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Comptroller General
of the United States

Accessible Version

May 10, 2023

The Honorable Merrick B. Garland
Attorney General
Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

Priority Open Recommendations: Department of Justice

Dear Attorney General Garland:

The purpose of this letter is to update you on the overall status of the Department of Justice's (DOJ) implementation of our recommendations and to call your continued personal attention to areas where open recommendations should be given high priority.¹ In November 2022, we reported that, government-wide, 77 percent of our recommendations made 4 years ago were implemented.² DOJ's recommendation implementation rate was 80 percent. As of January 2023, DOJ had 106 open recommendations. Fully implementing these open recommendations could significantly improve agency operations.

Since our June 2022 letter, DOJ has implemented three of our 10 open priority recommendations. In doing so, DOJ is able to assess how the data it obtains and uses support its diversion control activities of controlled substances and prescription drugs, including opioids.³ Further, DOJ demonstrated that its risk assessment process for determining whether the Law Enforcement program is susceptible to significant improper payments is reasonable.⁴ DOJ also revised its assessment procedures to incorporate steps for coordinating with other federal agencies when assessing state agencies' cybersecurity.⁵ This step can help reduce the time and resources required by state officials in responding to duplicative assessment activities.

DOJ has seven priority recommendations remaining from those we identified in the June 2022 letter. We ask for your continued attention to these remaining priority recommendations. We are

¹Priority recommendations are those that we believe warrant priority attention from heads of key departments or agencies. They are highlighted because, upon implementation, they may significantly improve government operations, for example, by realizing large dollar savings; eliminating mismanagement, fraud, and abuse; or making progress toward addressing a high-risk or duplication issue.

²GAO, *Performance and Accountability Report: Fiscal Year 2022*, [GAO-23-900398](#) (Washington, D.C.: Nov. 15, 2022).

³GAO, *Drug Control: Actions Needed to Ensure Usefulness of Data on Suspicious Opioid Orders*, [GAO-20-118](#) (Washington, D.C.: Jan. 29, 2020).

⁴GAO, *Improper Payments: Selected Agencies Need Improvements in Their Assessments to Better Determine and Document Risk Susceptibility*, [GAO-19-112](#) (Washington, D.C.: Jan. 10, 2019).

⁵GAO, *Cybersecurity: Selected Federal Agencies Need to Coordinate on Requirements and Assessments of States*, [GAO-20-123](#) (Washington, D.C.: May 27, 2020).

also adding one recommendation related to updating DOJ's risk management strategy to incorporate privacy and five recommendations related to the Bureau of Prison's (BOP) implementation of the First Step Act of 2018 (First Step Act), bringing the total number of priority recommendations to 13. (See enclosure for the list of recommendations and actions needed to implement them.)

The 13 priority recommendations fall into the following five major areas.

Efforts to Combat Illicit Opioid Use.

Drug misuse—the use of illicit drugs and the misuse of prescription drugs—has been a persistent public health issue in the United States. GAO added it to our High Risk List in 2021. In this area, we recommended that the Drug Enforcement Administration (DEA) solicit input from and develop additional guidance for distributors of controlled substances regarding their roles and responsibilities for monitoring and reporting suspicious prescription drug orders. This priority recommendation will assist DEA in strengthening its guidance to and communication with these distributors. This is intended to support its Office of Diversion Control's mission of preventing diversion while ensuring an adequate and uninterrupted supply of controlled substances for legitimate medical needs.

Federal Prison System.

BOP has faced challenges fully staffing its institutions and implementing certain requirements from the First Step Act. These shortfalls affect inmate custody and care, and efforts to assist individuals in a successful reintegration to the community after incarceration. By implementing the eight priority recommendations in this area, such as developing and implementing a reliable method, or amending existing methods, for calculating staffing levels at BOP institutions and developing a mechanism to monitor, on an ongoing basis, if it is offering a sufficient amount of evidence-based recidivism reduction programs and productive activities to meet the needs of its incarcerated population, BOP would have better mechanisms for monitoring and assessing its staffing situation and implementing its First Step Act requirements.

Federal Bureau of Investigation (FBI) Whistleblower Retaliation Complaints.

Whistleblowers help safeguard the federal government against waste, fraud, and abuse—however, they also risk retaliation by their employers. Implementing our priority recommendation to clarify guidance in this area requires that DOJ update its regulations to be consistent with statute and other FBI guidance.

Immigration Courts.

Each year, immigration judges within DOJ's Executive Office for Immigration Review (EOIR) issue decisions for hundreds of thousands of cases of foreign nationals charged as removable under U.S. immigration law. Implementing our priority recommendation to develop and implement a strategic workforce plan would help EOIR address current and future needs of the immigration court system, which had a backlog of about 1.8 million cases at the start of fiscal year 2023.

Cybersecurity.

Federal and state government agencies face a growing number of cyber threats to their systems and data, as illustrated by recent high profile cyberattacks. By fully implementing two priority

recommendations in this area, DOJ could help reduce burdens to state agencies resulting from variances in federal agencies' cybersecurity requirements and ensure it is managing privacy risks within acceptable thresholds. The two recommendations focus on the FBI ensuring its cybersecurity policies for states include requirements that are consistent with other federal agencies' requirements and National Institute of Standards and Technology (NIST) guidance and incorporating privacy into an agency-wide risk management strategy.

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In April 2023, we issued our biennial update to our [High Risk List](#). This list identifies government operations with greater vulnerabilities to fraud, waste, abuse, and mismanagement. It also identifies the need for transformation to address economy, efficiency, or effectiveness challenges.⁶

One of our high-risk areas—[national efforts to prevent, respond to, and recover from drug misuse](#)—focuses directly on DOJ and other agencies. In addition, we added a new area this year, [strengthening management of the federal prison system](#), which is directly under DOJ's purview.

Several other government-wide high-risk areas also have direct implications for DOJ and its operations. These include (1) [improving the management of IT acquisitions and operations](#), (2) [improving strategic human capital management](#), (3) [managing federal real property](#), (4) [ensuring the cybersecurity of the nation](#),⁷ and (5) [managing the government-wide personnel security clearance process](#).

We urge your attention to the high-risk issues related to DOJ as well as the government-wide high-risk issues as they relate to DOJ. Progress on high-risk issues has been possible through the concerted actions and efforts of Congress, the Office of Management and Budget (OMB), and the leadership and staff in agencies, including within DOJ. In March 2022, we issued a report on key practices to successfully address high-risk areas, which can be a helpful resource as your agency continues to make progress to address high-risk issues.⁸

In addition to your continued attention on these issues, Congress plays a key role in providing oversight and maintaining focus on our recommendations to ensure they are implemented and produce their desired results. Legislation enacted in December 2022 includes a provision for GAO to identify any additional congressional oversight actions that can help agencies implement priority recommendations and address any underlying issues relating to such implementation.⁹

⁶GAO, *High-Risk Series: Efforts Made to Achieve Progress Need to be Maintained and Expanded to Fully Address All Areas*, [GAO-23-106203](#) (Washington, D.C.: Apr. 20, 2023).

⁷With regard to cybersecurity, we also urge you to use foundational information and communications technology supply chain risk management practices set forth in our December 2020 report, GAO, *Information Technology: Federal Agencies Need to Take Urgent Action to Manage Supply Chain Risks*, [GAO-21-171](#) (Washington, D.C.: Dec. 15, 2020).

⁸GAO, *High-Risk Series: Key Practices to Successfully Address High-Risk Areas and Remove Them from the List*, [GAO-22-105184](#) (Washington, D.C.: Mar. 3, 2022).

⁹James M. Inhofe National Defense Authorization Act for Fiscal Year 2023, Pub. L. No. 117-263, § 7211(a)(2), 136 Stat. 2395, 3668 (2022); H.R. Rep. No. 117-389 (2022) (accompanying Legislative Branch Appropriations Act, H.R. 8237, 117th Cong. (2022)).

There are various strategies Congress can use in addressing our recommendations, such as incorporating them into legislation. Congress can also use its budget, appropriations, and oversight processes to incentivize executive branch agencies to act on our recommendations and monitor their progress. For example, Congress can hold hearings focused on DOJ's progress in implementing GAO's priority recommendations, withhold funds when appropriate, or take other actions to provide incentives for agencies to act. Moreover, Congress could follow up during the appropriations process and request periodic updates. Congress also plays a key role in addressing any underlying issues related to the implementation of these recommendations. For example, Congress could pass legislation providing an agency explicit authority to implement a recommendation or requiring an agency to take certain actions to implement a recommendation.

Copies of this report are being sent to the Director of OMB and the appropriate congressional committees. In addition, the report will be available on the GAO website at <http://www.gao.gov>.

I appreciate DOJ's continued commitment to these important issues. If you have any questions or would like to discuss any of the issues outlined in this letter, please do not hesitate to contact me or Charles Michael Johnson, Jr., Managing Director, Homeland Security and Justice Team at JohnsonCM@gao.gov or (202) 512-8777. Contact points for our offices of Congressional Relations and Public Affairs may be found on the last page of this report. Our teams will continue to coordinate with your staff on all of the 106 open recommendations, as well as those additional recommendations in the high-risk areas for which DOJ has a leading role. Thank you for your attention to these matters.

Sincerely yours,

A handwritten signature in black ink that reads "Gene L. Dodaro". The signature is written in a cursive, flowing style with a long horizontal line extending from the end of the name.

Gene L. Dodaro
Comptroller General of
the United States
Enclosure

cc: Lisa Monaco, Deputy Attorney General, Office of the Deputy Attorney General
Christopher Wray, Director, FBI
Jolene Ann Lauria, Acting Assistant Attorney General for Administration, Justice Management Division
David Neal, Director, Executive Office for Immigration Review
Anne Milgram, Administrator, DEA
Louis J. Milione, Principal Deputy Administrator, DEA
Christopher D. Nielsen, Senior Advisor, Office of the Administrator, DEA
Matthew J. Strait, Deputy Assistant Administrator, Office of Diversion Control Regulatory, Diversion Control Division, DEA
Thomas W. Prevoznik, Deputy Assistant Administrator, Office of Diversion Control Policy, Diversion Control Division, DEA

Brian Besser, Deputy Assistant Administrator, Office of Diversion Control Operations,
Diversion Control Division, DEA
Melinda Rogers, Deputy Assistant Attorney General/Chief Information Officer
Colette Peters, Director, Federal Bureau of Prisons
The Honorable Shalanda Young, Director, Office of Management and Budget

Enclosure -- Priority Open Recommendations to the Department of Justice (DOJ)

Efforts to Combat Illicit Opioid Use

Prescription Drugs: More DEA Information about Registrants' Controlled Substances Roles Could Improve Their Understanding and Help Ensure Access. [GAO-15-471](#). Washington, D.C.: June 25, 2015.

Year Recommendation Made: 2015

Recommendation: In order to strengthen the Drug Enforcement Administration's (DEA) communication with and guidance for registrants and associations representing registrants, as well as supporting the Office of Diversion Control's mission of preventing diversion while ensuring an adequate and uninterrupted supply of controlled substances for legitimate medical needs, the Deputy Assistant Administrator for the Office of Diversion Control should solicit input from distributors, or associations representing distributors, and develop additional guidance for distributors regarding their roles and responsibilities for suspicious orders monitoring and reporting.

Action Needed: DEA did not expressly agree or disagree with our recommendation, but raised concerns, stating that "short of providing arbitrary thresholds to distributors, it cannot provide more specific suspicious orders guidance because the variables that indicate a suspicious order differ among distributors and their customers." In September 2019, DEA told us that the agency had refocused its efforts on revising draft regulations in line with the Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities Act.¹⁰ On November 2, 2020, DEA published a notice of proposed rulemaking entitled *Suspicious Orders of Controlled Substances*.¹¹ DEA reports that the proposed rule (1) codifies existing legal obligations related to due diligence and suspicious order monitoring and reporting; and (2) provides additional guidance regarding the nature and timing of the reporting requirement.

DEA reported in May 2021 that the comment period for the proposed rule closed March 29, 2021, and that DEA was actively drafting the final rule with consideration of the comments. In April 2022, DEA reported that the agency anticipated publishing the final rule in June 2022. However, as of March 2023, DEA reported that the suspicious orders regulation remained in the internal deliberative process. DEA reported in February 2023 that the agency planned to fully implement our recommendation in fiscal year 2023. While DEA has reported taking some action to address this recommendation, as noted above, until the regulations are finalized, we cannot determine if these changes will fully address the recommendation. We will continue to monitor DEA's progress in addressing our recommendation. Improved DEA communication with and guidance for registrants may address some of the concerns from these registrants about their roles and responsibilities, while also helping registrants make business decisions that balance ensuring access for patients with legitimate needs with controlling abuse and diversion.

High Risk Area: [National Efforts to Prevent, Respond to, and Recover from Drug Misuse](#)

¹⁰Pub. L. No. 115-271, § 3292, 132 Stat. 3894, 3956-58 (2018).

¹¹Drug Enforcement Administration, *Suspicious Orders of Controlled Substances*, 85 Fed. Reg. 69282 (proposed November 2, 2020) (to be codified at 21 C.F.R. pt. 1300 and 1301).

Director: Alyssa M. Hundrup, Health Care

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Director: Triana McNeil, Homeland Security and Justice

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Federal Prison System

Bureau of Prisons: Opportunities Exist to Better Analyze Staffing Data and Improve Employee Wellness Programs. [GAO-21-123](#). Washington, D.C.: February 24, 2021.

Year Recommendation Made: 2021

Recommendation: The Director of the Bureau of Prisons (BOP) should develop and implement a reliable method, or amend existing methods, for calculating staffing levels at BOP institutions.

Action Needed: BOP concurred with this recommendation. In June 2021, BOP hired a contractor to address this recommendation and several others from our report. According to BOP, the contractor is responsible for developing a tool to calculate and forecast staffing levels across the bureau. In March 2023, BOP reported that the contractor was testing a prototype of the tool in three of BOP's six regions, primarily focusing on correctional officer positions. BOP anticipates that the tool will be rolled out to all six BOP regional offices by June 2023, followed by positions from additional BOP disciplines, such as the health service division and reentry services. The implementation of this tool could better position BOP to take corrective action to address staffing shortfalls.

Recommendation: The Director of BOP should conduct a risk assessment of its overtime and augmentation use, including identifying risks to staff, inmates, and institution security; and determining actions to respond, as appropriate.

Action Needed: BOP concurred with this recommendation and reported in February 2022 that the aforementioned contractor was finalizing a risk analysis of the agency's current use of overtime and augmentation. In March 2023, BOP reported that the contractor had finished the analysis and that BOP had been tracking overtime and augmentation usage and trends for several months. BOP also reported that such tracking will illuminate drivers and trends of overtime and augmentation usage and help BOP invest in short and longer-time solutions to mitigate associated risks. We will continue to monitor BOP's progress in addressing our recommendation.

Potential Financial Benefit if Implemented: Millions

Recommendation: The Director of BOP should assess the outcomes of the staffing incentives it utilizes by developing performance measures and goals, measuring outcomes against them, and adjusting incentives, as appropriate.

Action Needed: BOP concurred with this recommendation and reported in February 2022 that the same contractor was finalizing a risk analysis of the agency's current use of staffing incentives. In March 2023, BOP stated that the contractor continued its work to standardize incentive usage, including working with BOP Executive Staff and other Human Resources staff

to identify performance measures and goals for its use of incentives. This ongoing work should help BOP determine the effectiveness of staffing incentives.

High Risk Area: [Strengthening Management of the Federal Prison System](#)

Director: Gretta L. Goodwin, Homeland Security and Justice

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Federal Prisons: Bureau of Prisons Should Improve Efforts to Implement its Risk and Needs Assessment System. GAO-23-105139. Washington, D.C.: March 20, 2023.

Year Recommendation Made: 2023

Recommendation: The Director of BOP should use and document the results of its ongoing monitoring of the frequency at which it conducts risk and needs assessments, and take appropriate corrective actions, as needed.

Action Needed: BOP concurred with this recommendation. In response to our report, in February 2023, BOP stated it will continue its ongoing efforts to use and document the results of monitoring the frequency of risk and needs assessments and take appropriate corrective actions as needed, to ensure these assessments are conducted within the statutorily required timeframes. In addition, BOP stated it is contracting for a quality assurance audit to verify it is conducting risk and needs assessments within the First Step Act of 2018 (First Step Act) required timeframes.¹² If implemented effectively, these actions would better position BOP to ensure it is conducting assessments in accordance with the First Step Act requirements, and take corrective actions, as needed. However, as noted in our report, BOP's policy also requires that assessments take place on a more frequent basis. Furthermore, the frequency of such assessments may have a direct effect on the amount of time credits an incarcerated person may earn. Therefore, BOP would also need to ensure that it uses and documents the results of its ongoing monitoring to include both First Step Act and BOP internal timeframes. Doing so, BOP will be better positioned to understand if it is meeting these requirements and take corrective action, as needed.

Recommendation: The Director of BOP should ensure its plan for evaluating evidence-based recidivism reduction programs has pre-established, quantifiable goals that align with the First Step Act, and includes clear milestone dates.

Action Needed: BOP concurred with this recommendation. In response to our report, in February 2023, BOP stated it has a plan to evaluate evidence-based recidivism reduction programs which includes pre-established, quantifiable goals. In addition, BOP stated its milestones will be finalized as BOP learns to gauge its capacity and 14 evaluations are currently underway. As noted in our report, we have previously reported that BOP has not evaluated its programs, and missed the dates it set to conduct evaluations. In addition, we noted that BOP did not include pre-established, quantifiable goals in the evaluation plan that align with the requirements in the First Step Act. Specifically, the Attorney General is required to conduct ongoing research on which evidence-based recidivism reduction programs are the most effective at reducing recidivism, and the type, amount, and intensity of programming that most

¹²18 U.S.C. § 3632(d)(5).

effectively reduces the risk of recidivism.¹³ Therefore, by implementing our recommendation, BOP will be better positioned to ensure its evaluations are conducted in a timely manner, and align with requirements in the First Step Act.

Recommendation: The Director of BOP should develop a mechanism to monitor, on an ongoing basis, if it is offering a sufficient amount of evidence-based recidivism reduction programs and productive activities to meet the needs of its incarcerated population.

Action Needed: BOP concurred with this recommendation. In response to our report, in February 2023, BOP stated it has contracted to make this information available in a dashboard format that is continually updated. Further, BOP stated the technology currently being developed will offer information on the programs offered by each facility and the needs of the incarcerated people within that facility, and such information could be used to identify unmet needs. The actions BOP described, if implemented effectively, would address our recommendation.

Recommendation: The Director of BOP should document a complete list of all the unstructured productive activities that incarcerated people are able to participate in and earn First Step Act time credits.

Action Needed: BOP did not concur with this recommendation. In response to our report, in February 2023, BOP stated that it was not statutorily required to document such a list, and such action would not be useful or feasible. While the First Step Act and implementing regulations do not explicitly require BOP to document a complete list, the Act and regulations do provide an opportunity for eligible incarcerated people to earn First Step Act time credits if they successfully participate in programs or productive activities recommended based on their risk and needs assessment.¹⁴ According to BOP's Approved Programs Guide, eligible incarcerated people who successfully participate in programs and productive activities, including unstructured productive activities, may earn time credits. While the guide lists the programs and structured activities, it does not list unstructured productive activities. The intent of our recommendation is for BOP to be transparent in a process that BOP has already implemented and established in policy. Documenting such a list would not change how BOP currently approaches unstructured productive activities. Rather, this would help BOP to formalize the activities that BOP already accepts for earning time credits. Accordingly, GAO continues to believe this recommendation is valid.

Recommendation: The Director of BOP should collect and monitor participation data for unstructured productive activities that incarcerated people are able to participate in and earn First Step Act time credits.

Action Needed: BOP did not concur with this recommendation. In response to our report, in February 2023, BOP stated that it was not statutorily required, nor helpful, to monitor these activities. The First Step Act provides an opportunity for eligible incarcerated people to earn time credits if they successfully participate in evidence-based recidivism reduction programs or productive activities recommended based on their risk and needs assessment. By monitoring

¹³18 U.S.C. § 3631(b)(3)(C).

¹⁴18 U.S.C. § 3632(a)(5), (d)(4), 28 C.F.R. § 523.40(b); see also Department of Justice, Bureau of Prisons, *First Step Act of 2018 - Time Credits: Procedures for Implementation of 18 U.S.C. § 3632(d)(4)*, 5410.01 (Washington, D.C.: Nov. 18, 2022)(Change Notice – Feb. 6, 2023).

participation in unstructured productive activities, BOP will be better positioned to know the status of each incarcerated person's successful participation for purposes of time credits. Accordingly, GAO continues to believe this recommendation is valid.

High Risk Area: [Strengthening Management of the Federal Prison System](#)

Director: Gretta L. Goodwin, Homeland Security and Justice
Contact information: GoodwinG@gao.gov, (202) 512-8777

Federal Bureau of Investigation (FBI) Whistleblower Retaliation Complaints

Whistleblower Protection: Additional Actions Needed to Improve DOJ's Handling of FBI Retaliation Complaints. [GAO-15-112](#). Washington, D.C.: January 23, 2015.

Year Recommendation Made: 2015

Recommendation: To better ensure that FBI whistleblowers have access to recourse under DOJ's regulations should the individuals experience retaliation, and to minimize the possibility of discouraging future potential whistleblowers, we recommend that the Attorney General clarify in all current relevant DOJ guidance and communications, including FBI guidance and communications, to whom FBI employees may make protected disclosures and, further, explicitly state that employees will not have access to recourse if they experience retaliation for reporting alleged wrongdoing to someone not designated in DOJ's regulations.

Action Needed: DOJ agreed with the recommendation. In response to our report, in December 2016, Congress passed and the President signed the FBI Whistleblower Protection Enhancement Act of 2016. This act provides a means for FBI employees to obtain corrective action for retaliation for disclosures of wrongdoing made to supervisors and others in the employees' chain of command. DOJ has since updated some training and guidance to address the 2016 changes, but has not updated its regulations to be consistent with current statute. In March 2023, DOJ issued a Notice of Proposed Rulemaking that proposes amendments to its regulations to conform to the FBI Whistleblower Protection Enhancement Act of 2016, among other changes.¹⁵ To address this recommendation, DOJ would need to finalize proposed changes to its regulations. Ensuring that guidance, including regulations, always clearly explains to whom an FBI employee can report wrongdoing will help FBI whistleblowers ensure that they are fully protected from retaliation.

Director: Triana McNeil, Homeland Security and Justice

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¹⁵See Whistleblower Protection for Federal Bureau of Investigation Employees, 88 Fed. Reg. 18,487 (Mar. 29, 2023); see also Pub. L. No. 114-302, 130 Stat. 1516 (2016).

Immigration Courts

Immigration Courts: Actions Needed to Reduce Case Backlog and Address Long-Standing Management and Operational Challenges. [GAO-17-438](#). Washington, D.C.: June 1, 2017.

Year Recommendation Made: 2017

Recommendation: To better address current and future staffing needs, the Director of the Executive Office for Immigration Review (EOIR) should develop and implement a strategic workforce plan that addresses, among other areas, key principles of effective strategic workforce planning, including (1) determining critical skills and competencies needed to achieve current and future programmatic results; (2) developing strategies that are tailored to address gaps in number, deployment, and alignment of human capital approaches for enabling and sustaining the contributions of all critical skills and competencies; and (3) monitoring and evaluation of the agency's progress toward its human capital goals and the contribution that human capital results have made toward achieving programmatic results.

Action Needed: EOIR agreed with our recommendation. In February 2022, EOIR officials stated that the agency was participating in the development of a DOJ strategic plan which, once completed, would inform EOIR's own strategic plan. In June 2022, DOJ issued its new strategic plan. As of April 2023, EOIR officials stated that they have a draft strategic plan undergoing internal agency clearance, but could not provide an estimated timeframe for its completion.

Setting an agency's strategic direction is an important first step in establishing effective workforce planning practices. However, to fully address our recommendation, EOIR needs to develop, and then implement, a strategic workforce plan that addresses key principles of effective strategic workforce planning. Once this strategic workforce plan is completed, EOIR needs to monitor and evaluate the agency's progress toward its human capital goals. In February 2023, DOJ reported that EOIR was working to fully address this recommendation in fiscal year 2024. We reviewed EOIR's workforce planning practices, including its efforts to address this recommendation, and issued a report in April 2023.¹⁶ We found that EOIR had taken some steps to improve its workforce planning since our 2017 report, but its practices do not fully align with key principles for strategic workforce planning. We therefore reiterated that by implementing this recommendation, EOIR would be better positioned to address current and future staffing needs to more effectively carry out its mission.

Director: Rebecca S. Gambler, Homeland Security and Justice

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¹⁶GAO, *Immigration Courts: Actions Needed to Address Workforce, Performance, and Data Management Challenges*, [GAO-23-105431](#) (Washington, D.C.: April 26, 2023).

Cybersecurity

Cybersecurity: Selected Federal Agencies Need to Coordinate on Requirements and Assessments of States. [GAO-20-123](#). Washington, D.C.: May 27, 2020.

Year Recommendation Made: 2020

Recommendation: The Federal Bureau of Investigation (FBI) Director should, in collaboration with the Office of Management and Budget (OMB), solicit input from Centers for Medicaid and Medicare (CMS), Internal Revenue Service (IRS), Social Security Administration (SSA), and state agency stakeholders on revisions to its security policy to ensure that cybersecurity requirements for state agencies are consistent with other federal agencies and NIST guidance to the greatest extent possible.

Action Needed: The FBI agreed with this recommendation. As of February 2023, the FBI continued to hold Criminal Justice Information Services (CJIS) Policy Modernization Task Force meetings, consisting of representatives from the CMS, IRS, and SSA as well as representatives from state law enforcement agencies and courts, to advise the FBI on updates to its cybersecurity requirements. In addition, the FBI's Data Categorization Task Force has met to review and categorize criminal justice information in accordance with guidance from NIST. Both task forces have had multiple discussions on a portion of the FBI's cybersecurity requirements and assessment policies that affect state agencies. The FBI also noted that it expects to further align its CJIS policy with guidance from NIST to be more consistent with how other federal agencies use this guidance in their security policies.

These are positive steps that could lead to less variance among the federal agencies' cybersecurity requirements for states. However, the discussions are ongoing and FBI reported that it does not plan to complete the process of modernizing the CJIS Security Policy until the spring of 2025. Further, it is not yet clear how FBI intends to solicit input from key state agency IT stakeholders, such as chief information officers or chief information security officers, who have previously identified conflicts among federal agencies' requirements as burdensome and problematic.

To fully address our recommendation, FBI will need to complete efforts to solicit input from federal and state agency stakeholders, including state IT stakeholders as appropriate, on its cybersecurity requirements before determining changes it will make to address variances among federal agencies' cybersecurity requirements for states. Coordinating to address variances in federal agencies' cybersecurity requirements could help to significantly reduce cost, time, and other burdens resulting from these variances.

High Risk Area: [Ensuring the Cybersecurity of the Nation](#)

Director: David Hinchman, Information Technology and Cybersecurity

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Privacy: Dedicated Leadership Can Improve Programs and Address Challenges. [GAO-22-105065](#). Washington, D.C.: September 22, 2022.

Year Recommendation Made: 2022

Recommendation: The Attorney General should incorporate privacy into an organization-wide risk management strategy that includes a determination of risk tolerance.

Action Needed: The Department of Justice did not concur with this recommendation, stating that its existing strategy documents address how it manages privacy risk, including a determination of risk tolerance. However, documentation provided by DOJ did not explicitly discuss the department's approach to determining privacy risk tolerance, including, for example, factors to be considered and acceptable amounts of risk. Accordingly, we continue to believe our recommendation is warranted. As of February 2023, DOJ had not provided updates on any additional steps to implement this recommendation.

To fully address our recommendation, DOJ needs to include an explicit discussion of privacy, including its approach to risk tolerance, in its risk management strategy. Doing so would assist DOJ in ensuring that it is managing privacy risks within acceptable thresholds.

High Risk Area: [Ensuring the Cybersecurity of the Nation](#)

Director: Jennifer R. Franks, Information Technology and Cybersecurity

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