

**Interim Status Report on the Department's Efforts to
Implement the Recommendations of the OIG's Report Entitled
Handling of Sexual Harassment and Misconduct Allegations
by the Department's Law Enforcement Components**

Background

In March 2015, the OIG issued a report describing our assessment of how the Department's law enforcement components respond to sexual harassment and misconduct allegations made against their employees. Our review examined the nature, frequency, reporting, investigation, and adjudication of such allegations in the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF); the Drug Enforcement Administration (DEA); the Federal Bureau of Investigation (FBI); and the United States Marshals Service (USMS).

Our review identified some significant systemic flaws in the components' processes for handling sexual harassment and sexual misconduct allegations. For example, we found that at ATF, DEA, and the USMS, the internal affairs offices that receive sexual misconduct allegations did not always coordinate with the offices responsible for ensuring that employees meet the requirements to hold security clearances. We also found that supervisors at ATF and the USMS did not consistently report sexual harassment and sexual misconduct allegations to their headquarters, and that DEA's reporting policies did not clearly define what types of allegations should be reported to headquarters. While the FBI's policies on reporting sexual harassment allegations to FBI headquarters were clear, we found that its reporting policies on sexual misconduct allegations did not clearly delineate when such allegations should be reported to headquarters.

In addition, we found that ATF's tables of offenses and penalties did not contain specific offense categories to address sexual misconduct and sexual harassment. By contrast, we found that offense tables at DEA, FBI, and the USMS contained specific categories for such allegations and an appropriate range of penalties for them. However, we learned that in some instances, DEA and the USMS applied general offense categories to misconduct more appropriately addressed by the specific sexual misconduct and sexual harassment offense categories in their offense tables. We additionally found that ATF, DEA, and the USMS offense tables did not contain specific language to address the solicitation of prostitutes abroad, even where the conduct is legal or tolerated. Finally, we found that all of the components have weaknesses in detecting sexually explicit text messages and images, which may hamper their ability to use this type of evidence in misconduct investigations, to fully satisfy their discovery obligations, and to deter misconduct.

The report made eight recommendations - four recommendations to the law enforcement components and four to the Office of the Deputy Attorney General (ODAG). The recommendations directed to the law enforcement components were:

- All four law enforcement components should ensure that supervisors and managers report all allegations of sexual misconduct and sexual harassment to headquarters, and they should consider ensuring compliance with this requirement by including it in their performance standards so as to subject supervisors and managers to possible discipline for failing to report allegations;
- ATF, DEA, and USMS should ensure that all non-frivolous sexual harassment and sexual misconduct allegations are referred to their respective security personnel to determine if the misconduct raises concerns about the employee's continued eligibility to hold a security clearance, and to determine whether the misconduct presents security risks for the component;
- The components should have and follow clear and consistent criteria for determining whether an allegation should be investigated at headquarters or should be referred back to the originating office to be handled as a management matter; and
- All four law enforcement components should use the offense categories specifically designed to address sexual misconduct and sexual harassment, and revise their tables if they are inadequate or otherwise deter the use of such categories.

The four recommendations directed to the ODAG were:

- ODAG should ensure that the Department's zero tolerance policy on sexual harassment is enforced in the law enforcement components and that the components' tables of offenses and penalties are complementary and consistent with respect to sexual harassment;
- ODAG should develop policy explicitly prohibiting the solicitation of prostitutes in a foreign jurisdiction even if the conduct is legal or tolerated, and ensure that all component offense tables include language prohibiting this form of misconduct;
- The four law enforcement components, in coordination with ODAG, should acquire and implement technology and establish procedures to effectively preserve text messages and images for a reasonable period of time, and components should make this information available to

misconduct investigators and, as appropriate, for discovery purposes; and

- The four law enforcement components, in coordination with ODAG, should take concrete steps to acquire and implement technology to be able to, as appropriate in the circumstances, proactively monitor text message and image data for potential misconduct.

Status of the Recommendations With Respect to the FBI, DEA, and ATF

As of March 16, 2016, the FBI, DEA, and ATF have provided information to the OIG demonstrating that they have fully implemented corrective actions for all of the recommendations directed to them. All three components have, for example, modified, clarified, or re-emphasized their sexual misconduct and sexual harassment reporting policies and have disseminated them to all personnel. In addition, they have changed their sexual harassment and misconduct allegation reporting procedures to ensure consistency with our recommendations. The ATF and DEA have implemented processes designed to ensure that misconduct allegations are appropriately referred to headquarters and to security personnel; the FBI had already instituted such referrals to security personnel, as noted in our report dated March 2015. In addition, ATF, FBI, and DEA have provided information showing that they have implemented and are applying appropriate offense categories for sexual harassment and sexual misconduct allegations. In light of this, the OIG has closed the recommendations directed to the FBI, DEA, and ATF.

Status of the Recommendations With Respect to the U.S. Marshals Service

The USMS has demonstrated to the OIG that it has fully implemented two of the recommendations: ensuring that supervisors and managers report all allegations of sexual harassment and sexual misconduct to their headquarters, and that it has and follows clear and consistent criteria for determining whether to investigate allegations at headquarters or refer them back to the originating office. The USMS provided the OIG with copies of its updated Code of Professional Responsibility, which describes the requirements and also states that managers and employees who fail to report misconduct are subject to discipline. The USMS also provided its updated Policy Directive requiring managers to report all misconduct allegations to USMS Internal Affairs at Headquarters or to the OIG. Regarding the recommendation to follow consistent criteria for determining where misconduct allegations should be investigated, the USMS provided us with a copy of its updated procedures that describe who is responsible for the intake and investigation of all misconduct allegations and how it determines which should be handled locally or by

headquarters. Based on the information the USMS provided to us, we closed these recommendations.

The USMS also provided us with information that shows that it has made substantial progress towards full implementation of the remaining two recommendations: ensuring that all non-frivolous sexual harassment and sexual misconduct allegations are referred to their respective security personnel, and using the offense categories specifically designed to address sexual misconduct and sexual harassment when rendering disciplinary action and revising the offense tables if they are inadequate. With regard to ensuring that non-frivolous sexual harassment and misconduct allegations are referred to security personnel, the USMS told the OIG that it is engaged in identifying a database management system capable of comprehensively tracking the misconduct complaints and ensuring they are referred to security personnel appropriately. In response to our recommendation that it use offense categories specifically designed to address sexual misconduct and harassment, and revise its tables if they are inadequate, the USMS has stated that it made revisions to its Table of Disciplinary Offense and Penalties and disseminated them to all personnel. The USMS told the OIG that it plans to provide us with examples of any cases in which the USMS has used the new or revised categories. We will continue to monitor the USMS' progress in implementing these two recommendations, and will report on it in our follow-up report in six months.

Status of the Recommendations Made to the Office of the Deputy Attorney General

The ODAG is in the process of implementing corrective actions for three of the four recommendations directed to it: ensuring the Department's zero tolerance policy on sexual harassment is enforced; developing policies specifically prohibiting the solicitation of prostitutes by Department employees in a foreign jurisdiction, even if it is legal or tolerated in that jurisdiction; and taking concrete steps to acquire and implement technology to preserve text messages and images.

With regard to ensuring that the Department's zero tolerance policy on sexual harassment is enforced, the Department informed the OIG that it continues to work with the components to achieve greater consistency with Department policy as to the charges and penalties for this type of misconduct. Similarly, in the matter of the Department ensuring that the ATF, DEA, FBI, and USMS develop policy explicitly prohibiting the solicitation of prostitutes by Department employees, the Department stated it is working with the components to ensure that language is explicitly added to the components' policies and offense tables to address such misconduct.

In regard to the Department taking concrete steps to acquire and implement technology to preserve text messages and images, the Department reported that it procured an external consultant to assist in evaluating existing business processes and capabilities, assessing current market capabilities for text messaging, and identifying potential approaches for the capture and preservation of text messages. The Department has informed us that, based on the results of this evaluation, it will be implementing a series of phased activities throughout fiscal year 2016 for capturing messages in the short term to meet immediate needs and conducting further analysis on capture tools.¹

The remaining recommendation directed the ODAG to take concrete steps to acquire and implement technology to proactively monitor employee text messages and images for potential misconduct. On December 23, 2015, ODAG informed the OIG that it has explored various technologies that would support the ability to actively monitor text message and image data for potential misconduct, but it concluded that because the current state of various technologies to support this ability are considered to be only in the research and development phase, the Department considers implementation of such technology to be operationally infeasible at this time. We intend to continue our discussions with ODAG to determine the future status of this recommendation, to continue to monitor its progress on the other three recommendations, and we will report further on these matters in our report in six months.

In sum, the OIG has determined that the Department and its law enforcement components have implemented or are in the process of implementing the recommendations made in our report. The OIG will issue a report in six months that describes the Department's efforts to implement the eight OIG recommendations as of that time.

¹ The Department described these activities as a series of process improvements regarding message retention, including identifying and implementing applications to execute on smartphones, providing a streamlined approach for forwarding relevant messages for capture, vetting messaging applications to determine whether any should be prohibited due to potential security concerns, implementing policy on the use of third-party messaging applications, and developing training on the use of electronic messaging and recordkeeping responsibilities.