Office of Technical Development and Mission Support; and (7) OCSO. We also met with representatives from two unions with bargaining unit members receiving AUO to obtain their perspectives on components' use of AUO: the National Border Patrol Council and the National ICE Council. To determine actions DHS and its components have taken to strengthen AUO policies and procedures and to improve implementation of these policies and procedures, we reviewed DHS's January 23, 2014, and May 23, 2014, memorandums on AUO administration.

To determine how recent DHS suspensions of AUO have affected use of overtime, we analyzed employee overtime information for those employees who received AUO compensation from USCIS and OCSO, both of which suspended AUO in November 2013. Components use different terms to describe the cessation of AUO within their respective components. For the purposes of this report, we use "suspension" of AUO when addressing components' actions to completely stop use of AUO for all employees without a formal, written determination as to a particular employee's or position's AUO eligibility. Specifically, we compared overtime hours worked and overtime paid for these employees prior to and after the AUO suspension. Our analysis included 13 pay periods of AUO payments and hours worked prior to the suspension of AUO and 13 pay periods of Federal Employees Pay Act (FEPA), or scheduled overtime, payments, and hours worked following the suspension of AUO. To determine how recent deauthorizations have affected components, we analyzed AUO paid to employees who DHS components subsequently deemed to be incorrectly receiving AUO following DHS Secretary Johnson's January 27, 2014, memorandum, which instructed components to suspend AUO for certain categories of employees.⁵ For the purposes of this report, we use "deauthorization" of AUO when referring to components' actions to identify specific employees or positions as no longer eligible for AUO. We analyzed a list of all individuals from CBP, ICE, and NPPD who had been deauthorized from receiving AUO, and requested that each record also include the reason for the person's deauthorization. USSS responded that it did not have any employees

⁵This memorandum instructed DHS components to suspend AUO for those employees (1) engaged as full-time training instructors; (2) to whom internal investigators have, to date, determined that DHS is inappropriately providing AUO pay; and (3) working in component headquarters offices, not including those working in active operational capacities whose duties meet the regulatory requirements for AUO.

meeting the criteria of the memorandum and therefore did not suspend or deauthorize any employees and did not provide any such data to us. We combined the CBP, ICE, and NPPD lists with the AUO payments data previously discussed, and calculated the amount of AUO that DHS components paid individuals just prior to the time of deauthorization in January 2014. Subsequently, we estimated the annual amount paid to these individuals by multiplying the total they were paid at the time of suspension by 26, the total number of pay periods in a year. Since these pre- and postsuspension data and deauthorization data are from the same sources as we assessed above, we interviewed agency officials about any specific limitations to these different data sets. We did not identify any additional limitations, and noted any caveats to our analysis. We found the data sufficiently reliable for providing descriptive information on how DHS and components' November 2013 suspensions of AUO have affected use of overtime and the amount of AUO paid to employees deauthorized from receiving AUO following the January 2014 memorandum. In addition, we interviewed officials from USCIS and OCSO, as well as CBP, ICE, and NPPD, to collect their perspectives on the effect that the AUO suspensions and deauthorizations had on their ability to fulfill mission-critical tasks, such as any related attrition or morale issues.

We conducted this performance audit from January 2014 to December 2014, in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix II: Reviews of the Department of Homeland Security (DHS) Components' Use of Administratively Uncontrollable Overtime (AUO)

Various entities have investigated and reviewed the use of AUO by DHS components, including components that existed prior to the formation of DHS in 2003. More recently, the DHS Office of Inspector General (OIG) and DHS components' offices of internal affairs, in response to allegations referred by the U.S. Office of Special Counsel (OSC), have conducted investigations and reviews of AUO at DHS. Table 7 lists these selected past investigations and reviews of DHS components' use of AUO.

Table 7: Past Investigations and Reviews of Administratively Uncontrollable Overtime (AUO) Use within Department of Homeland Security (DHS) Components

Reviewer	Report and date	Subject of review	AUO-related findings
Department of Justice (DOJ), Office of Inspector General (OIG)	DOJ-OIG Report 97-09 January 1997	DOJ AUO-earners, most of whom were in Immigration and Naturalization Service (INS), U.S. Border Patrol ^a	<ul style="list-style-type: none"> DOJ paid about \$57 million in AUO to about 6,900 employees in fiscal year 1996, mostly to U.S. Border Patrol employees within INS. INS records did not substantiate that overtime worked was uncontrollable for 95 percent of employees sampled. DOJ OIG recommended that INS design and implement a review process to ensure that office heads maintain certificates of eligibility at the duty locations for all employees who receive AUO, and recertify these every year; and establish and implement procedures to ensure employees earn AUO only for uncontrollable work, among other things.
U.S. Customs and Border Protection (CBP), Office of Internal Affairs, on referral from U.S. Office of Special Counsel (OSC)	OSC File Number DI-07-0929 Allegations forwarded May 2007	CBP, Office of Border Patrol, Blaine Sector, Washington	<ul style="list-style-type: none"> Senior managers at Blaine Sector allowed 1 employee to earn AUO while detailed to an AUO-ineligible position. The employee routinely worked 2 hours at the end of his shift, an indicator that his overtime was administratively controllable.
CBP IA, on referral from OSC	OSC File Number DI-08-0663 Allegations forwarded February 2008	CBP, Office of Border Patrol, Blaine Sector and Lynden Station, Washington	<ul style="list-style-type: none"> Senior managers at Blaine Sector benefited from improperly and regularly approved AUO overtime. AUO claimed was administrative and controllable in nature, and inconsistent with AUO qualifying duties. AUO was not properly documented or certified as required by regulation and agency policy.

**Appendix II: Reviews of the Department of
Homeland Security (DHS) Components' Use of
Administratively Uncontrollable Overtime
(AUO)**

Reviewer	Report and date	Subject of review	AUO-related findings
CBP IA, on referral from OSC	OSC File Number DI-12-1105 Allegations forwarded July 2012	CBP, Office of Border Patrol, Laredo North Station, Texas	<ul style="list-style-type: none"> • Border Patrol agents are frequently engaged in routine postshift activities for which they claim 2 hours of AUO daily for duties that do not justify AUO pay. • AUO was not properly documented or certified as required by regulation and agency policy.
CBP IA, on referral from OSC	OSC File Number DI-13-0002 Allegations forwarded January 2013	CBP Commissioner's Situation Room (CSR)	<ul style="list-style-type: none"> • Numerous CSR employees regularly abused the use of AUO, and CSR management authorized and abetted the improper use of AUO. • CSR employees were engaged in routine postshift activities for which they claimed 2 hours of AUO daily for duties that do not justify AUO pay. • AUO was not properly documented or certified as required by regulation and agency policy.
DHS OIG	OIG-13-55 Report released March 2013	National Protection and Programs Directorate (NPPD), Infrastructure Security Compliance Division (ISCD)	<ul style="list-style-type: none"> • DHS OIG was unable to determine a definite rationale for why ISCD chemical security inspectors received AUO, and ISCD could not provide the proper authorization documentation. • ISCD did not conduct reviews of AUO rates, as required by agency policy. • ISCD employees improperly claimed and received AUO for performing duties that did not qualify for AUO, according to regulation and policy. • ISCD inappropriately paid employees approximately \$2 million in AUO in fiscal year 2012. • DHS OIG recommended that NPPD eliminate the authorization and payment of AUO for all ISCD personnel.
U.S. Immigration and Customs Enforcement (ICE), Office of Professional Responsibility, on referral from OSC	OSC File Number 13-1556 Allegations forwarded May 2013	ICE, Enforcement and Removal Operations (ERO), Houston Field Office	<ul style="list-style-type: none"> • ICE ERO employees provided, and supervisors approved, justifications that were inconsistent with the purpose of AUO. • AUO was not properly documented or certified as required by regulation and agency policy.

**Appendix II: Reviews of the Department of
Homeland Security (DHS) Components' Use of
Administratively Uncontrollable Overtime
(AUO)**

Reviewer	Report and date	Subject of review	AUO-related findings
CBP IA, on referral from OSC	OSC File Numbers DI-13-2853 and 13-3516 Allegations forwarded July 2013	CBP, Office of Border Patrol, San Diego Sector, California, Asset Forfeiture Office	<ul style="list-style-type: none"> • AUO claimed was administrative and controllable in nature, and inconsistent with AUO qualifying duties. • Asset Forfeiture Office employees claimed 2 hours of daily AUO work immediately following their scheduled shifts a majority of the time, indicating the work was controllable. • Asset Forfeiture Office employees are not eligible to receive AUO pay because the work does not qualify and assignment to the offices is a temporary detail exceeding 10 days.
CBP IA, on referral from OSC	OSC File Number DI-13-4124 Allegations forwarded September 2013	CBP, Office of Training and Development (OTD)	<ul style="list-style-type: none"> • Numerous Border Patrol agents assigned to OTD claimed and received AUO for performing duties that did not qualify for AUO, according to regulation and policy. • OTD employees claimed 2 hours of daily AUO work immediately following their shifts a majority of the time, indicating the work was controllable. • AUO was not properly documented or certified as required by regulation and agency policy.

Source: GAO analysis of selected reviews of DHS's use of AUO. | GAO-15-95

^aHomeland Security Act of 2002, Pub. L. No. 107-296, §§ 101, 441, 116 Stat. 2135, 2142, 2192 (2002) (transferring, among other entities, U.S. Border Patrol from INS to the newly formed Department of Homeland Security).

Appendix III: Variations in Administratively Uncontrollable Overtime (AUO) Policies and Procedures for Department of Homeland Security (DHS) Components

DHS components have numerous and varying AUO oversight and administration policies and procedures. In particular, policies and procedures differ regarding the frequency of AUO authorization and rates reviews, activity documentation, and guidance on temporary details. Table 8 shows the extent to which selected AUO oversight and administration mechanisms are included in DHS component policies.

Table 8: Selected Department of Homeland Security (DHS) Component Policies and Procedures on Administration and Oversight of Administratively Uncontrollable Overtime (AUO)

AUO policy or procedure category	National Protection and Programs Directorate	Office of the Chief Security Officer	U.S. Citizenship and Immigration Services	U.S. Customs and Border Protection	U.S. Immigration and Customs Enforcement	U.S. Secret Service
Frequency of AUO rates reviews	Quarterly	Quarterly	Every 7 to 8 weeks	Quarterly; every 12 pay periods ^a	Bimonthly	Quarterly
Frequency of reviews of determinations that employees or positions are authorized to receive AUO	As necessary, but no less than every 3 years	Quarterly	Annually	Annually; bimonthly ^b	Bimonthly	Not specified
Activity documentation requirements	Hours and activities submitted biweekly	Hours submitted monthly	Hours and activities submitted biweekly	Hours and activities submitted biweekly	Hours and activities submitted biweekly	Hours and activities submitted monthly

Source: GAO analysis of DHS component AUO policies and procedures. | GAO-15-95

Note: The Office of the Chief Security Officer and U.S. Citizenship and Immigration Services suspended AUO in November 2013, and the National Protection and Programs Directorate suspended AUO in September 2014.

^aAUO policies followed by the U.S. Border Patrol and the Office of Training and Development require rates reviews every 12 pay periods, which typically equates 24 weeks, and AUO policies followed by the Offices of Field Operations and Air and Marine require quarterly rates reviews.

^bAUO policies followed by the U.S. Border Patrol and the Office of Training and Development require authorization reviews bimonthly, and AUO policies followed by the Offices of Field Operations and Air and Marine require annual authorization determination reviews.

In addition, some component AUO policies and procedures do not address federal regulation and guidance regarding temporary details. Specifically, CBP's and USSS's policies do not include guidance to identify whether employees should continue to receive AUO while on temporary details away from their normal duties. Table 9 shows the extent to which DHS component policies and procedures address federal regulations regarding employees earning AUO while assigned to a temporary detail.

Appendix III: Variations in Administratively Uncontrollable Overtime (AUO) Policies and Procedures for Department of Homeland Security (DHS) Components

Table 9: Department of Homeland Security (DHS) Component Administratively Uncontrollable Overtime (AUO) Policies or Procedures Regarding Employees Assigned to Temporary Details

An employee may receive AUO pay for ^a	National Protection and Programs Directorate	Office of the Chief Security Officer	U.S. Citizenship and Immigration Services	U.S. Customs and Border Protection	U.S. Immigration and Customs Enforcement	U.S. Secret Service
A period of up to 10 consecutive prescribed workdays while on a detail where the work does not support payment of AUO premium pay	yes	yes	yes	yes	yes	no
A total of no more than 30 workdays in a calendar year when detailed to temporary assignments where the work does not support payment of AUO premium pay	yes	yes	yes	yes	yes	no
An aggregate period of up to 60 workdays in a calendar year when assigned to advanced training directly related to the duties for which AUO premium pay is paid	yes	yes	yes	yes	yes	no
A total of no more than 60 workdays in a calendar year in a combination of prescribed workdays on detail and in training	yes	yes	yes	yes	yes	no
A period of up to 30 consecutive workdays when on detail where the work does not support payment of AUO premium pay when the temporary assignment is directly related to a national emergency declared by the President	yes	yes	yes	no	yes	no
A total of up to 90 workdays in a calendar year when assigned to duties where the work does not support payment of AUO premium pay and when the temporary assignment is directly related to a national emergency declared by the President	yes	yes	yes	no	yes	no

Source: GAO analysis of DHS component AUO policies and procedures. I GAO-15-95

Note: See 5 C.F.R. § 550.162(c), (g) (prescribing circumstances under which an AUO-earning employee may continue to earn AUO while on temporary assignment to a position that would not otherwise warrant payment of premium pay on an annual basis). For example, an agency may continue AUO pay for not more than 10 workdays when an employee receiving AUO pay has been temporarily assigned to duties that do not warrant payment of AUO, with such payments for nonqualifying duties not exceeding 30 workdays in a calendar year. § 550.162(c)(1).

Appendix IV: Comments from the Department of Homeland Security

U.S. Department of Homeland Security
Washington, DC 20528



**Homeland
Security**

December 9, 2014

Dave Maurer
Director, Homeland Security and Justice
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548

Re: Draft Report GAO-15-95, "DEPARTMENT OF HOMELAND SECURITY:
Continued Action Needed to Strengthen Management of Administratively
Uncontrollable Overtime"

Dear Mr. Maurer:

Thank you for the opportunity to review and comment on this draft report. The U.S. Department of Homeland Security (DHS) appreciates the U.S. Government Accountability Office's (GAO) work in planning and conducting its review and issuing this report.

DHS welcomes GAO's recognition that the Department is taking aggressive actions to strengthen the management and oversight of Administratively Uncontrollable Overtime (AUO). Since their first days at DHS, Secretary Jeh Johnson and Deputy Secretary Alejandro Mayorkas have worked to improve AUO management at the Department. Secretary Johnson, for example, suspended AUO pay for certain categories of DHS workers in January 2014, only weeks after taking office.

DHS takes its responsibility to be good stewards of taxpayer dollars and uphold the public trust very seriously. In the last year, DHS has taken significant actions to improve its management of AUO. For example, DHS is finalizing a set of comprehensive and updated AUO policies. The Department is also establishing training requirements and programs; and U.S. Immigration and Customs Enforcement (ICE) and U.S. Customs and Border Protection (CBP) have already begun extensive premium pay training.

Increased compliance efforts are also underway at the three Components that continue to use AUO – CBP, ICE, and U.S. Secret Service (USSS) – which have prepared plans for improving AUO management. Based on continuing review and discussion, these Components may submit modifications and updates to their plans. In the meanwhile, Components have begun implementing various facets of the plans.

DHS senior leadership has also made clear that the Department will not tolerate overtime abuse. Along these lines, DHS is taking steps to ensure meaningful discipline for non-compliance, working with others, such as the DHS Office of Inspector General, as appropriate. As Secretary Johnson said while testifying before Congress earlier this year, "... we must work within the laws and rules pursuant to which overtime is sought and received." DHS is going to do this, period.

The draft report contained one recommendation, with which the Department concurs:

Recommendation: Develop and execute a department-wide oversight mechanism to ensure components implement AUO appropriately on a sustained basis, and in accordance with law and regulation.

Response: Concur. The DHS Office of the Chief Human Capital Officer has already incorporated AUO into its Human Resources Operational Audits, which are conducted every three to four years. In addition, DHS is nearing the final stages of issuing a department-wide AUO policy, which will, among other requirements, mandate annual, third-party audits of components' use of AUO.

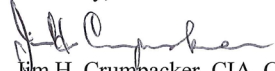
Under the planned policy, components must arrange for an annual third-party audit of AUO that measures compliance with the DHS-wide policy, Component procedures, and related regulations. The audit should assess whether AUO hours worked and AUO rates are consistent with applicable authorities and are supported with sufficiently detailed contemporaneous documentation demonstrating that the work at issue is AUO qualifying or AUO payable. A copy of each completed third-party audit must also be provided to the Component Head and the Chief Human Capital Officer.

In addition, the planned policy will require Component Heads certify annually that all Component AUO-eligible positions meet the statutory, regulatory, and DHS policy requirements for payment of AUO. This annual certification may not be redelegated. The Chief Human Capital Officer will also inform the Under Secretary for Management (USM) on results of the annual third-party audits and periodic Human Resources Operations Audits. In turn, the USM will facilitate the resolution of or elevate to more senior leadership any concerns identified to ensure they are addressed in a timely manner, as appropriate.

The policy is currently in its final, internal coordination stages and will be sent to national labor unions for review and comment before publication. Components that use AUO, such as the CBP and ICE, have also begun developing comprehensive action plans to achieve and/or maintain full compliance with the rules and law governing AUO. These plans will be finalized after the new DHS policy is published. Estimated Completion Date: June 30, 2015.

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

Sincerely,

A handwritten signature in blue ink, appearing to read "Jim H. Crumacker".

Jim H. Crumacker, CIA, CFE
Director
Departmental GAO-OIG Liaison Office

Appendix V: GAO Contact and Staff Acknowledgments

GAO Contact

David C. Maurer, (202) 512-9627 or maurerd@gao.gov

Staff Acknowledgments

In addition to the contact named above, Adam Hoffman (Assistant Director), David Alexander, Cynthia Grant, Eric Hauswirth, Susan Hsu, Thomas Lombardi, Alicia Loucks, Elizabeth Luke, Ruben Montes de Oca, and Sean Standley made key contributions to this report.

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