



Report to the Honorable Charles E.
Grassley, President Pro Tempore,
U.S. Senate

February 2020

DEPARTMENT OF JUSTICE

ATF and U.S. Marshals Service Can Further Strengthen Controls over Employee Misconduct Processes

GAO Highlights

Highlights of [GAO-20-200](#), a report to the Honorable Charles E. Grassley, President Pro Tempore, U.S. Senate

Why GAO Did This Study

Within the Department of Justice, ATF and USMS employ more than 10,000 staff responsible for protecting communities from violent criminals, investigating the illegal use of firearms, and apprehending wanted persons, among other things. Our recent studies of employee misconduct processes have highlighted the importance of internal controls to help ensure the quality and independence of these processes. We have also reported on employee misconduct investigations being used to retaliate against individuals who report wrongdoing.

GAO was asked to review ATF and USMS employee misconduct investigation and disciplinary processes. This report (1) summarizes data on the number, characteristics, and outcomes of ATF and USMS misconduct investigations that were opened from fiscal years 2014 through 2018 and were closed by the time of GAO's review, and (2) examines the extent to which ATF and USMS have developed, implemented, and monitored internal controls for their employee misconduct processes. For each component, GAO reviewed policies, guidance, and performance reports; analyzed case management system data; analyzed random samples of misconduct cases; and interviewed officials involved in investigation and discipline processes.

What GAO Recommends

GAO is making seven recommendations, including that USMS ensure supervisory review is documented; and that ATF and USMS develop policy for verifying system information, establish measures to monitor the timeliness of investigations, and improve monitoring of employee misconduct processes. DOJ concurred with our recommendations.

View [GAO-20-200](#). For more information, contact Triana McNeil at (202) 512-8777 or McNeilT@gao.gov

February 2020

DEPARTMENT OF JUSTICE

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What GAO Found

From fiscal years 2014 through 2018, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) and U.S. Marshals Service (USMS) collectively investigated about 3,900 allegations of employee misconduct, as shown in the table below. About one-half of these investigations were closed with no disciplinary action because the components found that the allegations were unsubstantiated. For allegations that were substantiated by an investigation, the most common ATF offenses were poor judgment and failure to adequately secure property, while the most common USMS offenses were general violations of policy or procedure and failure to follow instruction. The most common outcomes for both ATF and USMS substantiated investigations were discipline including suspensions of up to 14 days and lesser penalties such as verbal or written warnings. During this period, ATF and USMS investigated over 300 allegations of management retaliation, with few resulting in discipline.

Table: Number of ATF and USMS Employee Misconduct Investigations, Fiscal Years (FY) 2014 through 2018

	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018	FY 14-18
ATF	267	312	326	336	340	1,581
USMS	480	541	555	435	336	2,347

Source: GAO analysis of Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) and U.S. Marshals Service (USMS) data. | GAO-20-200.

ATF and USMS have developed some internal controls for managing their employee misconduct investigation and disciplinary processes, but have not consistently documented or monitored key control activities. For example:

- USMS policy requires supervisory review of district and division investigations, but the agency has not consistently documented this control in accordance with policy. ATF and USMS also lack policy for verifying the accuracy and completeness of information in employee misconduct systems. Ensuring supervisory review is documented as required and developing policy for verifying information in misconduct systems would provide greater assurance that controls are operating as intended.
- ATF and USMS have established policies and goals related to timeliness in completing various types of employee misconduct investigations (e.g., within 120 days). However, ATF has not established performance measures to monitor progress toward meeting the goals. USMS has measures to monitor timeliness for some types of investigations, but not for others. Establishing measures to monitor timeliness of investigations would provide more complete information to ATF and USMS managers responsible for oversight.
- ATF and USMS have established oversight mechanisms, such as internal management reviews, to monitor certain aspects of the components' operations, such as financial operations. However, ATF and USMS have not fully used these mechanisms to monitor internal controls related to employee misconduct processes, which would help ATF and USMS management ensure that controls are implemented as required by policy.

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Abbreviations

ATF	Bureau of Alcohol, Tobacco, Firearms and Explosives
DOJ	Department of Justice
EEO	Equal Employment Opportunity
OIG	Office of Inspector General
OSC	Office of Special Counsel
USMS	United States Marshals Service

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February 19, 2020

The Honorable Charles E. Grassley
President Pro Tempore
United States Senate

Dear Mr. Grassley:

Our recent studies of employee misconduct investigation and disciplinary processes within the federal government have highlighted the importance of internal controls to help ensure the quality, independence, and timeliness of these processes.¹ For example, in July 2018, we reported that federal agencies needed to take additional actions to effectively address employee misconduct.² We have also previously reported on individuals who report wrongdoing being retaliated against through investigations of employee misconduct.³

Within the Department of Justice (DOJ), the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) and U.S. Marshals Service (USMS) employ more than 10,000 staff responsible for protecting communities from violent criminals, investigating the illegal use of firearms and explosives, apprehending wanted criminals, and seizing assets, among other things.⁴ ATF and USMS have each established processes to

¹The term “employee misconduct” does not have a general definition in a statute or government-wide regulation. Agencies may elaborate on types of misconduct in handbooks and other internal guidance. However, according to the Office of Personnel Management, there is a large body of decisional law by the Merit System Protection Board addressing discipline for employee misconduct in the federal government that contains definitions of various forms of misconduct, such as “insubordination,” “excessive absence,” and “misuse of government property.” There are also instances in law and regulation where specific types of misconduct are referenced concerning appointment into the competitive service. See 5 U.S.C. §§ 7301-7363. Further, 5 U.S.C. Chapter 73 (Suitability, Security, and Conduct) addresses certain types of misconduct of executive branch employees.

²GAO, *Federal Employee Misconduct: Actions Needed to Ensure Agencies Have Tools to Effectively Address Misconduct*, [GAO-18-48](#) (Washington, D.C.: July 16, 2018); and GAO, *Department of Homeland Security: Components Could Improve Monitoring of the Employee Misconduct Process*, [GAO-18-405](#) (Washington, D.C.: July 31, 2018).

³See, for example, GAO, *Whistleblower Protection: Additional Actions Needed to Improve DOJ’s Handling of FBI Retaliation Complaints*, [GAO-15-112](#) (Washington, D.C.: January 23, 2015).

⁴ATF employed approximately 5,100 staff and USMS employed approximately 5,200 staff in fiscal year 2018.

receive, investigate, and adjudicate allegations of employee misconduct. Depending on the facts and circumstances of an investigation, possible outcomes of discipline by the components can include no action, letter of reprimand, suspension, and termination.

You asked us to review ATF and USMS employee misconduct investigation and adjudication processes. This report (1) summarizes data on the number, characteristics, and outcomes of ATF and USMS employee misconduct investigations that were opened during fiscal years 2014 through 2018 and were closed at the time of our review, and (2) examines the extent to which ATF and USMS have developed, implemented, and monitored key internal controls for their employee misconduct investigation and adjudication processes, including management retaliation against employees who report wrongdoing.

To summarize data on the number, characteristics, and outcomes of ATF and USMS employee misconduct investigations, we analyzed data from each component's case management systems for all investigations that were opened during fiscal years 2014 through 2018—the most recent available data over the past 5 years—and were closed at the time of our review. These data included misconduct investigations related to allegations of management retaliation. Where possible, we combined similar categories of offenses. We also reviewed each component's annual reports that described their investigations. To summarize data related to ATF and USMS employees filing claims of management retaliation through formal channels other than ATF and USMS Internal Affairs Division (Internal Affairs), we analyzed fiscal year 2014 through 2018 data from the DOJ Office of Inspector General (OIG), the U.S. Office of Special Counsel (OSC), and each of the components' Equal Employment Opportunity (EEO) office.⁵ We also analyzed EEO and employee misconduct data to determine how many employees who filed an EEO claim of management retaliation were also subject to a misconduct investigation.

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

⁵OSC is an independent federal investigative and prosecutorial agency. According to OSC, the agency's primary mission is to safeguard the merit system by protecting federal employees and applicants from prohibited personnel practices, including reprisal for whistleblowing.

inaccurate data, including missing data about dates, we found the data sufficiently reliable for providing general information on the nature and characteristics of employee misconduct investigations and adjudications.

To determine the extent to which ATF and USMS have developed internal controls to help ensure the quality and independence of investigation and adjudication processes, we reviewed each component's policies, procedures, and guidance for addressing employee misconduct. We also interviewed ATF and USMS officials to help us determine which control activities they considered important for ensuring the quality and independence of investigations and adjudications of employee misconduct. We then compared each component's procedures for investigations and adjudications with their respective policies and guidance, as well as with criteria in *Standards for Internal Control in the Federal Government*, *Quality Standards for Investigations*, and *Department of Justice Community of Practices for Internal Affairs*.⁶ Based on our review of policies and procedures, interviews with ATF and USMS officials, and relevant standards and guidance, we determined that the key internal controls are investigative supervisory review, legal sufficiency review, DOJ OIG review, and verification of case management system data.

To assess the extent to which ATF and USMS have 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 for investigation from fiscal years 2014 through 2018 and were closed at the time of our review. For ATF, this included headquarters' investigations that the agency closed as of April 2019 and division investigations (management referrals for action) that were closed as of July 2019. For USMS, this included investigations that the agency closed as of March 2019 (for cases opened during fiscal years 2014 through 2017) and April 2019 (for cases opened during fiscal year 2018). Strata were separate for each component, and included the severity of misconduct and whether the employee under investigation had also filed a claim of management retaliation to their respective EEO

⁶GAO, *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; and U.S. Department of Justice Office of Community Oriented Policing Services, *Standards and Guidelines for Internal Affairs: Recommendations from a Community of Practice* (Washington, D.C.: Aug. 21, 2009).

office. We used fiscal year 2014 through 2018 data from the components' information systems from which we randomly selected a generalizable sample of 65 misconduct cases for ATF and 100 cases for USMS.⁷ See appendix I for additional information on our sampling methodology.

We analyzed these sample cases to test whether the components consistently operated and documented the key internal control activities appropriately in their case management systems or other case file records. Specifically, we tested each misconduct case by analyzing data recorded in ATF and USMS systems to determine whether the component had documented key control activities, which serves as evidence that the component implemented the control activities. We also reviewed the case file records that each component retains outside its case management information systems (e.g., physical case files) for documentation of supervisory investigative review, legal sufficiency review, and case management data. To assess whether the components forwarded allegations to the DOJ OIG for review, we compared ATF and USMS records with DOJ OIG records. We also reviewed component policies, procedures, and management reports to determine the extent to which the agencies had established performance measures and monitored the timeliness of investigations. Further, we examined mechanisms used by each component for monitoring compliance with internal controls (e.g., annual self-assessment programs).

To address both objectives, we interviewed officials from each component involved in employee misconduct processes. Specifically, we met with officials from ATF and USMS Internal Affairs Division, which are the organizations that investigate allegations centrally at agency headquarters. ATF's Internal Affairs resides within the Office of

⁷Stratified 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.

Professional Responsibility and Security Operations, which reports directly to the ATF Deputy Director. USMS Internal Affairs reports directly to the USMS Deputy Assistant Director within the Office of Professional Responsibility. We also interviewed human resources and employee relations officials and officials from other offices involved with the adjudication process at each component, including the Offices of General Counsel. Further, we interviewed ATF and USMS officials 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 any past issues related to processing employee misconduct allegations and the status of their resolution, we reviewed our past work in this subject area, and reports on federal employee misconduct from the DOJ Office of Inspector General.

Additionally, for both objectives, we conducted site visits to review local procedures and interview field staff involved in handling employee misconduct cases for each component. We selected locations based on geographic dispersion and the high volume of employee misconduct cases associated with their locations. For both ATF and USMS, we interviewed officials who conduct inquiries of employee misconduct (investigations referred to local management by Internal Affairs) in Georgia, the District of Columbia, and Texas. Specifically, we interviewed officials at ATF's Atlanta and Houston Field Divisions and the Firearms and Explosives Services Division located in Martinsburg, West Virginia, each of which manages a high volume of misconduct investigations. We also interviewed USMS officials from the Southern Texas District, who manage a high volume of misconduct investigations, and from USMS District of Northern Georgia and District of Columbia District Court based on geographic locations. At these locations, we also interviewed senior officials—ATF Special Agents in Charge and Assistant Special Agents in Charge, and Division Chiefs and U.S. Marshals and Chief Deputy Marshals who are responsible for adjudicating employee misconduct cases. During these site visits, we also met with other staff who assist these senior officials with the adjudication process. The information provided by ATF and USMS officials at these locations is not generalizable to all employees at each component, but provided insights into their respective employee misconduct processes.

We conducted this performance audit from August 2018 to February 2020 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

According to ATF and USMS policy, the Directors of ATF and USMS have the authority to develop various policies, procedures, and guidance that specify the steps the components must or should take while investigating and adjudicating employee misconduct.

Investigation Process

ATF and USMS can receive allegations of employee misconduct from a variety of sources, including agency staff, the general public, and the DOJ OIG. Allegations of employee misconduct can include, for example, not following procedures associated with managing government-issued property or not reporting time and attendance accurately. Employee misconduct can occur outside of the workplace as well, such as local arrests of employees for domestic violence or driving under the influence of alcohol. ATF and USMS each have an intake or hotline function that is to initially assess the reported information and seriousness of each allegation to determine the appropriate next step in terms of which group or office within their respective component will conduct an investigation, if warranted. The investigation process involves engaging in fact-finding to the extent necessary to make an informed decision on the merit of an allegation.

In accordance with ATF and USMS policy, for each misconduct allegation received, the components' investigative office (Internal Affairs) must provide the DOJ OIG with "right of first refusal." This review allows the DOJ OIG to either open an investigation or send the allegation back to the component for action. If the DOJ OIG declines the opportunity to investigate, the components assign the case to Internal Affairs. Specifically:

- For ATF, cases that involve matters related to integrity are investigated by ATF Internal Affairs, while other cases are generally referred to ATF divisions to conduct inquiries (known as management referrals).⁸
- USMS typically assigns higher-level (i.e., more egregious) misconduct cases to Internal Affairs. For cases typically considered to involve

⁸ATF management referrals to divisions are either for information or action. Management referrals for information are forwarded to divisions for informational purposes only, while management referrals for action require divisions to conduct additional fact-finding and adjudicate cases locally.

lower-level offenses, USMS managers in divisions or districts conduct inquiries or fact finding locally.

Each component has policies, procedures, and guidance for its Internal Affairs and local management for investigating cases of employee misconduct. Based on the investigative findings, the responsible office for each component can make a preliminary determination of whether there is sufficient evidence to support an allegation.

Adjudication Process

After investigations are completed, each component has an adjudication process whereby delegated officials propose discipline. For ATF, a headquarters entity—referred to as the Professional Review Board—proposes discipline for all cases investigated by ATF Internal Affairs. For cases involving misconduct by ATF employees outside of Internal Affairs jurisdiction, division management proposes and decides discipline. USMS utilizes various, delegated agency officials to propose and decide discipline depending on the type of investigation. Discipline for both ATF and USMS employees can range in severity, depending on the unique findings and circumstances of each investigation. For misconduct within USMS warranting a suspension of 14 days or less, local management proposes and decides discipline.

For both ATF and USMS, during adjudication, proposing and deciding officials determine whether an allegation is substantiated or unsubstantiated when considering if an action is warranted. For substantiated cases that are determined to warrant action, components use their respective Table of Offenses and Penalties as a guide for disciplinary actions, which provides guidance for determining appropriate penalties. Each component is to provide employees with a letter of proposed discipline and an opportunity to respond 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 are to consider particular mitigating and aggravating factors on a case-by-case basis when determining the appropriate penalty for an act of employee misconduct. The relevant factors that are 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. This includes considering whether the offense was intentional or inadvertent, or was committed maliciously or for gain; the employee's past disciplinary record;

and whether the offense was frequently repeated. For both ATF and USMS, there are three categories of employee misconduct outcomes:

- **Corrective/Non-disciplinary action.** This is an administrative or non-disciplinary 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 actions resulting in a letter of reprimand up 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, non-pay status for up to and including 14 days.⁹
- **Adverse action.** This involves a suspension of more than 14 days (including an indefinite suspension), demotion to a lower pay band or rate of pay, or removal (an involuntary separation from employment).¹⁰ According to the U.S. Merit Systems Protection Board, an indefinite suspension is appropriate when evidence exists to demonstrate misconduct of a serious nature, such as an employee has committed a crime for which a sentence of imprisonment can be imposed, when the agency has concerns that an employee's medical condition makes the person's presence in the workplace dangerous or inappropriate, or when an employee's access to classified information has been suspended.¹¹ Also, according to the board, a demotion is a reduction in grade or a reduction in pay, while a removal terminates the employment of an individual.

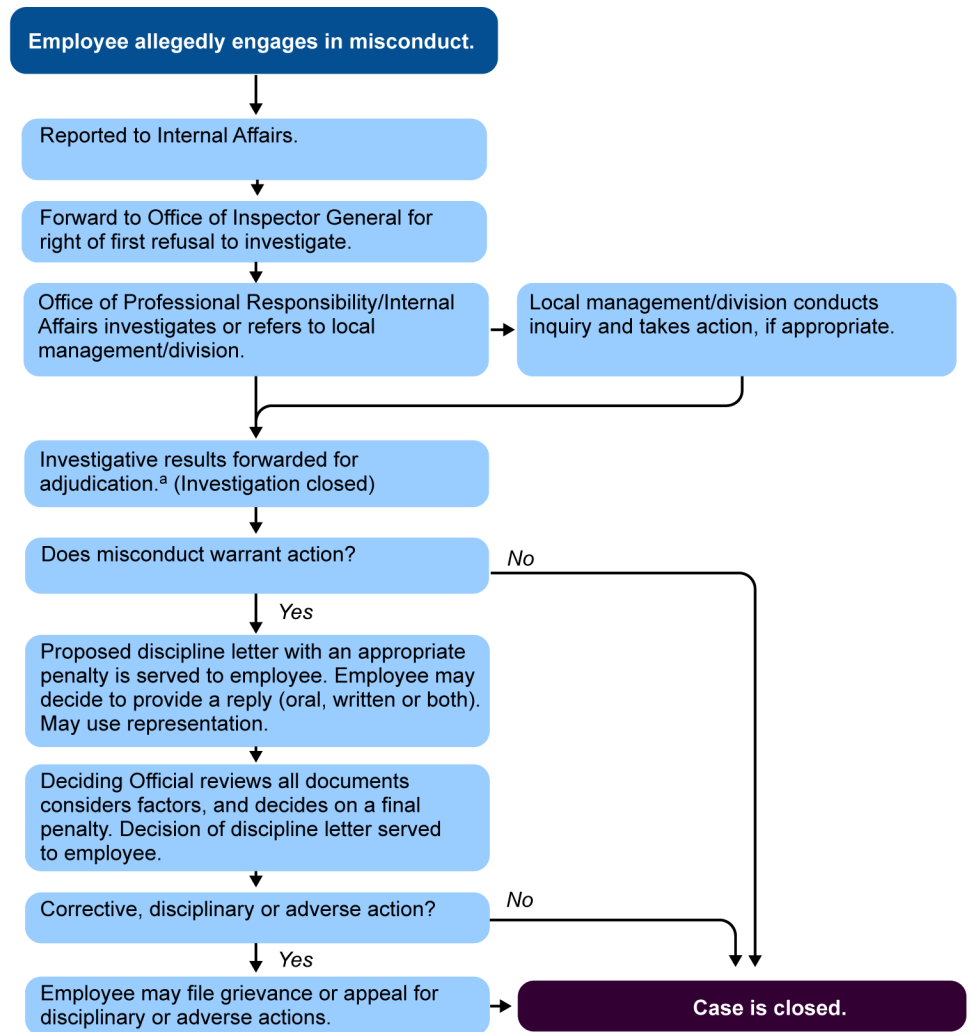
Figure 1 provides an overview of ATF and USMS employee misconduct processes.

⁹See 5 U.S.C. §§ 7501-7502.

¹⁰An 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.

¹¹The mission of the U.S. Merit Systems Protection Board is to protect the merit system principles and promote an effective federal workforce free of prohibited personnel practices.

Figure 1: Overview of Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) and U.S. Marshals Service (USMS) Employee Misconduct Processes



Source: GAO analysis of ATF and USMS procedures. | GAO-20-200

^aATF forwards completed internal investigations to its Professional Review Board, a panel of management officials. USMS investigation results are forwarded to Human Resources.

Case Management Systems

ATF and USMS have case management systems that are designed to maintain 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. ATF’s Professional Review Board uses another system to manage outcome data associated with Internal Affairs investigations. After adjudication of ATF Internal Affairs

investigations, the board is to provide this outcome data to ATF Internal Affairs for inclusion in its system. Similarly, after the adjudication of management referrals for action, ATF managers are to provide outcome data to ATF Internal Affairs to include in its system. In addition to the system USMS uses to manage Internal Affairs investigations, the agency has a separate system to record outcome data.

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**ATF Initiated About 1,600
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**ATF Investigations and
Allegations**

Our analysis of ATF employee misconduct data found that ATF opened 1,581 employee misconduct investigations during fiscal years 2014 through 2018.¹² As shown in table 1, the majority of ATF misconduct cases during this period were management referrals to divisions for informational purposes or for action.

¹²ATF employed approximately 5,000 staff annually in fiscal years 2014 through 2018. ATF provided investigation and adjudication data as of April 18, 2019, for Internal Affairs investigations and as of July 2, 2019, for investigations referred to local management.

Table 1: Number of Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) Employee Misconduct Investigations by Responsible Office, Fiscal Years (FY) 2014 through 2018

Responsible office	Number of misconduct investigations					Total, FY14-18
	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018	
Internal Affairs Investigations	49	62	53	41	61	266
Management Referrals For Information ^a	138	155	212	177	147	829
Management Referrals for Action ^b	72	89	56	108	114	439
Department of Justice Office of Inspector General Investigations	8	6	5	10	18	47
Total	267	312	326	336	340	1,581

Source: GAO analysis of ATF data. | GAO-20-200.

Note: ATF employed approximately 5,000 staff annually in fiscal years 2014 through 2018.

^aManagement referrals for information are forwarded to ATF divisions for informational purposes only.

^bManagement referrals for action require ATF divisions to conduct additional fact-finding and adjudicate cases locally.

Table 2 shows that the most common allegation category of misconduct that ATF received from fiscal year 2014 through 2018 was job performance failure, representing 8 percent of all allegations, which includes not attending meetings, submitting reports of inspection late, or becoming agitated during performance feedback, among other things.

Table 2: Top Five Allegation Categories in Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) Employee Misconduct Investigations, Fiscal Years 2014 through 2018

Allegation categories	Number of allegations	
	(2,737)	Percent of allegations
Job Performance Failure	210	8
Theft/Loss of Government Funds	155	6
Theft/Loss of Government Property	147	5
Law Enforcement Contact	127	5
Theft/Loss ATF Credentials/Badge/ID	120	4
Total allegations for these categories	759	28

Source: GAO analysis of ATF data. | GAO-20-200.

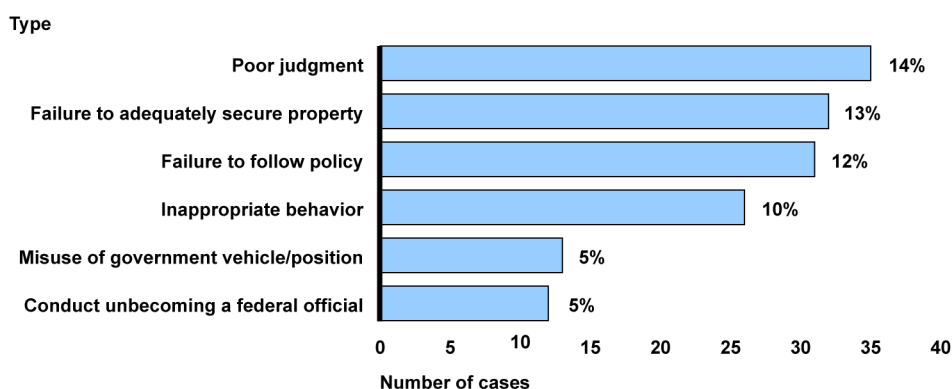
Note: Each investigation can include more than one allegation, and in such cases ATF did not document which one was the primary offense. In total, there were 166 categories of allegations in the ATF case management system for the years examined.

ATF Offense Categories and Disciplinary Outcomes

After investigations are completed, results are forwarded to the Professional Review Board for adjudication, and adjudication results are to be entered into ATF's Human Resources system. For investigations

that were adjudicated during the period we reviewed, six types of offense categories made up about 60 percent of those substantiated and captured in the ATF Human Resources system, as shown in figure 2. The exercise of poor judgment (14 percent) and the failure to adequately secure government property (13 percent) were the most common offenses.¹³

Figure 2: Top Offenses Substantiated by Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) Investigations, Fiscal Years 2014 through 2018



Source: GAO analysis of ATF data. | GAO-20-200

Note: Figure reflects adjudication data as of April 2019. GAO combined similar categories to report the six most common offenses.

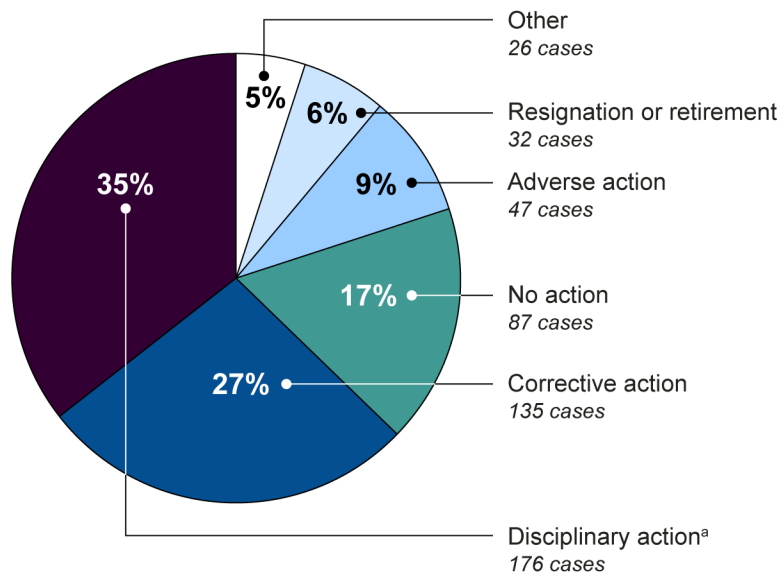
The employee misconduct outcomes for offenses ranged from corrective actions (e.g., letters of counseling or caution) to adverse actions such as suspensions and removals.¹⁴ Specifically, of the 503 investigations that had final actions reported in ATF case management system, disciplinary

¹³According to ATF policy, the exercise of poor judgment includes, for example, conviction of a criminal offense, contempt of court, violation of probation, and failure to appear in court. Failure to adequately secure government property includes loss of badge, credentials, or ATF computer.

¹⁴Of the 1,581 ATF investigations and management referrals, 503 included final outcomes. ATF Internal Affairs also referred 829 cases to management for information. These management referrals for information are allegations that are considered to be unsubstantiated and the only action is to inform the manager of the subject and nature of the allegation. There were also five cases where the action taken was listed as proposed or a settlement agreement. Another 245 investigations did not have final actions listed in the ATF data. According to ATF, 40 of these cases were still open at the time of our review; another 151 had missing data in that field and the remaining cases had unknown or non-ATF employees as subjects.

action—suspensions of 15 days or less and letters of reprimand—accounted for 176 (about 35 percent) of the final outcomes.¹⁵ Also, 135 (about 27 percent) of investigations adjudicated resulted in corrective actions (cautions such as a verbal or written warning). Further, 87 (about 17 percent) of these 503 investigations and management referrals were closed for various reasons, such as insufficient evidence of an employee’s inappropriate behavior or clearance of the charges after investigation, while adverse actions represented 47 (about 9 percent) of these outcomes, as shown in figure 3.

Figure 3: Outcomes of Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) Investigations, Fiscal Years 2014 through 2018



Source: GAO analysis of ATF data. | GAO-20-200

Note: This figure represents the 503 investigations that were adjudicated and had final outcomes recorded in ATF’s case management system at the time of our review.

^aATF’s management system data grouped suspensions of 11 to 15 days in the same category, although adverse actions are only those suspensions of 15 days or more. We have assigned the 11 to 15 day suspension category to the “Disciplinary Action” category for purposes of this figure.

¹⁵ATF management system data grouped suspensions of 11 to 15 days in the same category, though adverse actions are only those suspensions of 15 days or more. We have assigned the 11 to 15 day suspension category to the “Disciplinary Action” category for purposes of this report.

USMS Completed About 2,300 Investigations of Employee Misconduct from Fiscal Years 2014 through 2018

USMS Investigations and Allegations

Our analysis of USMS employee misconduct data show that USMS opened 2,347 employee misconduct investigations during fiscal years 2014 through 2018 that were also closed at the time USMS responded to our request for information.¹⁶ As shown in table 3, USMS Internal Affairs investigated the majority of the component’s employee misconduct cases.

Table 3: Number of U.S. Marshals Service (USMS) Employee Misconduct Investigations by Responsible Office, Fiscal Years (FY) 2014 through 2018

Responsible office	Number of misconduct cases processed					Total, FY14-18
	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018	
Internal Affairs Investigations	295	308	329	314	261	1,507
Local Management Investigations	142	168	181	96	69	656
Department of Justice Office of Inspector General Investigations	43	65	45	25	6	184
Total	480	541	555	435	336	2,347

Source: GAO analysis of USMS data. | GAO-20-200.

Note: USMS employed approximately 5,000 staff annually in fiscal years 2014 through 2018. USMS provided investigation data in two separate responses to our information requests. This table reflects USMS investigations that were opened during fiscal years 2014 through 2017 and closed as of March 13, 2019, and opened during fiscal year 2018 and closed as of April 26, 2019.

As shown in table 4, the most common misconduct allegations for USMS were violations of the code of professional responsibility (21 percent),

¹⁶USMS employed approximately 5,000 staff annually in fiscal years 2014 through 2018. USMS provided investigation data as of March 13, 2019, for fiscal years 2014 through 2017 and April 26, 2019, for fiscal year 2018. USMS provided corresponding data on the adjudication of the investigations (resulting employee actions) as of March 27, 2019, for fiscal years 2014 through 2017 and May 3, 2019, for fiscal year 2018.

conduct unbecoming or discourteous behavior (13 percent), and failure to follow procedures (12 percent).¹⁷

Table 4: Top Six Allegation Categories in U.S. Marshals Service (USMS) Employee Misconduct Investigations, Fiscal Years 2014 through 2018

Allegation categories	Number of allegations (4,087) ^a	Percent of allegations
Violation of the Code of Professional Responsibility	857	21
Conduct Unbecoming/Discourteous Behavior	586	13
Failure to Follow Procedure	510	12
Job Performance Failure	262	6
Misuse of Position	219	5
Firearm/Weapon Use	186	5
Total allegations for these categories	2,620	63^b

Source: GAO analysis of USMS data. | GAO-20-200

^aA case can include more than one allegation, and in such cases USMS did not document which one was the primary possible offense. There were 69 categories of allegations in the USMS case management system for the years examined.

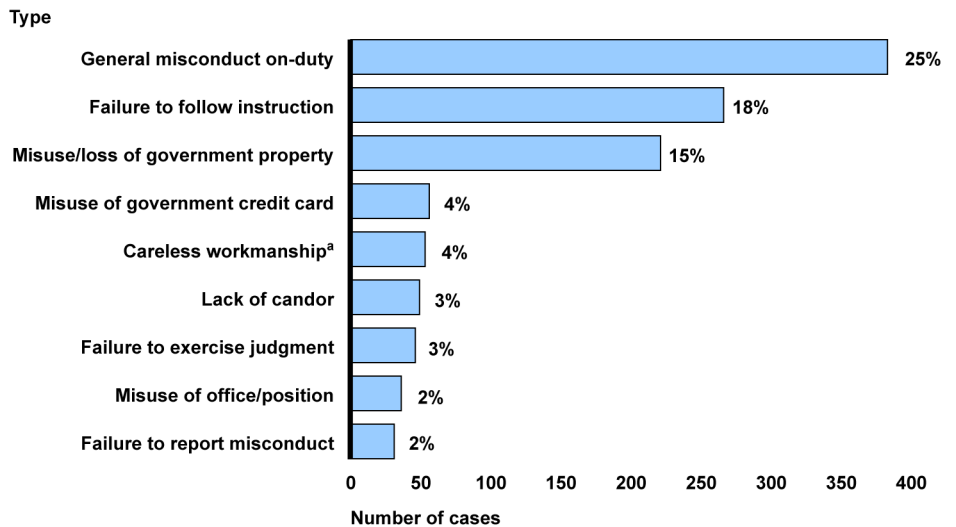
^bTotal percent of allegations for the top six categories equals 63 due to rounding.

USMS Offense Categories and Disciplinary Outcomes

As shown in figure 4, general misconduct while on duty and failure of staff to follow instructions were the most frequent offenses from fiscal years 2014 through 2018, representing 383 (about 25 percent) and 266 (about 18 percent) of offenses respectively.

¹⁷Violations of the USMS code of professional responsibility can include, but are not limited to, improperly disclosing official information, accepting gifts in connection with official duties, operating a government-owned vehicle improperly, not securing a weapon, and visiting a detail assignment site during non-duty hours. Failure to follow procedure includes failure to follow supervisory instructions and written or oral instructions.

Figure 4: Top Offenses Substantiated by U.S. Marshals Service Investigations, Fiscal Years 2014 through 2018

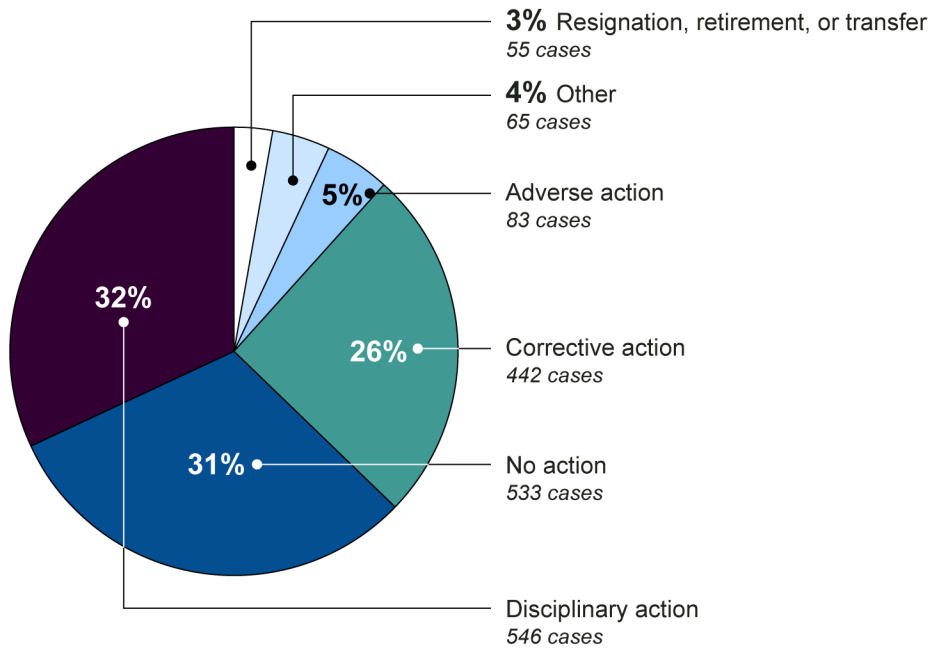


Source: GAO analysis of U.S. Marshals Service data. | GAO-20-200

^aCareless workmanship is a lack of thoroughness, an employee not showing full effort in their work, lack of attention to important details, negligence, or failure to ensure task is fully completed according to policy and office procedures.

Additionally, according to USMS adjudication data, of the 2,347 investigations that were opened in fiscal years 2014 through 2018, USMS had adjudicated 1,729 misconduct cases at the time USMS responded to our request for information (March 2019 for investigations opened in fiscal years 2014 through 2017 and April 2019 for investigations opened in fiscal year 2018). As shown in figure 5, the most common disciplinary outcomes for USMS were non-adverse actions (corrective and disciplinary actions), which accounted for 988 (about 58 percent) of final outcomes. USMS did not take disciplinary action on 533 (about 31 percent) of completed investigations forwarded for adjudication. The deciding official will not determine an action against an employee if he or she does not believe the allegations warrant action. Adverse actions were less common, with removals, suspensions of 15 days or more, and demotions accounting for 83 (about 5 percent) of all employee actions. The remaining 120 (about 7 percent) of completed investigations forwarded for adjudication resulted in retirements, resignations, transfers and other outcomes such as settlement agreements.

Figure 5: Outcomes of U.S. Marshals Service Investigations, Fiscal Years 2014 through 2018



Source: GAO Analysis of U.S. Marshals Service data. | GAO-20-200

Note: Percentages do not add to 100 due to rounding. Of the 1,729 records of adjudication during this period, five are not included in this figure due to incomplete data related to the outcome.

Over 300 Management Retaliation Claims from ATF and USMS Employees Were Investigated In Fiscal Years 2014 through 2018, with Few Resulting in Discipline

According to the U.S. Merit Systems Protection Board, to prove a claim of management retaliation, the investigation must show that the employee engaged in a protected activity (e.g., filing an EEO claim); the agency official with knowledge of the employee’s protected activity took, failed to take, or threatened to take a personnel action against the employee; and there is a causal connection between the protected activity and the personnel action. From fiscal years 2014 through 2018, ATF and USMS employees submitted 70 claims of management retaliation directly to their Internal Affairs division or the DOJ OIG, and about 240 to their EEO Office. OSC does not record data in its case management system related to DOJ employee disclosures (claims) by component.¹⁸

¹⁸OSC publically reports substantiated findings of its investigations that identify the DOJ component.

ATF, USMS, and DOJ OIG
Investigations

From fiscal years 2014 through 2018, ATF, USMS, and the DOJ OIG completed 70 investigations of employee misconduct that alleged management retaliation.

ATF Internal Affairs retaliation investigations. According to ATF investigations data, from fiscal years 2014 through 2018, ATF Internal Affairs investigated 23 cases alleging management retaliation. Of these 23 cases, Internal Affairs referred 20 to division management for informational purposes. Of the three cases that were investigated by ATF, two cases were investigated by division management and resulted in the employees being counseled by their supervisors. The third case was investigated by Internal Affairs and resulted in one employee receiving a clearance letter and another receiving a letter of caution, with another two employees retiring.¹⁹

USMS Internal Affairs retaliation investigations. According to USMS investigations data, from fiscal years 2014 through 2018, USMS Internal Affairs investigated 26 cases alleging management retaliation. Of these 26 cases, 12 were closed after the investigation was completed due to insufficient evidence. Of the remaining 14 cases, four resulted in employees retiring during or after adjudication, four had no employee action, three closed due to ongoing related cases, and there was one oral admonishment, one letter of counseling, and one suspension of 14 days.²⁰

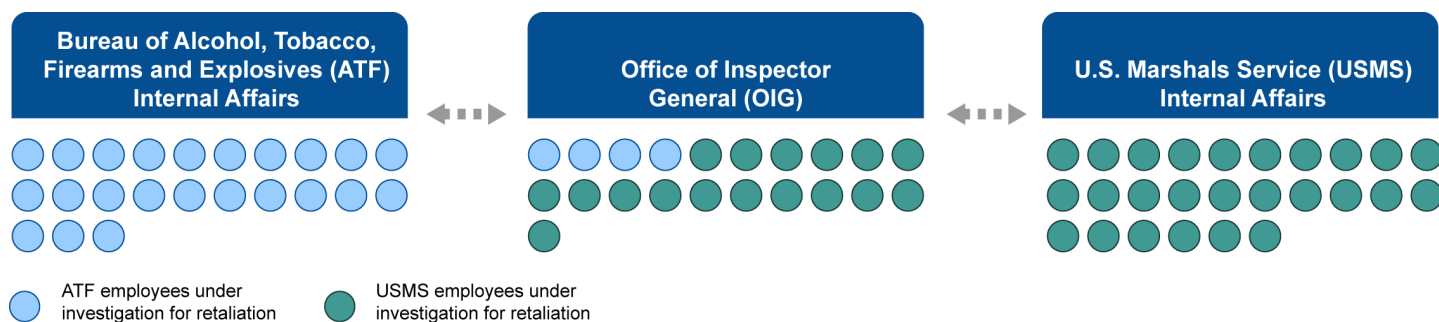
DOJ OIG retaliation investigations. According to our analysis of DOJ OIG data, from fiscal years 2014 through 2018, the DOJ OIG investigated 21 ATF or USMS cases alleging management retaliation (four ATF cases and 17 USMS cases). The DOJ OIG filed all four ATF cases in its management system for informational purposes only (no action), and also sent one of the four cases to ATF for informational purposes. Of the 17 USMS cases, the DOJ OIG filed 12 cases in its management system for informational purposes (no action), found that three cases lacked sufficient evidence, closed one case due to one of the involved employees being reassigned and the other resigning, and in one case made a procedural recommendation to the Director of USMS. Figure 6

¹⁹A clearance letter may be issued when no misconduct is substantiated and no report is forwarded to adjudicators for disposition.

²⁰USMS provided updated information on these 26 cases in August 2019. Although each of these 26 cases included an allegation of management retaliation in USMS's investigation data, after the completion of the investigations, none of these cases were categorized as management retaliation in USMS outcome data.

shows the number of ATF, USMS, and DOJ OIG management retaliation investigations from fiscal years 2014 through 2018.

Figure 6: Number of ATF, USMS, and DOJ OIG Management Retaliation Investigations, Fiscal Years 2014 through 2018



Source: GAO analysis of ATF, U.S. Marshals Service, and DOJ Office of Inspector General data. | GAO-20-200

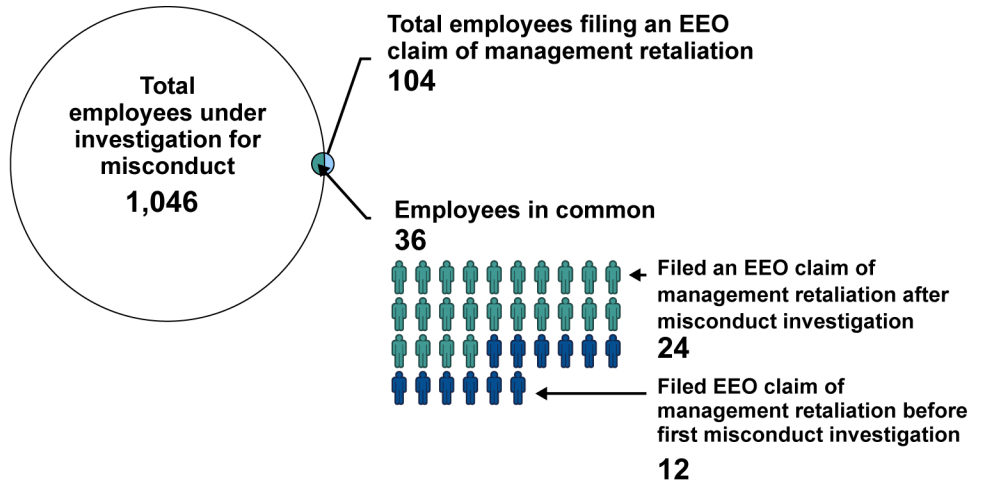
ATF and USMS EEO Offices Investigations

ATF and USMS employees may file claims of management retaliation through their agency’s EEO office. We analyzed ATF and USMS employee misconduct and EEO data to determine (1) the number of employees who had filed an EEO claim of management retaliation and (2) whether these employees were also subject to a misconduct investigation.

ATF EEO management retaliation investigations. From fiscal years 2014 through 2018, the ATF EEO Office received 128 claims from 104 employees that included management retaliation as the basis, but none of these claims have been found to support a finding of retaliation. ATF EEO and employee misconduct data show that employees in 54 of the 128 EEO cases (36 total individuals) were also subject to misconduct investigations that were adjudicated during this time period. Of the 36 employees, 24 submitted their EEO claim subsequent to their misconduct investigation. The remaining 12 employees submitted their EEO claim prior to their first employee misconduct investigation.²¹ Figure 7 shows the number of ATF employees who filed EEO claims of management retaliation and were also the subject of an employee misconduct investigation.

²¹ATF and USMS EEO claim data did not include information on final agency decisions that would indicate whether employee misconduct investigations were used by management as retaliation.

Figure 7: Management Retaliation Claims Received by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) Equal Employment Opportunity (EEO) Office, Fiscal Years 2014 through 2018



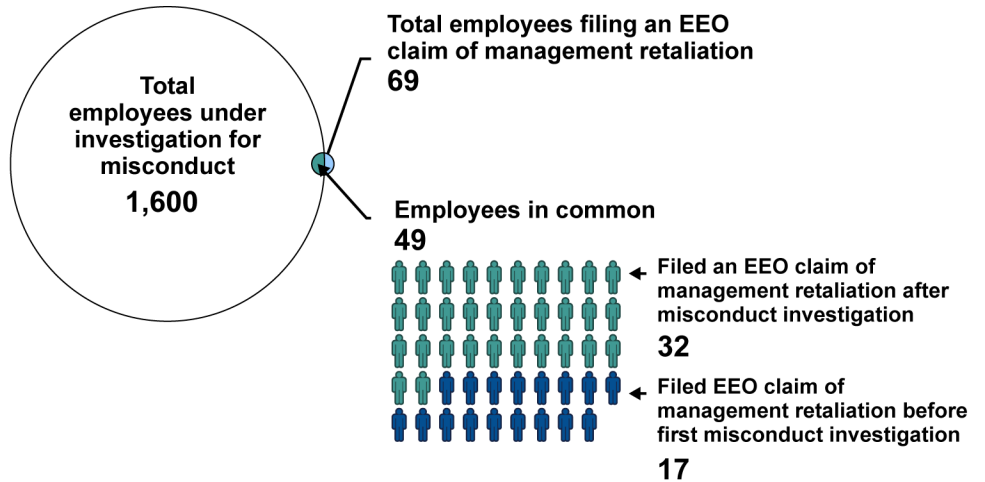
Source: GAO analysis of ATF data. | GAO-20-200

Note: The 1,046 individuals under investigation for misconduct is the number of unique individuals for the 1,581 investigations ATF conducted from fiscal years 2014 through 2018.

USMS EEO retaliation claims. From fiscal years 2014 through 2018, the USMS EEO Office received 110 claims from 69 individuals with management retaliation as the basis, of which one resulted in a final agency decision supporting the claim.²² USMS EEO and employee misconduct data show that individuals in 75 of the 110 EEO cases (49 total individuals) were also subject to a total of 134 employee misconduct investigations that were adjudicated from fiscal years 2014 through 2018. Of these 49 individuals, 32 submitted their EEO complaint subsequent to their misconduct investigation. The remaining 17 employees submitted their EEO claim prior to their first employee misconduct investigation, of which three claims resulted in a settlement agreement. Figure 8 shows the number of USMS employees who filed EEO claims of management retaliation and were also the subject of an employee misconduct investigation.

²²For the USMS employee with a claim of management retaliation supported by a final agency decision, this employee was not under investigation for misconduct during fiscal years 2014 through 2018.

Figure 8: Management Retaliation Claims Received by the U.S. Marshals Service (USMS) Equal Employment Opportunity (EEO) Office, Fiscal Years 2014 through 2018



Source: GAO analysis of U.S. Marshals Service data. | GAO-20-200

Note: The 1,600 individuals under investigation for misconduct is the number of unique individuals for the 2,400 approximate number of investigations conducted by USMS from fiscal years 2014 through 2018.

**U.S. Office of Special Counsel
Investigations of Management
Retaliation**

From fiscal years 2014 through 2018, OSC did not report any instances of management retaliation for ATF or USMS. OSC reported one investigation related to one USMS employee who improperly secured personally identifiable information, for which USMS took corrective actions. According to data maintained in an ATF Office of Chief Counsel case management system, ATF recorded eight instances where ATF counsel rendered assistance to OSC on retaliation-related matters.²³ USMS Office of General Counsel does not maintain OSC-related data in any USMS case management system.

²³These contacts—identified as matters—were recorded in ATF’s Office of Chief Counsel database that is used to record action by counsel. According to ATF, these would be instances where ATF counsel rendered assistance on an OSC complaint.

ATF and USMS Did Not Consistently Document Some Key Internal Controls for Processing Allegations of Employee Misconduct or Fully Monitor These Processes

ATF and USMS have incorporated some key internal controls for processing employee misconduct allegations into their policies and procedures, but have not consistently documented the implementation of these controls. ATF and USMS have also established policy requirements related to timeliness in completing employee misconduct investigations, but have not established performance measures to monitor all of these requirements. Further, both ATF and USMS have established mechanisms to monitor various aspects of the components' operations, but do not use these mechanisms to fully monitor key internal controls related to their employee misconduct investigation and adjudication processes.

ATF and USMS Documented the Implementation of Some Key Internal Controls, but Not for Others

ATF and USMS documented the implementation of some key control activities that are important for ensuring the quality and independence in processing allegations of employee misconduct.²⁴ However, they did not document other key control activities.

Supervisory review of investigations. According to *Federal Quality Standards for Investigations*, supervisory or management review of misconduct investigations helps ensure that investigations are comprehensive and performed correctly.²⁵ ATF and USMS both require this review in policy for misconduct investigations and have incorporated it in their respective procedures. Both ATF and USMS also have a policy or procedure for documenting this control activity in either their case management system or case file records.

We found that ATF consistently documented supervisory review of its employee misconduct investigations. Overall, based on our case file reviews, we estimate that 98 percent of the population of ATF investigations or management referrals for action from fiscal year 2014

²⁴Internal control activities are the actions management establishes through policies and procedures to achieve objectives and respond to risks.

²⁵*Quality Standards for Investigations*, Council of the Inspectors General on Integrity and Efficiency, November 15, 2011.

through fiscal year 2018 documented supervisory review.²⁶ For our sample, we found documentation of supervisory review in all 36 Internal Affairs investigations and all 26 management referrals for action.²⁷ We also found supervisory review for all 12 investigations or referrals in our sample with proposed adverse actions and all nine investigations or referrals in our sample that involved an individual who had filed an EEO claim of management retaliation.

For USMS, we found that the agency consistently documented supervisory review of its Internal Affairs investigations, but did not consistently document this review for its district and division investigations. Overall, based on our case file reviews, we estimate that 60 percent of the population of USMS investigations (2,347) from fiscal year 2014 through fiscal year 2018 documented supervisory review.²⁸ For our samples, we found documentation of supervisory review in 29 out of 30 of Internal Affairs investigations. However, for USMS district and division investigations, we found that 23 of 59 investigations had documentation of supervisory review through the required use of a field incident report.

We also found that all 20 investigations in our sample with proposed adverse actions had documentation of supervisory review. Further, we found that six of the 12 USMS investigations in our sample that involved an individual who had filed an EEO claim of management retaliation had documentation of supervisory review. The remaining six cases without documentation of supervisory review were district or division investigations, which are typically considered to involve lower-level offenses.

Although USMS policy on Field Operational Reports requires the use of a standard form to document supervisory review for district and division misconduct investigations, USMS officials stated that district and division management periodically document a completed investigation with an

²⁶Of ATF's 1,581 investigations, 829 resulted in management referrals for information and were not included in our sample. All estimates from the file review are subject to sampling error. This estimate has a 95 percent confidence interval that extends from 91 to 99.6 percent. See appendix I for additional information on the design of the random sample.

²⁷Of the 65 cases in our ATF sample, the DOJ OIG investigated three cases. While ATF includes these cases in its case management systems, ATF did not conduct the investigations and, therefore, we did not assess for ATF supervisory review.

²⁸This estimate has a 95 percent confidence interval that extends from 50 to 69 percent. See appendix I for additional information on the design of the random sample.

electronic email confirmation for various reasons, including that the investigation may involve non-adverse actions. However, according to USMS policy, a memorandum does not serve as a substitution for the required field report. Taking steps to ensure that supervisory review of division and district investigations is documented in accordance with USMS policy would provide greater management assurance that investigations are performed comprehensively and consistently, and that this control is operating as intended.

Legal sufficiency review. ATF policy on Integrity and Other Investigations states that managers will review the investigative findings with the Office of Chief Counsel's management division to propose and decide discipline or other actions. ATF also has procedures for documenting these activities in its case management systems.

We found that ATF consistently documented legal sufficiency review during the adjudication phase for its Internal Affairs investigations. Specifically, we found that 32 of 36 cases investigated by Internal Affairs documented legal counsel review during the adjudication phase. One case of these 32 had review for the proposal, but was ultimately cleared. For the four cases without documentation of legal counsel review, this review was not applicable. Specifically, one case involved an employee who received a clearance letter; one case was still pending a final decision; one case involved an employee who was on military leave; and one case involved an employee who had retired. We also found that legal counsel review was documented in 11 of the 12 cases in our sample where adverse action was proposed—all of which were investigated by Internal Affairs—and the remaining case was still pending adjudication as of August 2019. Further, we found documentation of legal counsel review for six of the nine employee misconduct investigations that involved an EEO claim of management retaliation. Of the three investigations that did not have documentation, one was an Internal Affairs case where the final action was pending, and the other two cases were management referrals for action.

Regarding ATF Internal Affairs investigations referred to division management for action, we found that legal counsel review was documented for nine of 26 cases during the adjudication phase for the proposed discipline, the final disciplinary action, or both. Documenting legal counsel review for cases referred to division management for action would provide ATF management greater assurance that all proposed discipline or other actions are legally sufficient. Although ATF policy requires managers to review investigative findings with the Office of Chief

Counsel when handling management referrals, ATF officials stated that supervisors may handle the matters within the division without informing or consulting with legal counsel if there is no proposed discipline. According to ATF officials, the agency plans to revise its policy on Integrity and Other Investigations in August 2020, the next scheduled recertification of the order, to allow managers discretion in determining whether legal review is needed in instances where discipline is not imposed.

USMS policy on Discipline Management Business Rules requires legal review for Internal Affairs investigations that involve a proposed adverse action, but does not require legal reviews for investigations that involve non-adverse actions.²⁹ USMS also has procedures for documenting this activity in its case management system and physical case files. We found that USMS consistently documented the legal sufficiency internal control. Specifically, we found that all of the 20 proposed adverse actions in our sample documented legal counsel review. Of the 12 cases in our sample that involved an individual who had also filed an EEO claim, three had proposed adverse actions, all of which had documentation of USMS legal review.

DOJ OIG right of first refusal. According to ATF and USMS policies on misconduct investigations and management referrals, for each misconduct allegation received, the components must provide the DOJ OIG the opportunity to review the case for right of first refusal. This review allows the DOJ OIG to either open an investigation or defer the case back to the component for investigation. This review is designed to maintain independence by determining which cases warrant investigation outside of ATF and USMS.

We found that ATF and USMS consistently forwarded allegations of employee misconduct to the DOJ OIG for right of first refusal. Specifically, our analysis of ATF and DOJ OIG data found that the DOJ OIG did not have a record of receiving five out of 1,581 ATF investigations or management referrals for right of first refusal. There were also 41 instances for which ATF did not have a DOJ OIG case number, which prevented the DOJ OIG from checking its records for evidence that ATF had forwarded the case for right of first refusal. We found that 37 of the 41 cases occurred in fiscal years 2014 or 2015, with only four cases

²⁹According to USMS policy on Discipline Management Business Rules, the USMS Office of General Counsel reviews proposed discipline for suspensions greater than 14 days or removal.

occurring in fiscal years 2016 through 2018. Our analysis of USMS and DOJ OIG data found that the DOJ OIG did not have a record of receiving 10 out of 2,347 investigations for right of first refusal.

Verification of accuracy of case management system data. ATF and USMS do not have a policy requirement for the use of a method or tool to verify system data associated with both investigation and disciplinary processes. However, according to *Standards for Internal Control in the Federal Government*, management is to use quality information to make informed decisions and evaluate the entity's performance in achieving key objectives and addressing risks.³⁰ The standards also state that data maintains value to management in controlling operations and making decisions, and management is to design control activities so that all records are complete and accurate. Regular reviews of case management data can identify outliers or abnormalities, such as missing information.

ATF officials stated that agency managers verify that the initial information related to the allegation is accurate in the case management system. However, additional reviewers in the misconduct process do not verify investigation and adjudication information subsequent to the allegation in the case management system. The officials added that after Internal Affairs investigations and management referrals for action are completed, the record of investigation and supporting materials are reviewed by management to assess the quality of the investigation before uploading to the case management system. However, we found that information related to the investigation and adjudication of these allegations was sometimes not captured in automated data fields. Since uploaded documents cannot be analyzed easily, the Office of Professional Responsibility manually reviews these documents to compile an annual report on employee misconduct activities, such as the number of investigations and outcomes.

According to ATF and USMS officials, employee misconduct procedures include supervisor review in several areas. For example, ATF and USMS officials stated that managers review reports of investigation and other documents to ensure certain information is recorded in case files or case management systems. ATF officials provided evidence that they verify certain data when a case is initiated, such as the identity of the subject and allegation. ATF officials also provided evidence that managers review

³⁰[GAO-14-704G](#).

the report of investigation for quality. USMS officials stated that they confirm that the employee under investigation is the correct employee in the system record and that the case was referred to the DOJ OIG for right of first refusal.

ATF officials also stated that reviewers involved in employee misconduct processes compare case file documentation against case management system records. However, we found that hundreds of case management system records were missing key information, such as the final outcomes of employee misconduct investigations and DOJ OIG case numbers for ATF, and dates related to district or division investigations for USMS. We also found that ATF and USMS lack policy for verifying the accuracy and completeness of data recorded in their respective employee misconduct case management systems. This policy could be implemented, for example, through the use of a method or tool, such as a data entry checklist, that would guide agency officials when entering information into systems. Establishing policy could help ensure that case management system data are accurate and complete and would allow ATF and USMS to effectively monitor and report on their employee misconduct processes.

ATF and USMS Have Established Timeliness Requirements for Completing Employee Misconduct Investigations, but Have Not Fully Established Performance Measures

ATF and USMS have established requirements in their policies regarding timeliness in completing employee misconduct investigations. However, ATF has not developed performance measures to monitor its timeliness requirements. USMS has developed a measure to monitor its Internal Affairs investigations, but not for its district and division investigations. *Standards for Internal Control in the Federal Government* state that management should define objectives in measurable terms so that responsible personnel and management are held accountable, and their performance toward achieving those objectives can be assessed.

ATF Does Not Have a Performance Measure to Monitor Timeliness

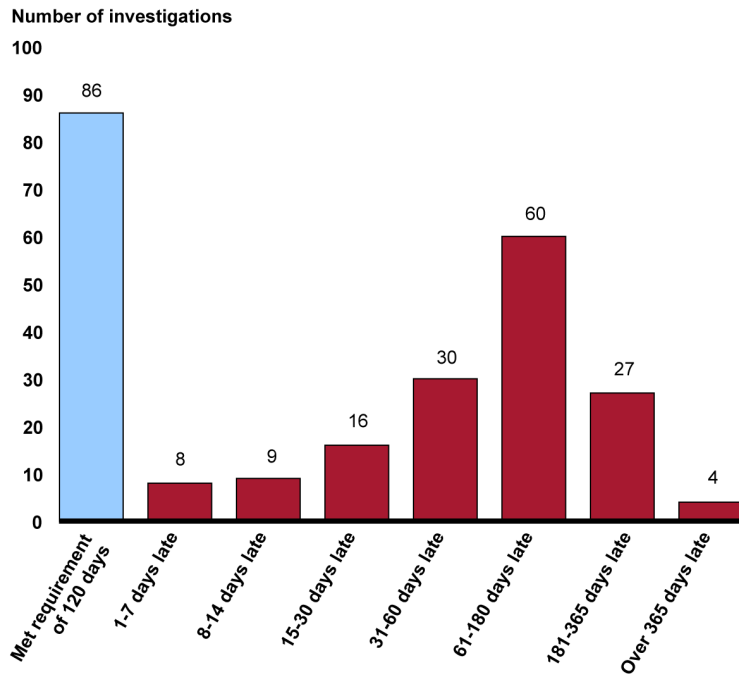
ATF policy on Integrity and Other Investigations requires completing Internal Affairs investigations generally within 120 days, and management referrals for action within 60 days. ATF officials acknowledged the importance of addressing employee misconduct allegations in a timely manner. For example, ATF may withhold a positive human resource action or personnel assignment pending completion of a misconduct investigation, such as a promotion or becoming a member of a task force. ATF employees under investigation for misconduct may also be placed on restricted duty, which depending on the case may prevent the employee from accessing information systems and require the employee to surrender his or her government-issued firearms, vehicle, other property, and credentials.

ATF officials stated that ATF management tracks ongoing investigations—for both Internal Affairs investigations and management referrals for action—and the amount of time they are open. ATF Internal Affairs officials stated that managers track the duration of all investigations on a weekly basis, and will inquire about the status of investigations and reasons why any exceed the duration standards. However, ATF has not developed a performance measure to monitor performance against timeliness requirements—for example, whether a certain percent of Internal Affairs investigations during a definite time period were completed within the required 120 days.

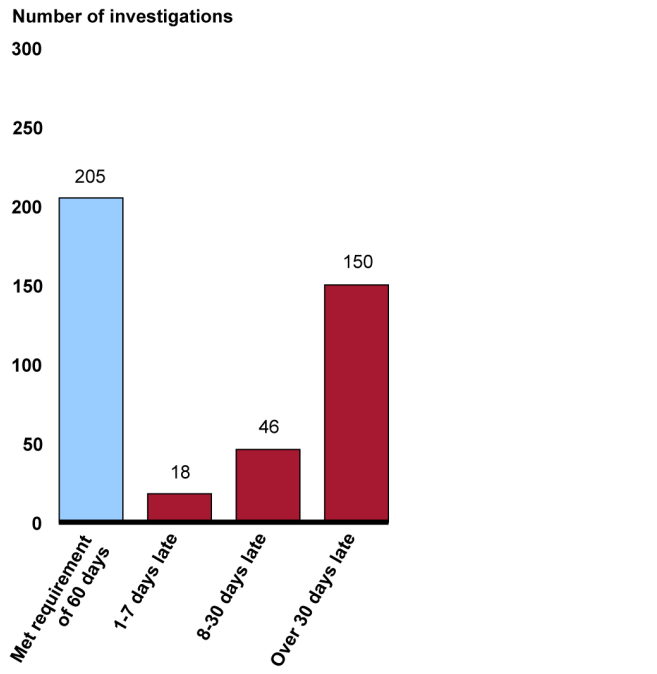
Based on our analysis of ATF data, Internal Affairs met its policy requirement of completing its investigations within 120 days about 36 percent of the time (86 of 240 investigations). ATF data also show that the agency met its policy requirement of 60 days for about 49 percent (205 of 419) of its management referrals for action (see fig. 9).

Figure 9: Duration of Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) Employee Misconduct Investigations and Management Referrals, Opened in Fiscal Years 2014 through 2018

Internal Affairs investigations (240 investigations)



Division referrals (419 investigations)



Source: GAO analysis of ATF data. | GAO-20-200

Note: Of ATF's 1,581 investigations or management referrals for action during this period, this figure does not include 829 cases that were referred to division management for information only and 47 investigations that were recorded in ATF systems but conducted by the Department of Justice Office of Inspector General. Another 1.4 percent of management referrals for action had a negative value for the time to complete these investigations. This indicates the completion date of the case was incorrectly entered as being before the start of the investigation. We also could not measure the duration of 26 Internal Affairs investigations and 14 division referrals for action because these were ongoing or the information was not recorded at the time ATF provided the data.

According to ATF officials, ATF does not use measures to monitor performance related to the duration of Internal Affairs investigations and management referrals for action due to numerous factors, such as investigators handling multiple cases at the same time and the involvement of the DOJ OIG. We have previously reported that other federal agencies have established such performance measures, which have taken these challenges into account when developing their methodology for measuring timeliness.³¹ Establishing a performance measure to monitor the timeliness of Internal Affairs and management

³¹GAO-18-405.

USMS Met Timeliness Goals for District and Division Investigations, but Lacks a Measure to Monitor These Investigations

referrals for action could provide ATF management more complete information in overseeing investigations and help improve the efficiency of employee misconduct processes.

USMS policy requires completing Internal Affairs investigations within 90 days, and within 30 days for investigations referred to its districts and divisions. USMS officials noted the importance of addressing employee misconduct allegations in a timely manner, with regards to effecting positive human resource actions such as promotions.

USMS Internal Affairs has developed a performance measure to monitor whether it is completing its investigations within the required 90-day time frame.³² According to USMS officials, the agency plans to change the required time frame for completing Internal Affairs investigations from 90 days to 180 days, which according to the officials is a time standard used by most other law enforcement agencies.³³ USMS does not have a performance measure to monitor the duration of investigations conducted by its districts and divisions. According to USMS officials, these investigations do not involve high-level offenses that would pose a significant risk to the agency.

Based on our analysis of USMS data, Internal Affairs met its policy requirement of completing its investigations within 90 days 35 percent of the time (468 of 1,320 investigations for which data were recorded in USMS systems), as shown in figure 10. Our analysis also shows that USMS met its policy requirement of completing its district and division investigations within 30 days over 99 percent of the time (489 of 490 investigations for which data were recorded in USMS systems).³⁴

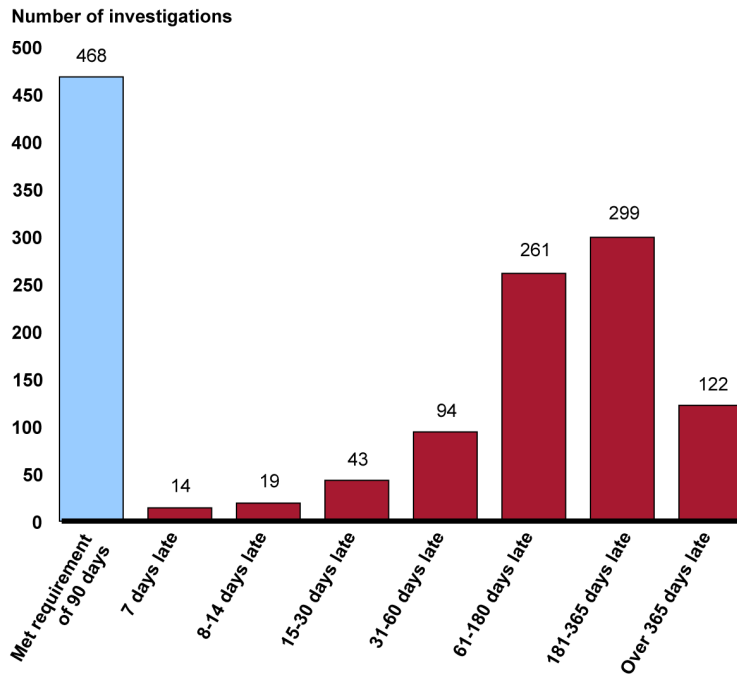
³²According to USMS, the methodology for calculating performance is dividing the number of investigations closed within the required time frame by the total number of investigations closed.

³³DOJ standards and guidelines for internal affairs state that it is preferable to conclude investigations within 180 days. See, U.S. Department of Justice Office of Community Oriented Policing Services, *Standards and Guidelines for Internal Affairs: Recommendations from a Community of Practice* (Washington, D.C.: Aug. 21, 2009).

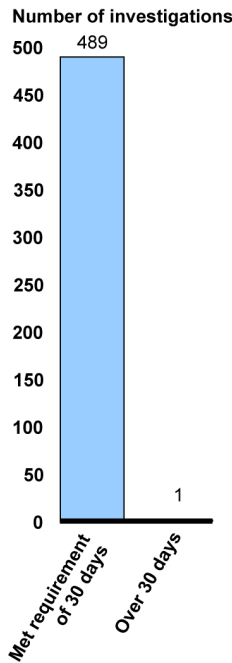
³⁴We could not measure the duration for 186 of the 1,507 Internal Affairs investigations and 165 of the 656 district and division investigations because this information was not recorded in the USMS system at the time USMS provided the data.

Figure 10: Duration of U.S. Marshals Service (USMS) Employee Misconduct Investigations, Opened in Fiscal Years 2014 through 2018

Internal Affairs investigations (1,506 investigations)



District/division investigations (655 investigations)



Source: GAO analysis of U.S. Marshals Service data. | GAO-20-200

Note: USMS opened 2,347 investigations from fiscal years 2014 through 2018 that were closed at the time of our review. The figure shows the duration for 1,320 Internal Affairs investigations and 490 district and division investigations. We could not measure the duration for 186 of the 1,506 Internal Affairs investigations and 165 of the 655 USMS district and division investigations because this information was not recorded in USMS systems at the time USMS provided the data.

Although we found that USMS met its timeliness requirement related to district and division investigations over 99 percent of the time, management responsible for oversight have not developed a performance measure to monitor whether the agency meets its policy requirement. Therefore, the agency will not be able to identify any potential future performance issues. Monitoring these investigations is also important since data on the duration for about 25 percent (165 of 655) of district and division investigations that were opened from fiscal years 2014 through 2018 were not recorded in USMS systems at the time the agency provided the data. Developing a measure for the duration of district and division investigations would provide USMS leadership with greater assurance that the agency is complying with policy requirements.

ATF and USMS Do Not Use Existing Oversight Mechanisms to Fully Monitor Key Internal Controls for Their Employee Misconduct Processes

ATF Oversight Mechanisms

ATF and USMS do not use their existing oversight mechanisms to fully monitor key internal controls related to employee misconduct processes. *Standards for Internal Control in the Federal Government* call for management to establish and implement activities to monitor the internal control system and evaluate the results, as well as remediate identified internal control deficiencies.

ATF has two oversight mechanisms that it uses to monitor internal controls related to financial reporting, compliance activities, and operations—annual self-assessments and internal management reviews. However, according to ATF officials, the component does not use these mechanisms to monitor any internal controls related to its employee misconduct processes.

Specifically, according to an ATF official, as part of ATF's annual self-assessment program, all component divisions, including Internal Affairs, are to test financial processes, such as government credit card payments. The ATF Inspection Division also conducts internal management reviews to test compliance with the same activities that are covered by the self-assessment program. ATF officials stated that the scope of the self-assessment program does not include key internal control activities related to employee misconduct processes due to competing priorities. According to an Inspection Division official, the division also has not conducted an internal management review of the offices responsible for employee misconduct processes (e.g., the Internal Affairs division, the Professional Review Board, Bureau Deciding Official activities) in about 10 years due to competing priorities.

ATF officials stated that the agency plans to review these divisions and offices in the future, but did not have any specific plans for how internal management reviews would be used for divisions and offices in the misconduct process or when these reviews would begin. While the scope of these reviews has not been determined, the officials stated that internal management reviews could include testing internal control activities related to allegations of employee misconduct, such as investigative review and approval, legal sufficiency review; and case management information system data reliability and completeness. Monitoring key internal controls related to employee misconduct processes through existing oversight mechanisms would help ATF management ensure that controls are being implemented as required by policy.

USMS Oversight Mechanisms

USMS has two oversight mechanisms that it uses to monitor internal controls related to financial reporting, compliance activities, and operations. Specifically, USMS's Compliance Review Office, within the Office of Professional Responsibility, conducts on-site management reviews at USMS districts and divisions.³⁵ USMS also has an annual self-assessment program that requires divisions and districts to self-assess their compliance with certain requirements by testing for and remediating any internal control deficiencies. However, because of competing priorities, USMS does not use these mechanisms to fully monitor key internal controls over employee misconduct processes.

According to Office of Professional Responsibility Compliance Review officials, the scope of on-site management reviews conducted at selected USMS districts and divisions during fiscal years 2014 through 2018 did not include employee misconduct processes. The officials also stated that on-site reviews during this period did not include the Internal Affairs and Discipline Management divisions. According to USMS officials, the agency plans to conduct an on-site management review at the Internal Affairs division in fiscal year 2021. The officials added that the compliance review cycle for each district and division currently occurs once every 9 years, but that this review cycle will increase to once every 4 years.

Our analysis of USMS annual self-assessment guides showed that from fiscal years 2014 through 2018, the guides included testing for most key controls related to employee misconduct processes. For example,

- Internal Affairs and Discipline Management self-assessment guides included questions on whether Internal Affairs forwards cases to the DOJ OIG for right of first refusal, the Chief of Internal Affairs reviews investigative reports, investigations are completed within 90 days, and data on allegations is entered into the case management system.
- The self-assessment guide for USMS districts and divisions included questions to assess compliance with the timeliness of investigations (within 30 days); use of the Table of Offenses and Penalties, consideration of Douglas Factors (certain factors that USMS is to consider about an employee when deciding discipline, such as the employee's need for training); Delegations of Authority for proposing

³⁵Office of Professional Responsibility Compliance Review examined USMS district and divisions compliance with policies related to travel card purchases, human resource management, among other things.

and deciding officials, and other Human Resource policy areas, such as administrative leave and eligibility for promotion.

However, although legal sufficiency review of proposed adverse actions is required by policy and a key internal control, USMS did not design its self-assessment guides for the Internal Affairs and Discipline Management divisions to include testing for such reviews.

Revising the scope of on-site management reviews to include employee misconduct processes and revising self-assessment guides to include testing for legal sufficiency of proposed adverse actions would help USMS gain greater assurance that these controls are implemented as required by policy.

Conclusions

ATF and USMS have established internal controls related to some employee misconduct investigation and disciplinary processes, but additional actions could strengthen their controls. Specifically, USMS does not ensure that supervisory review of division and district investigations is documented in accordance with agency policy. ATF and USMS also have not developed policy for verifying the accuracy and completeness of information in employee misconduct systems. Ensuring supervisory review is documented as required and establishing policy for verifying information in misconduct systems would provide greater consistency in processes, assurance that controls are operating as intended, and corrective actions are implemented as needed.

ATF and USMS policy also have required timelines for completing investigations. However, ATF does not have a performance measure to monitor whether it is meeting its timeliness requirement, such as the percentage of Internal Affairs investigations completed within 120 days. USMS does not have a performance measure to monitor and assess its performance in meeting the required time to complete its district and division investigations within 30 days. Developing performance measures to monitor the timeliness of all investigations could provide more complete information for ATF and USMS management responsible for oversight and allow them to address any related performance issues in a timely manner.

Further, ATF and USMS have established oversight mechanisms, such as internal management reviews, to monitor select aspects of the components' operations, such as financial operations. However, ATF and USMS generally have not used these mechanisms to monitor internal controls related to employee misconduct processes, which would help

ATF and USMS management ensure that controls are implemented as required by policy.

Recommendations for Executive Action

We are making a total of seven recommendations, including three to ATF and four to USMS. Specifically:

The Director of the U.S. Marshals Service should take steps to ensure that supervisory review of division and district investigations is documented in accordance with USMS policy. (Recommendation 1)

The Director of ATF should develop policy for verifying the accuracy and completeness of information in ATF employee misconduct systems. (Recommendation 2)

The Director of the U.S. Marshals Service should develop policy for verifying the accuracy and completeness of information in USMS employee misconduct systems. (Recommendation 3)

The Director of ATF should develop a performance measure to monitor the timeliness of misconduct investigations, according to policy requirements. (Recommendation 4)

The Director of the U.S. Marshals Service should develop a performance measure to monitor the timeliness of district and division misconduct investigations, according to policy requirements. (Recommendation 5)

The Director of ATF should modify existing oversight mechanisms to include the monitoring of key internal controls related to employee misconduct investigations. (Recommendation 6)

The Director of the U.S. Marshals Service should modify existing oversight mechanisms to fully monitor key internal controls related to employee misconduct investigations. (Recommendation 7)

Agency Comments

We provided a draft of this product to DOJ for review and comment. DOJ concurred with all of our recommendations and did not provide written comments. ATF and USMS provided technical comments, which we incorporated as appropriate.

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 Attorney General, the ATF Acting Director, the USMS Director, 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 McNeilT@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 II.

Sincerely yours,



Triana McNeil
Director, Homeland Security and Justice

Appendix I: Sampling Methodology

To assess the extent to which the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) and United States Marshals Service (USMS) components implemented key internal controls, we selected a stratified random sample of case files within the population of employee misconduct investigations that were opened by each component from fiscal years 2014 through 2018, and that were considered closed as by USMS as of March 13, 2019, for fiscal years 2014 through 2017 and April 26, 2019, for fiscal year 2018, with corresponding data on the outcomes of the investigations (resulting employee actions) as of March 27, 2019 for fiscal years 2014 through 2017 and May 3, 2019, for fiscal year 2018. ATF data are as of April 9, 2019, for internal investigations and as of August 2, 2019, for management referrals.

We also stratified our samples based on whether the case files included adverse actions (a suspension of at least 15 days, demotion or removal) and whether an employee under a misconduct investigation had also filed an Equal Employment Opportunity (EEO) claim of management retaliation to assure that representation from both subgroups were included in our sample. We used fiscal year 2014 through 2018 data from the components' information systems from which to randomly select a generalizable sample of 65 employee misconduct cases for ATF out of a population of 150 and 100 cases for USMS out of a population of 1,281.

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.

The sample was designed to produce 95 percent confidence intervals for percentage estimates that are within no more than plus or minus 10 percentage points within component. The precision is not high enough to generalize to the strata level and results should only be generalized to the component level (i.e. ATF and USMS).

Appendix I: Sampling Methodology

Table 5: GAO Sample of ATF and USMS Employee Misconduct Investigations by Proposed Action and Equal Employee Opportunity (EEO) Claims of Retaliation, Fiscal Years 2014 through 2018

Component	Strata	Population size	Sample size
ATF	Proposed Adverse Action and subject of alleged misconduct filed an EEO claim of management retaliation.	2	2
ATF	Proposed Non-adverse Action and subject of alleged misconduct filed an EEO claim of management retaliation.	7	7
ATF	Proposed Adverse Action and subject of alleged misconduct did not file an EEO claim of management retaliation.	15	10
ATF	Proposed Non-adverse Action and not subject of alleged misconduct did not file an EEO claim of management retaliation.	126	46
Total ATF		150	65
USMS	Proposed Adverse Action and subject of alleged misconduct filed an EEO claim of management retaliation.	2	2
USMS	Proposed Non-adverse Action and subject of alleged misconduct filed an EEO claim of management retaliation.	71	10
USMS	Proposed Adverse Action and subject of alleged misconduct did not file an EEO claim of management retaliation.	51	10
USMS	Proposed Non-adverse Action and not subject of alleged misconduct did not file an EEO claim of management retaliation.	1,157	78
Total USMS		1,281	100

Source: GAO analysis of Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) and United States Marshals Service (USMS) data. | GAO-20-200.

As part of these samples, we included investigation that resulted in proposed adverse actions and that involved employees who also submitted an EEO claim of management retaliation.¹ Specifically:

- For ATF, our sample included 12 cases with proposed adverse actions and nine cases that involved individuals who had also submitted an EEO claim of management retaliation.
- For USMS, our sample included 12 cases with proposed adverse actions and 12 cases that involved individuals who had also submitted an EEO claim of management retaliation.

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

¹Adverse actions include a suspension of more than 14 days (including an indefinite suspension), demotion to a lower pay band or rate of pay, or removal (an involuntary separation from employment). 5 U.S.C. § 7512.

Appendix I: Sampling Methodology

sample only, rather than attempting to generalize to the population of cases within the component.

Appendix II: GAO Contact and Staff Acknowledgments

GAO Contact

Triana McNeil at (202) 512-8777 or McNeilT@gao.gov

Staff Acknowledgments

In addition to the contact named above Eric Erdman (Assistant Director), Willie (Billy) Commons III, Dominick Dale, Anthony DeFrank, Justin Fisher, Eric Hauswirth, Ying Long, Amanda Miller, and Mike Tropauer made key contributions to this report.

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