



July 2018

DEPARTMENT OF HOMELAND SECURITY

Components Could Improve Monitoring of the Employee Misconduct Process

This report was revised on September 4, 2018, pages 62 - 68, agency comments were added, Appendix II: Comments from the Department of Homeland Security.

GAO Highlights

Highlights of [GAO-18-405](#), a report to congressional requesters

Why GAO Did This Study

Department of Homeland Security (DHS) component agencies CBP, ICE, and TSA are responsible for securing the nation's borders, enforcing immigration laws, and overseeing the security of transportation systems. Recent studies of these components' employee misconduct investigation and disciplinary processes have highlighted the importance of having appropriate internal controls.

GAO was asked to review CBP, ICE, and TSA employee misconduct investigation and adjudication processes. This report (1) summarizes data on misconduct cases that were opened from fiscal years 2014 through 2016 and closed by the time of GAO's review; (2) examines the extent to which CBP, ICE, and TSA implement internal controls in their employee misconduct and discipline processes; and (3) assesses how CBP, ICE, and TSA monitor the performance of their employee misconduct processes. For each component, GAO reviewed policies, guidance, and timeliness performance reports; analyzed case management information system data; and interviewed officials involved in investigation and adjudication processes.

What GAO Recommends

GAO is making 18 recommendations for CBP, ICE, and TSA to strengthen their employee misconduct internal controls and improve monitoring of the timeliness of the employee misconduct process (detailed on the following page). DHS concurred with GAO's recommendations.

View [GAO-18-405](#). For more information, contact Rebecca Gambler at (202) 512-8777 or gambler@gao.gov.

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Components Could Improve Monitoring of the Employee Misconduct Process

What GAO Found

From fiscal years 2014 through 2016, U.S. Customs and Border Protection (CBP), U.S. Immigration and Customs Enforcement (ICE), and the Transportation Security Administration (TSA) collectively opened and had closed nearly 70,000 employee misconduct cases, as shown in the table below. The most common CBP and ICE cases were for general misconduct, such as failure to follow procedures or rude conduct, while half of TSA's misconduct cases related to time and attendance misconduct. The most common misconduct outcomes for CBP, ICE, and TSA were written reprimand, suspension, and counseling, respectively. More than half of CBP and more than two-thirds of ICE misconduct cases resulted in no action or were not referred for adjudication because they were unsubstantiated or for other reasons, such as the employee under investigation retired or resigned.

Number of Customs and Border Protection (CBP), Immigration and Customs Enforcement (ICE), and Transportation Security Administration (TSA) Employee Misconduct Cases Opened in Fiscal Years (FY) 2014 through 2016 and Closed at the Time of GAO's Review, and Total Onboard Staff

Component	FY 2014		FY 2015		FY 2016		Total cases, FY14-16
	Total cases	Total onboard staff	Total cases	Total onboard staff	Total cases	Total onboard staff	
CBP	6,786	59,544	6,831	59,472	6,716	59,221	20,333
ICE	1,285	18,931	1,148	18,939	792	19,276	3,225
TSA	13,451	60,982	14,688	58,977	17,014	60,652	45,153
Total misconduct cases	21,522		22,667		24,522		68, 711

Source: GAO analysis of CBP, ICE, and TSA data. | GAO-18-405SU

While CBP, ICE, and TSA have established internal controls related to handling misconduct cases, they have not consistently documented or monitored key control activities. Specifically:

- GAO analyzed random samples of misconduct cases for each component and found inconsistent documentation of control activities related to supervisory and legal review, case file data verification, and investigator recusal. For example, all three component agencies require supervisory review of criminal or serious misconduct investigations to help ensure that investigations are comprehensive and performed correctly, and they require evidence of this supervisory review in their case management systems. However, GAO estimates that less than 50 percent of ICE management inquiries (which are investigations conducted by local managers) had supervisory review documented. Regarding recusal, each component requires investigators to recuse themselves if they are unable to investigate alleged misconduct in an impartial manner. However, none of the components require documentation of recusals in their case management systems.

What GAO Recommends

GAO recommends that the Commissioner of CBP, Director of ICE, and Administrator of TSA

- revise policy or guidance to ensure documentation of required control activities—such as legal and/or supervisory review and data verification—in their case management systems;
- modify their annual self-inspection programs (CBP and TSA by including evaluation and testing of internal controls related to the employee misconduct process; ICE by tracking the status of related corrective actions to ensure timely implementation);
- monitor the duration of all cases beginning-to-end by stage and by case type;
- define and document the case management system data fields to be used for monitoring all established performance targets and provide related guidance to staff; and
- monitor the timeliness of misconduct cases against established targets using case management system data.

GAO also recommends that the Commissioner of CBP and Director of ICE require documentation of investigative findings in their case management systems (CBP by documenting whether an allegation is substantiated and documenting and disseminating referral procedures for adjudication; ICE by documenting case resolution codes of management inquiries).

GAO also recommends that the Administrator of TSA develop a method for more easily connecting cases between the databases used for employee misconduct cases.

- CBP and ICE do not consistently document the findings of misconduct investigations—for example, whether a misconduct allegation was found to be substantiated—in their case management systems.
- Components' use of oversight mechanisms to monitor internal control is limited. Specifically, CBP and TSA do not use their self-inspection programs to test control activities related to investigating employee misconduct, and ICE does not centrally track the status of corrective actions.
- TSA cannot easily track the outcome of investigations across its case management systems. Specifically, GAO found 581 TSA misconduct allegations that were recorded in the database used by the investigating office but not found in the databases of TSA's adjudicating offices because the offices assign different case numbers to the same case.

More consistent documentation and monitoring of internal controls at each component—including tracking the status of corrective actions—would provide components with greater assurance that key controls are implemented and that deficiencies are addressed in a timely manner. Further, consistently documenting the findings of misconduct investigations and ensuring the compatibility of associated data systems would allow managers to ensure that cases are adjudicated as appropriate.

CBP, ICE, and TSA assess the performance of their employee misconduct processes primarily using timeliness targets. While components monitor the timeliness of certain stages of misconduct cases, they do not monitor all established timeliness targets, including the duration of all cases beginning to end; or document how staff are to measure targets using case management system data. According to GAO's analysis, from fiscal year 2014 through the time of GAO's review, the average total duration of employee misconduct cases ranged from 19 to 434 days, depending on the component and case type, as shown in the table below. In addition, GAO found that each component met its established timeliness targets for the investigation and adjudication stages to varying degrees. For example, CBP met its target to complete criminal investigations within 1 year in 93 percent of cases, while it met its target to complete non-criminal investigations within 60 days in 40 percent of cases. Improved monitoring of timeliness targets and the total duration of misconduct cases could allow each component to produce reliable data and increase process efficiency.

GAO Analysis of the Average Total Duration of U.S. Customs and Border Protection (CBP), U.S. Immigration and Customs Enforcement (ICE), and Transportation Security Administration (TSA) Misconduct Cases Opened in Fiscal Years 2014 through 2016 and Closed by the Time of GAO's Review

Case type	Average number of days		
	CBP	ICE	TSA
Management inquiry (reported to central intake center)	153	307	n/a
Management inquiry (reported locally only)	85	186	19
Administrative inquiry	280	434	41
Non-criminal investigation	278	389	184
Criminal investigation	318	163	219
All case types	146	331	23

Legend: "n/a" = not applicable.

Source: GAO analysis of CBP, ICE, and TSA data. | GAO-18-405

Note: CBP and ICE allegations may be reported to a Joint Intake Center. TSA does not have a central intake center. Management inquiries are investigations of allegations by local managers. Administrative inquiries are investigations of allegations conducted by fact finders who are from or trained by each component's central office responsible for investigations.

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Abbreviations

CBP	U.S. Customs and Border Protection
DHS	Department of Homeland Security
HRBE	Human Resources Business Engine
ICE	U.S. Immigration and Customs Enforcement
JIC	Joint Intake Center
JICMS	Joint Integrity Case Management System
LER	Labor and Employee Relations
OIG	Office of Inspector General
OOI	Office of Inspection
OPR	Office of Professional Responsibility
TSA	Transportation Security Administration

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July 31, 2018

The Honorable Chuck Grassley
Chairman
Committee on the Judiciary
United States Senate

The Honorable Claire McCaskill
Ranking Member
Committee on Homeland Security and Governmental Affairs
United States Senate

The Honorable Scott Perry
Chairman
Subcommittee on Oversight and Management Efficiency
Committee on Homeland Security
House of Representatives

Within the Department of Homeland Security (DHS), U.S. Customs and Border Protection (CBP), U.S. Immigration and Customs Enforcement (ICE), and the Transportation Security Administration (TSA) employ more than 100,000 staff responsible for securing our nation's borders, enforcing immigration laws, and overseeing the security of transportation systems, among other things. Recent studies of the employee misconduct investigation and disciplinary processes of these DHS component agencies have highlighted the importance of internal controls for these processes, including ensuring the quality, independence, and timeliness of investigations into employee misconduct. For instance, we recently reported that some misconduct cases involving DHS component employees took more than 3 years to resolve.¹ We also previously reported on the need for TSA to strengthen its monitoring of allegations of employee misconduct, recommending, among other things, that TSA establish a process to conduct reviews of misconduct cases to verify that its staff at airports are complying with policies and procedures for adjudicating employee misconduct.² In 2015, an internal review

¹ See GAO, *Administrative Leave: Evaluation of DHS's New Policy Can Help Identify Progress toward Reducing Leave Use*, [GAO-16-342](#) (Washington, D.C.: March 23, 2016).

² See GAO, *Transportation Security: TSA Could Strengthen Monitoring of Allegations of Employee Misconduct*, [GAO-13-624](#) (Washington, D.C.: Jul. 30, 2013).

contracted by CBP reported significant issues related to CBP's handling of allegations of employee misconduct, including unnecessarily lengthy processing timeframes and inconsistent practices and procedures. This review resulted in numerous recommendations, including developing performance benchmarks for significant case processing milestones.³

Each of these DHS components has a process to receive, investigate, and adjudicate allegations of employee misconduct. Employee misconduct can occur inside or outside of the workplace, such as local arrests of employees for domestic violence or driving under the influence of alcohol, and can be reported for investigation by the components.⁴ Depending on the facts and circumstances of the case, possible outcomes of discipline by the components can include no action, letters of reprimand, suspension, and termination.

You asked us to review CBP's, ICE's, and TSA's employee misconduct investigation and adjudication processes. This report (1) summarizes data about the number, characteristics, and outcomes of CBP, ICE, and TSA employee misconduct cases that were opened from fiscal years 2014 through 2016 and had closed at the time of our review, (2) examines the extent to which CBP, ICE, and TSA developed and implemented key internal controls in their employee misconduct investigation and discipline processes, and (3) assesses how CBP, ICE, and TSA monitor the performance of their employee misconduct process.

To address all our objectives, we reviewed policies and procedures from each component regarding their employee misconduct process, such as management directives regarding proposing discipline, conducting administrative inquiries, and defining investigative roles and responsibilities related to allegations of misconduct. We also interviewed officials from each component involved in those processes. Specifically, we met with CBP's and ICE's Offices of Professional Responsibility (OPR), which are the offices that investigate allegations of a serious nature or involving senior-level staff. CBP's OPR reports to the Office of the Commissioner, and ICE's OPR reports directly to the Deputy Director.

³ *U.S. Customs and Border Protection Complaints and Discipline Review: Public Report of Findings and Recommendations*, Pivotal Practices Consulting, LLC, November 23, 2015.

⁴ An employee shall comply with the standards of ethical conduct in 5 C.F.R. part 2635, as well as any supplemental regulations issued by the employee's agency under 5 C.F.R. § 2635.105. Examples of misconduct include misuse of government property, failure to follow instruction, and employee harassment.

For TSA, the central office is its Office of Inspection, Investigations Division (OOI), which reports to the Chief of Mission Support. We also interviewed human resources and employee relations officials and other offices involved with the adjudication process at each component, including TSA's Office of Professional Responsibility.⁵ We interviewed staff who oversee each component's case management information system to discuss and obtain documentation related to the employee misconduct process, such as system user guides. To learn of past issues related to processing employee misconduct allegations and the status of their resolution, we also reviewed our past work in this subject area, and reports on federal employee misconduct from the DHS Office of Inspector General, congressional committees, advisory panels, and private consulting firms contracted by the components.

Additionally, we conducted site visits to review local procedures, examine physical case files, and interview field staff involved in handling employee misconduct cases for each component. We selected locations based on the high volume of employee misconduct cases associated with their locations. For CBP and ICE, we interviewed senior OPR officials—Special Agents in Charge and Resident Agents in Charge—who oversee the investigation of employee misconduct in Texas and California. The southwest portion of the United States is associated with a high volume of misconduct cases at CBP and ICE. For these components, we also interviewed local program management officials (e.g., senior staff at U.S. Border Patrol, Office of Field Operations, and ICE Enforcement and Removal Operations field offices) delegated to adjudicate employee misconduct cases. With respect to TSA, we met with senior field office officials—Federal Security Directors and Assistant or Deputy Federal Security Directors—who oversee the investigation and adjudication of misconduct cases involving employees at airports in Los Angeles, California and Atlanta, Georgia; these are two of the nation's busiest airports and have relatively high volumes of misconduct cases. During these site visits to each component, we also met with human resource and legal staff who assist these senior officials with the adjudication process.

To summarize data on component misconduct cases, we reviewed each component's case management information system policies and

⁵TSA's Office of Professional Responsibility is an adjudicatory office, and it does not conduct investigations. The office adjudicates misconduct cases involving senior staff and certain employees such as Federal Air Marshals.

procedures.⁶ We obtained and analyzed case data from each component's case management system for all misconduct cases that were opened in fiscal years 2014 through 2016 and considered closed at the time of our data request.⁷ As part of this work, we assessed data reliability by analyzing electronic data fields for potential missing values and anomalies and by interviewing component officials to discuss the mechanisms in place to ensure data completeness. While we identified some instances of missing and inaccurate data, including missing data about offense categories, we found the data sufficiently reliable for providing general information on the nature and characteristics of employee misconduct. Further, we reviewed components' internal management reporting tools and the content of the reports on the employee misconduct process, such as TSA's and CBP's executive dashboard reports describing case volume and status information, and ICE OPR's annual accomplishment report.

To determine the extent components have developed and implemented key internal controls for assuring the independence, quality, data reliability, and oversight of the investigation and adjudication processes, we first identified the specific internal controls considered key to these processes—investigative supervisory review, legal sufficiency review, investigator recusal, and case management system data verification. We

⁶CBP and ICE use the Joint Integrity Case Management System (JICMS) to manage data on misconduct cases reported through the Joint Intake Center (JIC). They use the Human Resources Business Engine (HRBE) to manage data on case adjudication and disciplinary outcomes. HRBE also contains data on misconduct cases reported to local management only, rather than reported through the JIC. TSA uses the HRAccess system as its case management system.

⁷Based on our request, we received data from the components as of July 18, 2017 and September 18, 2017 for CBP JICMS and HRBE data, respectively; as of July 18, 2017 and August 22, 2017 for ICE JICMS and HRBE data, respectively; and as of September 22, 2017 for TSA HRAccess system data. We conducted data analysis of cases opened in the three most recent fiscal years to identify any trends and obtain information on the outcomes of allegations of misconduct. Fiscal year 2016 was the most recent and complete year of data at the time of our data request. Closed cases include CBP and ICE closed cases and TSA closed or completed (i.e., cases completed but not yet closed in the case management system) as of the above dates. The numbers of cases opened during this period and not closed, and thus excluded from our analysis, were 874 (CBP), 251 (ICE), and 2,967 (TSA). Closed cases include both cases that each component referred to their respective offices for adjudication and cases that each component did not refer for adjudication by a separate office but for which investigators or other staff determined a final outcome (e.g., investigators or local managers determined the case to be unsubstantiated or unfounded during investigation, the subject employee resigned or retired prior to the end of the investigation, or, for ICE criminal cases, the case resulted in prosecutorial action).

identified these specific controls by reviewing each component's guidance, policies, and procedures for addressing employee misconduct. We also interviewed headquarters and field office officials from each component and noted the most commonly and consistently described activities. We then compared each component's procedures for investigations and adjudications with its respective guidance and policies, as well as with criteria in *Standards for Internal Control in the Federal Government and Quality Standards for Investigations*.⁸ To assess the components' oversight over the investigation and adjudication processes, we examined mechanisms used by each component for monitoring internal control (e.g., internal self-inspection programs).

To assess the extent to which components implemented these key internal controls, we selected a stratified random sample of case files within the population of employee misconduct allegation case management system files that were opened and adjudicated by each component's adjudicating office from fiscal years 2014 through 2016, and that were considered closed as of September 18, 2017 for CBP; August 22, 2017 for ICE; and that were closed or completed as of September 22, 2017 for TSA.⁹ Strata were based on components and misconduct level (criminal and noncriminal).¹⁰ We used fiscal year 2014 through 2016 data

⁸GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: Sep. 10, 2014); *Quality Standards for Investigations*, Council of the Inspectors General on Integrity and Efficiency, November 15, 2011.

⁹This sample includes only CBP and ICE cases that were reported through the Joint Intake Center and adjudicated by each component's adjudicating office, and TSA cases that were investigated by the Office of Inspection and adjudicated by Employee Relations or the Office of Professional Responsibility. It does not include CBP, ICE, and TSA cases that were not reported through the Joint Integrity Center or that were not referred for adjudication.

¹⁰Stratified sampling refers to the situation in which the population is divided into mutually exclusive parts (strata) and a sample (e.g. simple random sample) is selected for each part (stratum). A stratum is a subpopulation from the total population. Because we followed a probability procedure based on random selections, our sample is only one of a large number of samples that we might have drawn. Since each sample could have provided different estimates, we express our confidence in the precision of our particular sample's results as a 95 percent confidence interval. This is the interval that would contain the actual population value for 95 percent of the samples we could have drawn. All percentage estimates from our survey have margins of error at the 95 percent confidence level of plus or minus 10 percentage points or less, unless otherwise noted. Because some items we assessed applied only to a subset of cases, resulting in a smaller sample size, we report some findings as the range from the lower to upper bound of the 95 percent confidence interval; in cases with particularly small sample sizes, we describe results for the sample only, rather than attempting to generalize to the population of cases within the component.

from the components' information systems from which to randomly select a generalizable sample of about 100 employee misconduct cases for each component. See appendix I for detailed information on the sampling methodology. To assess whether component management has assurance that key controls are implemented by its staff, we analyzed these sample cases to test whether key internal control activities were appropriately documented in the case management systems. Specifically, we tested each misconduct case by analyzing data from the components' systems, including history logs and notes entered by investigative agents, to find evidence in the case management system file that the component had implemented the control activity.

To determine how the components monitor their performance for the investigation and adjudication of employee misconduct, we reviewed DHS' strategic plan and each component's policies and guidance that document relevant performance targets and goals. We also reviewed components' internal management reporting tools related to the misconduct process, which report data on the status of misconduct cases and timeliness. For these and other management reports related to timeliness, we reviewed the components' methodologies for measuring timeliness and interviewed relevant officials.

To assess each component's performance as it relates to its respective timeliness measures and goals, we independently analyzed each component's case management information system data related to misconduct cases opened, investigated, and adjudicated in fiscal years 2014 through 2016 and considered closed at the time of our request. To do this analysis, we followed the components' instructions to calculate the timeliness of each component's misconduct case process, beginning-to-end, and by timeliness target by stage (investigation and adjudication). In instances where agency instructions were not specific for measuring the beginning and end of stages, we developed our own methodology with input from agency officials. For example, if we found that the data field agency officials had identified as the end date for a stage was blank for certain cases, we confirmed with officials an alternate data field. We assessed whether components met timeliness targets, and whether the data they use to measure their performance were reliable and complete.

We conducted this performance audit from January 2017 through July 2018 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

The CBP Commissioner, ICE Director, and TSA Administrator set the conditions of disciplinary measures as they determine to be necessary for their respective employees, consistent with applicable law and regulation.¹¹ To help implement this responsibility, each component has developed various policies, procedures, and guidance that specify the steps the components must or should take while investigating and adjudicating employee misconduct.

Investigative Process

Components receive allegations of employee misconduct from a variety of sources, including the general public, agency staff, and the DHS Office of Inspector General (OIG). Allegations of employee misconduct can include, for example, a U.S. Border Patrol agent not following procedures associated with managing government-issued property; an ICE officer violating policy associated with detaining individuals; or a Transportation Security Officer not reporting his or her work time and attendance accurately. Employee misconduct can occur outside of the workplace as well and can be reported for investigation by the components, such as local arrests of employees for domestic violence or driving under the influence of alcohol. Each component has an intake or hotline function that initially assesses the reported information and seriousness of each allegation, and to determine the appropriate next step in terms of which group or office within its respective organization will conduct an investigation if warranted. For example, CBP and ICE have the Joint Intake Center (JIC), which is the central processing center responsible for receiving, documenting, and referring allegations of employee misconduct for investigation. The investigative process involves engaging in fact-finding to the extent necessary to make an informed decision on the merit of an allegation.

¹¹Most federal employees are entitled to protections under the Civil Service Reform Act of 1978, as amended, which are codified in title 5 of the U.S. Code. Under the Aviation and Transportation Security Act, TSA employees are not subject to many of the provisions of title 5, including those related to disciplinary procedures. Pub. L. No. 107-71, § 101(a), 115 Stat. 597, 601 (2001) (49 U.S.C. § 114(n)). That act further provides that the conditions of employment, including disciplinary measures, for TSA security screeners may be set by the TSA Administrator. *Id.* § 111(d), 115 Stat. at 20 (49 U.S.C. § 44935 note).

In accordance with DHS policy, for each misconduct allegation received, the relevant component's intake function must provide the DHS OIG with the "right of first refusal."¹² This review allows the DHS OIG to either open an investigation or send the allegation back to the component for action. If the OIG declines the opportunity to investigate, the components' misconduct allegation intake functions assign cases to the appropriate office depending on the nature of the allegation. Specifically, misconduct cases involving more egregious criminal or noncriminal offenses, such as physical abuse of a detainee or cases involving senior-level employees such as Senior Executive Service staff, are assigned to a central office responsible for investigations.¹³ CBP and ICE each have an Office of Professional Responsibility as its central office that investigates allegations of misconduct. For TSA, the corresponding central office is its Office of Inspection, Investigations Division.¹⁴ For other cases, field program managers conduct inquiries locally, which are generally known as management inquiries.¹⁵ The responsible office for each component can make a preliminary determination based on its investigative findings that an allegation of misconduct is sustained or unfounded.

The components use different terminology to describe their investigative findings and have different procedures for referring cases for adjudication.

- CBP OPR investigators determine whether an allegation is sustained, not sustained, unfounded, or exonerated; and they refer allegations to

¹²DHS does not require that its components refer allegations to the Office of Inspector General that are considered to be non-criminal or non-serious misconduct. Rather, these allegations are referred to local management for inquiry.

¹³During initial intake, CBP assigns allegations a classification of 1 through 5, from most egregious to least egregious. For example, class 1 includes allegations of criminal activity, such as bribery, excessive use of force, and sexual assault or abuse. TSA classifies allegations from type A through D and fact-finding, from most egregious to least egregious.

¹⁴Effective June 2018, the central office that investigates allegations of misconduct is the TSA Office of Investigations. TSA has an Office of Professional Responsibility; however, it is not an investigative function. Rather, TSA OPR adjudicates cases involving senior staff and specific job categories, such as Federal Air Marshals.

¹⁵The three components use slightly different terms for the inquiries conducted by local managers. For the purposes of this report, "management inquiries" include CBP management inquiries or referrals, ICE management inquiries or referrals, and TSA fact-finding or local inquiries. "Management inquiries" do not include CBP, ICE, and TSA administrative inquiries, which are inquiries of offenses conducted by fact finders who are from or trained by each component's central office responsible for investigations.

their Office of Human Resources Management's Labor and Employee Relations (LER) for adjudication with some exceptions.¹⁶

- ICE OPR and field program managers determine whether an allegation should be referred to management or not referred to management for adjudication based on the evidence obtained during the investigation.¹⁷ ICE does not refer criminal cases that result in prosecution for adjudication by its Employee Relations office.
- TSA OOI investigators determine whether an allegation is substantiated, unsubstantiated, unfounded, or other category for their internal tracking purposes. But, TSA OOI refers all allegations to the

¹⁶According to CBP OPR policy, investigators should designate an allegation as "sustained" when the results of the investigation developed evidence sufficient to support the allegation. An allegation is "not sustained" when the evidence is inconclusive for a reasonable person to determine whether the subject employee committed the alleged act(s) of misconduct. Generally speaking, the evidence cannot prove or disprove the allegation. An allegation is "unfounded" when the evidence would cause a reasonable person to conclude that the subject employee did not commit the alleged act(s) of misconduct or that no misconduct in fact occurred. An employee is "exonerated" when it is found that the act occurred, but was lawful and consistent with policy. According to CBP officials, CBP current practice is to refer all allegations to LER for adjudication. But in fiscal years 2014 through 2016, staff did not always refer unsubstantiated allegations for adjudication. In addition, CBP told us that investigators did not refer allegations to LER for adjudication in which: (a) the investigation failed to identify the employee; (b) the employee resigned and the U.S. Attorney's Office declined prosecution; (c) the employee retired, (d) the employee was released from service because of excessive absences because of a medical condition, or (e) the case was a duplicate.

¹⁷According to ICE policy, investigators should designate an allegation as "referred to management" (the ICE Employee Relations office) for adjudication when the evidence obtained during the investigation establishes it is more likely than not that the employee committed alleged misconduct that should be reviewed by management. ICE investigators are to designate an allegation as "not referred to management" in the following cases: (a) the evidence shows that an employee did not commit the alleged misconduct or there is not a sufficient amount of evidence for a reasonable person to conclude the employee committed the alleged misconduct; (b) the subject employee resigned or retired prior to or during the investigation; (c) the investigation was unable to determine the name of the subject employee; or (d) the case was criminally investigated by ICE OPR and resulted in prosecution.

appropriate office to adjudicate whether a case is substantiated for the purposes of taking disciplinary action.¹⁸

Adjudication Process

Each component has an adjudication process whereby a delegated official or, depending on the case, a central office group proposes discipline. For CBP, the group that issues a notice of proposal is the Discipline Review Board. And for ICE, it is the Discipline and Adverse Action Panel (with the exception of Bargaining Unit personnel and personnel within the Office of the Principal Legal Advisor). For CBP and ICE cases outside the jurisdiction of the Discipline Review Board and Discipline and Adverse Action Panel respectively, local management proposes and decides discipline. For TSA, OPR staff proposes and decides discipline for cases involving senior staff and certain job categories such as Federal Air Marshals.¹⁹ For cases involving misconduct outside of OPR's jurisdiction, generally including non-senior and bargaining unit employees—which represent most cases—local management proposes and decides discipline.

During adjudication, under the advisement of their respective labor and employee relations offices, these staff can determine subsequent to the investigation that an allegation is unsubstantiated for the purposes of taking disciplinary action or warrants no action. For substantiated cases that are determined to warrant action, discipline can range in severity, depending on the findings and circumstances of each investigation.

¹⁸According to TSA policy, investigators should designate an allegation as “substantiated” if they determine there is a preponderance of evidence (greater than 50 percent) that would support the conclusion that the allegation is accurate. An allegation is to be designated “unsubstantiated” in cases of insufficient evidence. When the victim withdraws an allegation, staff are to use “unfounded (withdrawn).” An allegation is “incorrectly identified” if the investigation found that the original allegation was incorrectly identified and that the subject engaged in other misconduct. “Information only” is to designate allegations and investigative information that do not possibly relate to employee misconduct but that OOI management wishes to track. TSA OOI investigators refer all cases for adjudication, with two exceptions: the subject of the investigation is not a TSA employee, or the subject employee resigns or retires during the investigation.

¹⁹For cases within the scope our review, OPR proposed and decided on all matters (1) involving TSA employees investigated by the OIG; (2) involving senior-level and law enforcement employees; (3) involving more than one TSA employee, if at least one of the employees under investigation falls within (2); and (4) that the Assistant Administrator for Professional Responsibility, or his/her designee, determined should be reviewed and adjudicated by OPR. As of November 2017, OPR proposes discipline, but does not serve as the deciding official, on all two-step disciplinary and adverse actions (proposal letter is served and the employee has the right to reply before a decision is made).

Components use their respective Table of Offenses and Penalties as a guide for disciplinary actions, which provides guidance for determining appropriate penalties. Each component provides employees with notice and an opportunity to respond to proposed discipline before it makes a final decision on the discipline. After discipline is proposed and the employee's response is considered, final discipline is determined by a delegated official (deciding official), distinct from the proposing official. In addition, delegated officials must consider particular mitigating and aggravating factors on a case-by-case basis when determining the appropriate penalty for an act of employee misconduct.²⁰ The relevant factors that must be considered, as appropriate, in determining the severity of the discipline include, but are not limited to, the nature and seriousness of the offense, and its relation to the employee's duties, position, and responsibilities, including whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain, the employee's past disciplinary record, or was frequently repeated.

There are three categories of employee misconduct outcomes:

- **Corrective/Non-disciplinary action.** This is an administrative or nondisciplinary action, such as a letter of counseling or a letter of guidance and direction, that informs an employee about unacceptable performance or conduct that should be corrected or improved.
- **Disciplinary action.** This includes action that can range from a letter of reprimand to a suspension of 14 days or less. A letter of reprimand describes the unacceptable conduct that is the basis for a disciplinary action, and represents the least severe form of disciplinary action. Suspensions in this category involve the placement of an employee in a nonduty, nonpay status for up to and including 14 days.²¹
- **Adverse action.** This involves a suspension of more than 14 days, including an indefinite suspension, an involuntary demotion for conduct, or a removal.²² An indefinite suspension is appropriate when evidence exists to demonstrate misconduct of a serious nature, such

²⁰These are generally referred to as the Douglas Factors, based on a case decided by the Merit Systems Protection Board that established criteria that supervisors must consider in determining an appropriate penalty to impose for an act of employee misconduct. *Douglas v. Veterans Admin.*, 5 M.S.P.R. 280 (1981). TSA refers to these as "penalty factors."

²¹See 5 U.S.C. §§ 7501-02.

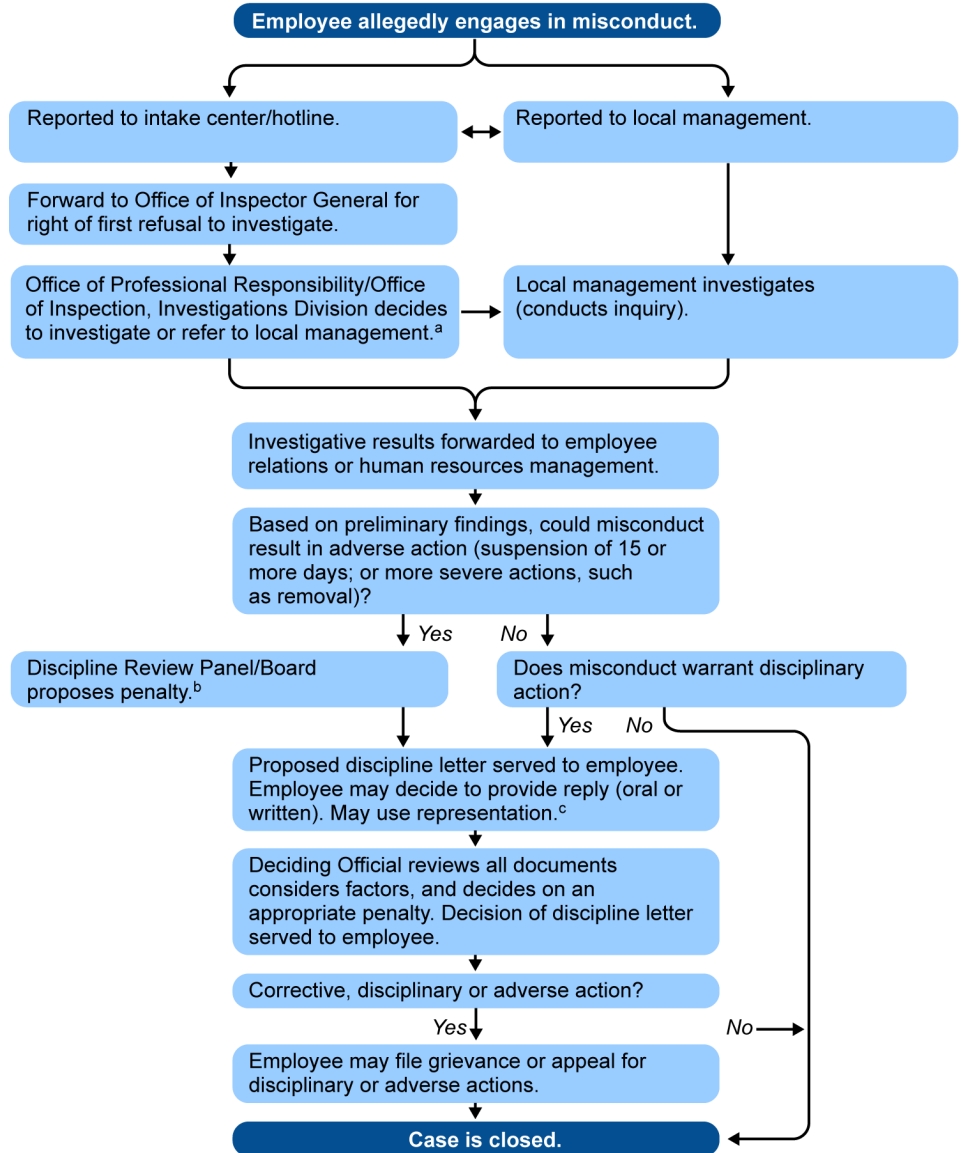
²²An adverse action includes removals, suspensions for more than 14 days, reductions in grade or pay, and furloughs of 30 days or less. 5 U.S.C. § 7512.

as an employee has been indicted or has been arrested pursuant to a judge's warrant for a crime involving potential imprisonment, or an allegation of misconduct that, if proven, represents a threat to life, property, safety, or the effective operation of the workplace.²³ A demotion is a voluntary or involuntary change to a lower pay band or rate of pay. A removal is involuntary separation from employment in order to promote the efficiency of the federal service.

Figure 1 is a general summary of how employee misconduct allegations are processed at CBP, ICE, and TSA.

²³Indefinite suspensions have satisfied requirements under title 5 when: (1) when there is reasonable cause to believe the employee has committed a crime carrying a sentence of imprisonment; (2) for certain medical reasons; and (3) when the employee's position requires access to classified information, but that access has been suspended. TSA has specified similar conditions under which indefinite suspensions may be imposed.

Figure 1: General Employee Misconduct Process at U.S. Customs and Border Protection, U.S. Immigration and Customs Enforcement, and the Transportation Security Administration



Source: GAO analysis of U.S. Customs and Border Protection, U.S. Immigration and Customs Enforcement, and Transportation Security Administration documentation. | GAO-18-405

^aU.S. Immigration and Customs Enforcement (ICE) will close a case at this stage, if the investigation determines the allegation of misconduct is unsubstantiated or unfounded. ICE also closes a case at this stage if the subject employee separates from the agency prior to the end of the investigation, the subject employee is unnamed, or if the case is investigated criminally by the ICE Office of Professional Responsibility and results in prosecutorial action.

^bU.S. Customs and Border Protection's Discipline Review Board and ICE's Discipline and Adverse Action Panel (with the exception of Bargaining Unit personnel, Senior Executive Service personnel, and personnel within the Office of the Principal Legal Advisor) propose discipline for allegations that may result in adverse action. The Transportation Security Administration's (TSA) Office of Professional Responsibility (OPR) does not differ in its process for proposing disciplinary and adverse actions. It proposes discipline for allegations on all matters (1) involving TSA employees investigated by the Office of Inspector General; (2) involving senior-level and law enforcement employees; (3) involving more than one TSA employee, if at least one of the employees under investigation falls within (2); and (4) that the Assistant Administrator for Professional Responsibility, or his/her designee, determines should be reviewed and adjudicated by OPR. TSA local management is responsible for proposing discipline for allegations involving staff not under the jurisdiction of TSA OPR that may result in adverse, disciplinary, or corrective actions.

^cTSA has a one-step discipline process for its Transportation Security Officer staff, in which a proposal of discipline is not required (proposal discipline letter is not served to the employee) for corrective actions, letters of reprimand, suspensions of less than 3 days, and indefinite suspension and removals for certain offenses such as refusing a drug test, theft, or sleeping on duty.

Case Management Information Systems

Each component records and maintains employee misconduct data—such as the date of the alleged incident, source of the allegation, description of the alleged misconduct, and the status of the investigation—in information management systems. Both CBP and ICE use the Joint Integrity Case Management System (JICMS) to manage data associated with investigations reported through the JIC. CBP and ICE also use the Human Resource Business Engine (HRBE) system to manage data for all cases referred to their respective human resource offices for adjudication (CBP Labor and Employee Relations and ICE Employee Relations) and cases associated with management inquiries not reported through the JIC. TSA uses one system, the HRAccess system, to manage its data.

Prior Reviews of DHS Employee Misconduct Process

We, and others, have previously reported on aspects of the employee misconduct process at DHS and its components. For example, in 2013 we reviewed TSA's policies and procedures for addressing employee misconduct and found that TSA could better monitor the investigation and adjudication processes. We recommended, among other things, that TSA establish an agency-wide policy to track cycle times in the investigations and adjudications process.²⁴ By April 2015, TSA implemented this recommendation by adding new data fields to its case management system, allowing for tracking of cycle times, and also providing related guidance to staff. We also reported in 2013 that ICE sexual abuse and assault allegations data were not complete and recommended that DHS develop additional controls to ensure all allegations are reported to

²⁴See GAO, *Transportation Security: TSA Could Strengthen Monitoring of Allegations of Employee Misconduct*, [GAO-13-624](#) (Washington, D.C.: July 30, 2013).

headquarters and develop a process for performing oversight consistently.²⁵ ICE implemented this recommendation in 2014 through quarterly reporting by the field to headquarters and guidance to field staff for verifying that all such allegations are reported as required.

In 2014, CBP hired a management consulting firm to conduct a review examining its handling of misconduct allegations. Among other things, the review found that not all of CBP's investigations were of sufficiently high quality. To address this issue, the report recommended that CBP conduct a comprehensive quality review of investigation case files guided by a set of widely recognized and acceptable standards. In 2016 the CBP Integrity and Advisory Panel recommended establishing clear goals and timelines for each step of the discipline process. The panel also recommended establishing clear policies, procedures, timeline expectations, and supervisory guidance for the handling of administrative and criminal matters.²⁶

Components Opened Nearly 70,000 Cases from Fiscal Years 2014 through 2016, and Case Characteristics and Outcomes Varied

CBP, ICE, and TSA Opened and Had Closed Nearly 70,000 Cases

According to CBP, ICE, and TSA employee misconduct data we analyzed, the three components opened from fiscal years 2014 through 2016 and had closed nearly 70,000 employee misconduct cases as of the time of our review, as shown in table 1. For the purposes of our analysis, employee misconduct cases refer to allegations for which CBP, ICE, or

²⁵See GAO, *Immigration Detention: Additional Actions Could Strengthen DHS Efforts to Address Sexual Abuse*, [GAO-14-38](#) (Washington, D.C.: November 20, 2013).

²⁶See Homeland Security Council: *Final Report of the CBP Integrity and Advisory Panel*, (Washington, D.C.: March 15, 2016). The report included 62 recommendations. As of September 2017, CBP had implemented 53 of the recommendations, and officials told us that 6 recommendations were in progress and 3 were not feasible to implement.

TSA completed an investigation or inquiry, and completed the adjudication or determination of outcome, closing the case.²⁷

Table 1: Number of Customs and Border Protection (CBP), Immigration and Customs Enforcement (ICE), and Transportation Security Administration (TSA) Employee Misconduct Cases Opened in Fiscal Years (FY) 2014 through 2016 and Closed at the Time of Our Review, and Total Onboard Staff

Component	FY 2014		FY 2015		FY 2016		Total cases, FY14-16
	Total misconduct cases	Total onboard staff	Total misconduct cases	Total onboard staff	Total misconduct cases	Total onboard staff	
CBP	6,786	59,544	6,831	59,472	6,716	59,221	20,333
ICE	1,285	18,931	1,148	18,939	792	19,276	3,225
TSA	13,451	60,982	14,688	58,977	17,014	60,652	45,153
Total misconduct cases	21,522		22,667		24,522		68, 711

Source: GAO analysis of CBP, ICE, and TSA data | GAO-18-405.

Note: This table reflects cases that were opened in fiscal years 2014 through 2016 and also had closed at the time of our review: as of July 18, 2017 for CBP Joint Integrity Case Management System (JICMS) cases, and as of September 18, 2017 for CBP Human Resources Business Engine (HRBE) cases; as of July 18, 2017 for ICE JICMS cases, and as of August 22, 2017 for ICE HRBE cases; and as of September 22, 2017 for TSA cases. The numbers of cases opened during this period and not closed, and thus excluded from our analysis, were 874 (CBP), 251 (ICE), and 2,967 (TSA). On board staff numbers are as of the end of each fiscal year.

Tables 2 through 4 show the number of CBP, ICE, and TSA employee misconduct cases opened from fiscal years 2014 through 2016 and closed at the time of our review by case type. As shown in the tables, the majority of misconduct cases investigated and adjudicated during this period were management inquiries, or inquiries conducted by local management.

²⁷As noted earlier, closed cases include both cases that each component referred to their respective offices for adjudication and cases that each component did not refer for adjudication by a separate office but for which investigators or other staff determined a final outcome (e.g., investigators or local managers determined the case to be unsubstantiated or unfounded during investigation, the subject employee resigned or retired prior to the end of the investigation, or, for ICE criminal cases, the case resulted in prosecutorial action).

Table 2: Number of Customs and Border Protection (CBP) Employee Misconduct Cases Opened in Fiscal Years (FY) 2014 through 2016 and Closed at the Time of Our Review, by Case Type

Case type	FY 2014	FY 2015	FY 2016	Total
Office of Professional Responsibility investigations	1,329	1,254	1,008	3,591
Administrative inquiry ^a	65	59	65	189
Management inquiry ^b	3,248	2,752	2,596	8,596
Total cases	4,642	4,065	3,669	12,376^c

Source: GAO analysis of CBP data | GAO-18-405.

Note: This table reflects CBP cases that were opened in fiscal years 2014 through 2016 and closed in the Joint Integrity Case Management System (JICMS) as of July 18, 2017 or in the Human Resources Business Engine (HRBE) case management system as of September 18, 2017. It does not include 874 cases that were not yet closed.

^aA CBP administrative inquiry is an inquiry conducted by Office of Professional Responsibility (OPR) fact finders or OPR-trained fact finders. These are investigators who are to adhere to OPR policy and procedures.

^bFor the purposes of this report, CBP management inquiries include management inquiry, management referral, and management referral-civil rights/liberty cases that were referred to the Joint Intake Center.

^cTable 2 does not include the offense categories for 7,957 cases that were reported to local managers only and not through the Joint Intake Center (JIC). The information for these cases is recorded in HRBE. HRBE does not have a field that captures the offense category of the allegation (prior to adjudication) that would allow comparable analysis with the offense category of cases reported to the JIC and captured in JICMS.

Table 3: Number of Immigration and Customs Enforcement (ICE) Employee Misconduct Cases Opened in Fiscal Years (FY) 2014 through 2016 and Closed at the Time of Our Review, by Case Type

Case type	FY 2014	FY 2015	FY 2016	Total
Office of Professional Responsibility investigation	354	543	367	1,264
Administrative inquiry ^a	77	0	0	77
Management inquiry ^b	836	564	403	1,803
Total cases	1,267	1,107	770	3,144^c

Source: GAO analysis of ICE data | GAO-18-405.

Note: This table reflects cases that were opened in fiscal years 2014 through 2016 and closed in the Joint Integrity Case Management System (JICMS) as of July 18, 2017, or in the Human Resources Business Engine (HRBE) case management system as of August 22, 2017. It does not include 251 cases that were not yet closed.

^aAn ICE administrative inquiry is an inquiry conducted by Office of Professional Responsibility (OPR) fact finders or OPR-trained fact finders, which are investigators who are to adhere to OPR policy and procedures. In the first quarter of fiscal year 2015, ICE ended its administrative inquiry program and replaced it with the management inquiry program.

^bFor the purposes of this table, ICE management inquiry cases include management inquiry and management referral cases referred to the Joint Intake Center.

^cTable 3 does not include 81 cases that were reported to local managers only and not through the Joint Intake Center (JIC). The information for these cases is recorded in the Human Resources Business Engine (HRBE). HRBE does not have a field that captures the case type that would allow comparable analysis with the case types of cases reported to the JIC and captured in the Joint Integrity Case Management System (JICMS).

Table 4: Number of Transportation Security Administration (TSA) Employee Misconduct Cases Opened in Fiscal Years (FY) 2014 through 2016 and Closed at the Time of Our Review, by Case Type

Case type	FY 2014	FY 2015	FY 2016	Total
Office of Inspection investigations ^a	289	553	365	1,207
Administrative inquiry ^b	129	128	89	346
Management inquiry ^c	13,033	14,007	16,560	43,600
Total cases	13,451	14,688	17,014	45,153

Source: GAO analysis of TSA data | GAO-18-405.

Note: This table reflects cases that were opened in fiscal years 2014 through 2016 and closed as of September 22, 2017; it does not include 2,967 cases that were not yet closed.

^aFor the purposes of our analysis, TSA Office of Inspection investigations include all cases opened in the TSA Office of Inspection database and all record of investigation cases opened in the TSA Employee Relations database from fiscal years 2014 through 2016.

^bA TSA administrative inquiry is an inquiry conducted by an appointed Inquiry Officer. In January 2018, TSA officials told us they have stopped appointing Inquiry Officers and are training local managers to conduct these inquiries. Also, they stated that the administrative inquiry policy is undergoing review while TSA is establishing a new office to manage and oversee the handling of employee harassment complaints.

^cFor the purposes of this report, management inquiry cases include TSA local inquiry cases.

Tables 5 through 7 show the five most common offense categories for CBP, ICE, and TSA misconduct cases opened from fiscal years 2014 through 2016 and closed at the time of our review.²⁸

Table 5: The Five Most Common Offense Categories for Customs and Border Protection (CBP) Employee Misconduct Cases Opened in Fiscal Years 2014 through 2016 and Closed at the Time of Our Review

Offense categories (examples of possible charges)	Number of cases	Percent of total cases reported to the Joint Intake Center (12,376) ^a
General misconduct (failure to follow procedures, rude conduct)	3,722	30
Conflict of interest (misuse of position, association with known criminals or illegal aliens)	2,138	17
Employee harassment (hostile work environment, discriminatory, and other)	1,481	12
Criminal misconduct (driving under the influence, domestic violence, and other criminal misconduct)	1,334	11
Detainee-related misconduct (physical or sexual abuse of detainees, use of force, or conditions of detention misconduct)	1,074	9
Total number of cases in the five most common offense categories	9,749	79

Source: GAO analysis of CBP data | GAO-18-405.

Note: This table reflects CBP cases that were opened in fiscal years 2014 through 2016 and closed in the Joint Integrity Case Management System (JICMS) as of July 18, 2017 or closed in the Human Resources Business Engine (HRBE) case management system as of September 18, 2017. It does not include 874 cases that were not yet closed.

^aTable 5 does not include the offense categories for 7,957 cases that were reported to local managers only and not through the Joint Intake Center (JIC). The information for these cases is recorded in HRBE, and HRBE does not have a field that captures the offense category of the allegation (prior to adjudication) that would allow comparable analysis with the offense category of cases reported to the JIC and captured in JICMS. Of the 7,957 misconduct cases reported to local managers and not through the JIC, the most common charges related to unprofessional conduct; careless operation of a government vehicle; failure to safeguard government property; failure to follow policies or procedures; and time and attendance misconduct, such as employees being absent without leave; among other misconduct.

As shown in table 5, 30 percent of CBP misconduct cases that were reported to the Joint Intake Center during this period were for general misconduct, which includes behaviors such as failure to follow procedures; rude or discourteous conduct; and the misuse of a government vehicle, computer, or other property. For example, at one port of entry, a CBP officer viewed sexually explicit material on a CBP computer. A subsequent investigation and adjudication resulted in the employee being suspended.

²⁸Tables 5 and 6 describe only CBP and ICE cases that were reported to the Joint Intake Center. Please see table notes for further details.

The second most common CBP offense category for this period was conflict of interest (17 percent), which includes the misuse of one’s position or association with known criminals or aliens without lawful status, among other things. Other common offense categories included employee harassment, criminal activity (such as driving under the influence and domestic violence), and detainee/alien abuse. For example, in one case a CBP officer allegedly grabbed a civilian during inspection, handcuffed him, and accused him of being intoxicated. Following investigation and adjudication of the case, the officer was suspended.

Table 6: The Five Most Common Offense Categories for Immigration and Customs Enforcement (ICE) Employee Misconduct Cases Opened in Fiscal Years 2014 through 2016 and Closed at the Time of Our Review

Offense categories (examples of possible charges)	Number of cases	Percent of total cases reported to the Joint Intake Center (3,144) ^a
General misconduct (other non-criminal and misuse of government vehicle, computer)	979	31
Lost/stolen/missing equipment (service weapon, badge, or other equipment)	455	15
Employee harassment (hostile work environment, workplace violence, sexual harassment)	325	10
Criminal misconduct (driving under the influence, domestic violence, or other criminal misconduct)	307	10
Conflicts of interest (misuse of position and association with known criminals or illegal aliens)	235	8
Total number of cases in the five most common offense categories	2,301	73^b

Source: GAO analysis of ICE data | GAO-18-405.

Note: This table reflects cases that were opened in fiscal years 2014 through 2016 and closed in the Joint Integrity Case Management System (JICMS) as of July 18, 2017, or in the Human Resources Business Engine (HRBE) case management system as of August 22, 2017. It does not include 251 cases that were not yet closed.

^aTable 6 does not include 81 cases that were reported to local managers only and not through the Joint Intake Center (JIC). The information for these cases is recorded in the Human Resources Business Engine (HRBE), and HRBE does not have a field that captures the offense category of the allegation (prior to adjudication) that would allow comparable analysis with the offense category of cases reported to the JIC and captured in the Joint Integrity Case Management System (JICMS).

^bPercentages do not add to 73 percent because of rounding.

As shown in table 6, the most common offense category for ICE cases reported to the Joint Intake Center during this period was also general misconduct (31 percent), including the misuse of a government vehicle or computer, among other things. For example, in one case, an armed on-duty ICE Enforcement and Removal Operations agent created an incident on an aircraft, appeared intoxicated, and was belligerent with the aircraft crew. A subsequent investigation and adjudication resulted in the

employee being suspended. Fourteen percent of the ICE employee misconduct cases were for a lost, stolen, or missing weapon or other equipment. Ten percent of the cases involved criminal activity, such as driving under the influence and domestic violence.

Table 7: The Five Most Common Offense Categories for Transportation Security Administration (TSA) Employee Misconduct Cases Opened in Fiscal Years 2014 through 2016 and Closed at the Time of Our Review

Offense Category (examples of possible charges)	Number of cases	Percent of total cases (45,153)
Attendance and leave (unexcused or excessive absences or tardiness, absence without leave, failure to follow leave procedures)	22,373	50
Failure to follow instructions (insubordination, ignoring policies, disrespectful conduct)	7,692	17
Screening and security (failure to follow standard operating procedures, bypassing screening, sleeping on duty)	6,092	13
Disruptive behavior (inappropriate or sexual misconduct, fighting, or abusive language)	2,730	6
Neglect of duty (inattention to duty resulting in a loss of property or life, careless inspection)	2,562	6
Total number of cases in the five most common offense categories	41,449	92

Source: GAO analysis of TSA data | GAO-18-405.

Note: This table reflects cases that were opened in fiscal years 2014 through 2016 and closed as of September 22, 2017; it does not include 2,967 cases that were not yet completed.

As shown in table 7, misconduct cases related to attendance and leave accounted for 50 percent of all TSA’s cases over this period.²⁹ According to TSA officials, there are many possible reasons for the increase in attendance and leave misconduct cases. For example, since October 2014, TSA has required airports to report performance against various metrics to determine the effectiveness of screening operations. One of the metrics is unscheduled absences. They stated this requirement has caused airport leadership to increase sick leave restrictions and implement other corrective measures to reduce unscheduled absences. In addition, TSA officials stated that the demands of a transportation security officer’s schedules (e.g., weekends, holidays, overnight, early mornings/late evenings) sometimes presents increased challenges to employees in providing child care, treating illnesses, and commuting to work, among other things. When an employee chooses not to work or is tardy, airports are inclined to take corrective or disciplinary action.

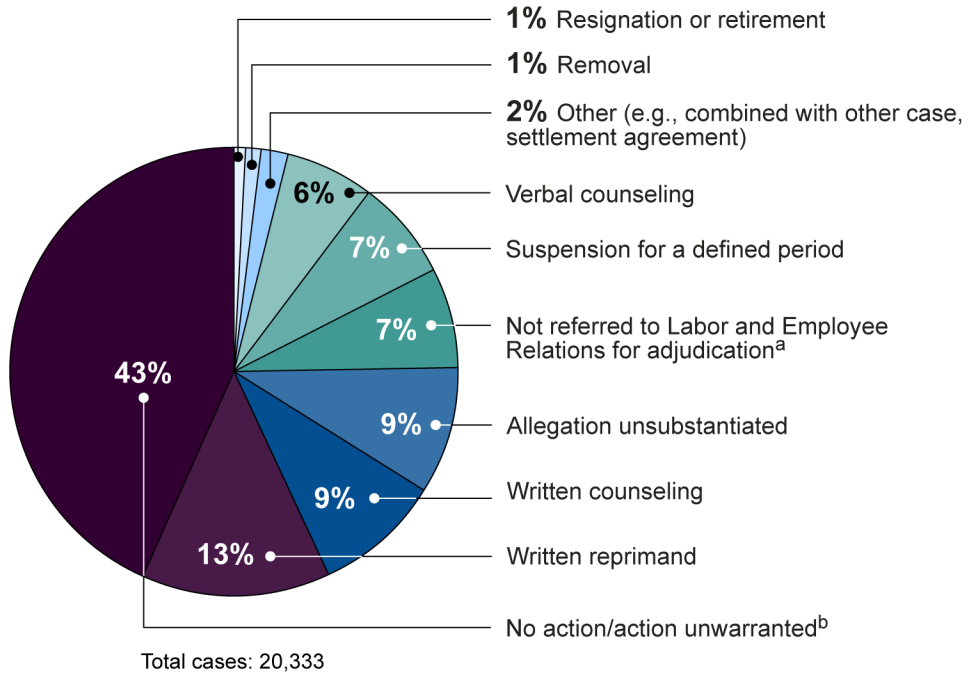
²⁹TSA uses a different offense category classification system than CBP and ICE.

The Most Common Disciplinary Outcomes Varied for Components

From fiscal years 2014 through 2016, the most common disciplinary outcome of misconduct cases for the three components varied. Figures 2 through 4 show the final outcomes for CBP, ICE, and TSA misconduct cases opened in fiscal years 2014 through 2016 and closed at the time of our review.³⁰ For CBP misconduct cases, the most common disciplinary outcome (or final outcome that resulted in discipline) was written reprimand, for ICE it was the suspension of the employee, and for TSA it was a letter of counseling. More than half of CBP misconduct cases and more than two-thirds of ICE misconduct cases were closed with no action or not referred for adjudication because they were found to be unsubstantiated or for other reasons discussed below.

³⁰For the purposes of our analysis, closed cases include both cases that each component referred to proposing and deciding offices or their respective offices for adjudication, and cases that each component did not refer for adjudication by a separate office, but for which investigators or other staff determined a final outcome (e.g., investigators or local managers determined the case to be unsubstantiated or unfounded during investigation, the subject employee resigned or retired prior to the end of the investigation, or, for ICE criminal cases, the case resulted in prosecutorial action).

Figure 2: Final Outcomes for U.S. Customs and Border Protection (CBP) Employee Misconduct Cases Opened in Fiscal Years 2014 through 2016 and Closed at the Time of Our Review



Source: GAO analysis of CBP data. | GAO-18-405

Note: This table reflects CBP cases that were opened in fiscal years 2014 through 2016 and closed in the Joint Integrity Case Management System (JICMS) as of July 18, 2017, or closed in the Human Resources Business Engine (HRBE) case management system as of September 18, 2017. It does not include 874 cases that were not yet closed. Percentages do not add to 100 percent because of rounding.

^aCBP did not refer 1,518 of the 20,333 cases (7 percent) to Labor and Employee Relations (LER). CBP practice is to refer the majority of allegations to LER for adjudication, but it may not refer allegations for certain reasons. CBP did not document whether 1,474 of the 1,518 cases (97 percent) were substantiated or unsubstantiated in its case management system.

^bCBP currently refers the majority of allegations—regardless of whether the investigator determines the allegation is substantiated or unsubstantiated—to its LER office for adjudication. According to CBP officials, many of these cases have an allegation that is unsubstantiated. As a result, for these cases, the deciding official would assign an outcome of no action or action unwarranted.

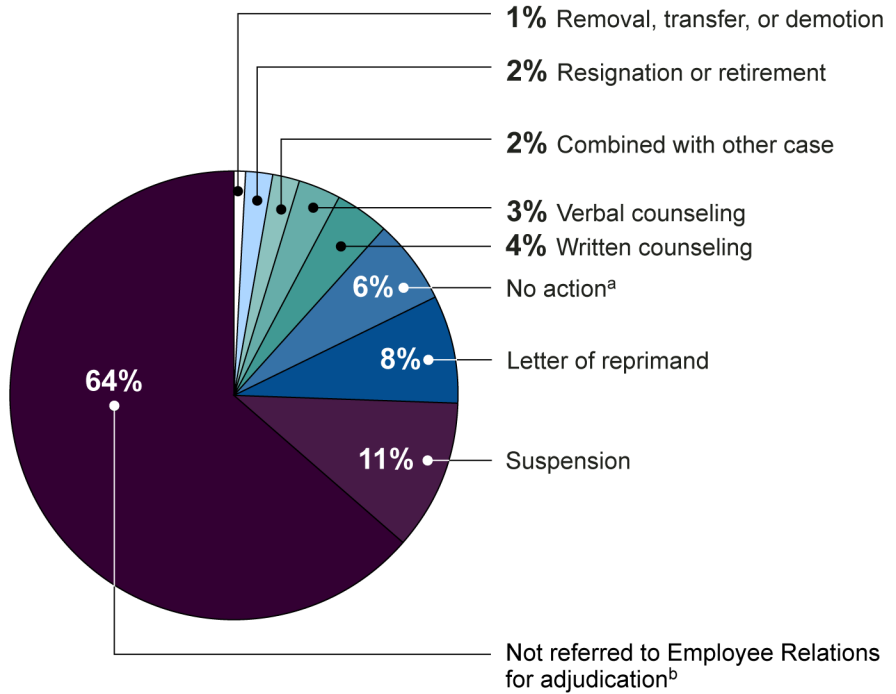
As shown in figure 2, the most common CBP disciplinary outcomes were written reprimand (13 percent) and written counseling (9 percent).³¹ Also, for more than half (51 percent) of the CBP cases that we analyzed, the deciding official determined that either no action was warranted (42 percent), or the allegation was unsubstantiated (9 percent). As noted earlier, CBP officials told us that CBP refers the majority of allegations—regardless of whether the investigator determines the allegation is substantiated or unsubstantiated—to its Labor and Employee Relations office for adjudication. According to CBP officials, this practice results in a large number of cases being closed with a final outcome of no action, action unwarranted, or allegation unsubstantiated.³² The deciding official may not assign discipline if upon reviewing the case he or she determines the allegations are unsubstantiated or do not warrant disciplinary action.³³

³¹A written reprimand, or letter of reprimand, is a disciplinary action that describes the unacceptable conduct that is the basis for a disciplinary action, and represents the least severe form of disciplinary action. Written counseling, or a letter of counseling, is an administrative or nondisciplinary action that informs an employee about unacceptable performance or conduct that should be corrected or improved.

³²According to CBP officials, in May 2016, CBP created the final outcome terms, “action unwarranted” and “allegation unsubstantiated,” for its case management system in an attempt to be clearer than the “no action” outcome. A final outcome of “action unwarranted” means the deciding official determined that the act alleged did occur but did not constitute misconduct by the employee. A final outcome of “allegation unsubstantiated” means the deciding official determined that the evidence does not show that the acts alleged actually occurred.

³³As noted earlier, during adjudication, these staff can determine subsequent to the investigation that an allegation is unsubstantiated or warrants no action. During the adjudication process, proposing and deciding officials consider several factors—including the findings and circumstances of the each investigation, the employee response to the proposed discipline, the Table of Offenses and Penalties, similar cases, and any particular mitigating and aggravating factors (Douglas Factors)—when determining the final decision of discipline.

Figure 3: Final Outcomes for U.S. Immigration and Customs Enforcement (ICE) Employee Misconduct Cases Opened in Fiscal Years 2014 through 2016 and Closed at the Time of Our Review



Total cases: 3,225

Source: GAO analysis of ICE data. | GAO-18-405

Note: This figure reflects cases that were opened in fiscal years 2014 through 2016 and closed in the Joint Integrity Case Management System (JICMS) as of July 18, 2017, or in the Human Resources Business Engine (HRBE) case management system as of August 22, 2017. It does not include 251 cases that were not yet closed. Percentages do not add to 100 percent because of rounding.

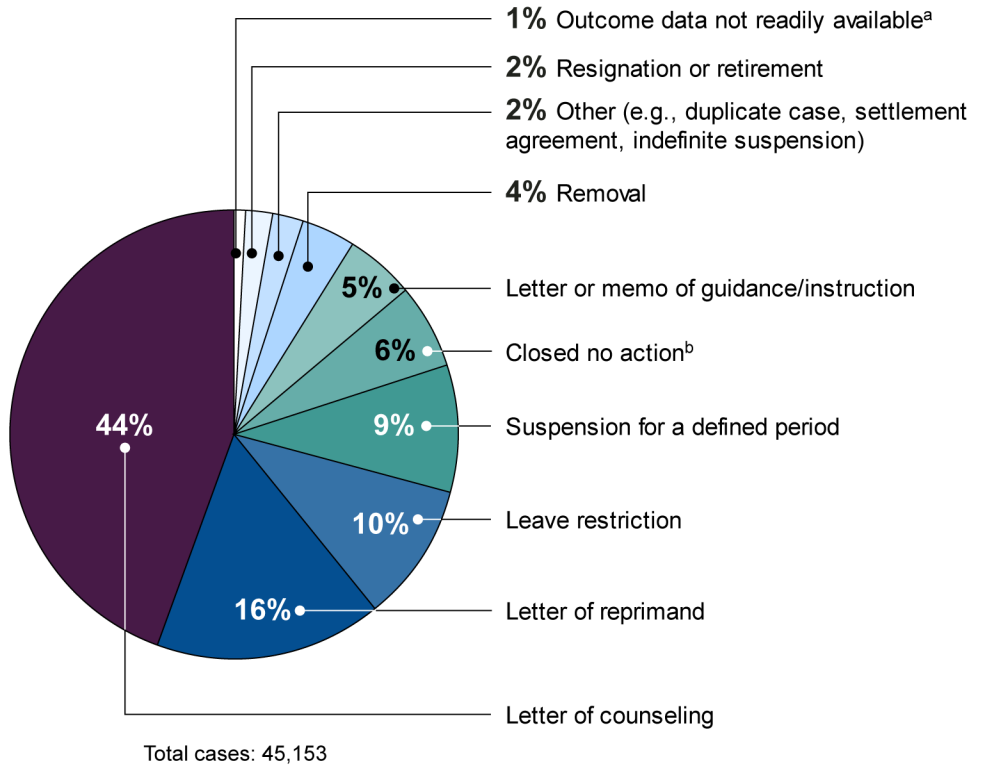
^aDeciding officials reviewed the case and determined that the allegation was unsubstantiated or did not warrant disciplinary action.

^bICE investigators are to designate an allegation as “not referred to management” (Employee Relations) for adjudication in the following cases: (a) the evidence shows that an employee did not commit the alleged misconduct or there is not a sufficient amount of evidence for a reasonable person to conclude the employee committed the alleged misconduct; (b) the subject employee resigned or retired prior to or during the investigation; (c) the investigation was unable to determine the name of the subject employee; or (d) the case is criminal and results in prosecution.

In contrast to CBP, ICE does not refer all allegations for adjudication. Rather, ICE investigators determine whether to refer allegations for adjudication based on the nature of evidence obtained during investigation.³⁴ As shown in figure 3, 11 percent of the ICE cases opened from fiscal years 2014 through 2016 and closed at the time of our review resulted in suspension, while 8 percent of the cases resulted in letters of reprimand. Seven percent of the ICE cases resulted in written or verbal counseling.

³⁴According to ICE policy, investigators should designate an allegation as “referred to management” for adjudication when (a) an employee is interviewed as a subject of investigation prior to separation from service; and (b) the evidence obtained during the investigation establishes it is more likely than not that the employee committed actionable misconduct that should be reviewed by management. ICE investigators are to designate an allegation as “not referred to management” when in the following cases: (a) the evidence shows that an employee did not commit the alleged misconduct or there is not a sufficient amount of evidence for a reasonable person to conclude the employee committed the alleged misconduct; (b) the subject employee resigns or retires prior to or during the investigation; (c) the investigation was unable to determine the name of the subject employee; or (d) the case is criminal and results in prosecution.

Figure 4: Final Outcomes for Transportation Security Administration (TSA) Employee Misconduct Cases Opened in Fiscal Years 2014 through 2016 and Closed at the Time of Our Review



Source: GAO analysis of TSA data. | GAO-18-405

Note: This figure reflects cases that were opened in fiscal years 2014 through 2016 and closed as of September 22, 2017; it does not include 2,967 cases that were not yet closed.

^aDuring our analysis of TSA data, we were unable to locate the adjudication, including final outcome, information for 581 Office of Inspection (OOI) investigations by matching these cases with TSA adjudicating office (Employee Relations) and the Office of Professional Responsibility data. According to TSA officials, once OOI officials refer a case to Employee Relations, for instance, Employee Relations may open a new case number of the case, which would make it difficult to electronically link the cases using the same case number.

^bThese cases were determined to be unsubstantiated or did not warrant disciplinary action.

As shown in figure 4, for TSA, the most common outcomes of misconduct cases opened from fiscal years 2014 through 2016 and closed by the time of our review were letter of counseling (44 percent), letter of reprimand (16 percent), and leave restriction (10 percent).

Components Did Not Consistently Document and Monitor Key Internal Controls for Processing Employee Misconduct Cases

CBP, ICE, and TSA have implemented key internal controls related to the processing of employee misconduct cases, such as supervisory review of investigation case files. However, the components did not consistently document these key control activities in their case management systems. CBP and ICE also did not consistently document the findings of misconduct investigations—for example, whether a misconduct allegation was found to be substantiated—and TSA cannot easily track the outcome of OOI investigations across its case management system. In addition, we found that monitoring of internal controls could be improved by components incorporating internal control testing as part of their existing oversight mechanisms, such as self-inspection programs.

CBP, ICE, and TSA Did Not Consistently Document Key Control Activities Related to Quality and Independence

CBP, ICE, and TSA did not consistently document key control activities related to ensuring quality and independence in processing misconduct cases. The key control activities we assessed were: (1) review of investigations by a supervisory agent or management official, (2) legal review of investigative case files, (3) investigator recusal, and (4) case file data verification.³⁵ We determined that these were key control activities based on agency policies, procedures, and guidance, as well as discussions with CBP, ICE, and TSA officials regarding which internal control activities that they considered important related to ensuring the quality and independence of investigating and adjudicating employee misconduct.

As discussed below, for the four key control activities, components varied in the extent to which documentation of the activities is required for all case types, such as cases involving allegations of a serious nature or involving senior-level staff and cases involving allegations of a less serious nature generally referred to as management inquiries—even if the control activity is required by policy. For example, CBP, ICE, and TSA require investigators to recuse themselves if they are unable to investigate alleged misconduct in an impartial manner. However, none of the components require documentation of recusals in their case

³⁵Internal control activities are the actions management establishes through policies and procedures to achieve objectives and respond to risks.

Review of Investigation by
Supervisory Agent or
Management Official

management systems.³⁶ As another example, ICE requires supervisory review of its management inquiries. However, we did not find documentation that this control activity occurred for all the management inquiries that we reviewed. We found that less documentation of internal control activity was generally associated with components not having policies that required it. Documentation is a necessary part of an effective internal control system, and *Standards for Internal Control in the Federal Government* require components to clearly document significant events in a manner that allows the documentation to be readily available.³⁷

To determine whether the four key internal control activities were documented in each component's case management system, we analyzed several samples of misconduct cases, including a representative, random sample of cases opened and closed between fiscal year 2014 and fiscal year 2016 (see appendix I for a detailed description of our sampling methodology).³⁸

According to federal quality standards for investigations, supervisory or management review of misconduct investigations is a key control activity that helps ensure that investigations are comprehensive and performed correctly.³⁹ Supervisory review of criminal or serious misconduct investigations, which are investigated by CBP OPR, ICE OPR, or TSA

³⁶For each component, the requirement for investigators to recuse themselves is found in the standard operating procedures. These standard operating procedures contain guidance on various aspects of conducting misconduct investigations, such as conducting interviews with subjects and handling evidence. Government-wide regulations and Office of Government Ethics guidance provide that an employee should not participate in government matters that could lead a reasonable person to question the employee's impartiality. See 5 C.F.R. §§ 2635.101, 501-02.

³⁷[GAO-14-704G](#).

³⁸Because some items we assessed applied only to a subset of cases, resulting in a smaller sample size, we report some findings as the range from the lower to upper bound of the 95 percent confidence interval; in cases with particularly small sample sizes, we describe results for the sample only, rather than attempting to generalize to the population of cases within the component. We tested each misconduct case by analyzing data from the components' systems, including history logs and notes entered by investigative agents, to find documentation in the case file that the component had implemented the control activity.

³⁹*Quality Standards for Investigations*, Council of the Inspectors General on Integrity and Efficiency, November 15, 2011.

OOI, is required by all three components.⁴⁰ Each component is also required to document evidence of this supervisory review in the case management system.

We estimate that 100 percent of the population of CBP OPR investigations from fiscal year 2014 through fiscal year 2016 had supervisory review documented in CBP's case management system and 100 percent of the population of ICE OPR investigations had supervisory review documented.⁴¹ For TSA, we found documentation of supervisory review in TSA's case management system in 7 out of the 10 TSA OOI investigations we reviewed.⁴² For management inquiries, ICE requires review of the closing memo prior to adjudication, and we estimate that 36 percent of the population of ICE management inquiries had supervisory review documented.⁴³ CBP and TSA policies do not have a supervisory review requirement for management inquiries and we estimate that 33 percent of the population of CBP management inquiries,⁴⁴ and between 0 to 3.3 percent of the population of TSA management inquiries had supervisory review documented in each component's case management system.

Legal Sufficiency Review of Investigation

According to the *Quality Standards for Investigations*, investigations should comply with legal requirements. Officials at each component said that legal review is a key control activity designed to ensure that investigative case files contain sufficient evidence to support a decision of discipline. Within CBP, legal sufficiency review is required for all cases

⁴⁰For OPR investigations, CBP and ICE require supervisory agents to review the case file with the investigating agent every 90 days for merit, timeliness, accuracy, and completeness of data in ICE's case management system. TSA also requires periodic supervisory review for OOI investigations.

⁴¹For CBP's supervisory review, our estimate falls within a lower bound of 89 percent and upper bound of 100 percent with a 95 percent confidence interval. For ICE's supervisory review, our estimate falls within a lower bound of 92 percent and upper bound of 100 percent with a 95 percent confidence interval.

⁴²Due to small sample sizes for certain TSA control activities, instead of estimated percentages, we describe the number of cases reported in our sample and do not generalize to the population of TSA cases.

⁴³With a lower bound of 25 percent and an upper bound of 47 percent at a 95 percent confidence interval. CBP and TSA do not require supervisory review for management inquiries because these are considered less serious cases, according to officials.

⁴⁴With a lower bound of 22 percent and an upper bound of 44 percent at a 95 percent confidence interval.

that result in an adverse action, and we found documentation of legal sufficiency review for approximately 94 percent of CBP cases that resulted in an adverse action. Within ICE, legal sufficiency review is required for cases investigated by ICE OPR that get referred to ICE Employee Relations, but it is not required for management inquiries conducted by management officials.⁴⁵ For ICE, we estimate that between 39 to 73 percent of the population of ICE OPR investigations had legal sufficiency review documented in the agency's case management system. Within TSA, legal review is available upon request for all cases, but is not a required control activity.⁴⁶ Regarding legal review of cases investigated by TSA OOI, we found documentation of legal review for 6 out of 8 of the TSA OOI cases we reviewed.⁴⁷ We estimate that 11 percent of the population of TSA management inquiries have legal sufficiency review documented, though it is not required for those cases. None of the components require documentation of legal review in their misconduct case management information systems, so it is possible that legal sufficiency review occurred but was not documented.

Investigator Recusal

According to the *Quality Standards for Investigations*, maintaining independence is important. CBP, ICE, and TSA officials stated that the option for investigators to recuse themselves from a misconduct investigation is a key control related to the independence of misconduct investigations, and each component requires investigators to recuse themselves if they feel they cannot be impartial, for all cases. None of the components require documentation of a recusal to be recorded in their case management systems, and officials stated that recusals are a relatively rare occurrence. No CBP, ICE, or TSA cases that we analyzed documented investigator recusal.⁴⁸

⁴⁵Specifically, CBP requires legal sufficiency review by its Office of Chief Counsel for cases in which the proposed action is an adverse action (e.g., suspension of more than 14 days); and ICE requires legal sufficiency review for cases investigated by OPR that are to be referred to Employee Relations for a disciplinary action. Our analysis of CBP legal review is based on all cases opened from fiscal year 2014 through fiscal year 2016 that resulted in proposed adverse action, including both OPR-investigated cases and management referrals.

⁴⁶In January 2016, TSA began requiring all misconduct cases that go to OPR for adjudication to be reviewed by the Office of Chief Counsel before case closure.

⁴⁷TSA allows OOI to request legal review at its discretion, and supervisors who conduct management referrals may also request legal review, though it is not required.

⁴⁸We estimate less than 3 percent each of CBP, ICE, or TSA cases involved recusal of an investigator.

Verification of Case Management System Data

According to the *Quality Standards for Investigations*, verifying case management system data is necessary for ensuring the quality and completeness of misconduct case records. For example, senior officials in CBP OPR said they conduct regular reviews of case management data to identify outliers or abnormalities—such as missing information—and CBP human resource specialists review case documentation to ensure that they have all the necessary information for adjudication. These specialists are also required to audit a small percentage of their cases each year after adjudication. CBP does not require data verification activities to be documented in its case management system. We estimate that 0.02 to 5.6 percent of the population of misconduct cases in CBP’s case management system had data verification activities documented.

ICE OPR requires the use of a data verification checklist to verify that investigators enter key information—such as a description of the allegation, key dates, whether a criminal or noncriminal case—into ICE’s case management system. However, ICE policy does not require the use of this data verification checklist to be documented in ICE’s case management system. We estimate that between 59 to 89 percent of the population cases investigated by ICE OPR had documented use of the data verification checklist while the case was being investigated.

TSA officials told us OPR and Employee Relations conduct data audits of completed cases to verify that key information has been entered in TSA’s case management system.⁴⁹ To document this activity, officials also stated that they mark the case as closed in TSA’s case management system. We found such documentation of data verification activities in 2 of the 10 OOI cases and in all 90 of the management inquiries that we reviewed.

Based on the results of our analysis, CBP, ICE, and TSA are not consistently documenting their key control activities, such as legal sufficiency review of investigations and data verification, among other things. Officials said that not all of the key controls are required to be documented in their case management systems. However,

⁴⁹TSA officials said that OPR staff conduct data audits of completed, individual misconduct cases and record them as “closed” as a collateral duty and thus are not able to audit every single case. As of September 2017, the HRAccess system contained approximately 38,000 ER cases that did not undergo a data verification review. TSA ER leadership has set performance measures for their specialists to conduct this case audit and close at least 18 to 25 cases resulting in corrective actions and at least 7 to 12 cases resulting in suspensions or adverse actions per month to help close this gap.

documentation is a necessary part of an effective internal control system, and *Standards for Internal Control in the Federal Government* require components to clearly document significant events in a manner that allows the documentation to be readily available.⁵⁰ Ensuring that component officials consistently document key required control activities—for example, when legal review occurs—in their respective case management system could give management greater assurance that their internal controls are effectively mitigating risks associated with investigating misconduct cases.

Components Do Not Consistently Document Investigative Findings in Their Case Management Information Systems, and CBP Does Not Provide Referral Procedures for Adjudication

We found during the course of our data analysis that CBP and ICE did not require that staff enter in their case management systems, or recorded inconsistently, whether each allegation was substantiated or unsubstantiated after investigation. In addition, CBP has not documented procedures regarding whether a case should be referred for adjudication based on the investigative finding, and TSA cannot easily track the outcome of OOI investigations across its case management information systems.

CBP: According to our analysis of CBP data, in addition to the 20,333 allegations that CBP opened from fiscal years 2014 through 2016 and had closed by the time of our review, we found that CBP received but did not refer 1,518 allegations to Labor and Employee Relations for adjudication. Of these 1,518 allegations, CBP did not document in its case management information system whether 1,474 (97 percent) allegations were substantiated or unsubstantiated.

In January 2016, CBP OPR issued guidance stating that investigators are to identify each specific allegation investigated and assign a specific investigative finding to each allegation in all final investigative reports. However, CBP officials said that CBP does not require investigators to enter the investigative finding in the case management system with the exception of Prison Rape Elimination Act allegations, which CBP is

⁵⁰[GAO-14-704G](#).

required by law to document.⁵¹ Therefore, only a small percentage of cases' investigative findings are documented in CBP's case management system.

Standards for Internal Control in the Federal Government state that management communicates quality information down and across reporting lines to enable personnel to perform key roles in achieving objectives, addressing risks, and supporting the internal control system. Also, management is to clearly document internal control and all transactions and other significant events in a manner that allows the documentation to be readily available for examination.⁵²

Additionally, CBP has not documented procedures regarding whether OPR investigators and local managers should refer allegations for adjudication based on the investigative finding. *Standards for Internal Control in the Federal Government* state that management develops and maintains documentation of its internal control system. Effective documentation assists in management's design of internal control by establishing and communicating the who, what, when, where, and why of internal control execution to personnel. Documentation also provides a means to retain organizational knowledge and mitigate the risk of having that knowledge limited to a few personnel, as well as a means to communicate that knowledge as needed to external parties, such as external auditors. CBP officials told us that if a case was not referred, then the investigators found the allegation to be unsubstantiated or the case was not referred for other reasons. However, they acknowledged that the resolution code was not documented. Without the JIC documenting the investigative finding and CBP documenting referral procedures based on the investigative finding, managers and external stakeholders cannot ensure that cases that should be adjudicated by Labor and Employee Relations are adjudicated as appropriate.

⁵¹The final resolution field is to show the finding for the most egregious, or highest level, allegation. The findings of additional allegations are to be reflected in the background section as well as within the body of the final investigative report. The Prison Rape Elimination Act directed the Attorney General to issue national standards for the detection, prevention, reduction, and punishment of prison rape. 42 U.S.C. § 15607(a)(1)-(2). These standards require investigations into inmate allegations of sexual abuse and sexual harassment to be documented in written reports. 28 C.F.R. § 115.71.

⁵²[GAO-14-704G](#).

ICE: In addition to the 3,225 cases that ICE opened from fiscal years 2014 through 2016 and closed by the time of our review, we found that ICE received but did not refer 2,077 allegations to its Employee Relations' office for adjudication.⁵³ For 167 of the 2,077 allegations (8 percent), ICE did not document, using a resolution code in its case management system, the investigative finding. Furthermore, our analysis of ICE data found that 182 of the 2,077 allegations (9 percent) were to be referred for adjudication, but ICE did not refer these allegations for adjudication.⁵⁴ ICE OPR requires that its investigators enter the resolution code in JICMS for OPR cases, and this step is included on ICE OPR's data verification checklist. However, ICE officials told us that staff may record the resolution code in their case management information system in an inconsistent manner because the resolution codes and the related guidance for referring OPR cases for adjudication have changed over

⁵³ICE policy states that allegations are only to be referred for adjudication when an employee is interviewed as a subject of investigation prior to separation from service and the evidence obtained during the investigation establishes it is more likely than not that the employee committed actionable misconduct that should be reviewed by management. In addition, ICE does not refer for adjudication by Employee Relations substantiated criminal cases that result in prosecutorial action. Of the 2,077 allegations, ICE documented the investigative finding, using a case resolution code in the case management system, for 1,728 allegations (83 percent). Of the 1,728 allegations, ICE investigators or local managers documented in the case information management system that 1,387 allegations did not meet ICE's criteria for referral; 227 allegations were unsubstantiated, unfounded, or recanted; 58 allegations were substantiated; 49 allegations were recorded in the case management system for management information only; and 7 allegations were referred to another entity for adjudication. Of the 58 substantiated cases, 28 were criminal cases (and therefore not referred for adjudication by Employee Relations according to ICE policy), and 30 were non-criminal cases. According to ICE officials, ICE did not refer the 30 non-criminal cases because the employee resigned/retired during the course of the investigation or it was determined during the investigation that the employee had already resigned/retired, or because the investigation was unable to determine the name of the employee.

⁵⁴According to ICE officials, 173 of the 182 allegations were management inquiries that resulted in minor verbal counseling by program management and did not rise to the level of referring to Employee Relations for adjudication. Although ICE did not intend to forward these allegations to Employee Relations for adjudication, Employee Relations advised program management to use the "Referred to Management" resolution code to reflect in the case management system that some type of disciplinary action was taken. Officials stated that the remaining 9 cases were OPR investigations having related cases on the same employee subject that had been referred to Employee Relations for adjudication. The main case referred to Employee Relations included all case documentation, whereas, the related case would not include all case documentation and not be required to be sent to Employee Relations.

time.⁵⁵ In October 2014, ICE OPR issued guidance to OPR staff regarding use of the old and new codes and related referral procedures.

Additionally, according to ICE officials, staff are to enter the resolution code for non-OPR, management inquiry cases in the case management information system, but ICE officials have not documented this requirement and related guidance regarding resolution codes and referral procedures for management inquiries. Documenting the requirement to enter the resolution code in the case management information system and related procedures for referring management inquiry cases for adjudication could help ensure that ICE staff enter the resolution code for all misconduct cases and refer them for adjudication as appropriate. Also, in early 2017, ICE OPR developed a data verification checklist for local managers to use when entering data for management inquiries in JICMS and trained them on how to use it. According to ICE officials, local managers use the document, but they are not required in policy to complete the data verification checklist for management inquiries. In May 2018, ICE officials stated that ICE is currently updating the management inquiry program to enhance its oversight with a focus on accountability and case management standardization, and they anticipate providing updated guidance to the local managers in the near future.

TSA: In addition to the 45,153 cases that TSA opened from fiscal years 2014 through 2016 and closed by the time of our review, we identified 581 TSA misconduct allegations that were recorded in the OOI database but not easily found in the databases of TSA's adjudicating offices, Employee Relations or the Office of Professional Responsibility, using the same case number.⁵⁶ As noted earlier, TSA OOI is to refer all allegations to the appropriate office to adjudicate whether a case is substantiated for the purposes of taking disciplinary action. Also, *Standards for Internal Control in the Federal Government* state that management communicates quality information down and across reporting lines to enable personnel to

⁵⁵In particular, ICE officials told us that, initially, only the resolution codes, unfounded (N), substantiated (S), and unsubstantiated (U), were available in the case management system. Starting in 2014, values A through M (e.g., A – not referred to management, B – referred to management) were added, and ICE instructed staff that values N, S, and U should only be used for unknown employees, former employee, and non-employee subjects such as a detainee and a civilian.

⁵⁶TSA OOI does not require that its investigators enter in its case management system whether the allegations are substantiated or unsubstantiated. However, they refer all allegations to the appropriate adjudicatory office.

perform key roles in achieving objectives, addressing risks, and supporting the internal control system. Additionally, management is to clearly document internal control and all transactions and other significant events in a manner that allows the documentation to be readily available for examination.⁵⁷ TSA officials told us that information on the adjudication of 581 OOI investigation cases could not be found in the Employee Relations database primarily because Employee Relations and OOI assign different case numbers to the same case.⁵⁸ Developing a method for more easily tracking cases between the OOI and Employee Relations databases could help inform managers and external stakeholders for management and oversight purposes, as well as for monitoring the timeliness of OOI cases, as discussed later in this report.

Opportunities Exist to Improve Monitoring of the Employee Misconduct Process

Components have oversight mechanisms that they use to monitor internal controls related to financial reporting, compliance activities, and operations; however, components do not fully utilize these mechanisms to monitor the employee misconduct process.

CBP has an annual self-inspection program that requires program offices to assess their compliance with certain requirements by testing for and remediating any internal control deficiencies. Additionally, CBP's Management Inspection Division, which oversees the annual program and monitors corrective actions, uses other oversight mechanisms such as Management Assurance Reviews and Focused Assessments to evaluate specific CBP offices or programs.⁵⁹ However, based on our analysis of CBP's self-inspection program review cycles from fiscal years 2014 through 2016, CBP did not use any of these oversight mechanisms to test controls related to the employee misconduct process. Rather, CBP tested controls related to other processes, such as the use of government purchase cards. *Standards for Internal Control in the Federal Government*

⁵⁷[GAO-14-704G](#).

⁵⁸TSA officials examined data for 20 of these 581 cases and found that that 16 of the 20 cases had been referred for adjudication, but Employee Relations specialists created a new case number for these cases when they received the case that did not match the OOI case number. In 4 of the 20 cases, the subject of the investigation was removed for a case other than the one that was in our sample, and thus OOI did not refer the case for adjudication.

⁵⁹The Management Assurance Reviews, examined CBP offices' compliance with policies related to travel card purchases and government vehicle management, among other things.

require management to establish and implement monitoring activities to monitor the internal control system and evaluate the results, as well as remediate identified internal control deficiencies. By including monitoring of key controls related to employee misconduct in its existing oversight mechanisms, such as the annual self-inspection program, CBP would gain greater assurance that controls such as supervisory review of case files were being implemented, and more easily identify and remediate any internal control deficiencies in a timely manner.

ICE tests internal controls related to employee misconduct through an annual self-inspection program as well, but could strengthen monitoring of corrective actions. In fiscal years 2014 through 2016, ICE's program included worksheets to assess OPR compliance with policies related to employee misconduct. For example, when completing the self-inspection program, ICE officials assessed a sample of misconduct case files to determine whether the cases were reviewed by an investigative supervisor at least every 90 days while the case was open, as required. These program worksheets documented a range of deficiencies related to managing misconduct cases, including failure to conduct supervisory review. Individual ICE field offices are responsible for developing corrective action plans.

However, ICE's Management Inspection Unit, which oversees the inspection process, did not track the status of related corrective actions. ICE Management Inspection Unit officials told us that they tracked corrective actions centrally until 2013, but they no longer do so because they do not have the authority to enforce that corrective actions are implemented. Regardless of whether or not the Management Inspections Unit has authority to ensure corrective actions are implemented, *Standards for Internal Control in the Federal Government* require management to monitor the status of corrective actions so that they are completed on a timely basis.⁶⁰ ICE field offices are required to keep their corrective action plans on file for 3 years, and the Management Inspection Unit can review those corrective action plans and related documentation during field office inspections to see whether corrective actions were taken. By tracking the status of corrective actions related to employee misconduct control deficiencies through its existing oversight mechanisms, ICE management would have greater assurance that desired outcomes—such as supervisory and legal review of case files—

⁶⁰[GAO-14-704G](#).

are consistently attained through the operation of key internal control activities.

TSA monitors some internal controls related to the adjudication of employee misconduct, but could do more to monitor key control activities related to misconduct investigations. TSA requires its offices and airports to regularly assess, through a self-assessment process, their compliance with policies related to adjudicating employee misconduct.⁶¹ For example, OOI is required to assess whether disciplinary actions are taken in accordance with DHS and TSA policy. TSA officials said that TSA centrally tracks the status of corrective actions implemented by airports and offices as a result of the self-assessments.

However, based on our review of these TSA self-assessments from fiscal years 2014 through 2016, we found that their scope did not include the testing of key controls related to the investigation of employee misconduct, such as supervisory and legal review of the investigation. *Standards for Internal Control in the Federal Government* require management to establish and implement activities to monitor the internal control system and evaluate the results, as well as remediate identified internal control deficiencies.⁶² By including testing and monitoring of key controls related to the investigation of employee misconduct in its existing oversight mechanisms, TSA would gain greater assurance that key controls are implemented, and could identify and remediate internal control deficiencies in a timely manner.

⁶¹These assessments can take place annually, semiannually, or quarterly depending on whether TSA determined them to be high-risk, according to agency officials.

⁶²[GAO-14-704G](#).

Components Have Established Some Targets for Monitoring the Performance of Their Misconduct Processes, but Could Better Monitor Timeliness

CBP, ICE, and TSA assess the performance of their processes to investigate and adjudicate employee misconduct cases primarily using timeliness targets.⁶³ While the components monitor the timeliness of certain stages of misconduct cases, we found that each component does not fully monitor the timeliness of cases, including total case duration, and has not clearly defined and documented the data fields for measuring the targets. According to component officials, they monitor the timeliness of some case types and stages, but they have not considered monitoring the duration of the entire misconduct case process from beginning to end by case type.

Given that the components do not fully measure and monitor the timeliness of cases, we utilized component case data to determine total case duration by case type and whether the components met the timeliness targets they had established. Based on our analysis of component case data, for cases opened from fiscal years 2014 through 2016 and closed by the time of our review, the average total duration of CBP, ICE, and TSA employee misconduct cases ranged from 19 to 434 days, depending on the component and type of case. In addition, each component met its established timeliness targets for the investigation and adjudication stages to varying degrees.

Components Identified Timeliness as a Goal, But Do Not Monitor the Total Duration of All Misconduct Cases

CBP, ICE, and TSA have identified improving the timeliness of processing employee misconduct allegations as a goal, but the components do not monitor the total duration of misconduct cases. For example, in CBP's 2014 Integrity and Personal Accountability Strategy, CBP stated that increasing efficiency throughout its disciplinary process was a strategic objective, and that CBP was committed to reviewing its disciplinary process and finding new ways to increase the efficiency of its adjudications of misconduct. ICE OPR's Fiscal Year 2016 Annual Accomplishments Report noted the office's efforts to improve the overall effectiveness and efficiency of its programs, including its performance against its target to complete the investigation of non-criminal misconduct cases within 120 days. In addition, TSA's 2015-2018 Office of Inspection

⁶³A timeliness target is a target amount of time within which a component aims to complete a stage of its misconduct process, such as ICE OPR completing the investigation of non-criminal allegations within 120 days. DHS considers the processing of employee misconduct allegations as a mission support activity, and therefore has not established departmental performance goals related to employee misconduct.

Investigations Strategic Plan identified organizational efficiency as one of three performance goals, and completing investigations within 90 days as a strategic objective.

Furthermore, officials we met with in all three components acknowledged the importance of addressing employee misconduct allegations in a timely manner.

CBP monitors the timeliness of certain stages of misconduct cases, but does not monitor the total duration of misconduct cases from beginning to end—from the date the case is opened to the date of the final disciplinary decision—by case type.⁶⁴ CBP's 2015 internal review of its misconduct process by Pivotal Practices included a recommendation that CBP create a performance dashboard that supports monitoring, analyzing, and reporting capabilities.⁶⁵ CBP subsequently developed an enterprise dashboard reporting tool so that executive management could have visibility over the average duration of the entire misconduct process for OPR investigations by stage and from beginning to end. However, CBP's dashboard does not have this same information for management inquiries or administrative inquiries. CBP officials told us that they developed the dashboard to capture cases that had been through the entire process end-to-end—that is, reported to the Joint Intake Center, investigated by the Office of Professional Responsibility, and referred to Employee Relations for adjudication—and had not focused on management and administrative inquiries that are investigated by local managers.

ICE has timeliness targets for and monitors certain stages of the misconduct process—such as completing an OPR, non-criminal investigation within 120 days—but ICE officials do not use case management information system data to monitor the total duration of cases from beginning to end (from case creation to decision issued) by case type. ICE officials stated that management inquiry and

⁶⁴Types of cases include criminal and non-criminal investigations, management inquiries and administrative inquiries. See Table 8 and table notes for additional information about each case type.

⁶⁵Specifically, the 2015 Pivotal Practices report found that there is not a single repository of key performance data for the end-to-end process, and CBP OPR does not have the ability to generate timely and consistent performance analytical data. In January 2018, CBP OPR officials told us they are undertaking a JICMS modification effort to improve the system's efficiency and functionality for CBP's purposes. They have secured funding for an outside contractor to identify and implement requirements and start the hiring process in April 2018.

administrative inquiry cases are managed by individual program offices (e.g., Homeland Security Investigations, Enforcement and Removal Operations), and ICE headquarters has not considered monitoring the total duration of all misconduct case types.

TSA officials use a dashboard to monitor the timeliness of many stages, but it does not monitor the total duration of a case by case type from beginning to end, such as from the time when OOI receives an allegation for investigation to when OPR decides on the final discipline. According to TSA officials, TSA has produced timeliness trend reports as needed, but does not routinely monitor the total duration of misconduct cases by case type.

We analyzed each component's case management information system data to independently determine the average total duration of misconduct cases by case type from fiscal years 2014 through 2016. As shown in table 8, based on our analysis of each component's data, the average total duration of CBP, ICE, and TSA employee misconduct cases—from case creation through the issuance of the final outcome—ranged from 19 to 434 days, depending on the component and case type. Total case duration includes the investigation and adjudication stages, as well as the intake stage and any periods of transfer and review across the stages.

Table 8: GAO Analysis of the Average Case Duration for U.S. Customs and Border Protection (CBP), U.S. Immigration and Customs Enforcement (ICE), and Transportation Security Administration (TSA) Employee Misconduct Cases Opened in Fiscal Years 2014 through 2016 and Closed at the Time of Our Review

Case Type	Average Case Duration (Number of Days from Case Creation to Final Outcome)		
	CBP	ICE	TSA
Management inquiry ^a reported to the Joint Intake Center	153	307	Not applicable ^b
Management inquiry not reported to the Joint Intake Center ^c	85	186	19
Administrative inquiry ^d	280	434 ^e	41
Non-criminal investigation ^f	278	389	184
Criminal investigation	318	176	219
All case types	146	223	23

Source: GAO analysis of CBP, ICE, and TSA data | GAO-18-405.

Note: This table reflects cases that were opened in fiscal years 2014 through 2016 and also had closed at the time of our review: as of July 18, 2017 for CBP Joint Integrity Case Management System (JICMS) cases, and as of September 18, 2017 for CBP Human Resources Business Engine (HRBE) cases; as of July 18, 2017 for ICE JICMS cases, and as of August 22, 2017 for ICE HRBE cases; and as of September 22, 2017 for TSA cases. The numbers of cases opened during this period and not closed, and thus excluded from our analysis, were 874 (CBP), 251 (ICE), and 2,967 (TSA).

^aA management inquiry is an allegation that is referred to local program managers for investigation. The three components use slightly different terms for the investigations conducted by local management. For the purposes of this report, “management inquiries” include CBP management inquiries or referrals, ICE management inquiries or referrals, and TSA fact-finding or local inquiries.

^bTSA does not use the Joint Intake Center.

^cThese are allegations reported to local management and not reported to the Joint Intake Center. CBP and ICE policies do not require that low-level allegations be reported to the Joint Intake Center.

^dAn administrative inquiry is an inquiry of an offense conducted by fact finders who are from or trained by each component’s central office responsible for investigations. Local managers may request an administrative inquiry for an allegation that was not referred for investigation by the central investigative office.

^eIn the first quarter of fiscal year 2015, ICE ended its administrative inquiry program and replaced it with the management inquiry program.

^fA non-criminal investigation is conducted by the central office responsible for investigations when the allegation it has received for investigation is non-criminal or after the case is declined for prosecution.

CBP and TSA criminal misconduct cases took longer to complete than other cases, as shown in table 8. According to officials, criminal cases tend to take longer for reasons such as the time needed for evidence gathering and the time the U.S. Attorney’s Office considers a case for prosecution, among other factors. Table 8 shows that the average total case duration of CBP and ICE management inquiry cases that were first

reported to the JIC was longer than the average total case duration for management inquiries that were not reported to the JIC.⁶⁶ According to ICE officials, the total duration of management inquiry cases that were initially reported to the JIC may be lengthier than management inquiry cases not reported to the JIC for one of two reasons. First, the JIC and component management may refer the allegation to the component's central office responsible for criminal or administrative investigation. Then if the investigation finds no criminal wrongdoing or serious misconduct, the case may be downgraded to a management inquiry and referred to a fact finder or local management for investigation. Second, staff may incorrectly refer allegations of a less serious nature to the JIC, instead of to local management, and the JIC's assessment, review of the case by the DHS Office of Inspector General, and transfer of the case back to the component for investigation takes time.

The average total duration of ICE misconduct cases was longer than that of CBP and TSA cases, as shown in table 8. ICE officials stated that multiple factors can influence the average duration of cases, including the involvement of multiple offices and the facts and circumstances of a case. For instance, according to ICE officials, the DHS Office of Inspector General may take some time to assess the case before declining it. For complex cases, ICE's Office of the Principal Legal Advisor may conduct a lengthy legal sufficiency review. Also, ICE officials added that for some investigations and management inquiries, factors outside of ICE's control can delay certain aspects of an investigation, such as an employee being unavailable for interview for an extended period of time, a concurrent Equal Employment Opportunity investigation, an ongoing criminal or civil trial, and budget or funding issues.⁶⁷

As noted earlier, CBP, ICE, and TSA have identified completing misconduct cases in a timely manner as a strategic goal. *Standards for Internal Control in the Federal Government* state that management should use quality information to make informed decisions and evaluate the entity's performance in achieving key objectives and addressing

⁶⁶Specifically, the average total case duration for CBP management inquiries reported to the JIC was 153 days, while the average total duration of management inquiries reported directly to management was 85 days. ICE management inquiry cases reported directly to the JIC had a total average case duration of 307 days compared with those that were not reported to the JIC (186 days).

⁶⁷While such factors may also contribute to the total duration of CBP and TSA misconduct cases, ICE officials provided these examples as reasons for delays in their cases.

risks.⁶⁸ In addition, the standards state that management is to communicate quality information externally through reporting lines so that external parties can help the entity achieve its objectives and address related risks. Measuring and monitoring the timeliness of all employee misconduct cases from beginning to end by stage and by case type could provide more complete information for CBP, ICE, and TSA management to identify delays in the processes between stages and individual offices. This information could also provide more complete and accurate information on the total duration of CBP, ICE, and TSA misconduct cases to internal managers and to external stakeholders responsible for oversight.

Components Do Not Monitor Whether They Are Meeting All Established Targets

CBP, ICE, and TSA have established timeliness targets for the investigation and adjudication of misconduct cases, as shown in figure 5 below. However, they do not use case management information system data to monitor whether they are meeting all established timeliness targets.

CBP uses data from its case management information system to measure and monitor whether it is meeting its established targets for the proposal and decision of disciplinary outcomes (adjudication stage), but not its targets for the investigation stage by case type (i.e., management inquiries, administrative inquiries, non-criminal and criminal investigations). As noted earlier, CBP uses its dashboard to monitor the average duration of the entire misconduct process for OPR investigations by stage and from beginning to end.

However, CBP has not designed this dashboard tool to monitor each of its established timeliness targets. For example, the dashboard reports that we reviewed do not include timeliness data by each case type—management inquiries, administrative inquiries, and criminal and non-criminal central office investigations. Therefore, this dashboard does not currently provide CBP management the information it needs to monitor performance against its targets for each case type. CBP officials told us that management could request further updates to the dashboard to meet its oversight needs, such as adding timeliness data by each case type.

⁶⁸[GAO-14-704G](#).

ICE monitors whether non-criminal investigations are completed within its target of 120 days, but it does not monitor its two other performance targets: (1) whether management inquiries are completed within 90 days, and (2) whether Employee Relations specialists complete their adjudication support responsibilities for a case within 45 days of initial assignment to the specialist.⁶⁹ Beginning in November 2017, ICE OPR runs monthly reports on open management inquiries that exceed the 90-day target for local program managers (e.g., Homeland Security Investigations, Enforcement and Removal Operations). Also, these reports are provided to senior leadership to show them which management inquiries need to be prioritized and completed. However, ICE does not measure the duration of completed management inquiries to monitor the percentage of cases that are completed within 90 days. ICE officials also told us that measuring whether Employee Relations specialists complete their adjudication duties within 45 days is difficult because ICE's case management system does not track the number of days a case is with a particular office or individual (e.g., local program managers, Employee Relations, or Office of Chief Counsel) during the adjudication stage. However, monitoring this target using its case management information systems could help ICE assess whether all specialists are meeting this target.

TSA monitors the average number of days of certain stages of its misconduct process, and whether at least 65 percent of OOI investigations were completed within the target of 90 days, but it does not monitor whether it is meeting each of its other timeliness targets. In 2013, TSA developed an executive dashboard reporting tool to monitor the average number of days of OOI investigations and other stages, such as

⁶⁹Also, ICE did not measure and monitor whether it completed administrative inquiry investigations within the target of 120 days. In the first quarter of fiscal year 2015, ICE ended its administrative inquiry program and replaced it with the management inquiry process. According to ICE officials, ICE established the 45-day timeliness target for Employee Relations specialists in fiscal year 2018. As noted earlier, employee relations office specialists in each component advise officials during the proposal and decision of discipline. ICE Employee Relations specialists are organized by field office and advise ICE Discipline and Adverse Action Panel members, supervisors, and employees on relevant policies, such as the Table of Offenses and Penalties, procedures, and regulations, among other things. Employee Relations specialists are also responsible for recording the outcome of cases, including legal sufficiency reviews by the Office of Chief Counsel, in HRBE.

the proposal and decision stages of all misconduct cases.⁷⁰ However, the reports that we reviewed do not include information that would allow TSA management to monitor performance against each of its established targets, such as the percent of management inquiries and administrative inquiries that met the established targets of less than 30 and 15 days, respectively.⁷¹ Also, the reports do not show the percent of cases that fell within TSA's proposal and decision targets of 30 and 21 days, respectively.

Because CBP, ICE, and TSA do not monitor whether they are meeting each one of their established timeliness targets, their managers do not have all the information needed to make informed decisions and evaluate their performance in achieving key objectives. *Standards for Internal Control in the Federal Government* state that management should compare actual performance to planned or expected results throughout the organization and analyze significant differences. Improved monitoring of employee misconduct cases against all established timeliness targets could help the component managers better identify delays in the employee misconduct process and identify improvements to increase efficiency.⁷²

Given that the three components do not monitor all timeliness targets and have not clearly documented how staff are to measure the duration of misconduct cases in a way that would ensure consistency for assessing performance against timeliness (discussed further below), we independently analyzed component data according to guidance provided in response to our questions. Our purpose in doing so was to calculate the performance of each component's misconduct case process by timeliness target. In instances where we concluded that the components'

⁷⁰In 2013, we recommended that TSA establish an agency-wide policy to track cycle times in the investigations and adjudications process. In April 2015, TSA provided us with documentation supporting that the agency added new data fields to its Integrated Database, allowing for tracking of cycle times. TSA provided guidance to database users concerning these new data fields on June 16, 2014. We determined that these actions should help provide TSA with information on the differences across airports related to case processing and closed this recommendation as implemented.

⁷¹In January 2018, TSA officials told us they have stopped using administrative inquiry officers and are training local managers to conduct these investigations. Also, they stated that the administrative inquiry policy is undergoing review while TSA is establishing a new office to manage and oversee the handling of employee harassment complaints.

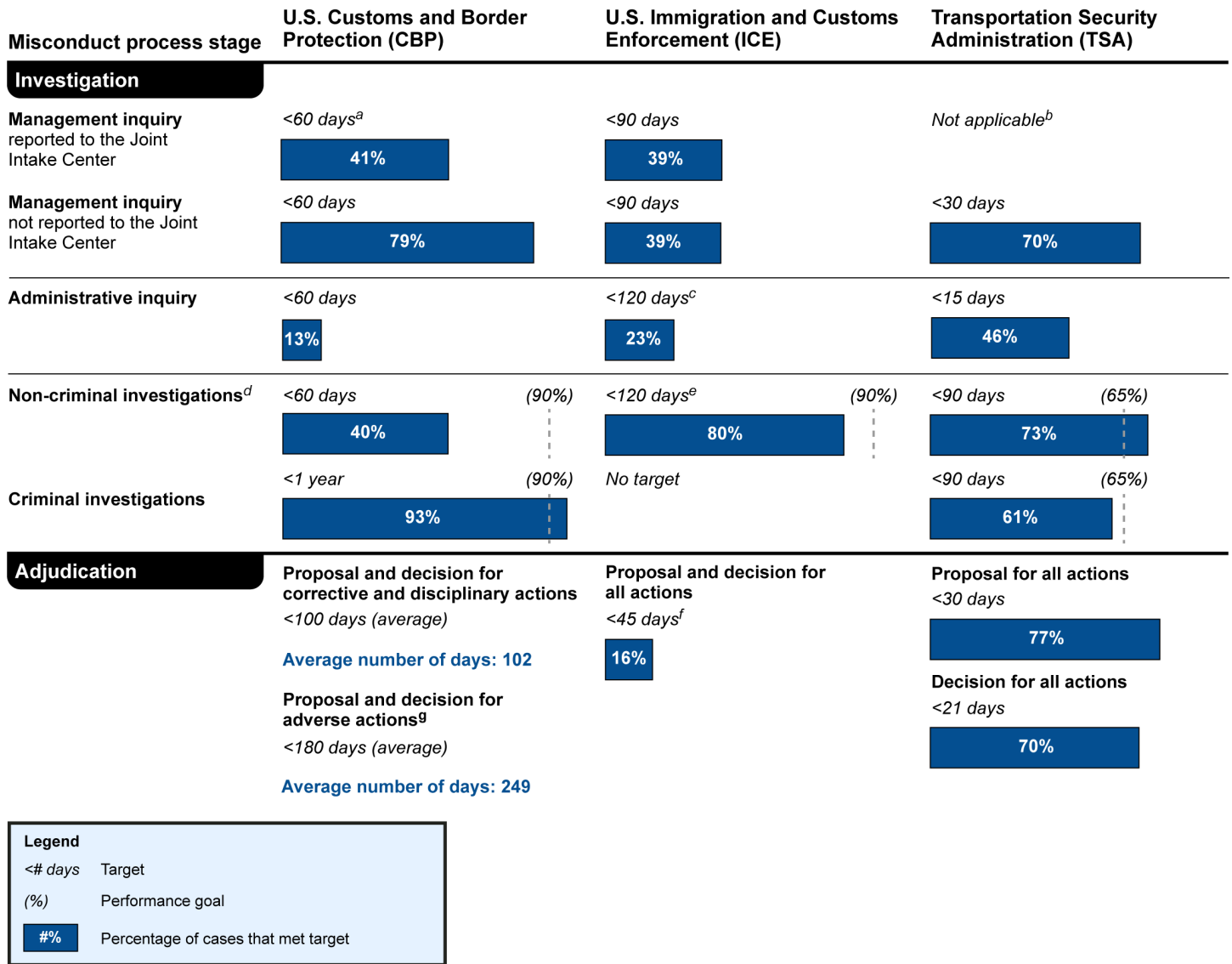
⁷²[GAO-14-704G](#).

guidance could produce inconsistent measurement results, we developed a uniform rule for measuring the timeliness for all cases relevant for a specific target. For instance, for CBP OPR criminal investigations, we developed a rule to establish the start date as the day a case was first transferred to an OPR office for investigation and the end date as the day that office transferred the case to another office. Another example of a uniform rule that we established is the selection of an alternate data field to measure the end date of an ICE OPR investigation when the data field instructed by ICE to identify the end date did not contain a value for several cases. We confirmed our rules with the components, as appropriate, to ensure that our analysis of the data was valid. In the absence of clear guidance, these results are an indication of how they might actually be performing.

Figure 5 below shows our analysis of the duration of specific stages—investigation and adjudication—against component timeliness targets for these stages. According to our analysis, the components met their timeliness targets for the investigation and adjudication of misconduct to varying degrees. For example, CBP met its target to complete criminal investigations within 1 year in 93 percent of cases, while it met its target to complete non-criminal investigations within 60 days in 40 percent of cases. As shown in the figure, some component targets have related performance goals, or percentages of cases that should meet the target. For example, TSA OOI has a performance goal of completing 65 percent of its investigations (non-criminal and criminal) within 90 days. Agency officials reviewed and approved our rules and generally agreed with our results.⁷³

⁷³CBP established the timeliness targets related to adjudication in fiscal year 2015. CBP officials stated that their performance against the adjudication targets has improved over this period, and fiscal year 2014 cases may be increasing the average number of days for the period. As noted earlier, ICE officials said that several factors outside their control contributed to the overall duration of misconduct cases and not meeting certain timeliness targets.

Figure 5: U.S. Customs and Border Protection (CBP), U.S. Immigration and Customs Enforcement (ICE), and Transportation Security Administration (TSA) Employee Misconduct Cases That Met Component Timeliness Targets by Stage, Fiscal Years 2014 through 2016



Source: GAO analysis of CBP, ICE, and TSA data. | GAO-18-405

Note: This figure reflects cases that were opened in fiscal years 2014 through 2016 and also had closed at the time of our review: as of July 18, 2017 for CBP Joint Integrity Case Management System (JICMS) cases, and as of September 18, 2017 for CBP Human Resources Business Engine (HRBE) cases; as of July 18, 2017 for ICE JICMS cases, and as of August 22, 2017 for ICE HRBE cases; and as of September 22, 2017 for TSA cases. The numbers of cases opened during this period and not closed, and thus excluded from our analysis, were 874 (CBP), 251 (ICE), and 2,967 (TSA).

^aThe CBP Office of Field Operations and Border Patrol each have a timeliness measure to complete management inquiries within 60 days or less.

^bTSA does not report employee misconduct allegations to the Joint Intake Center.

^cIn the first quarter of 2015, ICE ended its administrative inquiry program and replaced it with the management inquiry process.

^dA non-criminal investigation is conducted by the central office responsible for investigations when the allegation it has received for investigation is non-criminal or after the case is declined for prosecution.

^eIn October 2014, ICE changed its timeliness target and performance goal for OPR, non-criminal investigations from completing at least 80 percent within 180 days to completing at least 90 percent in fiscal year 2016 within 120 days. Therefore, many of the cases opened in fiscal year 2014 could still adhere to the 180 days target. However, if non-criminal determination or prosecutorial declination occurred after the new guidance in October 2014, the case would adhere to the 120 days goal. According to our analysis of ICE data, 86 percent of OPR-investigated, non-criminal cases opened in fiscal year 2014 adhered to the 180 days target.

^fICE's adjudication timeliness target applies only to the days that Employee Relations specialists review a case, and not to all offices involved in the adjudication process.

^gFor CBP, if the Labor and Employee Relations office is responsible for the adjudication, as opposed to the Disciplinary Review Board, a 100-day timeliness target is used.

Components Have Not Defined and Documented Data Fields for Monitoring the Timeliness of Misconduct Cases

CBP, ICE, and TSA have not clearly defined or documented in policy or guidance the case management information system data fields that staff should use to measure timeliness related to each established target. For example, CBP, ICE, and TSA policy and guidance do not define the case management information system data fields for measuring the start and end dates of management inquiries and administrative inquiries, and CBP and ICE policy and guidance do not define the case management system data fields for measuring the start and end dates of criminal and non-criminal investigations. As a result, the quality and consistency of the data used for monitoring timeliness are questionable.

We found this, in part, when we independently analyzed the components' data. Specifically, in instances where components had not defined or documented how to measure timeliness related to certain targets, we requested direction from the components on how to do so.⁷⁴ Using this direction, we independently analyzed case data from all three components to measure timeliness against targets. However, this direction could not be applied uniformly to all cases. For example, for

⁷⁴In response to our requests, the components identified the data fields in their respective case management systems that indicate the start and end dates of the stages associated with their targets. For example, ICE directed that the start date for a management inquiry is the date in the JICMS history case notes when the case is transferred to a program office for investigation, and the end date is the date in the history case notes when the case is transferred to Employee Relations for adjudication or is closed in JICMS.

certain cases, CBP and ICE officials told us that the start of an investigation is when the case is transferred to the responsible OPR office. However, a case may be transferred among several OPR offices during the course of an investigation (e.g., more than one OPR Special Agent-in-Charge (SAC) office or OPR Resident Agent-in-Charge office), making it difficult for CBP, ICE, or us to identify in JICMS the correct start date of an OPR-led investigation for the purposes of monitoring timeliness using case management information system data. Additionally, while TSA has defined and documented the appropriate start and end dates and methodology for measuring some of its targets, it has not defined the start and end dates for measuring management inquiry and administrative inquiry investigation targets because TSA does not monitor these targets.

Also, CBP OPR instructs and collects timeliness data related to its investigations from its SAC field offices. However, we found that there are risks to how the SAC offices consistently report these data because OPR headquarters has not defined and documented the standard date fields within the case management systems for both the start and end dates of each type of investigation. Rather, the officials stated that most of the pertinent information, such as start and end dates, for OPR investigations is contained within the case management system's free-form case history notes or information maintained by SAC offices outside of the case management system. Therefore, SAC staff must report the duration of its investigations by analyzing free-form data and data outside the case management system for each case individually and manually, rather than the SAC offices or OPR headquarters querying standard data fields in the case management information system. This can lead to inconsistencies depending on the quality of the analysis and reporting.⁷⁵

In addition, to measure timeliness for criminal investigations, CBP officials in OPR's SAC office told us that the instructions from OPR headquarters are complex. For example, OPR headquarters instructs SAC offices to report the length of an investigation based on the "primary criminal investigative work." In other words, the end date of this type of investigative work is the date the SAC office submits the prosecution report to the local U.S. Attorney's Office, or the date the prosecutor

⁷⁵For example, CBP OPR headquarters currently relies on field SAC-reported data and analysis (e.g., average duration of non-criminal cases, excluding the days in pending status; and the number of cases exceeding 60 days, excluding the days in pending status). The SAC offices could total the number of days differently (e.g., count and subtract days in "pending" status differently).

declines investigative interest in an investigation. However, officials in the three SAC offices we contacted told us they may use a different end date—the date the SAC office compels the first interview with the subject—to mark the end of a criminal investigation.⁷⁶ Furthermore, SAC officials in one office told us that they may continue to pursue a criminal investigation if the prosecution declines interest in the case to build more evidence, or they may continue criminal investigative work after the prosecutor accepts the case to assist the prosecution. Thus, they stated that the term, “primary investigative work,” may not capture the full length of the criminal investigation.

Standards for Internal Control in the Federal Government state that management should define objectives in measurable terms so that performance toward achieving those objectives can be assessed. Measurable objectives are generally free of bias and do not require subjective judgments to dominate their measurement.⁷⁷ In addition, the standards state that automated control activities tend to be more reliable than manual control activities, such as manual analysis and reporting of data, because they are less susceptible to human error and are typically more efficient.

CBP OPR officials have stated that they plan to transition to tracking case investigation timeliness using an OPR-specific dashboard by the end of fiscal year 2018. However, CBP OPR still has not clearly defined the data fields that should be used for measuring timeliness targets using case management information system data. Clearly defining the data fields for measuring the timeliness of each target, and documenting those identified fields in formal policy or guidance, would help the CBP SAC offices and CBP officials who develop the dashboard to produce more reliable results. Defining and then documenting the data fields and methodology that are to be used for performance measures, and providing related guidance to staff could help ensure the quality and consistency of timeliness data that CBP, ICE, and TSA management can use for monitoring and reporting timeliness against established targets.

⁷⁶Under *Garrity v. New Jersey*, 385 U.S. 493 (1967), internal investigators cannot compel testimony from a public employee under threat of being fired and then use that testimony in criminal proceedings. Officials in the three SAC offices we contacted stated that they mark the end of a criminal investigation as the date they compel the first interview with the subject because the U.S. Attorney will not prosecute cases where the subject as an employee was compelled to interview.

⁷⁷[GAO-14-704G](#).

Conclusions

Within the Department of Homeland Security, CBP, ICE, and TSA employ more than 100,000 staff responsible for securing our nation's borders, enforcing immigration laws, and overseeing the security of transportation systems, among other things. Given the number of employee misconduct cases these components handle annually, it is important that the processes they use have internal controls to ensure quality and independence, the data in the management system is complete and reliable, and cases are processed in a timely manner according to established performance targets.

Additional actions on the part of these DHS components could strengthen internal control activities related to the investigation and adjudication of employee misconduct. While CBP, ICE, and TSA have established internal controls related to processing allegations of misconduct, they do not consistently document key control activities each considers important to ensuring the quality and independence of the process. Specifically, providing guidance on consistently documenting key control activities, such as when legal review occurs, would give each component's management greater assurance that their processes mitigate associated risk. This guidance should also ensure CBP and ICE consistently and accurately document the investigative finding, and CBP should include information on which cases to refer for adjudication. Doing so could help ensure that staff refer all substantiated allegations for adjudication. To help with monitoring, modifying current annual self-inspection programs and other management self-assessments to include the testing and monitoring of control activities related to processing misconduct cases would also provide greater assurance that internal controls are operating as intended and corrective actions are implemented as needed.

The components have identified timeliness of case resolution as a performance goal and have taken some steps to establish performance targets and monitor the timeliness of certain stages of misconduct cases. However, the components have not clearly defined and documented the data fields for measuring the targets in policy or guidance and do not fully monitor the timeliness of cases, including total case duration. More clearly defining and documenting the case management system data fields, the methodology to be used for measuring and monitoring performance targets, and providing related guidance to staff could help ensure the quality and consistency of timeliness data that component management can use for monitoring and reporting timeliness against established targets. In addition, measuring and monitoring the timeliness of all employee misconduct cases from beginning to end, by stage and by case

type, could provide more complete information for CBP, ICE, and TSA management to identify delays in the processes between stages and individual offices, while still ensuring the quality of misconduct process. This information could also provide more complete and accurate information on the total duration of misconduct cases to internal managers and to external stakeholders responsible for oversight.

Recommendations for Executive Action

We are making a total of 18 recommendations: 6 to CBP, 6 to ICE, and 6 to TSA. Specifically:

The Commissioner of CBP should revise policy or guidance to ensure documentation of required control activities in its case management system, such as legal review of adverse actions, and data verification (Recommendation 1);

The Commissioner of CBP should require staff to document investigative findings (e.g., whether an allegation is substantiated) in the case management system, and document and disseminate associated referral procedures for adjudication (Recommendation 2);

The Commissioner of CBP should ensure the appropriate program offices include evaluating and testing internal controls related to the employee misconduct process in CBP's annual self-inspection program (Recommendation 3);

The Commissioner of CBP should monitor the duration of all cases beginning-to-end by stage and by case type (Recommendation 4);

The Commissioner of CBP should monitor the timeliness of misconduct cases according to established targets for management inquiries, administrative inquiries, and criminal and non-criminal investigations using case management system data (Recommendation 5); and

The Commissioner of CBP should define and document the case management system data fields to be used for monitoring all established performance targets and provide related guidance to staff (Recommendation 6).

The Director of ICE should revise policy or guidance to ensure documentation of required control activities in its case management system, such as supervisory review of management inquiries, legal

review of OPR-investigated cases, and data verification (Recommendation 7);

The Director of ICE should require staff to document the investigative findings (case resolution codes) of management inquiries in the case management system (Recommendation 8);

The Director of ICE should modify ICE's annual self-inspection program to track the status of related corrective actions to ensure they are implemented in a timely manner (Recommendation 9);

The Director of ICE should monitor the duration of all cases beginning-to-end by stage and by case type (Recommendation 10);

The Director of ICE should monitor the timeliness of misconduct cases according to established targets for management inquiries and Employee Relations specialist review of proposal and decision of disciplinary outcomes using case management system data (Recommendation 11); and

The Director of ICE should define and document the case management system data fields and methodology to be used for monitoring all established performance targets and provide related guidance to staff (Recommendation 12).

The Administrator of TSA should revise policy or guidance to ensure documentation of required control activities in its case management system, such as supervisory review of investigations and data verification (Recommendation 13);

The Administrator of TSA should develop a method for more easily connecting cases between the OOI database and Employee Relations database (Recommendation 14);

The Administrator of TSA should modify TSA's annual inspection process to include evaluating and testing internal controls related to the investigation of employee misconduct (Recommendation 15);

The Administrator of TSA should monitor the duration of all cases beginning-to-end by stage and case type (Recommendation 16);

The Administrator of TSA should monitor the timeliness of misconduct cases according to established targets for management inquiries (fact finding) and administrative inquiries, and the proposal and decision stages, using case information system data (Recommendation 17); and

The Administrator of TSA should define and document the case management system data fields and methodology to be used for monitoring all established performance targets and provide related guidance to staff (Recommendation 18).

Agency Comments and Our Evaluation

We provided a draft of this product to DHS for review and comment. DHS provided written comments, which are reproduced in full in appendix II, and technical comments, which we incorporated as appropriate. In the written comments, DHS concurred with all of our recommendations and described the actions CBP, ICE, and TSA plan to take in response. These actions, if effectively implemented, should address the intent of the recommendations. However, for four recommendations, the actions described do not fully meet the intent of the recommendations.

With respect to our second recommendation for CBP to require staff to document investigative findings in its case management systems, CBP stated that investigative findings are contained in its Reports of Investigation, which are uploaded in both JICMS and HRBE. Further, CBP stated that the final determination as to whether an allegation is substantiated is a management determination made after the case is referred to Labor and Employee Relations for adjudication, and this office then documents the substantiated misconduct in HRBE. However, many cases are not referred to Labor and Employee Relations and for those cases the investigative findings are not documented in a data field in JICMS. To meet the intent of our recommendation that data in its management system are complete and reliable, CBP needs to enter its investigative findings within the appropriate data field (e.g., resolution code) in JICMS for all cases, to include those not referred to Labor and Employee Relations for adjudication.

With respect to our tenth recommendation for ICE to monitor the duration of all cases from beginning to end by stage and by case type, ICE plans to establish a project team to document its employee misconduct process, including associated data and roles. However, to fully address the intent of this recommendation, ICE's activities should include using this information to monitor the duration of all cases from beginning to end

by stage and by case type to ensure it is meeting established performance targets.

With respect to our thirteenth recommendation for TSA to revise policy or guidance to ensure documentation of required control activities in its case management system, TSA plans to update guidance where necessary to ensure documentation of required control activities in its case management system or in the physical case file. However, to fully address the intent of this recommendation, TSA needs to ensure that such documentation is entered within its case management system so that management is able to query data across all cases as part of providing oversight.

With respect to our last recommendation for TSA to define and document the case management system data fields and methodology to be used for monitoring all established performance targets and provide related guidance to staff, TSA stated that its user guides and training curriculums contain documented protocols, defined system data fields, methodology, performance targets, and other instructions to all system users. However, as noted in the report, based on our review of TSA case management system user guides and training, current guidance does not fully define and document data fields and methodology to be used for monitoring established performance targets for management inquiries (fact finding) and administrative inquiries. To fully address the intent of this recommendation, TSA needs to update its user guides and training to include the data fields and methodology for monitoring established performance targets for management inquiries and administrative inquiries.

As agreed with your offices, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time, we will send copies of this report to the Secretary of the Department of Homeland Security, appropriate congressional committees, and other interested parties. In addition, the report will be available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (202) 512-8777 or gablerr@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 key contributions to this report are listed in appendix III.

A handwritten signature in black ink that reads "Rebecca Gambler". The signature is written in a cursive, flowing style.

Rebecca Gambler
Director, Homeland Security and Justice

Appendix I: Sampling Methodology

To assess the extent to which components implement key internal controls, we selected a stratified random sample of case files within the population of employee misconduct allegation case files that were opened and adjudicated by each component's adjudicating office between fiscal years 2014 and 2016, and that were considered closed as of September 18, 2017 for U.S. Customs and Border Protection (CBP) and August 22, 2017 for U.S. Immigration and Customs Enforcement (ICE); and that were closed or completed as of September 22, 2017 for Transportation Security Administration (TSA).¹ Strata were based on components and misconduct level (criminal and noncriminal). We used fiscal year 2014 through 2016 data from the components' information systems from which to randomly select a generalizable sample of about 100 employee misconduct cases per component.

Because we followed a probability procedure based on random selections, our sample is only one of a large number of samples that we might have drawn. Since each sample could have provided different estimates, we express our confidence in the precision of our particular sample's results as a 95 percent confidence interval. This is the interval that would contain the actual population value for 95 percent of the samples we could have drawn.

Criminal misconduct cases make up less than 9 percent of cases in our population from which we drew the sample (see table below). To assure some criminal cases were included in our sample, we defined strata as a combination of each component and misconduct level (criminal and non-criminal). However, the sample design will not support separate estimates that are generalizable within level of misconduct. Instead, the sample was designed to produce 95 percent confidence intervals for percentage estimates that are within about plus or minus 10 percentage points within component. Specifically, we calculated the Neyman optimal sample size to allocate sample within each component that resulted in an overall within component margin of error of 10 percent.

¹This sample includes only CBP and ICE cases that were reported through the Joint Integrity Center and adjudicated by each component's adjudicating office, and TSA cases that were investigated by the Office of Inspection and adjudicated by Employee Relations or the Office of Professional Responsibility. It does not include CBP, ICE, and TSA low-level cases that were not reported through the Joint Integrity Center or that were not referred for adjudication.

Since the Neyman sample sizes were close to 100 within strata, and near a 10-90 split between criminal and non-criminal cases, we are using the 10-90 split of sample cases within component. Estimates and standard errors produced from the sample were weighted by the inverse of the probability of selection and obtained using survey analysis software. All percentage estimates from our survey have margins of error at the 95 percent confidence level of plus or minus 10 percentage points or less, unless otherwise noted. Because some items in the data collection instrument applied only to a subset of cases, resulting in a smaller sample size, we report some findings as the range from the lower to upper bound of the 95 percent confidence interval; in cases with particularly small sample sizes, we describe results for the sample only, rather than attempting to generalize to the population of cases within the component.

Table 9: U.S. Customs and Border Protection (CBP), U.S. Immigration and Customs Enforcement (ICE), and Transportation Security Administration (TSA) Employee Misconduct Cases by Level of Misconduct, Opened in Fiscal Years 2014 through 2016 and Closed at the Time of Our Review

Component	Level of misconduct	Population Size	Sample Size
CBP	Criminal	960	10
CBP	Noncriminal	10638	90
ICE	Criminal	80	10
ICE	Noncriminal	1013	90
TSA	Criminal	114	10
TSA	Noncriminal	11209	90

Source: GAO analysis of CBP, ICE and TSA data. | GAO-18-405.

Appendix II: Comments from the Department of Homeland Security

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



**Homeland
Security**

July 19, 2018

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

Re: Management's Response to Draft Report GAO-18-405, "DEPARTMENT OF HOMELAND SECURITY: Components Could Improve Monitoring of the Employee Misconduct Process"

Dear Ms. Gambler:

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.

The Department is pleased to note GAO's positive recognition that U.S. Customs and Border Protection, U.S. Immigration and Customs Enforcement, and the Transportation Security Administration have (1) identified completing misconduct cases in a timely manner as a strategic goal, and (2) established internal controls related to processing allegation of misconduct. DHS remains committed to upholding the trust by ensuring it has effective processes for receiving, investigating, and adjudication allegations of employee misconduct.

The draft report contained 18 recommendations, all with which the Department concurs. Attached find our detailed response to each recommendation. Technical comments were previously provided under separate cover.

Again, thank you for the opportunity to review and comment on this draft report. Please feel free to contact me if you have any questions. We look forward to working with you again in the future.

Sincerely,

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

JIM H. CRUMPACKER, CIA, CFE
Director
Departmental GAO-OIG Liaison Office

Attachment

**Attachment: Management Response to Recommendations
Contained in GAO-18-405**

GAO recommended that the Commissioner of U.S. Customs and Border Protection (CBP):

Recommendation 1: Revise policy or guidance to ensure documentation of required control activities in its case management system, such as legal review of adverse actions, data verification and recusal.

Response: Concur. CBP's Office of Professional Responsibility (OPR) is working with U.S. Immigration and Customs Enforcement's (ICE) OPR to create and implement procedures for completing a Data Verification Checklist that will assist OPR in verifying that the data contained in the Joint Integrity Case Management System (JICMS) is complete and accurate. Data pertaining to case activity undertaken by Human Resources Management, Labor and Employee Relations (HRM LER), including if and when a document is submitted for legal review, is currently captured within the Human Resources Business Engine (HRBE). HRBE is the case management system utilized by HRM LER, the CBP office responsible for agency-wide discipline administration. Estimated Completion Date (ECD): March 31, 2019.

Recommendation 2: Require staff to document investigative findings (e.g., whether an allegation is substantiated) in the case management system, and document and disseminate associated referral procedures for adjudication.

Response: Concur. Currently, CBP OPR investigative findings are documented in OPR Reports of Investigation that are uploaded in both JICMS and HRBE. However, under CBP's uniform discipline procedure, the final determination as to whether an allegation is substantiated, is a management determination made after OPR has referred the case to HRM LER for review and action. Accordingly, LER documents in HRBE the misconduct that the proposing official has determined is actionable, along with the misconduct the deciding official substantiated. For its part, OPR will document and disseminate associated referral procedures for adjudication by developing internal protocols establishing when and how cases should be referred to LER for adjudication. ECD: March 31, 2019.

Recommendation 3: Modify its annual self-inspection program to include evaluating and testing internal controls related to the employee misconduct process.

Response: Concur. CBP OPR and HRM will continue to work with CBP's Management Inspections Division to develop Self-Inspection Program (SIP) worksheets that evaluate and test internal controls related to the employee misconduct process. The worksheets will be included in the fiscal year (FY) 2019 SIP cycle. ECD: April 30, 2019.

Recommendation 4: Monitor the duration of all cases beginning-to-end by stage and by case type.

Response: Concur. The data that would allow CBP to monitor the duration of all cases beginning-to-end by stage and case type is currently maintained in two different case management systems, OPR's JICMS and HRM's HRBE.

CBP OPR is working with the IBM Cognos Team to identify and secure funding on an existing CBP contract with the goal to upgrade the current Cognos dashboard. Once a contract is identified and funding secured, the JICMS Program Advisor will work with the Cognos Team to re-launch the OPR Executive Dashboard. OPR will work with HRM to ensure the dashboard includes the data necessary to monitor the duration of all cases beginning-to-end by stage and by case type. ECD: June 28, 2019.

Recommendation 5: Monitor the timeliness of misconduct cases according to established targets for management inquiries, administrative inquiries, and criminal and noncriminal investigations using case management system data.

Response: Concur. The capability to monitor timeliness of misconduct cases according to established targets for various case types using case management system data is dependent on the updated comprehensive OPR Executive Dashboard. The data in the OPR Executive Dashboard will be used to generate reports that will allow OPR headquarters and local OPR management to review and monitor timeliness. OPR and HRM will work together to ensure the Dashboard monitors timeliness of all misconduct cases. ECD: June 28, 2019.

Recommendation 6: Define and document the case management system data fields to be used for monitoring all established performance targets and provide related guidance to staff.

Response: Concur. CBP OPR will clearly define the data fields used to measure performance within the OPR Executive Dashboard. Once developed, OPR will issue guidance to personnel on the OPR Executive Dashboard data fields. ECD: June 28, 2019.

GAO recommended that the Director of ICE:

Recommendation 7: Revise policy or guidance to ensure documentation of required control activities in its case management system, such as supervisory review of management inquiries, legal review of OPR-investigated cases, data verification, and recusal.

Response: Concur. ICE OPR is committed to continuously improving the documentation of controlled activities in its case management system. The ICE OPR Assistant Director (AD) for Investigations, or their designee, will issue guidance to ICE OPR and ICE components regarding the mandatory documentation of controlled activities (supervisory review of management inquiries, legal review of OPR-investigated cases, data verification and recusals) in JICMS. ECD: June 28, 2019.

Recommendation 8: Require staff to document the investigative findings (case resolution codes) of the management inquiries in the case management system.

Response: Concur. ICE OPR is committed to continuously improving the data quality in its case management system. The ICE OPR AD for Investigations, or their designee, will issue guidance to the ICE components regarding the mandatory documentation of a case resolution code for cases assigned to them in the case management system. ECD: June 28, 2019.

Recommendation 9: Modify its annual self-inspection program to track the status of related corrective actions to ensure they are implemented in a timely manner.

Response: Concur. ICE OPR is responsible for upholding the agency's standards for integrity and professionalism. Consequently, ICE OPR developed and oversees the implementation of the agency's SIP to create management accountability at every level of the organization and foster the professional integrity of all ICE personnel. The SIP is a vehicle through which all ICE managers and supervisors can review, address and/or verify their office, directorate and/or programmatic compliance with established policies and procedures. ICE Senior Level Officials are charged with the responsibility for overseeing the completion of the SIP for their respective unit/program/field office and designating a Senior Level Official as a SIP Certifier that is responsible for reviewing the results and ensuring effective corrective actions for all identified deficiencies are completed within 30 days of the completed SIP.

ICE OPR is currently revising the SIP policy to require ICE units/programs/field offices to maintain and safeguard all SIP documentation for four fiscal years from the closing data of the SIP. In addition, corrective actions will continue to be required to be tracked to completion by the unit/program/field office Senior Level Official or designee. Upon completion of any necessary corrective actions, the Senior Level Official must send a confirmation mail message to the ICE SIP email box to evidence that they have been completed within the requisite 30 day period. This ensures prompt remediation of deficiencies and improves accountability by the Senior Level Official or designee with the responsibility of completing the SIP. GAO promulgated "Standards for Internal Control in the Federal Government" require that:

"Management completes and documents corrective actions to remediate internal control deficiencies on a timely basis. These corrective actions include resolution of audit findings. Depending on the nature of the deficiency, either the oversight body or management oversees the prompt remediation of deficiencies by communicating the corrective actions to the appropriate level of the organizational structure and delegating authority for completing corrective actions to appropriate personnel."¹

The revisions to the ICE SIP policy, which designate an ICE Senior Level Official with the responsibility of overseeing their unit/program/field compliance with established policies and procedures, will put ICE in compliance with these standards. ECD: June 28, 2019.

¹ GAO, "Standards for Internal Control in the Federal Government," GAO-14-704G (Washington, D.C.: Sep 10, 2014) Section 17.06, page 68.

Recommendation 10: Monitor the duration of all cases beginning-to-end by stage and by case type.

Response: Concur. The ICE Office of Human Capital (OHC) and OPR Investigations will work together to establish an integrated project team (IPT) to document ICE's employee misconduct process from beginning-to-end. The IPT will specifically identify the start and end points; identify the inputs, outputs, and activities; identify the process roles; and develop the process documentation (e.g., flowchart). Additionally, the ICE Office of the Chief Financial Officer, Office of Assurance and Compliance, will provide support by monitoring and tracking this implementation of this recommendation till completion. ECD: June 28, 2019.

Recommendation 11: Monitor the timeliness of misconduct cases according to established targets for management inquiries and Employee Relations specialist review of proposal and decision of disciplinary outcomes using case management system data.

Response: Concur. ICE OPR is committed to continuously improving the timeliness of management inquiries. The ICE OPR AD for Investigations, or their designee, will issue updated guidance to the ICE components regarding the established targets for the completion of management inquiries. In addition, ICE OHC will review the timeliness of misconduct cases handled by Employee Relations according to the FY 2018 established targets, and will determine the FY 2019 performance targets with senior leadership. The CBP case management system, HRBE, will be assessed to determine the ICE data elements available to track the timeliness of misconduct cases and Employee Relations Specialist review of proposals and decisions of disciplinary outcomes. This analysis will help ICE OHC identify potential gaps and enhancements needed in HRBE to appropriately monitor the timelines of misconduct cases. ICE OHC will also work with CBP to implement any necessary enhancements to HRBE within available funding constraints. ECD: June 28, 2019.

Recommendation 12: Define and document the case management system data fields and methodology to be used for monitoring all established, performance targets and provide related guidance to staff.

Response: Concur. ICE OHC and OPR are committed to continuously improving the data quality in their case management systems. ICE OPR is currently in the process of defining and documenting JICMS data fields and the methodology used for monitoring of all established performance targets. As soon as ICE OHC Employee Relations obtains approval for the FY 2019 performance targets and is able to automatically extract the data from HRBE; they will define the data fields and methodology for all established performance targets. Once the definitions and documentation are completed, ICE OPR and OHC will develop and provide related guidance to senior leadership, OPR staff, Employee Relations personnel, and ICE components, as appropriate. ECD: June 28, 2019.

GAO recommended that the Administrator of the Transportation Security Administration (TSA):

Recommendation 13: Revise policy or guidance to ensure documentation of required control activities in its case management system, such as supervisory review of investigations, data verification and recusal.

Response: Concur. TSA's Offices of Investigations (INV), Human Capital (HC) and Professional Responsibility (PR) will update guidance where necessary to ensure documentation of required control activities where appropriate, e.g., in the case management system or the case file/work papers. Supervisor review and verification of data protocols and measurement of timeliness are documented already, depending on the entity and control it may be in the case management system or in the case file. ECD: January 30, 2019.

Recommendation 14: Develop a method for more easily connecting cases between the OOI database and ER database (e.g., such as using the same case number for the same case in both databases).

Response: Concur. TSA's INV, HC and PR currently have an Improvement Process Team (IPT) in place. The IPT includes members from INV, HC Employee Relations (ER) and PR, as well as the system administrators that are working on the development of a method to transfer cases without losing the continuity or identification ability. A fix has been put in place on the ER side which requires manual case number entry into the duplicated case by the HC-ER specialist. TSA will continue to work towards an automated solution during the 2nd quarter of FY 2019. ECD: March 31, 2019.

Recommendation 15: Modify its annual inspection process to include evaluating and testing internal controls related to the investigation of employee misconduct.

Response: Concur. TSA has a robust Management Control Objective Plan (MCOP) in place that covers the annual inspection process for PR, ER and INV. For PR and ER, 10 percent of cases receive a full audit quarterly; INV cases are reviewed by the OIG and local airports and program offices are evaluated by Risk Management teams. TSA's INV, HC and PR will further enhance the MCOP process to include evaluating and testing of the investigation of employee misconduct and the management inquiry process. ECD: October 31, 2018.

Recommendation 16: Monitor the duration of all cases beginning-to-end by stage and case type.

Response: Concur. TSA's INV, HC and PR are separate entities with different processes and which also differ for each type of case. TSA's INV, HC, and PR will expand and modify its executive dashboard to the Administrator to include monitoring the duration of all cases from beginning to end by stage and case type. The executive dashboard will be provided to the Administrator on a quarterly basis. ECD: January 31, 2019.

Recommendation 17: Monitor the timeliness of misconduct cases according to all established targets using case information system data.

Response: Concur. The capability currently exists to monitor the timeliness of misconduct cases. Documented targets are already in existence. Reports will be adjusted to include and document timeliness targets as recommended and will be added to the executive dashboard in future reports. TSA's INV, HC and PR all have existing user guides that establish these targets. There is a training curriculum that is also available to airport and program offices that cover this comprehensively. In addition, a modified executive dashboard to the Administrator will include a feature that addresses the timeliness of cases. ECD: January 31, 2019.

Recommendation 18: Define and document the case management system data fields and methodology to be used for monitoring all established, performance targets and provide related guidance to staff.

Response: Concur. User guides and training curriculums contain documented protocols, defined system data fields, methodology, performance targets and various other instructions to all system users. All entities (PR, ER and INV) have separate guides and documentation that address this issue. All system users have access to the user guides they need as applicable and can request additional training at any time. TSA's INV, HC and PR's updated and modified Dashboards, as stated in Recommendations 16 and 17, will include information for the Administrator and leadership to fix accountability throughout the review process. ECD: January 31, 2019.

Appendix III: GAO Contact and Staff Acknowledgments

GAO Contact

Rebecca Gambler at (202) 512-8777 or GamblerR@gao.gov

Staff Acknowledgments

In addition to the contact named above; Adam Hoffman (Assistant Director); Lacinda C. Ayers; Jennifer Bryant; Michele Fejfar; Eric Hauswirth; Ben Nelson; Claire Peachey; Kevin Reeves; Christine San; Janet Temko-Blinder; Mike Tropauer; and Sonya Vartivarian made key contributions to this report.

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