

PREMIUM PAY

Weak Controls Resulted in Noncompliance with the Law Enforcement Availability Pay Act



Office of Inspector General U.S. Government Accountability Office Report Highlights

September 16, 2015

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Weak Controls Resulted in Noncompliance with the Law Enforcement Availability Pay Act

Objective

This report addresses the extent to which GAO's Forensic Audits and Investigative Service (FAIS) had effective controls to ensure compliance with the Law Enforcement Availability Pay (LEAP) Act requirements for receiving LEAP.

What OIG Found

Availability pay is a type of premium pay that is paid to criminal investigators required to perform, or be available to perform, investigative activities outside of normal business hours based on the needs of the agency. OIG found that FAIS did not have effective policy and procedures to ensure compliance with LEAP Act requirements. Procedures designed to support annual certifications and to ensure agents were meeting the substantial hours requirement were discontinued or did not exist. As a result, FAIS lacked assurance that unscheduled duty hours were sufficient and certifications were made in compliance with legal and regulatory requirements.

GAO agreed with the issues we identified and stated that it had implemented all corrective actions we suggested. It also stated that annual certifications for LEAP will be supported in fiscal year 2016 when time and attendance system enhancements are finalized. We believe that once the enhancements are in place, GAO will have adequately addressed our findings. Therefore, we are not making recommendations.





September 16, 2015

Memorandum For: Gene L. Dodaro
Comptroller General of the United States

From: Adam R. Trzeciak
Inspector General

Subject: Transmittal of Office of Inspector General (OIG) Audit Report

Attached for your information is our report, *Premium Pay: Weak Controls Resulted in Noncompliance with the Law Enforcement Availability Pay Act* (OIG-15-3). The audit objective was to evaluate the extent to which GAO's Forensic Audits and Investigative Service had effective controls to ensure compliance with the Law Enforcement Availability Pay (LEAP) Act and related requirements.

Our audit found that GAO did not have effective LEAP policy and procedures to ensure compliance with the LEAP Act. We determined that controls designed to ensure compliance were discontinued or did not exist. GAO agreed with the issues we identified and stated that it had implemented all corrective actions we suggested. It also stated that annual certifications for LEAP will be supported in fiscal year 2016 when WebTA enhancements are finalized. We believe that once the enhancements are in place, GAO will have adequately addressed our findings. Therefore, we are not making recommendations.

We are sending copies of this report to the other members of GAO's Executive Committee, GAO's Audit Advisory Committee, and key managers responsible for establishing policy and procedures for administering law enforcement availability pay. The report is also available on the GAO website at <http://www.gao.gov/about/workforce/ig.html>.

If you have questions about this report, please contact me at (202) 512-5748 or trzeciaka@gao.gov.

Attachment

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Abbreviations

FAIS	Forensic Audits and Investigative Service
FSI	Forensic Audits and Special Investigations
LEAP	Law Enforcement Availability Pay
IFPTE	International Federation of Professional and Technical Engineers
OGC	Office of the General Counsel
OSI	Office of Special Investigations

Introduction

The Law Enforcement Availability Pay (LEAP) Act of 1994, as amended, authorized 25 percent premium pay to criminal investigators as compensation for performing unscheduled duty in excess of a 40-hour work week.¹ The LEAP Act and its supporting regulations established specific requirements that investigators and agencies must meet. To be eligible, each investigator is required to meet an annual average of 2 or more unscheduled duty hours per workday—referred to as the substantial hours requirement.² Each year, investigators and their supervisors must certify to the agency head that the substantial hours requirement has been met and will continue to be met the next year.³ Further, LEAP regulations specifically direct that newly hired criminal investigators and their supervisors make an initial certification to the agency head that the investigator is expected to meet the substantial hours requirement in the upcoming year.⁴

Forensic Audits and Investigative Service (FAIS) is a specialized team within GAO that conducts forensic audits and investigations and establishes investigative policy and procedural guidance, including those related to LEAP.⁵ In 2014, 11 FAIS criminal investigators, known as agents, were authorized to receive law enforcement availability pay. To ensure compliance with LEAP Act requirements and related regulations, controls must be appropriately designed and implemented to record, report, and monitor agents' unscheduled duty hours to support their annual certifications.

Objective, Scope, and Methodology

This report addresses the extent to which FAIS has effective controls, including policy and procedures, to ensure compliance with LEAP requirements related to unscheduled duty hours and certifications. To achieve our audit objective, we identified and reviewed relevant laws and regulations and FAIS policy, procedures, and guidance related to LEAP at GAO. We interviewed the FAIS Managing Director, and Director of Investigations, and agents authorized to receive LEAP to understand the team's certification process. We also met with GAO's Office of the General Counsel (OGC) to discuss LEAP administration at GAO and OGC's roles and responsibilities in developing and reviewing FAIS LEAP policy and procedures. In addition, we interviewed a former FAIS Managing Director to obtain historical knowledge of LEAP procedures established in October 2002 under his direction and the implementation and administration of LEAP during his two-and-a-half-year tenure. Finally, we obtained and reviewed personnel records and LEAP certifications supporting the authorization and payment of LEAP to agents. Additional information on our scope and methodology is presented in appendix I.

¹5 U.S.C. § 5545a(b),(h).

²5 U.S.C. § 5545a(d)(1); 5 C.F.R. § 550.183(a).

³5 U.S.C. § 5545a(e); 5 C.F.R. § 550.184(b).

⁴5 C.F.R. § 550.184(a).

⁵GAO established its Office of Special Investigations (OSI) in October 1986 as part of GAO's Office of the General Counsel. On May 6, 2005, GAO created its Forensic Audits and Special Investigations (FSI) unit to monitor and manage the FraudNet Hotline and to support other GAO teams with investigative activities. On March 1, 2011, FSI was restructured and renamed the Forensic Audits and Investigative Service (FAIS) team.

We conducted this performance audit from July 2014 to September 2015 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 objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

Background

Law Enforcement Availability Pay Act

In 1994, Congress enacted the LEAP Act amending Chapter 55 of title 5 of the United States Code to establish a new type of premium pay referred to as availability pay or LEAP.⁶ LEAP is intended to ensure that criminal investigators are available for unscheduled duty beyond their regular 40-hour work week based on the needs of the employing agency. Unscheduled duty is hours that a criminal investigator works, or is determined by the agency to be available to work (i.e., criminal investigators do not have to perform work, but only be available to work), that is not part of the criminal investigator's basic 40-hour work week and are not regularly scheduled overtime hours.⁷

Each GAO employee meeting the definition of criminal investigator and fulfilling the conditions and requirements of the LEAP Act and its related regulations must receive LEAP.⁸ However, such pay is subject to a biweekly limit that cannot exceed the greater of the biweekly rate payable for (1) General Schedule GS-15, step 10 (including any applicable locality payment or special rate supplement), or (2) the rate payable for level V of the Executive Schedule.⁹ Furthermore, regulations require the employing agency to ensure that criminal investigators receiving availability pay maintain an annual average of 2 hours or more of unscheduled duty per regular workday.¹⁰ Only criminal investigators who meet this requirement are eligible for LEAP.¹¹

Criminal investigators and their supervisors must certify each year to their agency head that the investigator has met the substantial hours requirement in the previous year and is expected to do so in the upcoming year. Newly hired criminal investigators and their supervisors must make initial certifications to the agency head that they expect to meet the substantial hours requirement in the upcoming year.¹² The employing agency may deny or cancel a certification if an investigator fails to perform unscheduled duty as assigned or

⁶5 U.S.C. § 5545a.

⁷For criminal investigators receiving availability pay, regularly scheduled overtime hours exclude the first 2 hours of overtime worked on any day containing a part of the investigator's basic 40-hour work week. 5 C.F.R. § 550.182(b).

⁸5 C.F.R. § 550.181(a). The scope of this audit did not include determining whether criminal investigators met the definition of criminal investigator as defined in 5 U.S.C. § 5541(3) and 5 C.F.R. § 550.103. See appendix I for a discussion of the audit scope and methodology.

⁹5 U.S.C. § 5547(a) and 5 C.F.R. § 550.105.

¹⁰5 C.F.R. §§ 550.182(e), 183(a), 184(d).

¹¹5 C.F.R. §§ 550.183(a), 184(d).

¹²5 U.S.C. § 5545a(e); 5 C.F.R. § 550.184(a),(b).

reported, or is unable to perform unscheduled duty for an extended period due to physical or health reasons.¹³

GAO's Forensic Audits and Investigative Service Team

FAIS is the GAO team responsible for (1) conducting forensic audits and investigations concerning allegations of serious wrongdoing that may involve potential violations of criminal law and (2) establishing FAIS investigative policy and procedures. The purpose of FAIS's investigative program is to provide the Congress with forensic audits; investigations of fraud, waste, and abuse; evaluations of security vulnerabilities; and other investigative services as part of its own assignments or in support of other GAO teams.

To conduct investigations GAO hires criminal investigators, or "agents". FAIS agents may conduct covert inquiries and gather evidence, as appropriate, using special investigative techniques including, among others, undercover operations, physical surveillance, and confidential informants. FAIS conducts its investigations in accordance with the *Quality Standards for Investigations* established by the Council of the Inspectors General on Integrity and Efficiency.¹⁴

Of the 11 FAIS agents authorized to receive LEAP in 2014, 10 received all or some availability pay according to GAO biweekly payroll reports, totaling more than \$144,000. The remaining agent had met the biweekly pay limit, and therefore did not receive LEAP during 2014. In accordance with the LEAP Act and related regulations, LEAP is treated as basic pay for purposes of determining certain benefits and other payments (e.g., retirement annuity).¹⁵ As a result, while the agent did not receive a monetary increase in biweekly pay, the agent's retirement annuity upon separation from the government would be determined using the agent's basic pay increased by the 25 percent availability pay. This would also be true for agents who, because of the biweekly pay limit, received only a portion of the 25 percent availability pay.

GAO's Law Enforcement Availability Pay Policy and Procedures

Following enactment of the LEAP Act in 1994, GAO's then Office of Special Investigations finalized its LEAP policy and operating procedures in 1996 establishing rules, guidelines, and procedures for the administration of LEAP.¹⁶ The policy and procedures established biweekly, quarterly, and annual requirements for reporting and monitoring agents' unscheduled duty hours and completing annual certifications. The policy and procedures were designed to provide management with both biweekly and quarterly reports necessary

¹³5 C.F.R. § 550.184(d).

¹⁴Council of the Inspectors General on Integrity and Efficiency, *Quality Standards for Investigations* (Nov. 15, 2011).

¹⁵LEAP Act and related regulations provide that availability pay is to be treated as basic pay pertaining to (1) advances in pay, (2) severance pay, (3) workers' compensation, (4) retirement benefits, (5) Thrift Savings Plan, and (6) life insurance. 5 U.S.C. § 5545a(h)(2), 5 C.F.R. § 550.186(b).

¹⁶On October 30, 1994, GAO's then Office of Special Investigations issued an interim LEAP policy that was finalized on August 16, 1996.

to ensure that agents were maintaining the required annual average of 2 or more unscheduled duty hours per workday.

Each biweekly pay period, agents were required to complete an agent's availability activity report documenting the number of unscheduled duty hours the agent worked or was available to work. Agents were required to sign the report certifying that the unscheduled duty hours reported were correct. The agent's supervisor was responsible for approving and certifying each report.

According to the policy and procedures, at the end of each quarter, agents' average cumulative unscheduled duty hours (worked and available) should be computed and the results and corresponding averages provided to the Directors and Managing Director. In addition, copies should be provided to FAIS Assistant Directors to facilitate review of the cumulative unscheduled duty hours for their respective agents.¹⁷ These quarterly reports were designed to identify agents who were not meeting the annual average of 2 hours or more unscheduled duty per regular workday. If an agent had not maintained the required annual average, the agent and the first-line supervisor were required to establish a course of action to ensure that the unscheduled duty hours requirement would be met.

At the beginning of each fiscal year and at any point when availability status changed, agents were required to complete a statement of availability affirming or declining their availability for unscheduled duty hours. This statement required approval by the Managing Director.

On October 7, 2002, the LEAP operating procedures were revised and agents were instructed to begin completing their biweekly availability activity reports using a Microsoft Excel template.¹⁸ This template was designed to automatically compute the agents' total availability hours per pay period and provide a cumulative average for the year to date. The then Managing Director noted that "using the automated form will increase the accuracy and reduce compilations and review time." Although the method for reporting availability hours changed, the revised procedures continued to require both the agents and their supervisors to certify on a biweekly basis that unscheduled duty hours (worked or available) were correct.

In February 2012, FAIS began efforts to revise the LEAP policy established in 1996 and the operating procedures updated in 2002. In August 2013, the Director of Investigations met with key stakeholders within GAO to discuss a mechanism for agents to record LEAP hours worked or available each pay period. On July 30, 2014, the FAIS draft *Law Enforcement Availability Pay* policy and draft *Unscheduled Duty Hours* procedures were provided to the GAO Employees Organization (the Union) with notice and opportunity to bargain.¹⁹ In September 2014, GAO entered into a contract to modify its electronic time and attendance system (WebTA) to capture, track, and report unscheduled duty hours. Most recently on August 14, 2015, GAO and the Union reached agreement on the LEAP

¹⁷In accordance with 5 C.F.R. § 550.183, the cumulative average of daily unscheduled duty is computed by dividing the total unscheduled duty hours for the annual period (numerator) by the number of regular workdays (denominator).

¹⁸Before October 7, 2002, agents were required to document their availability activity in a Microsoft Word file.

¹⁹GAO Employees Organization, International Federation of Professional and Technical Engineers (IFPTE, Local 1921). On May 20, 2011, GAO entered into a Collective Bargaining Agreement with the Union.

policy and procedures. However, GAO is delaying implementation of the policy and procedures until the WebTA changes are implemented or an otherwise negotiated time and attendance format for capturing LEAP hours worked or available is agreed upon. The Memorandum of Agreement between GAO and the Union is reprinted in appendix III.

Ineffective Policy and Procedures Resulted in Noncompliance with the LEAP Act

FAIS policy and procedures did not provide adequate controls to ensure compliance with the LEAP Act and related regulations. Key procedures designed to support annual certifications and to ensure agents were meeting the substantial hours requirement were discontinued in 2006. Further, no policy and procedures existed to ensure compliance with additional LEAP certification requirements. These gaps continued to exist in the 2014 draft LEAP policy and procedures. As a result, GAO did not fully comply with the LEAP Act and related regulations. Specifically, GAO did not ensure that (1) agents' unscheduled duty hours were sufficient to meet requirements of the LEAP Act and related regulations, (2) agents' annual certifications were certified by a supervisor, (3) initial certifications for newly hired agents were obtained, and (4) initial and annual certifications were made to the Comptroller General, GAO's agency head.

Procedures for Recording, Reporting, and Monitoring Unscheduled Duty Hours Were Discontinued

In 2006, FAIS discontinued the biweekly reporting procedures designed to track, report, and monitor agents' unscheduled duty hours without ensuring that mitigating controls were in place. Due to a lack of sufficient evidence supporting each agent's annual certification the Director of Investigations ceased attesting to the agents' certifications in 2013. Without supervisory attestation of each agent's annual certifications, GAO did not comply with the LEAP Act and related regulations.²⁰

While GAO's 1996 LEAP policy and procedures (as revised on October 7, 2002) required biweekly reporting of agents' unscheduled duty hours, this requirement was discontinued on or about September 2006 under the direction of the then Managing Director. As a result, the required quarterly review and reporting of availability activity could no longer be performed. Without quarterly reviews or a similar periodic monitoring control in place, FAIS management was unable to comply with federal regulations requiring the employing agency to ensure that each agent had sufficient hours to meet the substantial hours requirement and to complete the annual LEAP certification.²¹ Although FAIS management and the five agents interviewed who had worked in the investigative unit in 2006 confirmed that the biweekly reporting of unscheduled duty hours was discontinued, the 1996 LEAP policy and procedures were not updated, reissued, or superseded to document that

²⁰5 U.S.C. § 5545a(e); 5 C.F.R. § 550.184(b),(d).

²¹5 C.F.R. § 550.182(e).

decision.²² As a result, the 1996 LEAP policy and procedures remained in effect at the time of our audit.

We requested all documentation supporting unscheduled duty hours (worked and available) for FAIS agents for fiscal years 2013 and 2014 (through June 30, 2014). In responding to our request, the Director of Investigations noted that FAIS did not have such documentation (electronic or otherwise). Furthermore, the Director of Investigations told us that following his appointment in 2011, he signed the 2012 LEAP Act annual certifications under the assumption that GAO had established mechanisms to ensure the availability of agents and to calculate the annual average unscheduled duty hours. However, after learning that mechanisms were not in place to support the agents' annual certifications, the Director of Investigations ceased attesting to the certifications. The Director of Investigations also noted that FAIS was unable to reinstate biweekly reporting procedures, or any new procedures supporting agents' unscheduled duty hours (worked or available) prior to negotiation and resolution with the Union.²³

We interviewed eight FAIS agents who received or were eligible to receive availability pay as of June 30, 2014, to determine whether they maintained records to support their annual certification that they met the unscheduled duty substantial hours LEAP requirement. Seven of the eight agents stated that they did not maintain their own records for purposes of tracking unscheduled duty hours. All eight agents noted that (1) they were not required to track or report their unscheduled duty hours, and (2) they either worked or were available to work unscheduled duty hours if requested or required. Further, GAO's electronic time and attendance system lacked the capability to record unscheduled duty hours—worked or available.

Without sufficient evidence supporting each agent's unscheduled duty hours, FAIS management lacked a sufficient basis to ensure compliance with the substantial hours requirement and to certify annual LEAP certifications. Although agents submitted annual certifications, the lack of the required supervisory certification resulted in noncompliance with the LEAP Act and related federal regulations.²⁴

Gaps Were Found in LEAP Policy and Procedures

LEAP Policy and Procedures Omitted Key LEAP Act Certification Requirements

LEAP policy and procedures in effect during our audit did not set forth rules, guidelines, or procedures to ensure that GAO fully complied with requirements of the LEAP Act and related federal regulations. Specifically, procedures did not exist to ensure that annual certifications were made to the Comptroller General and newly hired agents completed an initial LEAP certification.

²²On August 6, 2013, the then Managing Director of FAIS noted in a memorandum to the Chief Operating Officer regarding availability pay at GAO that the 1996 LEAP Policy has not been superseded but some of the requirements set forth in the policy have been discontinued for a number of years.

²³*Master Collective Bargaining Agreement: U.S. Government Accountability Office & GAO Employees Organization, IFPTE Local 1921 (the Union), May 20, 2011 - Article 43 Mid-Term Bargaining* discusses the agreed procedures related to policies or practices or conditions of employment for all bargaining unit employees represented by the Union.

²⁴5 U.S.C. § 5545a(e); 5 C.F.R. § 550.184(a),(b),(d).

Internal control serves as a defense in preventing and detecting, among other things, noncompliance with provisions of laws and regulations. GAO's *Standards for Internal Control in the Federal Government* require that internal control be designed to provide reasonable assurance of compliance with laws and regulations.²⁵ GAO's internal control standards also note that management is responsible for developing detailed policies, procedures, and practices to fit agency operations and to ensure they are built into and an integral part of operations.

We found that the 1996 LEAP policy and procedures did not include a requirement that agents' annual certifications be made to the Comptroller General or a designee.²⁶ Rather the policy required that annual certifications be reviewed and approved by the FAIS Managing Director and maintained within FAIS.²⁷

In addition, we found that FAIS's LEAP policy and procedures do not include a requirement for obtaining newly hired agents' initial certifications, which were also required to be certified by the appropriate supervisor and made to the Comptroller General or a designee. Federal regulations require each newly hired criminal investigator who will receive availability pay and the appropriate supervisor to make an initial certification attesting that the investigator is expected to meet the unscheduled duty substantial hours requirement during the upcoming one-year period.²⁸ In September 2014, this deficiency was brought to the attention of the Director of Investigations who acknowledged that initial certifications were not obtained for the two agents hired in 2012.

Without specific policy and procedures establishing requirements for reporting to the Comptroller General or a designee and for completing initial certifications for newly hired agents, GAO lacked sufficient controls to ensure compliance with LEAP Act certification requirements and related regulations.²⁹

Revised LEAP Policy and Procedures Also Omitted Key LEAP Act Certification Requirements

In February 2012, FAIS began efforts to revise its LEAP policy and procedures. On July 30, 2014, having gone through GAO's approval process, draft copies of FAIS's *Law Enforcement Availability Pay* policy and *Unscheduled Duty Hours* procedures were

²⁵GAO, *Standards for Internal Control in the Federal Government*, [GAO/AIMD-00-21.3.1](#) (Washington, D.C.: November 1999).

²⁶The LEAP Act does not explicitly contemplate delegation of the Comptroller General's function to review annual certifications submitted to the agency head. However, the Comptroller General holds the authority to delegate this function to another agency official under his authority conferred by the GAO Act. 31 U.S.C. § 711(2).

²⁷The LEAP Act and related regulations require that annual certifications for each criminal investigator be made to the agency head. 5 U.S.C. § 5545a(e)(1); 5 C.F.R. § 550.184(b).

²⁸5 C.F.R. § 550.184(a). Initial certifications made by newly hired criminal investigators are not required to include a statement certifying that the substantial hours requirements has been met in the preceding year.

²⁹5 U.S.C. § 5545a(e); 5 C.F.R. § 550.184(a),(b),(d).

provided to the Union with notice and opportunity to bargain.³⁰ In August 2014, FAIS provided the OIG copies of these documents. We determined that gaps we identified in the 1996 LEAP policy and procedures pertaining to annual certifications continued to exist in the 2014 draft policy and procedures. Specifically, neither the draft policy nor the draft procedures addressed the requirements that annual certifications be made to the Comptroller General or a designee and that initial LEAP certifications be completed for newly hired investigators.

GAO Order 0010.1 *Government Accountability Office (GAO) Orders, Operational Directives, and Manuals* requires GAO organizational units to adequately document GAO-wide programs, policies, responsibilities, and standards in appropriate written documents to evidence GAO's organization, functions, and significant substantive procedures.³¹ In addition to review by GAO's Chief Administrative Office, the order also requires review by OGC, as appropriate, for legal sufficiency and enforceability.

Both FAIS's Managing Director and the Director of Investigations stated that they rely on OGC to identify legal deficiencies in FAIS developed policies and procedures. According to an OGC official, OGC's review of the FAIS draft policies and procedures is similar to the legal sufficiency reviews performed on draft GAO products prior to issuance as described in GAO's policy³² and in the April 26, 2006, *General Counsel Policy*.³³ It was noted that, in this regard, OGC is responsible for independently checking legal principles and legal source materials to verify that they are appropriately applied and to independently check and verify the basis for all legal statements, references, and citations in the draft product.

While OGC's legal sufficiency review of the draft LEAP policy and procedures may have been similar to guidance provided in GAO's and OGC's audit support policies, it failed to identify that key requirements of the LEAP Act and related regulations were not addressed. A comparison between the draft LEAP policy and procedures and the 1996 LEAP policy and procedures was performed; however, a key procedure—comparing the draft policy and procedures with the LEAP Act and related regulations—was not performed. As a result, the gaps that existed between the law and the 1996 LEAP policy and procedures continued to exist in the draft LEAP policy and procedures. We alerted the FAIS Director of Investigations of this fact for consideration before finalizing the draft policy and procedures.

Legal sufficiency reviews of draft policy and procedures serve as an important first step in achieving compliance with laws and regulations. By not comparing the draft LEAP policy and procedures with the LEAP Act and its related regulations, gaps remained and key provisions were overlooked when establishing policy and procedures to ensure compliance with the law and regulations.

³⁰On May 20, 2011, GAO entered into a Collective Bargaining Agreement with the GAO Employees Organization, International Federation of Professional and Technical Engineers (Local 1921). *Article 43 Mid-Term Bargaining* of the agreement discusses the agreed processes regarding changes in personnel policies or practices or conditions of employment.

³¹GAO, *Government Accountability Office (GAO) Orders, Operational Directives, and Manuals*, Order 0010.1 (July 1, 2013).

³²GAO, *GAO Policy Manual Section 315: Consultations with Experts and Specialists, Part A—Obtain Legal Assistance* (January 1, 2008 Version [Updated December 2012]).

³³GAO, *General Counsel Memorandum: Updated Audit Support Policy Statement* (April 26, 2006).

In response to our work, on July 10, 2015, GAO's General Counsel directed OGC staff to review any future changes to FAIS LEAP policy or procedures and unscheduled duty hours and to document their review, including the legal sufficiency of any changes, in an e-mail to the FAIS Managing Director. In addition, the General Counsel specified that OGC's review should include an analysis of the relevant laws and regulations and that, as customary, other OGC subject matter experts should be consulted during the review. Subsequently, an OGC official reported to the FAIS Managing Director that provisions added to the draft LEAP policy and procedures regarding annual and initial certifications were legally sufficient.

FAIS Actions Taken

Both the FAIS Managing Director and the Director of Investigations stated that various actions had been taken to strengthen FAIS management and administration of LEAP. Significant actions noted include:

- February 2012—began efforts to revise the LEAP policy and procedures and issued mobile phones to all agents to ensure availability;
- August 2013—met with key GAO stakeholders to discuss a mechanism for agents to record LEAP hours worked or available each pay period;
- July 2014—provided draft LEAP policy and procedures to the Union;
- September 2014—entered into a contract to modify GAO's electronic time and attendance system to track and approve agents' unscheduled duty hours and to report on agents' cumulative average annual unscheduled duty substantial hours;
- March 2015—established procedures requiring supervisory-level agents (i.e., band III, non-bargaining unit employees) to report unscheduled duty hours (worked or available);
- July 2015—updated the revised LEAP policy and procedures previously provided to the Union to address gaps identified by the OIG; and
- August 2015—finalized LEAP policy and procedures.

Conclusion

Availability pay is a type of premium pay provided to criminal investigators who, due to the nature of their work, are required to work, or to be available to work, a certain amount of unscheduled duty hours. The LEAP Act and related regulations set forth specific requirements, related to agents and management, supporting annual certifications that unscheduled duty hours have been met and will continue to be met in the upcoming one-year period. However, GAO did not have effective LEAP policy and procedures to ensure compliance with several requirements of the LEAP Act and related regulations.

Specifically, procedures designed to support annual certifications and to ensure agents were meeting the substantial hours requirement were discontinued in 2006. Further, the

Director of Investigations stopped certifying agents annual certifications because he lacked assurance that substantial hours requirements were met. Finally, gaps in the LEAP policy and procedures resulted in a lack of initial certifications by new agents and submissions of annual certifications to the Comptroller General or a designee.

GAO agreed with our findings and took corrective action to address the issues we identified. Therefore, we are not making recommendations.

Agency Comments and Our Evaluation

The Inspector General provided GAO with a draft of this report for review and comment. In its written comments, reprinted in appendix II, GAO agreed with the issues we identified and stated that it had implemented all corrective actions we suggested. It also stated that annual certifications for LEAP will be supported in fiscal year 2016 when WebTA enhancements are finalized. We believe that once the enhancements are in place, GAO will have adequately addressed our findings.

In its response to our report, GAO believed that the report lacked context and readers could leave with the mistaken impression that this is an agency-wide problem. Specifically, GAO noted that only 10 FAIS staff, less than one-half of one percent of GAO's workforce of about 3,000 personnel, received LEAP during 2014.

As we reported, only FAIS investigators are subject to LEAP Act regulations. It is clear that the issue of LEAP pay resides in FAIS. Moreover, it is noncompliance with the LEAP Act, not the number of agents receiving LEAP that is the focus of our report. Regardless of the number of staff, FAIS lacked policy and procedures to ensure compliance with the LEAP Act and related regulations.

GAO also provided technical comments, which we incorporated as appropriate.

Appendix I: Objective, Scope, and Methodology

This report addresses the extent to which GAO's investigative unit, Forensic Audits and Investigative Service (FAIS) team,¹ has established and implemented effective controls, including policy and procedures, to ensure compliance with certain requirements of the Law Enforcement Availability Pay (LEAP) Act and its related regulations.²

To accomplish our objective, we identified and reviewed LEAP legal and regulatory requirements related to (1) maintaining the annual average of unscheduled duty hours and (2) completing and submitting annual LEAP certifications. We analyzed FAIS LEAP policy and procedures that describe controls for certifying LEAP compliance and ensuring that each agent's unscheduled duty hours were sufficient to enable the agent and responsible supervisor to make the LEAP certification. We obtained and reviewed annual certifications prepared during 2012-2015 to determine whether certifications were completed by both the agent and the respective supervisor and made to the Comptroller General or a designee. We obtained information on changes in policy and procedures and key controls intended to provide a basis for certifications and compliance with related regulations, as well as corrective actions taken or under way to improve controls for ensuring compliance. We reviewed FAIS's draft LEAP policy and procedures provided to GAO's Employees Organization³ (the Union) in July 2014 to determine whether gaps between the LEAP Act and current policy and procedures continued to exist in the drafts.

We obtained and reviewed personnel records authorizing the payment of LEAP to FAIS agents to identify the universe of agents eligible to receive LEAP. We also obtained calendar year 2014 payroll data for all FAIS agents to determine the amount of LEAP paid during 2014. We compared authorizing records with payroll data to determine reliability of the universe of agents receiving LEAP.

The scope of our audit did not include reviewing (1) GAO's need for criminal investigators, and (2) unscheduled duty hours performed by criminal investigators to determine whether such hours satisfy those required of criminal investigators authorized to receive LEAP.⁴

We interviewed the FAIS Managing Director and Director of Investigations and the eight agents who received or were eligible to receive availability pay as of June 30, 2014, to understand the LEAP certification process, including FAIS policy and procedures, and related compliance. We also met with a former FAIS Managing Director to obtain historical knowledge of LEAP procedures established in October 2002 under his direction and the implementation and administration of availability pay during his two-and-a-half-year tenure. In addition, we interviewed Office of the General Counsel attorneys to gain an

¹GAO established its Office of Special Investigations (OSI), in October 1986 as part of GAO's Office of the General Counsel. On May 6, 2005, GAO created the Forensic Audits and Special Investigations (FSI) unit to monitor and manage the FraudNet Hotline and to support other GAO teams with investigative activities. On March 1, 2011, FSI was restructured and renamed the Forensic Audits and Investigative Service team.

²5 U.S.C. § 5545a(b),(d),(e),(h); 5 C.F.R. § 550.183(a) and § 550.184(a),(b).

³GAO Employees Organization, International Federation of Professional and Technical Engineers (IFPTE, Local 1921). On May 20, 2011, GAO entered into a Collective Bargaining Agreement with the IFPTE Local 1921.

⁴5 U.S.C. §§ 5541(3), 8331(20), 8401(17); 5 C.F.R. § 550.103.

understanding of the administration of the LEAP Act at GAO and their respective roles and responsibilities in developing and reviewing FAIS current and draft LEAP policy and procedures. For our evaluation of FAIS LEAP policy and procedures, existing and draft, we used the LEAP Act and related regulations and federal standards for internal control⁵ to identify and assess controls.


We conducted this performance audit from July 2014 through September 2015 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 objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

⁵GAO, *Standards for Internal Control in the Federal Government*, [GAO/AIMD-00-21.3.1](#) (Washington, D.C.: November 1999).

Appendix II: Comments from the U.S. Government Accountability Office



Memorandum

Date: August 28, 2015
To: Inspector General – Adam Trzeciak
From: Managing Director, FAIS – Stephen M. Lord 
Subject: Agency Comments – GAO's LEAP Program (OIG-15-3)

On August 6, 2015, you issued a draft report entitled, "*Premium Pay: Weak Controls Resulted in Noncompliance with the Law Enforcement Availability Pay Act (OIG-15-3)*". The objective of your evaluation was to address the extent to which GAO's Forensic Audits and Investigative Service (FAIS) had effective controls to ensure compliance with the Law Enforcement Availability Pay (LEAP) Act requirements for receiving LEAP.

Thank you for the opportunity to comment on the draft LEAP audit report. I appreciate the considerable time your staff spent preparing this report and the professional manner in which they conducted their work. I also appreciate the recognition that FAIS has already taken significant action to strengthen management controls over the use of LEAP. It should be emphasized that significant management actions were taken to address LEAP issues well before your audit commenced in July 2014. As your report itself notes, in February 2012, FAIS began efforts to revise the LEAP policy and related operating procedures and the final revisions were made in July 2015. In fact, all corrective actions suggested by OIG have been implemented.

GAO provided a Memorandum of Agreement (MOA) to the Union to memorialize the tentative agreement regarding LEAP policy and procedures on August 6, 2015; and the final version was signed on August 14, 2015. Thus, the LEAP policy and procedures are now final and the changes you were seeking have already been incorporated into the guidance. The MOA includes language implementing the new policy and procedures in October 2015, to allow the WebTA enhancement effort currently underway time to test and validate its ability to accurately record LEAP hours. These efforts will allow us to support annual certifications by management starting in Fiscal Year 2016.

To help facilitate your efforts to revise the draft report and provide context, I am also providing some suggestions and comments. Specifically, since only a small number of FAIS staff receive LEAP pay, the title of the report should be revised to provide readers with the necessary context about the number of GAO staff who receive LEAP pay. Otherwise, it could leave readers with the mistaken impression that this is an agency-wide problem. The number of FAIS staff who received LEAP pay during 2014 was 10, which is less than one-half of one percent of GAO's workforce of about 3,000 personnel. I suggest the title be revised as follows: *Premium Pay: Weak Controls Resulted in Noncompliance with the Law Enforcement Availability Pay Act **for 10 Staff***.

In addition, the Highlights page, which is a key synopsis of report findings for external clients, also lacks this important context and includes no specific numbers; such context and numbers should be added to the Highlights page.

While FAIS initiated its effort in 2012 to address LEAP issues well before the OIG audit commenced in July 2014, your audit helped us refine our approach and procedures. For example, OIG staff reviewed the updated version of the draft LEAP policy and procedures we provided as a professional courtesy, and made suggestions for refining the language, which we incorporated into our LEAP policy and procedure to help ensure it complied with LEAPA and related regulations. Thanks again for your assistance in enhancing our controls over use of LEAP pay. Technical comments were also provided under separate cover.

cc: Karl Maschino, CAO
William Anderson, FMBO
Wayne McElrath, FAIS
Adebiji Adesina, FMBO
Evelyn Logue, OIG

Appendix III: Memorandum of Agreement between GAO and the GAO Employees Organization, IFPTE, Local 1921

**Memorandum of Agreement (MOA)
Between
The Government Accountability Office
And
The GAO Employees Organization, IFPTE, Local 1921**

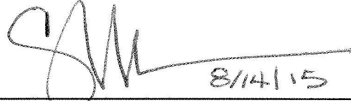
(Forensic Audit and Investigative Services Manual and Procedures Chapter 15 (LEAP))

The Memorandum of Agreement (MOA or Agreement) is entered into between the U.S. Government Accountability Office (GAO and/or the Agency) and the GAO Employee Organization, IFPTE Local 1921 (Union). The Agreement captures the mutual understanding that the parties reached to implement Forensic Audit and Investigative Services (FAIS) Special Agents Manual – Chapter 15 – Law Enforcement Availability Pay (LEAP) and FAIS Procedures – Chapter 15 – Unscheduled Duty Hours. By this Agreement the Parties have reached agreement on FAIS Chapter 15 Manual and Procedures (except as identified in section 1).

Accordingly, the Parties agree as follows:

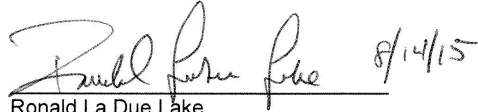
1. FAIS Management will not implement Chapter 15 Manual or Chapter 15 Procedures until negotiations have been completed on the “authorized format” for capturing LEAP hours - referenced in Chapter 15 Procedures. Specifically, the Parties intent is to implement the WebTA component for LEAP which will allow Special Agents/Criminal Investigators to input LEAP hours worked, and availability hours in the WebTA system. If the Parties cannot reach agreement on the WebTA system as the “authorized format” by October 31, 2015, the Parties will negotiate a paper format to capture the LEAP hours worked and availability hours.
2. Criminal Investigators who elect to use their personal cell phones for government-related business and/or while performing official duties of their position (including, but not limited to while serving as the Duty Agents) will not be entitled to reimbursement for any costs incurred by their election to use their personal cell phone instead of the/an agency issued device.
3. GAO may deny or cancel a certification of eligibility if a criminal investigator has failed to perform unscheduled duty (availability or work) as assigned or reported on an annual basis or is unable to perform unscheduled duty for an extended period due to physical or health reasons. An involuntary suspension of LEAP resulting from a revocation or denial of certification shall be a reduction in pay for the purpose of applying the adverse action provisions of 5 U.S.C. 7512 and shall be processed pursuant to applicable negotiated and/or agency-wide adverse actions procedures.
4. Additional Requirements (section 15.3 – Chapter 15 – FAIS Manual) – The term “additional requirements” as stated in the sentence which reads, “The Director of IS or his/her authorized designee may prescribe “additional requirements” needed to administer the certification requirement for GAO/the Agency...” does not indicate a waiver of the Union’s right to be provided notice and opportunity to bargain over changes to working conditions to the extent required by the law. The statement also does not preclude management from exercising management rights under the Statute, including the right to assign work to employees.

5. Prior to implementation the Agency and Union will hold a joint briefing with the Special Agents/Criminal Investigators on the contents and requirements of the Policy and Procedures.
6. When the Parties reach agreement on the "authorized format", as described in section 1, the Parties will discuss and coordinate the initiation of the Duty Agent Roster rotational process as described in section 4 (B) of the Procedures.



8/14/15

Shamar R. Cowan, Esq.
Senior Labor Relations Specialist
GAO, CAO



8/14/15

Ronald La Due Lake
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Appendix IV: Major Contributors to This Report

Key contributors to this report were Louise DiBenedetto, Juan Garcia, Cynthia Hogue, and Evelyn Logue. Technical assistance was provided by Timothy Walker and Cynthia Taylor.

Appendix V: Report Distribution

U.S. Government Accountability Office

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