

Department of Homeland Security **Office of Inspector General**

Allegations of Misconduct and Illegal
Discrimination and Retaliation in the
Federal Air Marshal Service





Homeland
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Preface

The Department of Homeland Security (DHS) Office of Inspector General (OIG) was established by the *Homeland Security Act of 2002* (Public Law 107-296) by amendment to the *Inspector General Act of 1978*. This is one of a series of audit, inspection, and special reports prepared as part of our oversight responsibilities to promote economy, efficiency, and effectiveness within the Department.

This report addresses the strengths and weaknesses of the Transportation Security Administration and Federal Air Marshal Service. It is based on interviews with employees and officials of relevant agencies and institutions, direct observations, and a review of applicable documents.

The recommendations herein have been developed to the best knowledge available to our office, and have been discussed in draft with those responsible for implementation. We trust this report will result in more effective, efficient, and economical operations. We express our appreciation to all of those who contributed to the preparation of this report.

A handwritten signature in black ink, appearing to read "Charles K. Edwards".

Charles K. Edwards
Acting Inspector General

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Abbreviations

ASAC	Assistant Supervisory Air Marshal in Charge
CRCL	Office for Civil Rights and Civil Liberties (DHS)
DHS	Department of Homeland Security
EEO	Equal Employment Opportunity
EEOC	Equal Employment Opportunity Commission
FAMS	Federal Air Marshal Service
FY	fiscal year
GAO	Government Accountability Office
MIU	Management Inquiries Unit
MSPB	Merit Systems Protection Board
NMS	non-mission status
OHC	Office of Human Capital (TSA)
OIG	Office of Inspector General
OOI	Office of Inspections (TSA)
OPA	Office of Professional Accountability
OPM	Office of Personnel Management
OPR	Office of Professional Responsibility (TSA)
RDO	regular day off
SAC	Supervisory Air Marshal in Charge
SFAM	Supervisory Federal Air Marshal
TSA	Transportation Security Administration
TSES	Transportation Senior Executive Service
USERRA	<i>Uniformed Services Employment and Reemployment Rights Act</i>
USSS	U.S. Secret Service
VIPR	Visible Intermodal Prevention and Response



Department of Homeland Security
Office of Inspector General

Executive Summary

In January 2010, CNN reported allegations of misconduct and illegal employment discrimination and retaliation in the Federal Air Marshal Service's Orlando field office. The reports included descriptions of an agency rife with cronyism; age, gender, and racial discrimination; and unfair treatment in promotions, assignments, and discipline. Also included were photographs of a game board modeled after the television show "Jeopardy!" created and displayed by supervisors there, with categories containing derogatory nicknames referring to veterans, females, African-Americans, Hispanics, and lesbians and gays. Senator Bill Nelson and Congressmen Edolphus Towns and Darrell Issa asked us to review the allegations in Orlando and throughout the agency as well as the circumstances surrounding the game board.

Although individual employees may have experienced discrimination or retaliation, our review does not support a finding of widespread discrimination and retaliation within the Federal Air Marshal Service. However, employees' perceptions of discrimination and retaliation are extensive, and we heard too many negative and conflicting accounts of events to dismiss them. Many Federal Air Marshals and some supervisors think they have been discriminated against, fear retaliation, and believe there is much favoritism. There is a great deal of tension, mistrust, and dislike between non-supervisory and supervisory personnel in field offices around the country. We identified factors that contributed to strained relations and became the basis for the allegations. Limited transparency in management decisions is also at the center of fears of retaliation and perceptions that management is mistreating its workforce.

These issues pose a difficult challenge for the agency, but they do not appear to have compromised the service's mission. Transportation Security Administration and Federal Air Marshal Service senior leadership are committed to addressing these issues and have implemented several proactive initiatives to address them. We are making several recommendations to help the agency mitigate these issues.

Background

On September 11, 2001, there were 33 Federal Air Marshals. In November 2001, the Transportation Security Administration (TSA) was created within the U.S. Department of Transportation, and the Federal Air Marshal Service (FAMS) moved from the Federal Aviation Administration to TSA. At that time, the Deputy Secretary of Transportation issued a mandate to recruit, hire, and train thousands of Federal Air Marshals by July 1, 2002.

FAMS met this mandate. To help achieve it, FAMS hired numerous U.S. Secret Service (USSS) retirees because of their experience working in a protective-oriented agency. This was made easier by a provision regarding their federal retirement, which allowed them to continue receiving their federal retirement annuity and a federal law enforcement salary at the same time. TSA also sought experienced retirees from other federal law enforcement agencies. To hire them, TSA requested and obtained waivers of the general restriction prohibiting employees from receiving two federal paychecks at the same time. FAMS eventually received 5-year waivers of the prohibition, and then hired experienced managers from other federal law enforcement agencies. FAMS received more than 175,000 applications and hired Federal Air Marshals from state and local police departments, the Bureau of Prisons, the U.S. military, the U.S. Border Patrol, and other federal law enforcement agencies.

Between 2003 and 2005, FAMS underwent three organizational changes. In March 2003, TSA, including FAMS, moved from the Department of Transportation to the Department of Homeland Security (DHS). In November 2003, FAMS moved within DHS from TSA to U.S. Immigration and Customs Enforcement. In October 2005, it returned to TSA. In June 2008, TSA promoted Robert Bray to Director of FAMS.

FAMS operates many field offices throughout the United States. Field office locations and staffing levels are determined based on intelligence, the FAMS Concept of Operations, and proximity to airports. A Supervisory Air Marshal in Charge (SAC) manages each office, assisted by a Deputy Supervisory Air Marshal in Charge or Assistant Supervisory Air Marshals in Charge (ASACs), depending on the size of the field office, and Supervisory Federal Air Marshals (SFAMs). Federal Air Marshals make up the majority of staff in each field office. Most Federal Air Marshals are deployed on commercial domestic and international flights. A few work in ground-based positions in the field offices to support flying Federal Air Marshals and carry out other responsibilities.

As the size of FAMS increased, workforce issues also increased. The rapid buildup of FAMS, coupled with the task of merging the cultures of the many law enforcement agencies from which Federal Air Marshals were hired, proved to be a challenge. In May 2006, the House Judiciary Committee released an investigative report stating that FAMS encountered numerous problems during the rapid buildup that severely affected morale and potentially national security. The committee reported that Federal Air Marshals in many field offices expressed concerns with policies and reluctance to approach managers due to fear of retaliation. Following the release of this report, the Ranking Member of the House Committee on Homeland Security issued a statement that his committee, which has primary jurisdiction over FAMS, had worked closely with TSA to address flawed policies and practices since FAMS returned to TSA in October 2005. He noted that many of the claims in the report had been or were in the process of being corrected.

In 2009, the U.S. Government Accountability Office (GAO) assessed actions taken by the FAMS to fulfill its mission and address workforce issues. It determined that Director Brown had implemented processes such as working groups and listening sessions to address workforce issues, and Federal Air Marshals were satisfied with these efforts.

FAMS EEO and MSPB Activity

Individual Federal Air Marshals have filed informal and formal Equal Employment Opportunity (EEO) complaints, Merit Systems Protection Board (MSPB) appeals, and lawsuits alleging discrimination, retaliation, or improper personnel actions of one form or another. The majority of cases were decided in the agency's favor. Some were settled prior to the issuance of a decision by the MSPB or the Equal Employment Opportunity Commission (EEOC).

FAMS employees filed 280 informal EEO complaints from September 2006 through May 2010 and 174 formal EEO complaints from September 2006 through April 2011 (see table 1).¹ In fiscal year (FY) 2010, the number of formal complaints rose sharply. For both informal and formal complaints, the primary areas on which employees based their complaints were nonsexual

¹ An informal complaint must be filed initially. Complaints that are not resolved informally may be elevated to the formal complaint process.

harassment, promotion or nonselection, and reprisal. There were three findings of discrimination against FAMS in FY 2009 from claims initiated in 2002, 2004, and 2006, respectively. There was one finding of discrimination against FAMS from September 2009 through January 2010, stemming from a claim initiated in 2004.

Table 1. EEO Complaints Filed by FAMS Employees, FY 2007–FY 2011		
Fiscal Year	Informal Complaints	Formal Complaints
2007	39	18
2008	45	34
2009	49	41
2010	92	71
2011 ¹	55	10
Total	280	174

¹ Informal and formal complaints through April 30, 2011.

From January 2005 through June 2011, FAMS employees filed 161 MSPB appeals. Table 2 provides a breakdown of MSPB appeals filed by calendar year.

Table 2. MSPB Appeals Filed by FAMS Employees, 2005–2011	
Calendar Year	Number of Appeals
2005	10
2006	23
2007	29
2008	26
2009	18
2010	38
2011 ¹	17
Total	161

¹ Number of appeals through June 15, 2011.

Of the 109 cases that had received decisions, 103 (94%) were decided in favor of the agency and 6 (6%) against the agency. Twenty-five cases were settled prior to a decision, and 27 were pending as of June 2011. In July 2011, the MSPB upheld the agency's removal of a Federal Air Marshal in a whistleblower case.

Some Federal Air Marshals have also filed federal lawsuits in U.S. District Courts alleging discrimination and retaliation. From September 2005 to August 2011, 40 lawsuits alleging discrimination by FAMS were filed in U.S. District Courts. The agency won summary judgment or dismissal at the district court level in 22 of the 40 cases. The complainant in one case appealed the district court's decision to summarily dismiss the case, and FAMS then settled the case. Complainants in three other cases also have

appealed the district courts' decisions; the appeals are pending. In addition, 10 cases were settled and 8 are pending.

Discrimination, Retaliation, and Favoritism

Discrimination and retaliation are commonly used terms that when used in legal contexts involve complex matters. Each requires specific elements of evidence to meet its respective legal thresholds. Federal employees and job applicants are protected against discrimination in employment on the basis of race, color, religion, sex (including pregnancy), sexual orientation, national origin, age (40 or older), disability, or genetic information. In addition, federal employers are required to provide a reasonable workplace accommodation for individuals with disabilities and for religious purposes.²

Employees are protected against retaliation for two categories of activities—whistleblowing and exercising their right to engage in certain protected activities. The whistleblower category protects employees, former employees, and applicants for employment against reprisal for lawfully disclosing information they reasonably believe is evidence of a violation of law, rule, or regulation in the workplace or by federal employees. It also protects against reprisal for disclosing gross mismanagement, gross waste of funds, abuse of authority, or substantial or specific danger to public health or safety. The second category protects employees from reprisal for exercising their right to engage in certain protected activities, including the following:

- Filing an appeal, complaint, or grievance;
- Testifying for or assisting another in exercising such a right;
- Cooperating with or disclosing information to the Special Counsel or to an Inspector General; or
- Refusing to obey an order that would require the individual to violate a law.

Sometimes employees believe supervisors have discriminated or retaliated against them by giving preferential treatment to other employees based on biases or personal relationships. If a supervisor gave an assignment to one employee over another because of a personal friendship with that employee, rather than basing the assignment on legitimate business factors such as

² See appendix D for a list of selected laws that protect employees and job applicants against employment discrimination.

expertise, workload, or performance, that would be favoritism. Although what we refer to as favoritism in this report is not the same as discrimination or retaliation, employees are still protected against it; employment decisions must be based on objective factors. An employee might interpret as favoritism what in reality could be fair, merit-based behavior by a supervisor in a given instance. Differentiating among employees based strictly on performance would not be favoritism.

The Allegations

In January 2010, CNN reported allegations of misconduct, illegal discrimination, and retaliation in the FAMS Orlando field office. The reports included descriptions of an agency rife with cronyism; age, gender, and racial discrimination; and unfair treatment in promotions, assignments, and discipline. Also included were two photographs of a “Jeopardy!”-style game board purportedly created and displayed by supervisors in the Orlando field office. One photo depicted the board as it appeared on display in the office; the other was a re-creation of the board with additional descriptions of what the maker believed the game board categories meant. According to the recreated board, categories included derogatory nicknames for a number of groups, including veterans, females, African-Americans, Hispanics, and lesbian and gay employees. After the allegations surfaced, three members of Congress asked us to review allegations of illegal discrimination and retaliation in the Orlando field office and throughout FAMS, as well as the specific circumstances surrounding the creation and use of the offensive game board in Orlando.

Results of Review

Although individual employees may have experienced discrimination or retaliation, our review does not support a finding of widespread discrimination and retaliation within FAMS. However, employees’ perceptions of discrimination, retaliation, and favoritism are extensive. Based on personal testimony and data we collected, the agency is facing a difficult challenge. Tension and limited trust between non-supervisory and supervisory personnel, poor communication, and limited transparency are not only damaging morale, but are also at the center of fears of retaliation and perceptions that management is mistreating its workforce.

We did not review individual allegations against supervisors brought to our attention by non-supervisory Federal Air Marshals. Determining whether one employee retaliated or discriminated against another is a

complex matter that may not be resolved until reviewed by the EEOC, MSPB, or a court of law. Beginning in the Orlando field office, we engaged FAMS employees at all levels and at multiple locations around the country to gain a better understanding of how the organization operates and obtain their insights into incidents that have fueled the allegations. One of our challenges was discerning the views of non-supervisory and supervisory Federal Air Marshals and FAMS' senior leadership.

We heard too many negative and conflicting accounts of events to dismiss them. Federal Air Marshals repeatedly portrayed their supervisors as vindictive, aggressive, and guilty of favoritism. At the same time, Federal Air Marshals occasionally appeared to take certain management actions out of context, such as feeling victimized by a policy decision that applied to the entire field office, failing to tell us what we would later discover was the "whole story," or misinterpreting a management decision as harassment. Based on our discussions with senior leadership, supervisors, and non-supervisors, we believe many of the incidents described to us could have been avoided.

We identified numerous factors that contributed to strained relations and became the basis for many allegations of management misconduct (see page 12). We also conducted a survey of the entire FAMS workforce. The survey results echoed what we observed during our site visits (see page 50). One-quarter of respondents feel they have been discriminated against, 47% of respondents fear retaliation, and 55% believe favoritism is tolerated. The survey also revealed that most, but not all, supervisors disagree with non-supervisory Federal Air Marshals' perceptions of these issues.

These issues do not appear to have compromised the FAMS mission. Despite the concerns expressed in field offices, 76% of survey respondents either agreed or strongly agreed that people they work with cooperate to get the job done. However, these allegations add unnecessary distraction at all levels at a time when mission tempo is high and many in the agency are becoming increasingly concerned about workforce burnout and fatigue. Management may not have attained a sufficient degree of transparency yet to mitigate these perceptions, but it has not been for lack of effort. Management has been addressing workforce issues for several years, and continues to take a very proactive approach to solving them (see page 64).

We are making 12 recommendations to address these issues. TSA concurred with all of the recommendations and is formulating plans to implement them. TSA provided written comments on our draft report. We evaluated TSA's comments and made changes to the report where we

deemed appropriate. A copy of TSA's response is included as appendix C.

The Orlando Field Office "Jeopardy!" Board

CNN reported that managers within the FAMS Orlando field office had created a game board styled after the television game show "Jeopardy!" The content of the game board, and a Federal Air Marshal's interpretation of it in the form of a second game board containing more explicit descriptions, was extremely offensive and outraged many Federal Air Marshals, who alleged that field office managers were targeting them. Even though the incident occurred several years ago, news of it brought the agency under further scrutiny and ultimately resulted in changes within the Orlando field office.

We assessed the circumstances surrounding the game board and the field office's response. We conducted interviews of 66 personnel in Orlando and Tampa, including the SAC, every supervisor, one of the employees who created the game board, and numerous non-supervisory Federal Air Marshals. Based on their recollections, the news report appeared to surprise the field office's senior managers. The game board existed only in Orlando, and was not the source of allegations of retaliation and discrimination in other field offices. Federal Air Marshals we interviewed in other field offices had limited knowledge of it.

The game board was created by an SFAM, a Federal Air Marshal, and a civilian training officer in the training office. All three of these individuals have since left FAMS. The Federal Air Marshal, who later became an SFAM and is no longer a Federal Air Marshal, asserted that the game board was used only for several weeks in the spring of 2007, but another employee said it was on display frequently over many months and he last saw it in 2008. The Federal Air Marshal said he and a few others—some but perhaps not all members of the training staff—played the game and that it was used to make fun of those on the training staff, not others. We asked him to explain each of the game board's categories. He could not remember some, and he provided relatively innocuous explanations for others. We interviewed three additional members of the training staff who were knowledgeable about the game board at the time it was displayed. One said the training staff used the game board to make fun of Federal Air Marshals they disliked, including African-Americans, gays and lesbians, and others who had filed complaints against the office. The other two said they saw the board but did not do anything about it.

The former Federal Air Marshal who photographed the game board while it hung in the training office did not show it to members of Congress or the media until after FAMS removed him in December 2009. He said he

drew a second game board, which contained more patently offensive categories, to help the congressional staff understand the original game board's categories better. He emailed images of both game boards to a few Federal Air Marshals in Orlando and Tampa. One or more of those Federal Air Marshals forwarded the email to others on staff. An unidentified Federal Air Marshal distributed paper copies to several Federal Air Marshals via office mailboxes. The recreated game board generated outrage, anger, and sadness. The removal of the Federal Air Marshal who drew the second game board was upheld by the MSPB.

Most of the Orlando field office did not see the game board until it appeared in news media, because the training offices were usually locked and most Federal Air Marshals did not have access to them. Federal Air Marshals felt belittled by the game board because they interpreted one or more of the categories as representing groups to which they belonged. For example, some Federal Air Marshals said the category "Our Gang" referred to African-Americans. They and others who felt targeted by the game board said it provided more proof that management disliked them and it helped explain why they had not received promotions, awards, or international flight assignments, or had been disciplined unjustly. The training staff may have targeted people on the game board, but we found no evidence that using the game board resulted in passing individuals' names to other managers for harsh or inequitable treatment.

We asked personnel in the field office how management responded to the situation. The SAC and the ASACs held a series of briefings about the game boards. Supervisors and non-supervisors confirmed that supervisors described the game board as an improper, sophomoric joke by training staff. However, accounts of managers' attitudes while addressing the matter varied. According to many we interviewed, senior leaders focused on the facsimile game board and were angered that the second game board had been distributed to certain Federal Air Marshals. Managers felt they had responded appropriately. Non-supervisory Federal Air Marshals recalled being disappointed by the briefings because managers came across as insensitive for not expressing accountability, contrition, or appropriate outrage. Several Federal Air Marshals alleged that during one meeting a senior leader commented that 20% of the office staff were excellent, 20% were poor performers and always would be, and the other 60% could go either way. If true, the comment was inappropriate and might suggest there was animosity toward Federal Air Marshals.

This was not the first or only incident driving Federal Air Marshals' allegations of retaliation and discrimination in the Orlando field office. The Orlando field office was under scrutiny prior to the CNN report and the start of our review. In October 2009, TSA's Office of Inspections (OOI) had begun investigating numerous allegations concerning

supervisors' conduct. The basis for its investigation was allegations of misuse of authority or position. TSA OOI completed its Report of Investigation in March 2010 and provided it to TSA and FAMS senior leadership. In February 2010, TSA OOI began a follow-up investigation and completed its Report of Investigation in April 2010. TSA OOI substantiated the allegation that personnel in the Orlando field office training division played the game board. TSA OOI investigators briefed us and we reviewed their reports.

In March 2009, TSA OOI conducted a Management Assessment Program inspection of the Orlando field office, covering the office's activities for 2008. Field offices undergo this inspection every 3 years. As part of the inspection, investigators conducted dozens of interviews in Orlando, and no one mentioned the game board to them.

The environment in the Orlando field office, specifically working relationships between management and non-supervisory Federal Air Marshals, appeared tense. We noted much anxiety among its workforce, and the degree of animosity and mistrust that supervisors and non-supervisors described in interviews was unsettling. Although we spoke to some individuals who said they did not experience or know of any retaliatory actions in the Orlando and Tampa field offices, the majority of non-supervisory Federal Air Marshals expressed fears of retaliation, said they were retaliated against, or cited knowledge of retaliation against others. Many Federal Air Marshals said they feared retaliation from managers for speaking with us and requested anonymity. In addition, at their request we conducted numerous interviews at offsite locations because interviewees did not want to be seen talking to us. One Federal Air Marshal said the last time an Office of Inspector General (OIG) team was there, they thought management retaliated against them for their involvement in those matters. Another Federal Air Marshal believed management was out to "get" him and he would be suspended soon for something, but discipline records do not indicate that a suspension occurred.

Very few Federal Air Marshals in the Orlando field office complained of discrimination. More Federal Air Marshals felt they had been, or feared being, retaliated against by one of the supervisors. Several Federal Air Marshals described the field office as a hostile work environment in which management focuses more on detecting mistakes or violations and punishing Federal Air Marshals rather than supporting and developing staff. The field office has a contingent of Federal Air Marshals who believe they work in a culture in which senior management and supervisors grant promotions, cash awards, pay increases, flight and ground-based assignments, and discipline on the basis of favoritism.

In addition, Federal Air Marshals in Orlando raised concerns that are addressed later in the report, including the need for clear and transparent management decisions. For example, Federal Air Marshals complained about not receiving cash or time-off awards and in-position increases. Federal Air Marshals believe there is no logic to who gets them, and without receiving feedback on their own performance they perceive them to be prejudicial and given to the favorites, especially those in ground-based assignments. It is difficult for flying Federal Air Marshals to demonstrate their abilities because their actual job performance is seldom observed.

Federal Air Marshals also alleged a need for transparency and constructive comments in the promotion process. There were allegations of individuals who were promoted because they were part of management's clique even though they were not as qualified as others or had a record of discipline against them. Some Federal Air Marshals feel they are more qualified than some of those who were promoted and do not understand why they were passed over. Many Federal Air Marshals are disappointed after not being promoted. In addition, Orlando field office managers were the first to describe problems with the promotion process. Without a transparent process and feedback, Federal Air Marshals will continue to feel that favoritism plays a part in management's decisions.

We encountered many instances in which managers and Federal Air Marshals provided conflicting accounts of events and how the agency operates. Like the TSA OOI investigators, we found inconclusive results in several areas. However, the tension between supervisors and Federal Air Marshals was apparent. For example, we reviewed circumstances involving the investigation of a group of Federal Air Marshals for alleged voucher fraud. Many Federal Air Marshals claim the group was ostracized. One manager believes Federal Air Marshals avoided the group because of the ongoing investigation and not because they feared retaliation. In another case, a Federal Air Marshal believes he was coerced into not filing a complaint against a former supervisor. Management denied any coercion.

While we were conducting our site visit, FAMS leadership met with the Orlando SAC at headquarters. In July 2010, the Orlando field office underwent some personnel changes. These included the SAC being reassigned to a position in headquarters. In August 2010, Director Bray met with the entire Orlando field office to address workforce issues. We also met with FAMS senior leadership to discuss the status of disciplinary action within the field office. The individuals who created the game board no longer work for FAMS. In January 2011, the former Orlando SAC retired from FAMS.

Several Workforce Issues Have Led to Allegations

In the past several years, numerous workforce issues have undermined relationships between managers and Federal Air Marshals, created tension and mistrust within the work environment, and led to many complaints and allegations against managers. These issues have spawned an “us versus them” mentality among non-managers, immediate managers, and senior managers. We noted different leadership styles and attitudes among managers and supervisors in the field offices we visited, but most acknowledged that relationships could be better and said they are trying to communicate better with the workforce to address these issues. At the same time, many Federal Air Marshals seemed unwilling or unable to adapt to changes or to acknowledge that senior management has made efforts to address work-life issues brought to its attention. The inability of both supervisors and Federal Air Marshals to “let go” of past incidents that were previously addressed was a recurring theme during our review.

Non-supervisory Federal Air Marshals were far more vocal in their animosity toward their supervisors than supervisors were toward non-supervisory Federal Air Marshals. Numerous Federal Air Marshals told us they do not trust their supervisors, whether they feel they have been discriminated or retaliated against or not. Some Federal Air Marshals believe managers have not adapted adequately to their unique mission, in which the workforce spends the majority of its time outside the office. Some Federal Air Marshals harbor strong feelings against managers who worked previously at USSS. In their opinion, former USSS employees who are now FAMS managers have created their own elite culture within the organization that is not held accountable. One Federal Air Marshal opined that management has underestimated how much this has affected morale. According to our survey, 52% of the respondents believe senior managers in FAMS will not be held accountable if they engage in misconduct. When management does hold a senior manager accountable, it still might not mitigate perceptions because management cannot disclose disciplinary action taken in response to employee misconduct except in limited circumstances. TSA and FAMS leadership have held former USSS employees accountable. FAMS recently reassigned three high level officials who are former USSS employees.

We observed that managers and supervisors also have opinions about Federal Air Marshals that illuminate their tense relationship. We concluded that supervisors feel they have a bad reputation among Federal Air Marshals because they must enforce the rules and make decisions that may be unpopular. Supervisors also seemed to wonder why Federal Air Marshals are so inclined to file complaints in response to actions that were management’s prerogative. Many supervisors denied knowledge of any discrimination or retaliation. We determined that supervisors share the

belief that Federal Air Marshals call attention to themselves by not following the rules. They also feel that the brunt of Federal Air Marshals' criticism is directed toward them because they were promoted or hired into positions that Federal Air Marshals want. Managers and supervisors did not hide their views that TSA hired many Federal Air Marshals that it should not have hired.

Other factors have also led Federal Air Marshals to complain or allege management misconduct. Due to the nature of the agency's mission, Federal Air Marshals have limited interaction with their supervisors. Evaluating Federal Air Marshals based on such limited interaction is difficult and may lead to disagreements. We noted inconsistency and the need for greater transparency and expediency in the agency's handling of employee misconduct. In addition, several other operational and administrative aspects of FAMS, such as how it administers ground-based assignments, promotions, and restriction from flying international missions, need more clarity.

One field office we visited had an overwhelmingly different opinion about the nature of the relationship between management and Federal Air Marshals. Federal Air Marshals in this field office reported that they are comfortable bringing issues to management because there is an open door policy and good communication. Another Federal Air Marshal in this field office, where the SAC was a former USSS employee, said he was aware of the perceptions about USSS but that in his field office managers and Federal Air Marshals have open communications and everyone gets along. A manager in this field office also highlighted that people come first within the scope of the mission. Another manager acknowledged the "us versus them" problem and said that "it's a tough hill to climb," even though a lot of managers, who are believed to be responsible for the problem, have left. Some of these issues may dissipate over time as current Federal Air Marshals are promoted and become the agency's new leaders. Since January 2009, all FAMS vacancies at the J- and K-band level have been filled by current FAMS employees, either as promotions or lateral reassignments.

Managers Do Not Interact Often With Federal Air Marshals, Which Makes Trusting and Evaluating Them More Difficult

The nature of the job limits interaction between Federal Air Marshals and management. Federal Air Marshals fly missions several hundred days per year, and may be out of the office for half or more of every month. Managers spend most of their time in the office, which means they see only ground-based Federal Air Marshals regularly. Flying Federal Air Marshals are usually in the office only on their non-mission status (NMS) and training days.

The limited interaction between flying Federal Air Marshals and managers makes establishing trusting relationships more difficult.

Former FAMS Director Brown said the relationship between Federal Air Marshals and managers comes down to trusting the Federal Air Marshal. He noted that Federal Air Marshals are some of the least supervised personnel in the entire law enforcement community. Some Federal Air Marshals said the nature of the job makes it difficult to maintain connections with colleagues and asserted that team building and camaraderie do not exist.

Most Federal Air Marshals are professional and responsible, but measuring actual performance is difficult. The autonomous nature of the job and the limited interaction between Federal Air Marshals and management make it difficult for managers to evaluate Federal Air Marshals objectively for in-position increases, awards, promotions, and ground-based assignments. We discuss these issues further beginning on page 29. In some field offices, a 23-point evaluation tool is used to complete Federal Air Marshals' performance appraisals, although headquarters officials said this tool has not been used since 2009. Many managers and Federal Air Marshals told us they are frustrated with this tool because it is difficult to use and does not adequately measure performance. For example, the only quantifiable scores in the tool are physical fitness and firearms scores. One manager explained how he dreads award time because Federal Air Marshals get angry when they do not receive an award. He also explained that it was difficult for a Federal Air Marshal to demonstrate that he or she went "above and beyond." Similarly, Federal Air Marshals in multiple field offices reported inconsistencies in how managers use the tool to make competitive selections because some managers focus more heavily on training and firearms scores than others.

The 23-point tool is subjective. For example, the Readiness for Duty and the Operational Abilities sections of the tool include the following elements:

- Maintains a professional appearance and demeanor
- Professionally interacts with airlines and federal, state, and local agencies as necessary to accomplish specific mission objectives
- Identifies issues, reports discrepancies, and distinguishes problem areas for resolution through appropriate measures
- Provides realistic, logical, and prudent recommendations and suggestions

Without proper guidance, supervisors may interpret each of these elements differently. Rating some areas without physically observing a Federal Air Marshal would not yield results indicative of true performance. TSA developed new performance plans for all personnel in FY 2010. The common belief among Federal Air Marshals is that there are limitations to differentiating among Federal Air Marshals when incidents do not occur on flights. As a result of the subjectivity in performance evaluations, managers tend to accentuate negative issues.

Our survey results indicated ambiguity about performance standards:

- Fifty percent believe the performance standards upon which their rating is based are appropriate for the work they do;
- Fifty-one percent believe their supervisor has enough information concerning the performance of their duties to accurately rate;
- Forty-seven percent believe personal favoritism is not a factor their supervisor considers when rating them;
- Fifty-one percent believe their current performance appraisal is an accurate reflection of their performance; and
- Forty-six percent believe their supervisor provides constructive suggestions to improve job performance.

The physical layout of a field office may affect how non-managers perceive managers, to what extent managers interact with non-managers, and the quality of those working relationships. For example, in one field office, managers and administrative staff occupy one side of the building and Federal Air Marshals and first-line supervisors occupy the other side. Federal Air Marshals and managers referred to upper management's section as the "West Wing." Given the level of tension we noted in this field office, the layout (which the Director acknowledged is not ideal) may be compounding issues there, and the connotation should not be taken lightly. In another field office, management offices could only be accessed with cipher locks until the door was eventually removed. In contrast, in another field office that is not experiencing these issues, the SAC's office is the first one visitors see when entering.

Recommendation

We recommend that the TSA Administrator:

Recommendation #1: Identify other means to obtain information on Federal Air Marshals’ performance that could assist supervisors when preparing evaluations.

Management Comments and OIG Analysis

Management Comments to Recommendation #1

TSA concurred with the recommendation. TSA noted the challenges in supervising and managing a largely mobile workforce. TSA and FAMS believe an external assessment of the issue would be beneficial to FAMS, and are in the process of identifying an independent entity to assess the issue and make recommendations for more effectively evaluating Federal Air Marshals’ performance.

OIG Analysis

We concur with TSA’s response. In its action plan, TSA should identify the assessment’s targeted completion date. We will close the recommendation pending review of the results of the external assessment and FAMS’ plan for implementing actions to assist supervisors in evaluating their employees.

This recommendation is Resolved – Open.

Inconsistencies, Need for Transparency Permeate Handling of Employee Misconduct Cases

Although TSA has a discipline policy that covers FAMS, it appeared that senior field office managers interpret and apply certain aspects of the policy differently. This has resulted in inconsistencies across offices with respect to the types of conduct or incidents that are reported as misconduct and the discipline imposed for similar infractions, including when prior misconduct incidents can be considered. Everyone we spoke with, regardless of their position, agrees that it takes too long to reach a decision on discipline.

Discrepancies in the application of discipline have affected morale and contributed to tension between Federal Air Marshals and management. Some Federal Air Marshals believe management uses the discipline process to “go after” Federal Air Marshals they do not like, rendering them ineligible for raises, awards, or

promotions. In addition, discipline activity can cause a Federal Air Marshal's removal from the international flight schedule for varying lengths of time. We heard repeatedly from Federal Air Marshals who said they constantly felt they were "walking on eggshells" to avoid being "written up for something." TSA has implemented changes to the process of handling misconduct cases; however, these changes were not in place during our fieldwork. Therefore, much of our discussion of the discipline process that follows describes the process in place when we visited offices in the field.

Discrepancies Across Field Offices

We heard complaints regarding disparate treatment of similar incidents that field offices cite for possible discipline. We also heard that field offices do not notify headquarters consistently for the same types of incidents.

Addressing an incident of employee misconduct begins at the field office level. In most cases, the employee's immediate supervisor reports the incident to the SFAM for Administration, who is the designated proposing official for the field office, unless the offending employee is an SFAM or higher ranked official. The proposing official then reviews the facts of the incident, obtains a statement from the involved employee(s), and prepares an incident tracking report to document the incident. Until recently, the incident tracking report usually was forwarded to the Office of Professional Accountability (OPA) at FAMS headquarters, which was responsible for facilitating the misconduct process. OPA also ensured that all required TSA offices were involved as necessary, including the Office of Employee Relations, Office of Chief Counsel, and field office management. The TSA OOI or DHS OIG Office of Investigations investigates incidents of serious misconduct. If discipline was considered, OPA guided the decisionmaking, but ultimately, the field office proposed and decided the form and amount of discipline. Not all incidents reported to OPA led to discipline.

Field office management said they use the standards of behavior outlined in FAMS policy OMS 3700 as a guide in determining when to report an incident as misconduct. However, some managers interpret the policy more strictly than others and may report more incidents, resulting in differences across field offices in the types and number of incidents of alleged misconduct reported to OPA. Some said they referred all incidents to OPA, while others said they do not because they take other factors into

consideration, provide warning(s), or offer general leniency for first-time offenders. Specifically, one field office sent approximately 90% of its incident tracking reports to OPA, and the remainder were maintained at the field office without further action. All policy violations in another field office are recorded in an incident tracking report, but not all incident tracking reports were sent to OPA because extenuating circumstances and past work performance are considered first. Management in a third field office said they tended to give out many warnings to employees before referring a matter to OPA. By contrast, a fourth field office forwarded all discipline cases to OPA.

We heard complaints in some field offices that management was targeting Federal Air Marshals for punishment rather than supporting them. In one field office we visited, managers had clearly found the right balance between administering discipline and supporting Federal Air Marshals by attempting to address matters locally. In another example, incident tracking reports were prepared and forwarded to OPA for Federal Air Marshals in some field offices who reported for a flight 5 to 10 minutes late even when they did not miss the flight and there was a justified reason, such as being delayed by a car accident on the way to the airport. In another office, we were told that such instances usually result in verbal counseling without documenting the incident.

Federal Air Marshals also alleged that their field office would forward incident tracking reports to OPA for some Federal Air Marshals but not others who committed the same infraction. For example, two Federal Air Marshals in the same office made similar mistakes on travel vouchers and received higher reimbursements than they should have. One was allowed to repay the amount and the issue ended; the other also repaid the amount but was then the subject of an extensive investigation.

Following changes to the discipline process, which are discussed further on page 25, incident tracking reports are forwarded to TSA OOI's Management Inquiries Unit (MIU). In addition, the FAMS entity submitting the incident tracking report will now ensure that all required TSA offices are involved as necessary, including the Office of Employee Relations and Office of Chief Counsel. This function will no longer be facilitated by a central headquarters office such as MIU.

Clarifying the types of incidents that should be reported as misconduct to MIU should improve consistency and equity across offices. Field offices need guidance on the types of incidents that

should be reported to MIU in an incident tracking report and should take steps to ensure that misconduct incidents are reported consistently. In addition, TSA should provide guidance regarding the TSA offices required to be involved in the discipline process.

Determining the Discipline for Employee Misconduct

We heard complaints at all levels regarding inconsistency and differences in the severity of the final discipline for employee misconduct. Many of the criteria and rules for disciplining a federal employee arise from an MSPB decision, *Douglas vs. Veterans Administration*.³ That case established 12 criteria—commonly referred to as “Douglas factors”—to be considered in determining an appropriate penalty to impose for employee misconduct.⁴ TSA’s penalty factors are based on the Douglas factors. Among the factors to be considered are an employee’s past disciplinary record and the consistency of the penalty with those imposed upon other employees for the same or similar offense. We heard numerous complaints regarding how TSA and FAMS considered these two factors in determining the form and amount of discipline.

TSA uses a system of progressive discipline wherein the least severe penalty for an offense is assessed first, followed by increasingly harsher penalties until the performance or conduct is corrected or the employee is removed. Often the first action taken is a letter of counsel. The letter notifies the employee that future incidents will result in more severe action. According to TSA policy, letters of counsel may be retained in the employee’s local personnel file indefinitely. Policy does not indicate how long managers may consider a prior letter of counsel or how similar the prior incident must be when determining subsequent discipline. As a result, field offices implemented their own practices.

Management at the field offices we visited differed in how long they would consider a prior letter of counsel when determining discipline for a subsequent incident and what types of prior incidents they would consider. In some field offices, if an employee had no new incidents during the year after receiving a letter of counsel, the letter of counsel would not be considered if a new incident occurred. In other field offices, managers would factor in a prior letter of counsel for varying lengths of time if the new incident was similar to or the same as the prior incident.

³ 5 MSPR 280 (1981).

⁴ See appendix E for a list of the factors to be considered in determining discipline.

Another office considers prior letters of counsel indefinitely, regardless of similarity. A senior manager in one field office said they can consider infractions from an employee's first day with the agency, whether or not the infractions are related.

We concur with OPA officials' suggestion that FAMS needs to provide guidance regarding a timeline for consideration of prior offenses, particularly how long prior corrective actions, such as letters of counsel, or discipline actions, such as letters of reprimand, can be considered and for which types of incidents. For example, suppose a Federal Air Marshal received a letter of counsel for a missed mission 5 years ago. Assuming no further misconduct issues, should that event be considered a prior offense for purposes of determining discipline if the Federal Air Marshal missed a mission today? What if the current offense was failing to pay a government travel card bill instead? The mitigated penalty range for each of these offenses includes a letter of counsel, and the base penalty range for each starts with a letter of reprimand. Although every misconduct case is considered individually, all other factors being equal, management in the field offices we visited would differ in how they considered the 5-year-old letter of counsel, potentially resulting in a different action being taken by each office. Guidance on this issue would ensure greater equity within FAMS. FAMS, the TSA Office of Professional Responsibility (OPR), and the TSA Office of Human Capital (OHC) should work together to provide guidance and clarification regarding how long prior corrective or discipline actions should be considered and for which types of incidents.

Efforts To Ensure Similar Discipline for Similar Infractions

To ensure that discipline was issued consistently across field offices, OPA provided the proposing official with a range of possible penalties for an infraction. OPA officials said they used their database to review the employee's prior discipline and determine a possible range of penalties. However, they often relied on institutional knowledge to identify possible penalties for similar infractions rather than solely relying on the database. In some cases, OPA conferred with the TSA Office of Employee Relations and Office of Chief Counsel to determine an appropriate penalty.

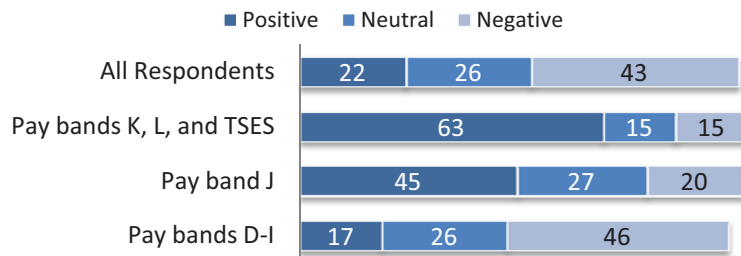
Once OPA provided the penalty range to the proposing official, that official determined what discipline to propose. This usually occurred in consultation with OPA, but ultimately the proposing official had the discretion to select a penalty within the range.

Each field office we visited maintains records of discipline it issued and consults those records to ensure consistency for the same or similar offense.

Given the proposing officials’ discretion, a proposing official in one field office could select less severe penalties while a proposing official in another field office could select harsher penalties for the same offense. An OPA official said some field offices tend to select more severe penalties than others. Allowing selection anywhere in the penalty range increases the possibility of penalties being issued inconsistently across field offices for similar infractions. It also provides the opportunity for field office management to favor some employees by imposing less severe discipline, target others with more severe discipline, or use discipline to retaliate against employees.

According to our survey, employees perceive this to be the case. Only 15% of respondents felt disciplinary actions are applied consistently for similar offenses, whereas 57% felt the actions are not applied consistently. Only 16% of respondents overall felt disciplinary actions are at the appropriate level of severity for a given offense, and 49% felt they are not. The remainder answered that they were neutral or did not know.⁵ In addition, 43% of respondents felt disciplinary actions are used as a tool to retaliate against employees (see figure 1).⁶ It is likely, and even reasonable to assume, that because of privacy rules, respondents are not fully informed of the agency’s reason for disciplining an employee or the basis upon which a penalty is assessed.

Figure 1: Disciplinary actions are not used as a tool to retaliate against employees, by pay band.



We were unable to use OPA’s database to determine whether TSA or FAMS issued comparable penalties for common infractions. The

⁵ See appendix E for definitions of the survey terms “positive,” “neutral,” and “negative,” which are used in figures throughout this report.

⁶ Percentages in figure 1 and subsequent figures may not add up to 100% because results for respondents who selected “do not know” are not included.

database allows only one allegation to be selected and does not track the allegation upon which the final discipline is based. In addition, without manually reviewing the note fields for each individual database record, we could not determine whether mitigating or aggravating factors were part of the discipline decision.

To generate reliable comparisons in a timely manner, the database should be capable of tracking and searching multiple allegations for each case, as well as the allegation(s) upon which the final disposition was based. In addition, including whether mitigating or aggravating factors such as prior discipline were present would help establish comparable penalties. FAMS should be able to track disciplinary data consistently and comprehensively.

Discipline Process Should Be Expedited

The length of time it takes to reach a decision regarding discipline is a source of frustration and tension at all levels of FAMS, and has become a priority for TSA senior leadership. Numerous Federal Air Marshals and managers complained about how long it takes to complete the disciplinary process. Many employees told us they believe management is retaliating against them by keeping discipline cases open for so long, thus keeping them ineligible for in-position increases, awards, and promotions. The issue is compounded because many Federal Air Marshals do not fully understand the discipline process or TSA policies.

Current TSA policy regarding in-position increases and awards do not prohibit employees with a discipline action in the previous 12 months from receiving either. However, policy indicates that management should assess the severity of the event that led to the discipline, the type of discipline, the length of time since the event or discipline, and the performance and conduct of the employee since the event before deciding whether to grant an in-position increase or award. TSA policy does not specifically prohibit eligibility when there is a pending disciplinary matter. However, managers and Federal Air Marshals in the field said that, in practice, FAMS employees are ineligible for in-position increases, awards, and promotions in the fiscal year in which they have a pending discipline matter. When the matter spans 2 fiscal years, it may render the employee ineligible for a favorable action in either year. Managers in some field offices we visited recognized this as a problem because in-position increases and awards usually are distributed once a year and employees are only supposed to be ineligible for 1 year. Because TSA policy does not address

eligibility when the discipline process carries over fiscal years, field offices have created local policies. One field office starts the year of ineligibility on the date of the incident; another starts it on the date of final disposition of the discipline.

OPA officials told us that employees must remain ineligible for personnel actions such as in-position increases, awards, and promotions while discipline is pending because a favorable personnel action would indicate confidence in the employee. Since the discipline process could result in an adverse action against the employee, the agency could have difficulty demonstrating before the MSPB its lack of confidence in the employee if it has recognized the employee with an in-position increase or an award.

Field offices create inconsistency by implementing different local policies regarding an employee's period of ineligibility. In addition, doing so could make it difficult for the agency to defend its decision regarding discipline in future legal matters. Field offices need a policy defining when employees are ineligible for favorable personnel actions when there is a pending disciplinary matter that crosses fiscal years. The policy should specify when the period of ineligibility begins and ends.

Many offices agree that the discipline process needs to be more expedient, but opinions vary as to why it is slow. Accelerating the process has been a challenge for TSA and FAMS. Current policy does not establish timelines for executing the various portions of the discipline process. We heard complaints that TSA OOI investigations take too long to complete, and the report of investigation must be completed and delivered to FAMS before a decision to discipline an employee is made. We also heard complaints that FAMS takes too long to determine the discipline to be imposed after receiving the report of investigation. In addition, we heard that delays occur because the Office of Chief Counsel must perform a legal sufficiency review of the matter before FAMS can propose or issue discipline to an employee. Employee requests for extensions to respond to parts of the process can also delay a final disposition.

When an incident involves conduct or behavior that could jeopardize an employee's security clearance, the matter is referred to the TSA Office of Security. Many employees believe the security clearance review process is part of the discipline process, but the two processes are separate. Both processes usually take place concurrently until the Office of Security decides whether to revoke an employee's clearance. When this happens, FAMS stops

the discipline process because without a security clearance, a Federal Air Marshal is unable to work. If a Federal Air Marshal successfully appeals the revocation, FAMS restarts the discipline process once the security clearance has been reinstated. This process can be confusing for Federal Air Marshals because they feel they have already been punished by not being able to work during the period when their security clearance was revoked. We did not assess the average length of time it takes to conduct security clearance reviews, but we were told it is not unusual for the process, which may include an appeal to the DHS Security Appeals Board, to take more than a year.

We attempted to determine which stages of the discipline process may be delaying the overall process. Different TSA offices track different portions of the process, but no office is tracking all stages. For example, TSA OOI tracks information on referrals it receives and cases it investigates by case agent, case number, region, and subject name but not by date. Employee Relations officials told us they have used multiple systems to track discipline over the years, and data are missing for some periods. In addition, they said that not all FAMS discipline would be entered in their system.

Although OPA was still in the process of backfilling fields with old records, its database was the most comprehensive. We reviewed a random sample of 2,676 records from OPA's database, dated from September 2005 to February 2011. OPA officials told us they evaluated cases opened between January 2009 and January 2011, and the average duration from case opening to issuance of discipline was 118 days. We did not review the methodology OPA used in its evaluation. We determined the following:

- Of 2,038 completed cases that had a case open date and a final disposition date in the database, the average case duration was 145 days.
- The 497 cases that were pending in the database on February 2, 2011, had been open an average of 309 days.

Of the 2,676 records we reviewed, 347 were investigated by TSA OOI. Although there is no written policy stipulating the amount of time for completing an investigation, TSA OOI requires a report of investigation to be submitted within 120 days. We determined the following:

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- Of the 143 records with both TSA OOI case acceptance and report of investigation dates, it took TSA OOI an average of 184 days to complete its report of investigation.
 - Of 151 records with both TSA OOI reports of investigation and OPA receipt dates, it took TSA OOI an average of 39 days to send the report to OPA.

We did not determine how long it takes to perform a legal sufficiency review for disciplinary decisions. Neither OPA nor Employee Relations tracked the amount of time that a given case was under review by the Office of Chief Counsel. We did not seek further clarification from TSA Office of Chief Counsel about how it performs legal sufficiency reviews or how long it takes to perform them.

TSA should develop a comprehensive system to track all stages of the discipline process and movement of individual cases through the process. OHC, OOI, and OPR are working together to develop a shared database to track for all misconduct cases from opening through actions taken. The database will be located in OHC. TSA should ensure that all offices with responsibilities in the discipline process update the database in a timely manner.

Discipline Process Is Changing but Details Need To Be Completed

In September 2010, TSA established OPR to ensure that allegations of misconduct are thoroughly investigated and discipline is appropriate and fair across TSA, including FAMS. As a result, OPA was dissolved from FAMS in February 2011. TSA OOI's MIU assumed OPA's functions. Under a new TSA policy, OOI will investigate all allegations of misconduct against all Federal Air Marshals and other FAMS employees at the K-band level or above. OPR will adjudicate all disciplinary matters involving these employees. This change is designed to ensure that independent offices are responsible for investigating and adjudicating these cases. We believe this is a positive development because it removes this responsibility, as well as possible bias, from field offices.

OPR officials said they will receive all TSA OOI reports of investigation involving FAMS employees. OPR plans to communicate directly with TSA OOI about exactly what it needs in an investigation to minimize the duration of future investigations. Upon receipt of the report of investigation, OPR will request comments from the employee's field office regarding penalty factors. The field offices will be expected to provide this

information within 14 days so that OPR can propose discipline in the case within 30 days of receiving TSA OOI's report of investigation. The employee then will have 7 days to respond to the proposed discipline, and OPR will issue its final decision regarding discipline within another 21 days. Extensions could occur in extraordinary circumstances.

OPR officials will act as the proposing or deciding officials in all FAMS discipline cases. According to the OPA database, OPA received 723 incident tracking reports in FY 2010 for FAMS employees. OOI accepted 99 of the 723 reports for investigation. Of the remaining 624, the primary offense against the employee in 601 of them could result in informal or formal discipline; however, each would have to undergo some sort of review or investigative process to determine what action should be taken. Under the new TSA policies, all such cases will be referred to OOI for investigation and then forwarded to OPR for adjudication. Both OOI and OPR are reviewing how best to carry out these responsibilities, given available resources. OPR will work with OOI and FAMS to clarify which types of incidents constitute potential misconduct and thus need to be referred to OOI.

TSA published a Table of Offenses and Penalties in September 2011, which includes offense descriptions, citations to relevant policies, and recommended penalties for each penalty range. The penalties fall under three options: a base penalty range, a penalty range when mitigating factors are present, and a penalty range when aggravating factors are present. OPR and OHC worked with many offices within TSA, including FAMS, to ensure that the most common infractions are included in the table and to generate appropriate penalties for each. We applaud OPR's decision to collaborate directly with FAMS rather than rely on current discipline databases to determine appropriate penalties. OPR officials expect, and we agree, that the table, which is available to all TSA employees, will increase transparency in the disciplinary process and consistency in adjudications. This is a critical development as it relates to Federal Air Marshals' allegations regarding discipline. There is near unanimous support for OPR across FAMS. OPR is working with OHC and OOI to generate a shared database that will track a case through each stage of the discipline process.

Recommendations

We recommend that the TSA Administrator:

Recommendation #2 (Revised): Provide guidance regarding the types of incidents the Federal Air Marshal Service should and should not report to the Office of Inspection in an incident tracking report.

Recommendation #3: Provide additional guidance and clarification regarding employee ineligibility for favorable personnel actions when there is a pending disciplinary matter that spans performance cycles, including when the period of ineligibility begins and ends. The guidance should be disseminated to all Federal Air Marshal Service personnel.

Recommendation #4: In consultation with the Director of the Federal Air Marshal Service, the Assistant Administrator of the Office of Professional Responsibility, and the Assistant Administrator of the Office of Human Capital, provide guidance and clarification regarding how long prior corrective or discipline actions should be considered and for which types of incidents. Current training to supervisors and the workforce concerning conduct should be assessed and additional training provided as necessary.

Recommendation #5: Develop a comprehensive system to track all stages of the discipline process.

Management Comments and OIG Analysis

Management Comments to Recommendation #2

TSA concurred with the recommendation. In its response, TSA indicated that under new policies, OOI will investigate all allegations of misconduct involving all Federal Air Marshals and OPR will adjudicate them. In light of these developments, TSA suggested that the recommendation be revised. TSA stated that OOI, OPR, and OLE/FAMS will work to provide guidance regarding the types of incidents the Federal Air Marshal Service should and should not report to OOI in an incident tracking report.

OIG Analysis

We concur with TSA's response and have revised the recommendation. We also made changes to the draft report to reflect the new procedures. In its action plan, TSA should discuss its strategy and timeline for providing guidance regarding the types of incidents to be reported to OOI.

This recommendation is Resolved – Open.

Management Comments to Recommendation #3

TSA concurred with the recommendation. FAMS and OHC are working together to develop more detailed guidance regarding these issues. However, TSA said definitive timelines cannot be given regarding employee ineligibility when there is a pending disciplinary matter because it would limit supervisors' ability to manage issues on a case-by-case basis.

OIG Analysis

Although TSA indicated concurrence with the recommendation, its response indicates only partial concurrence. Current policy states that an in-position increase may not be appropriate if an employee has had disciplinary action within the last 12 months, but it does not indicate eligibility during the period while the disciplinary matter is pending. We believe TSA should be able to provide general guidance regarding eligibility during this period to improve consistency across field offices without limiting a supervisor's ability to manage favorable personnel actions on a case-by-case basis. We will close this recommendation pending receipt and review of this guidance.

This recommendation is Resolved – Open.

Management Comments to Recommendation #4

TSA concurred with the recommendation. OHC, OPR, and FAMS are collaborating to develop additional guidance and clarification to supervisors. In addition, they will assess and issue training materials and reminders on conduct.

OIG Analysis

We concur with TSA's response. In its action plan, TSA should provide OIG with copies of the guidance and training materials.

This recommendation is Resolved – Open.

Management Comments to Recommendation #5

TSA concurred with the recommendation. In April 2011, TSA created an Integrated Project Team with representatives and

subject matter experts from OHC, OPR, OOI, and the Chief Information Office to create a common database to track all phases of the disciplinary process. OPR's initial requirements were added to the existing Employee Relations Case Management Tracking system and implemented in June 2011, with additional functionality implemented in October 2011. OOI's functional requirements were approved in September 2011, and the functionality for OOI and the process flow between the offices will be developed, tested, and implemented throughout the remainder of 2011.

OIG Analysis

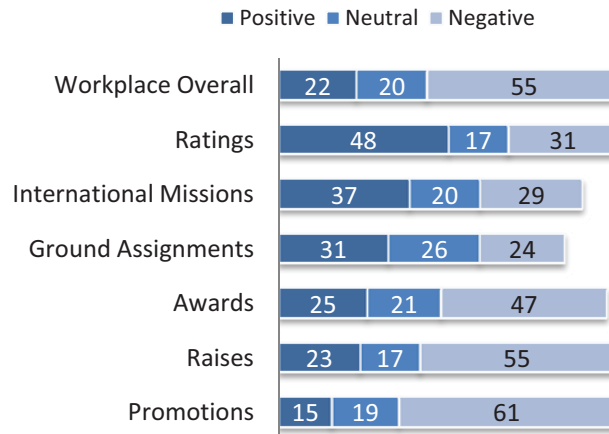
We concur with TSA's response. Our review of the Employee Relations Case Management Tracking system raised concerns regarding the use of this database to track the discipline process. Although the database appeared to be capable of tracking a case's movement through different phases and offices, users often did not utilize these capabilities. For example, a case may have been sent to the Office of Counsel for review, but that field in the database was not completed. TSA should ensure that processes exist and responsibility is designated for keeping the database complete and up-to-date. In addition, given that multiple offices likely will be responsible for updating different fields within the database, responsibility for overseeing the database should be designated to ensure that all phases of the disciplinary process are consistently entered into the database. We will close this recommendation upon receipt and review of the expanded functionalities and process flows of the database, as well as guidance regarding responsibilities for its updating and oversight.

This recommendation is Resolved – Open.

FAMS Needs More Transparency and Consistency in the Workplace

In addition to limited interaction and administration of discipline, other aspects of agency decisionmaking have contributed to Federal Air Marshals alleging favoritism by senior and immediate managers. Favoritism was alleged in selection for international missions, ground-based assignments, in-position increases and awards, promotions, the Senior Federal Air Marshal program, and leave. Figure 2 shows respondents' perceptions of favoritism in some of these areas.

Figure 2: Personal favoritism is not a factor.



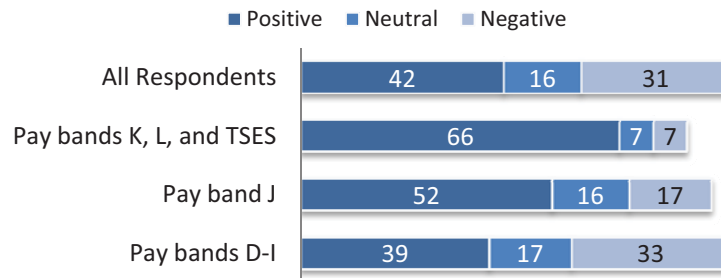
Aside from leave, two factors make decisionmaking in these areas more challenging for managers. First, it is difficult to differentiate Federal Air Marshals by seniority because they are generally equal in tenure, having been hired at about the same time. Second, the nature of the job makes it difficult for Federal Air Marshals to differentiate their accomplishments from those of their peers. In the absence of clear guidance for those programs requiring a selection process, field office managers have created their own criteria. After the field office manager selects an individual for a ground-based assignment, award, or Senior Federal Air Marshal position, the other Federal Air Marshals seldom receive information as to why they were not selected.

Ground-based Assignments

FAMS has several ground-based positions that support all aspects of its mission. These positions include scheduling missions, training and managing training, and liaising with local airports. In addition, Federal Air Marshals can be assigned to Visible Intermodal Prevention and Response (VIPR) teams, which provide security nationwide for mass transit systems, or to a Joint Terrorism Task Force led by the Federal Bureau of Investigation.

Each field office has only a few ground-based positions. Although headquarters has provided guidance for filling these positions, field office managers have discretion in determining the criteria used for selecting Federal Air Marshals to fill the positions and the duration of the ground-based assignment. Our survey showed that 42% of respondents believed the criteria for being selected for ground-based assignments are clearly communicated (see figure 3).

Figure 3: The criteria for being selected for ground-based assignments are clearly communicated, by pay band.

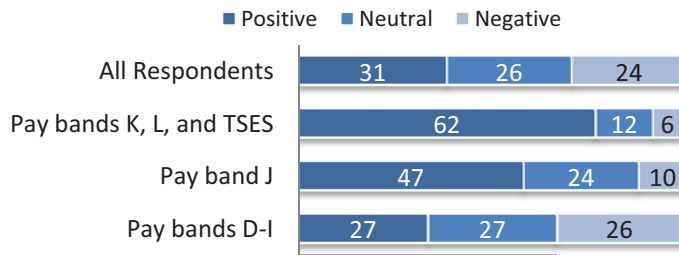


The field offices we visited conducted open competitions. Federal Air Marshals must submit an application and be interviewed by a selection panel. The SAC makes the selection decision. Federal Air Marshals have concerns that managers consider factors other than merit when making these selections. Many Federal Air Marshals described the relationship between Federal Air Marshals in ground-based positions and management as a system based on personal friendships, saying that being selected for a position depends on whether management likes an individual.

Managers said they consider the qualifications of the employee, including shooting and physical fitness scores, prior experience, computer skills, and how well employees present themselves in interviews. In response to our survey, greater percentages of senior managers and J-band supervisors indicated that those selected for ground-based positions meet the stated criteria, although J-band supervisors' responses were not as positive.⁷ Overall, 31% of respondents believe that employees selected meet the stated criteria (see figure 4).

⁷ TSA uses an "SV" or Shared Value grading system, which is a system of discrete grades with pay ranges that differ from "GS" or General Schedule pay ranges. Grade levels are identified by a letter. Grade levels SV-G to SV-K roughly equate to GS-11 to GS-15, respectively.

Figure 4: Those employees selected for ground-based assignments meet the stated criteria, by pay band.



In March 2011, headquarters emailed guidance to the field offices informing SACs that they may determine the length of the ground-based assignment as long as it does not exceed 36 consecutive months. If ground-based assignments exceed 36 consecutive months, the SAC must submit a memo to the Regional Deputy Assistant Director to explain the special circumstance. Additionally, a Federal Air Marshal who completes a 36-month ground-based assignment will not be eligible for another ground-based assignment until after the Federal Air Marshal completes 12 consecutive months on mission flight status. More specifically, headquarters informed all SACs that VIPR assignments can be extended to a maximum of 1 year to alleviate the shortage of volunteers for the program. Also, according to an announcement, Joint Terrorism Task Force assignments should generally not exceed 36 months.

Many Federal Air Marshals expressed concerns that the same individuals occupy positions too long and that employees move directly from one ground-based position to another. However, this did not appear to be the case everywhere. Many Federal Air Marshals told us they are not interested in ground-based positions because they prefer to fly to earn extra per diem, or they do not want to spend time in the field office on a regular basis. This results in a smaller pool of applicants. Managers acknowledged that the same employees often apply for each new position that opens, but it appeared to be less of a problem for managers in large field offices. At the time of our fieldwork, one office was weighing whether to cease asking Federal Air Marshals to apply for ground-based positions and begin assigning Federal Air Marshals to them. Another field office rotates Federal Air Marshals in and out of operations and training to provide more ground-based opportunities and ensure a smoother transition when rotations occur. An SFAM said that rotations were helpful because “bringing in new air marshals helps to keep things fresh.”

In-Position Increases and Awards

An in-position increase is a raise to an employee's basic pay rate, with no change in position or pay band. In-position increases are to be awarded to the top-performing employees in a fair and equitable manner. Awards, which can either be cash or time off, are made to recognize an employee's work contributions. Federal Air Marshals claim they do not know the criteria for in-position increases and awards and that it is difficult for them to demonstrate their performance. Managers acknowledge that it is difficult to differentiate and quantify Federal Air Marshals' performance. Selection and distribution practices vary among field offices, which fuels Federal Air Marshals' perceptions of favoritism.

Federal Air Marshals spend most of their time outside the office. Therefore, it is difficult for them to showcase their abilities because of limited interaction between them and their supervisors, as well as limited quantitative performance indicators. It is equally challenging for managers to rate them. It is a common perception among Federal Air Marshals, as well as some managers, that Federal Air Marshals in ground-based assignments are more likely to receive recognition because they have more frequent contact with their supervisors. Some supervisors emphasize training, physical fitness and weapons scores, and writing and communication skills; some also consider sick leave use. Many Federal Air Marshals believe supervisors focus on negative issues to differentiate between Federal Air Marshals. Indeed, managers repeatedly cited discipline as a key determinant of ineligibility. Multiple Federal Air Marshals confirmed this practice.

Many Federal Air Marshals said they do not know the selection criteria for in-position increases or awards and believe the process is not transparent. Headquarters officials said policies and procedures for who should receive in-position increases or awards are set forth in TSA Management Directives 1100.53-8, with accompanying handbook, and 1100.45-1, respectively. Managers in the field reported that headquarters assigns selection criteria based on 10 areas that have changed annually. Managers in another field office reported using the 23-point rating system to make decisions, but consider it to be ineffective. Unclear selection criteria have bolstered perceptions of favoritism within FAMS. Survey results corroborated these findings:

- Fifty-five percent believe personal favoritism is a factor when awarding in-position increases;

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- Forty-seven percent believe personal favoritism is a factor when awarding cash or time off;
 - Fifty-three percent do not understand what they need to do to receive an in-position increase;
 - Fifty-six percent believe in-position increases are not based on merit;
 - Fifty-one percent do not understand what they need to do to receive a cash or time-off award; and
 - Forty-seven percent believe cash and time-off awards are not based on merit.

In determining how to distribute limited funds for in-position increases and awards, field offices have taken different approaches. Some managers have tried allocating smaller amounts to a greater percentage of their field office workforce. Others have allocated larger amounts to a smaller percentage of their office's workforce. One field office does not allow back-to-back in-position increases. Some managers and Federal Air Marshals disagree with this approach because top performers are not consistently recognized. In FY 2010, 62% of FAMS employees received awards and 21% received in-position increases. In FY 2011, 52% of FAMS employees received awards and 30% received in-position increases. In both years, more than two-thirds of those receiving awards and in-position increases were I-band employees, and some employees received both awards and in-position increases.

According to TSA policy, an employee can receive two consecutive in-position increases as long as there are at least 52 weeks between them. In addition, policy allows employees to receive an in-position increase and a performance award in the same year. FAMS should provide additional guidance and clarification to field offices regarding awards and in-position increases. Specifically, FAMS should clarify whether in-position increases and awards can be rotated among staff and given to the same employee in consecutive years. In addition, FAMS should clarify to what extent discipline issues should be considered when determining who will receive in-position increases and awards.

Senior FAM Program

The Senior FAM program was established to recognize high-performing Federal Air Marshals who have exceptional expertise in flying missions, possess a broad knowledge of the FAMS mission and operational requirements, and have demonstrated an excellent work ethic. The program was well intended, but it was not well received by the workforce. In fact, many Federal Air

Marshals and managers believe the program's execution has had a detrimental effect on morale. The program has further divided the workforce and spurred complaints. The complaints are the result of a number of concerns about the program, including differing applicant criteria, minimal constructive comments for the applicants, and the limited number of positions and incentives.

For appointment as a Senior FAM, current policy states that Federal Air Marshals must possess the following minimum requirements:

- Seven years of continuous service as a Federal Air Marshal;
- Three years as a Federal Air Marshal at the Pay Band I level;
- Eight hundred mission career fly days (military shall be treated as if they were on duty status and shall be credited for missed FAMS service time);
- An excellent work ethic; an employee record free of suspensions or involuntary demotions and performance improvement plan(s) for at least 24 consecutive months prior to submission;
- A current performance rating of "Achieved Expectations," "Exceeded Expectations," or "Achieved Excellence"; and
- Demonstrated initiative in performance of duties and responsibilities required of the Federal Air Marshal position.

The Senior FAM selection panel evaluates applicants based on (1) the applicant's verbal response to the question, "Why do you wish to serve as a Senior FAM?" and (2) the overall quality of the Federal Air Marshal's application package. Some panels added selection criteria to further differentiate candidates. The additional criteria varied among field offices we visited. For example, one field office also required above-average physical fitness and shooting ability. Another field office also considered the applicant's total time in federal service.

Not only do the criteria differ across field offices, but applicants still find the criteria confusing. Many applicants said they did not receive any comments from managers after they were not selected. Managers may not be obligated to provide feedback, but not doing so has led Federal Air Marshals to speculate as to why they were not selected. Some managers said they would have provided comments if the applicant requested them, but we did not find managers who claimed to have provided constructive comments to

applicants proactively. As a result, many Federal Air Marshals were less likely to apply again.

The Senior FAM program currently limits the number of Senior FAMs within each field office. This is problematic since many employees' service time is virtually the same, especially in field offices where attrition is low. FAMS should not restrict the number of Federal Air Marshals who are eligible for the position at each field office. Rather, all flying Federal Air Marshals should be eligible for designation as Senior FAMs upon meeting specific mission and length-of-service criteria, in addition to the performance requirements already in place.

The Senior FAM program offers limited incentives. No additional pay or benefits are associated with being a Senior FAM. According to policy, Federal Air Marshals do not earn credit toward promotion by becoming a Senior FAM. There are no specific job requirements, but a Senior FAM might mentor new employees or serve as the team leader on international missions. Because there are no apparent advantages to being a Senior FAM, many regard the position as only a title with little merit. Senior leadership believes the program has value in that it provides management an opportunity to recognize outstanding Federal Air Marshals. FAMS plans to solicit applications again in 2011.

J-Band Promotion Process

Each year, the agency conducts a FAMS-wide application process for promotion to the J-band, or SFAM. Within FAMS, J-band positions are first-line supervisors. The FAMS J-band promotion process was established in collaboration with OHC and reviewed by the Office of Chief Counsel. Competition for promotion to the J-band is intense due to the large number of applicants and limited number of positions available. Each year more than 600 Federal Air Marshals apply for usually fewer than 80 J-band vacancies. The agency goes to extraordinary lengths to evaluate and rank all of the candidates. However, managers and Federal Air Marshals expressed concerns that the promotion process needs more overall transparency, particularly with regard to scoring Federal Air Marshals' applications. The process has been a source of resentment and tension between managers and Federal Air Marshals. The Federal Air Marshals believe the agency has not fulfilled its promise to provide upward mobility to its recruits. Although we did not study recent hiring decisions, the promotion process can result in a Federal Air Marshal who ranks low nationally being placed on a best qualified list if he/she is among

the top 40 Federal Air Marshals who applied for a specific field office's vacancy. The agency recognizes the need for more transparency, and plans to implement changes in FY 2013.

Several factors have contributed to perceptions of retaliation, discrimination, and favoritism, which have discouraged some Federal Air Marshals from applying. These factors include the wide variances in SAC and panel scores, minimal comments provided to those not promoted, and a misunderstanding by some that the national ranking is the sole determining factor of the best qualified applicants. We heard allegations that Federal Air Marshals in ground-based assignments, or who have worked in headquarters or for USSS, were more likely to be promoted. There were many allegations that minorities were not likely to be promoted. In fact, in FY 2010 and FY 2011 combined, 29% of Federal Air Marshals promoted to J-band positions and 27% of all FAMS employees promoted to the K-band positions were members of minority groups. Of our survey respondents, 61% indicated that they believe there is favoritism in the promotion process. In addition, 52% indicated that they are dissatisfied with their opportunity to get a better job in the organization. Most surprising, 44% of J-band supervisors perceive favoritism in the promotion process.

FAMS does not conduct interviews as part of the promotion process. Applicants must submit to their field office SAC a package that includes their résumé and descriptions of their knowledge, skills, and abilities. The SAC evaluates the applications, and then generates a score based on the information presented. A three-person panel also reviews each application. Typically, the panel consists of one K-band and two J-band supervisors. The panel reaches consensus and assigns each application a score.

The SAC and panel scores are added together to generate a composite score for each applicant. Applicants then are ranked nationally according to their final composite scores. Each field office SAC receives an unranked certification list of the 40 highest ranked applicants, plus ties, who indicated an interest or willingness to work in the office when they submitted their application. Field office SACs review the list and applicants' packages if desired, and submit to headquarters the names of five applicants from the list to fill the vacant supervisory positions within their field office. The Deputy Assistant Directors review each SAC's preferences and make the final recommendations for

each field office. The Assistant Director for Field Operations has final approval.

Federal Air Marshals are also skeptical of the J-band process for other reasons. First, many Federal Air Marshals and supervisors confirmed that the SAC and panel evaluation criteria and the process have changed every year, resulting in confusion for both applicants and raters. Many changes were based on advice sought from the workforce to improve the process. For example, in various years the agency has tried changing the length and type of questions posed to applicants; asked applicants to self-evaluate; and excluded but then included supervisor input. Prior experience that Federal Air Marshals could cite on their application has evolved. For example, immediately following the 9/11 terrorist attacks, Federal Air Marshals received credit for experience with various firearms. Federal Air Marshals complained of not being informed about changes to the criteria, and senior FAMS officials acknowledged they do not like the fact that applicants may not know all of the criteria. The J-band process is communicated to all employees through a FAMS broadcast message. The message includes the timeline, instructions for applying, and resource materials such as the standardized job description, the candidate preparation manual, and answers to frequently asked questions. FAMS also conducts two information sessions, which are recorded and made available on the FAMS home web page, to provide an overview of the process. The agency should ensure that it clearly communicates specific application criteria and updated process procedures to all applicants at the beginning of each promotion cycle.

Second, Federal Air Marshals perceive problems with the scoring process, specifically wide variances between the SAC's and the panel's scores from year to year, and between the SAC's score and the panel's score during the same year. Federal Air Marshals do not think SACs use the same criteria, but more important, they asserted that SACs should not score them if they are not in a ground-based position because they have such limited interaction. SACs usually solicit input from an employee's first- and second-line supervisors during the evaluation process. Applicants do not feel the process is transparent because, although not required, managers do not explain the variance in scores.

Incorporating the SAC's views of the applicant's promotion potential is a reasonable starting point because the SAC represents the Federal Air Marshal's chain of command. SAC scores may fluctuate from year to year depending on the applicant's

performance, recommendations from supervisors, or the SAC's relationship with the applicant. The SAC can raise or lower a Federal Air Marshal's ranking based on these factors. When the SAC's score is lower than a panel's score by a wide margin, Federal Air Marshals invariably believe their SAC is deliberately sabotaging their bid for a promotion. However, that criticism is unfair as long as SAC scores are consistent. Because the SAC can include personal knowledge of and experience with the Federal Air Marshal in his or her score and the panel score is independent, Federal Air Marshals should expect SAC scores and panel scores to differ.

Federal Air Marshals become very suspicious when their SAC's evaluation is significantly different from one year to the next, without any apparent change in the applicant's performance. One Federal Air Marshal believed that his giving a deposition in an investigation of another Federal Air Marshal was the only reason his SAC rated him high one year and significantly lower the next. There may be instances when the agency should address variances in SAC scores and panel scores in order to provide for a more transparent and equitable promotional process. The more data FAMS can include to complement the SAC's rating, the less likely Federal Air Marshals will be to second-guess their rating.

Federal Air Marshals and some managers familiar with the process told us they do not like the way the agency uses the certification list. After SACs receive the unranked list of applicants willing to work in their field office, they indicate their top five preferences and send those names to headquarters for final selection. SACs may choose from anyone on the list, possibly avoiding certain applicants even if they were initially ranked higher during the application process.

It is unclear what factors other than personal knowledge of the applicant Deputy Assistant Directors and Assistant Directors consider when recommending or finalizing their selections, but we were told they frequently override SACs' preferences. The large certification list affords SACs, Deputy Assistant Directors, and Assistant Directors greater flexibility when making selections. TSA should review evaluation and assessment procedures for the J-band promotion process and revise as necessary to ensure that certification lists contain the best qualified candidates.

In 2010, the FAMS Advisory Council formed a working group to analyze the J-band promotion process and make recommendations to senior leadership. The council recommended a new process that

gradually reduces the list of applicants to those who are most qualified. The council recommended inserting steps in the process, including implementing a computer-based test to assess writing skills and reasoning abilities as well as a scenario-driven telephone assessment to assess supervisory skills. If implemented, FAMS would design and implement study guides for each process assessment tool to prepare applicants for the test. FAMS should ensure that the test has been validated sufficiently prior to implementation. Finally, the council recommended that a panel of senior, midlevel, and first-line supervisors interview applicants and evaluate a core competency narrative submitted by the applicant. Each of the three phases will be weighted. Applicants' final scores will also be retained indefinitely. FAMS plans to incorporate these changes into the 2013 promotion cycle.

International Assignments and Use of International Restriction

International flight assignments and management's use of international restriction have been a source of frustration and tension between Federal Air Marshals and supervisors. International missions are the most complex and sensitive missions that Federal Air Marshals fly. They are long in duration, usually over water without an immediate ground landing possible, and without immediate FAMS or other U.S. law enforcement support available. They also require Federal Air Marshals to follow the rules and laws of the nation they are visiting. The execution of international missions could affect FAMS' ability to continue flying missions to specific countries or create other serious diplomatic ramifications.

Although Federal Air Marshals are not guaranteed international missions, because of the potential to earn higher per diem than domestic missions, most Federal Air Marshals believe the inability to fly international missions is akin to punishment. Many Federal Air Marshals asserted that management favors certain Federal Air Marshals for international flights and manipulates the assignments process to carry out such favoritism. Absent any apparent cause for removing them from international missions for extended periods, Federal Air Marshals asserted that managers are retaliating against them.

Managers in field offices were forthcoming regarding how they assign international missions, and said that Federal Air Marshals may review the flight schedule at any time. The agency does not have a standard policy to guide managers deciding whether to restrict a Federal Air Marshal from flying internationally. As a

result, field offices administer international restriction differently and with less transparency than the assignments process. In general, both supervisors and non-supervisory Federal Air Marshals acknowledged that the surge in the international tempo since December 2009 has mitigated these issues. Federal Air Marshals who desire international missions are getting them. Because of the recent need to cover more international flights, there have been fewer complaints.

The International Assignments Process Is Transparent

We interviewed Federal Air Marshals in the operations office of each field office we visited and reviewed spreadsheets supporting each roster period to understand how the process works and the role of field office managers in determining which Federal Air Marshals get international missions, and where. In all but one field office, we encountered Federal Air Marshals who felt management is using international missions as leverage against them and would deny them international missions. In 148 interviews in which we discussed international assignments, only 45 Federal Air Marshals said they thought international assignments were administered fairly. Others said they either did not have international missions or did not get them for a long time, believing that their field office did not schedule international missions fairly or equitably.

On the other hand, managers and Federal Air Marshals in operations offices who coordinate the schedules with headquarters said Federal Air Marshals do not understand how scheduling works. They were forthcoming about the process and described steps they have taken to inform Federal Air Marshals about it. Missions are assigned based on the needs of the mission and not individual preferences. Most operations staff members appear to track the number of international assignments for each Federal Air Marshal to ensure equitable distribution, yet they hear complaints of Federal Air Marshals getting too few or too many missions, and not getting to travel to certain locations. Managers asserted that they try to keep it fair. We did not learn of an instance when a Federal Air Marshal was denied access to this information.

Because of the diplomatic implications of international missions, the agency does not guarantee international missions to Federal Air Marshals. Federal Air Marshals who are not operationally ready should not be put on international missions. Management prefers to assign international missions to the Federal Air Marshals best equipped for them. One manager stated that sometimes Federal Air Marshals are selected based on their foreign language skills or

previous experience in a country. We repeatedly heard that field offices do not allow Federal Air Marshals with disciplinary issues to travel internationally. Headquarters officials said field offices often consider discipline, including severity and recentness, when assigning Federal Air Marshals to international missions. Several managers advised us that international missions and team leaders are assigned on a rotational basis, and behavior is the only reason this would change.

Supervisors and non-supervisory Federal Air Marshals generally agree that international missions are a privilege, but they are also a requirement of the job. In previous years when not as many international missions were available, managers said they assigned them to good performers, whereas Federal Air Marshals felt management was assigning international missions to their favorites. However, the question has become less relevant simply because, since the Detroit bomber incident in 2009, the agency has needed more Federal Air Marshals to cover more international missions.

Staffing each 28-day roster period is complex because international missions are scheduled based on availability, and many variables affect availability. The schedule must consider regular days off (RDOs), NMS days, leave, and training. Field offices have implemented schedules that appear to accommodate Federal Air Marshals as much as possible without jeopardizing missions. One field office publishes assigned RDOs, which “cascade” or rotate during the year, so Federal Air Marshals know their days off in advance. Another field office created a flex schedule, which rotates RDOs every two roster periods and essentially minimizes less desirable RDOs. Two field office managers said more than 95% of international missions are followed by RDOs. This is done so that Federal Air Marshals do not have to fly domestically the day after an international mission. Some field offices schedule training and NMS days next to RDOs to extend Federal Air Marshals’ weekends. At other field offices, RDOs are determined by squads. Federal Air Marshals in each field are typically organized by squads, which are small groups usually led by a Supervisory Federal Air Marshal. All of the field offices decide Federal Air Marshals’ RDOs from 90 days up to 1 year in advance. Each field office considered Federal Air Marshals’ preferences for their desired RDO schedule. We heard few complaints about RDO schedules from the field offices we visited.

FAMS Does Not Have a Standard Policy for Placing Federal Air Marshals on International Restriction

There is no national policy for determining whether to remove a Federal Air Marshal from international missions. As a result, Federal Air Marshals assert that managers deny them international missions for excessive periods without cause. Federal Air Marshals view international restriction as informal discipline when coupled with official punishment for a misconduct or behavioral incident. For example, a Federal Air Marshal who receives a letter of counsel, which is not considered formal discipline, may or may not be placed on international restriction.

Of the five field offices we visited, only one has a written policy regarding restriction of international mission privileges. That policy states that any discipline, including a letter of counsel, will automatically result in 1 year of international mission restriction. This field office takes the Federal Air Marshal off international status on the date of the incident, even before discipline is determined. It may be for this reason that within this field office the term “Team America” exists, referring to a group of Federal Air Marshals ineligible for international missions. The term is widely understood around the office; more than two dozen Federal Air Marshals mentioned it to us because of its negative connotations. It is obviously necessary for field office management to track Federal Air Marshals who are on international restriction. It is possible that a Federal Air Marshal may not be flying international missions for reasons other than discipline.

Field office managements’ justifications for placing Federal Air Marshals on international flight restriction varied. Some of the justifications we heard were related to medical reasons and passport/visa issues. We heard that poor job performance, late payment of expenses credited to travel cards, and conduct issues could warrant international restriction. The managers at all of the field offices we visited believe that Federal Air Marshals who commit serious infractions should be removed from international missions, or in some cases, removed from all flying missions.

FAMS should develop and implement a national policy to define when Federal Air Marshals can be removed from international flight schedules, including what performance and conduct issues can cause a Federal Air Marshal to be removed and the duration of the restriction.

Annual, Sick, and Military Leave and Light Duty Policies

We heard fewer complaints about leave and light duty compared to international mission assignments and the promotion process. Some Federal Air Marshals believed their supervisors discourage or oppose the use of sick or military leave, and leave usage has an effect on how they are treated. We did not review these incidents in detail, and we make no recommendations concerning leave administration or light duty.

Federal Air Marshals who had problems with sick leave cited managers tracking how much leave was used; managers requesting doctor's notes; not being able to call in sick on certain days; and being disciplined for taking, in the manager's opinion, too much sick leave. Owing to the perceived negativity from management, Federal Air Marshals claim they will continue to fly even when they are sick or injured. We also heard allegations of supervisors denying sick leave to care for family members and attend funerals. Several Federal Air Marshals claimed they were placed on sick leave restriction. One field office allegedly posted sick leave use on a bulletin board in a common area. The affected Federal Air Marshals believe this was done to embarrass them and discourage others from using sick leave. In general, managers said that although they prefer 3 to 4 months' notice, they rarely deny annual leave. Larger field offices are able to absorb sick days and backfill missions better than smaller field offices. Supervisors may request a doctor's note if there is a pattern of sick leave.

Fewer Federal Air Marshals complained of problems with military leave, although several said they were retaliated against for serving in the military. At least one was told his military service was becoming a problem because flight schedules had to be changed. One Federal Air Marshal said that on at least four occasions, he received military orders, submitted a request for military leave, and was asked by his supervisor when he was going to retire from the military. His leave was not denied. Other Federal Air Marshals said they believe or had been told that management thinks they should choose either military service or working for FAMS. In addition, although military leave may introduce certain inconveniences for field offices, operations personnel build schedules for Federal Air Marshals around military leave, when known. Several Federal Air Marshals said their office previously would schedule their RDOs to coincide with drill days. This kept the Federal Air Marshal available for flight schedules and reduced the amount of annual leave the Federal Air Marshal had to take once the 15 days of military leave allowed annually had been used.

Federal Air Marshals claimed management changed this practice and their days off no longer coincide with their drill days, meaning they have to use more annual leave to cover their drill schedules.

According to the *Uniformed Services Employment and Reemployment Rights Act of 1994* (USERRA), a service member on military orders should be considered for raises, bonuses, and awards as if the Federal Air Marshal had never left for duty.⁸ USERRA does not guarantee that Federal Air Marshals are entitled to performance-based raises when they return from service. However, Federal Air Marshals claim they have been denied raises and other considerations because of their military service. For example, one Federal Air Marshal said he returned from a military deployment and received a cash award that was smaller than what he usually received. He said his supervisor said this was because he had only been in the field office for part of the year. In another case, a Federal Air Marshal returned from a military deployment and learned that several others in the office had received pay raises. He said his supervisor told him he was not considered for a pay raise because he was deployed at the time the pay raise decisions were made. The Federal Air Marshal felt he should have been considered, even if he did not receive a raise.

Light duty is the temporary adjustment or modification to essential job functions that may be offered to employees with temporary injuries or medical conditions that did not occur on the job. Limited duty is the temporary adjustment or modification to essential job functions for employees with temporary medical restrictions for injuries or illnesses that occur on the job. In either situation, suitable work must be available. Managers and Federal Air Marshals in offices we visited did not differentiate between light and limited duty; all referred to both as light duty. We were told that if light duty assignments were available, employees with work-related medical restrictions would be offered a light duty assignment before employees with non-work-related medical restrictions. Management may change or cancel light duty assignments because of changing operational needs, space limitations, and staffing requirements or because of changes to the employee's physical or medical limitations, in accordance with the procedures described in TSA's light and limited duty policies. It is within the SAC's purview to deny a Federal Air Marshal light duty when no suitable work is available.

⁸ 38 U.S.C. § 4316.

Several Federal Air Marshals have filed EEO complaints after being denied light duty. We heard allegations of light duty not being administered fairly or having a negative connotation. Many felt light duty was given to those whom management favors. Federal Air Marshals also expressed confusion about the light duty policy.

Several years ago, one field office attempted to make accommodations based on pregnancy by providing light duty. When another Federal Air Marshal who was denied light duty alleged discrimination, the field office abandoned light duty altogether. More recently, several Federal Air Marshals in this field office requested and were denied light duty. Headquarters directed the field office to bring them into the office to work light duty. In the SAC's view, this field office did not have light duty work available to accommodate all who requested it, but he called those Federal Air Marshals into the office. He directed them to sit in a small room and let people into the office, answer phones, and make photocopies. Federal Air Marshals we interviewed who were in the room felt that they were being punished and made an example of. Management said that it was following headquarters' direction, despite having no light duty. Although it was within the SAC's authority to refuse light duty, from our perspective it was not necessarily within the spirit of the policy.

Recommendations

We recommend that the TSA Administrator:

Recommendation #6: Establish additional guidelines that set forth selection criteria for Federal Air Marshal ground-based positions.

Recommendation #7: Provide additional guidance and clarification for awards and in-position increases, including whether they can be rotated among staff and given to the same employee in back-to-back years, and to what extent managers should consider discipline issues.

Recommendation #8: Evaluate whether the Federal Air Marshal Service should remove specific limits on the number of Senior Federal Air Marshals allowed in each office and establish eligibility criteria for designation as a Senior Federal Air Marshal based on specific mission and length-of-service achievements, in addition to the performance requirements already in place.

Recommendation #9: Communicate specific application criteria to all J-band promotion applicants at the beginning of each promotion cycle.

Recommendation #10: Review evaluation and assessment procedures for the J-band promotion process and revise as necessary to ensure that certification lists contain the best qualified candidates.

Recommendation #11: Develop guidelines to define when Federal Air Marshals can be removed from international flight schedules, including what performance and conduct issues can cause a Federal Air Marshal to be removed and the duration of the restriction.

Management Comments and OIG Analysis

Management Comments to Recommendation #6

TSA concurred with the recommendation. In March 2011, guidance regarding the length of ground-based assignments and extensions of those assignments was sent to field office SACs. Field office SACs must communicate the selection process structure and employ a panel of supervisors to review, interview, and rank ground-based assignment candidates. Those not selected will receive feedback on areas for improvement for possible future selection. If special circumstances require a ground-based assignment to be extended, the field office's Regional Deputy Assistant Director must approve the extension. In addition, Federal Air Marshals who complete a 36-month ground-based assignment must be on mission flight status for 12 consecutive months before being eligible for another ground-based assignment. In April 2011, new guidance was sent allowing SACs to extend VIPR assignments up to a maximum of 1 year. FAMS is preparing additional consolidated guidelines on selection criteria for ground-based assignments that will be provided to field offices.

OIG Analysis

We concur with TSA's response. We will close this recommendation upon receipt and review of the consolidated guidance regarding selection criteria for ground-based assignments.

This recommendation is Resolved – Open.

Management Comments to Recommendation #7

TSA concurred with the recommendation. OHC and FAMS are collaborating to develop guidance to clarify existing policy and mitigate issues surrounding the perception of favoritism while allowing management to use their judgment and discretion in granting awards and in-position increases. In addition, OHC and FAMS will discuss and clarify for the workforce the applicability of discipline matters.

OIG Analysis

We concur with TSA's response. We will close this recommendation upon receipt and review of the additional guidance and clarification.

This recommendation is Resolved – Open.

Management Comments to Recommendation #8

TSA concurred with the recommendation. FAMS is examining the program to determine what changes may be needed. FAMS senior leadership has tasked the SAC Advisory Council and the FAMS Advisory Council to consider all facets of the program to develop a program better suited for the development and recognition of Federal Air Marshals. An ad hoc committee of representatives of both councils will meet to develop recommendations for consideration and implementation by senior leadership. Any new criteria for the program will be communicated to the entire FAMS workforce.

OIG Analysis

We concur with TSA's response. We will close the recommendation upon receipt and review of the committee's recommendations for the program and communication of the new criteria to the FAMS workforce.

This recommendation is Resolved – Open.

Management Comments to Recommendation #9

TSA concurred with the recommendation and believes the recommendation has been addressed. The Federal Air Marshal J-band promotion opportunity is posted on USAJobs.gov and is

sent to all FAMS employees via a FAMS broadcast message. Available resources include the standardized job description, a candidate preparation manual, and answers to frequently asked questions. FAMS also conducts two informational sessions, which are recorded and made available on the FAMS home web page, to provide an overview of the process. Employees are also made aware of TSA career coaching services. In addition, FAMS implemented the Candidate Dashboard on October 1, 2011, which allows applicants to track their status through each phase of the application process.

OIG Analysis

We concur with TSA's response.

This recommendation is Resolved – Closed.

Management Comments to Recommendation #10

TSA concurred with the recommendation. OHC is working with FAMS to review and recommend improved candidate evaluation and assessment, specifically regarding J-band promotions. TSA will further these efforts to ensure that certification lists contain the best qualified candidates.

OIG Analysis

We concur with TSA's response. We will close the recommendation upon receipt and review of the results of the OHC and FAMS review and recommendations regarding the promotions process, as well as revisions to the process to ensure that certification lists contain the best qualified candidates.

This recommendation is Resolved – Open.

Management Comments to Recommendation #11

TSA concurred with the recommendation. FAMS assigns international missions to Federal Air Marshals who are performing at or above expected levels; have gained their supervisor's confidence; and have demonstrated the requisite professionalism, ability, and skills. Employees not performing to these expectations are scheduled less sensitive work assignments. This determination must be made on a case-by-case basis and final supervisory authority must rest with field office management who know the strengths and weaknesses of each Federal Air Marshal.

Clarification regarding the removal of Federal Air Marshals from international missions will be provided to field offices.

OIG Analysis

We concur with TSA's response. We will close the recommendation pending receipt and review of the clarification provided to field offices regarding removal from international missions.

This recommendation is Resolved – Open.

Results of Workforce Survey

From February to April 2011, we conducted a survey of the FAMS workforce to measure employees' perceptions of discrimination, retaliation, and favoritism. We also attempted to obtain employees' views on the current workplace environment and asked about communication, diversity, reporting and addressing misconduct, and job satisfaction. The survey enabled us to obtain opinions from FAMS employees we were unable to interview. In addition, the survey provided an outlet for employees to voice their opinions regarding these matters independent of TSA and FAMS.

To help develop the survey, we consulted with the EEOC, the DHS Office for Civil Rights and Civil Liberties (CRCL), and FAMS. We administered the survey via the Internet and invited the entire FAMS workforce to participate. Approximately 50% of the workforce completed the survey.⁹

A substantial percentage of Federal Air Marshals who responded to the survey believe they are victims of discrimination, retaliation, or unfavorable treatment. As illustrated in figures below, opinions varied among senior managers, intermediate managers, and non-managers, but some supervisors also perceive these issues. Almost half of respondents feared retaliation if they disclosed a violation of law, rule, or regulation. Negative perceptions are also prevalent regarding discipline and favoritism, even among managers and respondents who do not believe that they are victims of discrimination, retaliation, or unfavorable treatment. Employees who fear retaliation are also less likely to report misconduct or illegal activity. Overall, perceptions of policies and procedures for addressing complaints and disputes are mixed. These perceptions have real effects on the organization, such as increased dissatisfaction and negative perceptions of the discipline, awards, promotions, and assignments processes. Among

⁹ See appendix F for a complete list of survey questions and overall responses.

survey respondents, 25% are dissatisfied with their job. If FAMS management does not address these perceptions, the problems reflected by our survey will continue to affect morale and possibly lead to more allegations and litigation.

We also looked at the survey results across field offices.¹⁰ We collected a significant amount of information and observations during site visits to Charlotte, Cincinnati, Dallas, Minneapolis, and Orlando/Tampa. In general, survey responses in each of these field offices were consistent with our observations. Perceptions of favoritism, discrimination, retaliation, and discipline were consistently negative in certain field offices, as well as consistently positive in others.

We also compared respondents' answers to identical or nearly identical questions the Office of Personnel Management (OPM) posed during its 2010 survey of DHS employees. In 15 of the 16 questions, FAMS' responses were more negative than those of DHS employees overall.¹¹

Perceptions of Discrimination and Diversity Programs Are Mixed

By “discrimination” we refer to unlawful actions taken against employees on the basis of race, color, national origin, sex, religion, age, or disability. Although perceptions of diversity programs and the existence of discrimination are often mixed, minority populations had a higher rate of negative perceptions of diversity and discrimination than nonminorities. Most respondents (77%) believe they know whom to contact if they feel they are or have been discriminated against or harassed on the job.

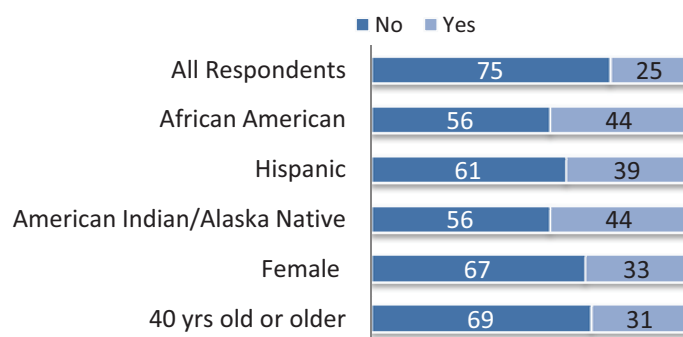
One-quarter of respondents believe they have been discriminated against (see figure 5).¹² More than one-third of respondents from several minority groups feel they have been discriminated against, the highest being African-Americans and American Indian/Alaska natives with 44%. The issues we identified in the areas of promotions, in-position increases, awards, assignments, and discipline have likely contributed to perceptions of discrimination. FAMS can help mitigate these issues by being more transparent.

¹⁰ See appendix G for select survey results by location.

¹¹ See appendix H for a comparison of the 16 identical or nearly identical questions and responses between our survey of the FAMS workforce and the 2010 DHS-wide Office of Personnel Management survey.

¹² Our survey asked respondents whether they have been treated unfavorably because they belong to one of six protected classes. Positive responses are referred to as discrimination.

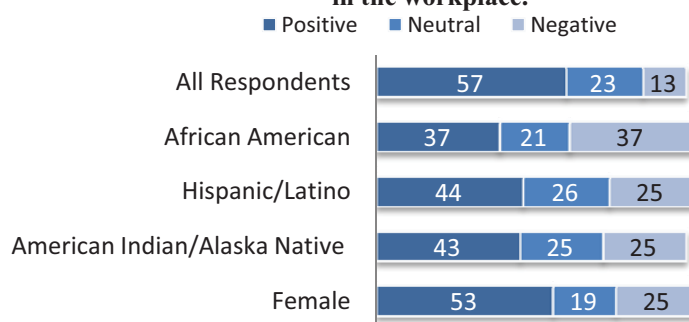
Figure 5: Have you been discriminated against?



Seventy-nine percent of respondents who feel discriminated against believe the unfair treatment occurred since February 2009, but other incidents occurred earlier than that.¹³ A majority of these same respondents (62%) believe a senior manager in their office was responsible for the discrimination. Additionally, 44% believe their immediate supervisor was responsible and 25% believe a manager outside of their office was responsible.¹⁴

A majority of respondents (57%) believe policies and programs promote diversity in the workplace (see figure 6). However, 25% of three minority groups—American Indian/Alaska Native, Hispanic or Latino, and female—do not believe policies and programs promote diversity in the workplace. Thirty-seven percent of African-American respondents do not believe policies and programs promote diversity in the workplace.

Figure 6: Policies and programs promote diversity in the workplace.



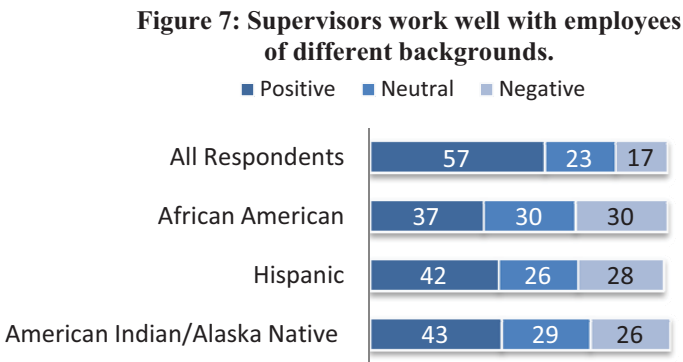
Most respondents (63%) believe their supervisor supports diversity. The majority of all minority groups also believe their

¹³ See survey question 52 in appendix F.

¹⁴ Responses to this question added up to more than 100% because more than one option could be selected.

supervisor supports diversity in the workplace. Among minority groups, African-Americans were mostly likely to agree that their supervisor does *not* support diversity.

A majority of respondents (57%) believe supervisors work well with employees of different backgrounds (see figure 7). Among minority groups, African-Americans were mostly likely to disagree that their supervisors work well with employees of different backgrounds, with a negative response rate of 30%.



Federal Air Marshals Perceive That Unfavorable Treatment Is Widespread, but Most Incidents Do Not Meet the Legal Standards for Unlawful Retaliation

We designed our survey to allow respondents to identify perceived unlawful retaliation, whether or not they had knowledge of specific legal standards. Our survey used “retaliation” to refer to violations of the whistleblower provisions applicable to TSA employees, 5 U.S.C. §§ 2303(b)(8) and (9). We also sought to determine what actions respondents believed to be unfair or unfavorable treatment that would not meet the definition of unlawful retaliation.

If respondents believed they were retaliated against or treated unfavorably because they engaged in one or more of six activities protected by law, our survey asked them to describe the retaliation. If these respondents indicated they felt a personnel action was involved, the supervisor’s actions might have been unlawful retaliation. If respondents selected an action other than a personnel action, such as verbal counseling, written counseling, unprofessional conduct, or “other” as the form of the retaliation, the supervisor’s alleged actions constituted unfavorable treatment.

We also asked whether TSA or FAMS retaliated against them or treated them unfavorably because they—

-
- Questioned policies or procedures;
 - Proposed changes to policy or procedures;
 - Questioned decisions made by their immediate supervisor or senior management;
 - Requested annual or sick leave;
 - Requested leave under the *Family and Medical Leave Act* or leave for military duty;
 - Requested schedule adjustments; or
 - Requested light duty.

If respondents believe they have been retaliated against or treated unfavorably for one or more of these reasons, we consider this to be possible unfavorable treatment.¹⁵

It is important that FAMS recognize unfavorable treatment, perceived or otherwise, that is not necessarily unlawful forms of retaliation. Perceptions of retaliation can result in resentment, mistrust, group tension, reduced motivation, and low morale for the organization, regardless of whether a court determines unlawful retaliation took place. In addition, the legal ramifications can embroil an agency in time-consuming and expensive appeals and complaints.

Few Instances of Perceived Retaliation Meet the Threshold of Covered Retaliation

Seven percent of respondents believe TSA or FAMS unlawfully retaliated against them because they engaged in one or more protected activities and a personnel action was involved. Approximately 9% believe TSA or FAMS treated them unfavorably because they engaged in one or more activities protected by law but a personnel action was not involved. These respondents believe they have been retaliated against or treated unfavorably, but the perceived harms are not actionable retaliation or actions capable of a remedy under 5 U.S.C. § 2302(b)(8) or (9) because a personnel action was not involved.

Survey respondents selected the following reasons most often for why they were retaliated against or treated unfavorably: exercising an appeal, complaint, or grievance right granted by any law, rule, or regulation (9%); disclosing information believed to be a violation of any law, rule, or regulation (8%); and disclosing

¹⁵ We treated a leave request under the *Family and Medical Leave Act* as “unfavorable treatment” in our report even though it constitutes unlawful retaliation under 29 U.S.C. § 2615.

information believed to be a gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety (6%).¹⁶

More than half of the 16% who believe they were retaliated against or treated unfavorably because they engaged in one or more activities protected by law feel the retaliation was in the form of what was perceived to be unprofessional conduct. This means the incident did not actually raise to the level of covered, actionable retaliation, although it may have been covered by agency policy.

Forty-four percent of respondents who believe they were retaliated against or treated unfavorably because they engaged in one or more activities protected by law believe the retaliation was in the form of a personnel action.

Perceived Unfavorable Treatment Is Prevalent

Almost one-third of respondents (32%) believe they have been retaliated against or treated unfavorably because they questioned or proposed changes to policies or procedures, questioned decisions of management, or requested leave, schedule adjustments, or light duty. The most common reason respondents cited for unfavorable treatment were questioning decisions, policies, or procedures (20%). Ten percent of respondents selected proposing changes to policies and procedures and requesting annual leave as reasons for the unfavorable treatment. The three most common forms of perceived unfavorable treatment were “other” (46%), “conduct that was unprofessional” (40%), and “a personnel action” (29%).

Incidents of Perceived Retaliation and Unfavorable Treatment Are Recent and Believed To Be Perpetrated by Managers

Approximately 75% of the respondents who believe they have been retaliated against or unfavorably treated feel the incidents occurred since February 2009. More than two-thirds (68%) of the respondents believe a senior manager in their office is responsible for the retaliation or unfavorable treatment. Additionally, 56% believe their immediate supervisor is responsible, and 20% believe a manager outside of their office is responsible.¹⁷

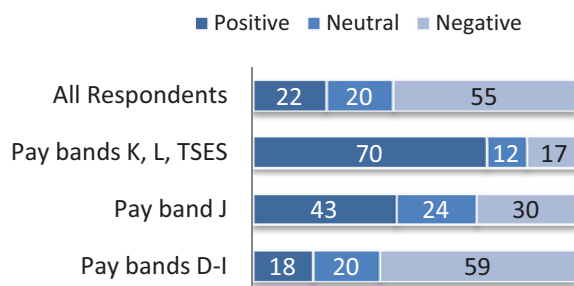
¹⁶ See survey question 58 in appendix F. Totals for this question add up to more than 100% because more than one option could be selected.

¹⁷ Totals for this question could equal more than 100% because respondents could select more than one answer.

Perceptions of Favoritism in Personnel Decisions Are Widespread

The belief that personnel decisions are not based on merit or involve favoritism is present throughout all levels of the workforce. Non-managers, specifically employees in pay bands D through I, believe favoritism exists at a significantly higher rate than managers do. However, 30% of first-line managers in the J band and 17% of managers in pay bands K, L, and Transportation Senior Executive Service (TSES) believe favoritism is tolerated (see figure 8). When we asked whether favoritism, in general, is tolerated, 55% responded that they believe it is tolerated. An analysis of responses shows managers believe favoritism is tolerated at a lower rate than non-managers.

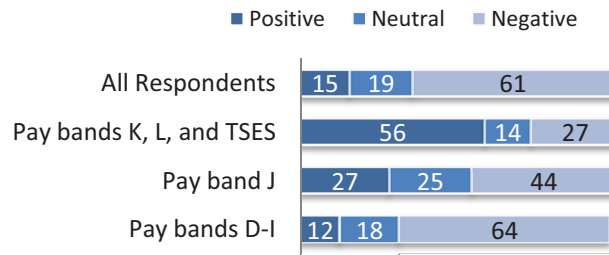
Figure 8: Personal favoritism is not tolerated in my workplace, by pay band.



Perceptions of favoritism are most prevalent regarding raises, awards, and promotions. Perceptions that favoritism exists in performance ratings and work assignments are also elevated. Earlier we discussed problems in these areas that have likely contributed to perceptions of possible favoritism. These may not be the only causes, but FAMS can mitigate them by increasing transparency.

A majority of respondents (61%) believe personal favoritism is a factor in the promotion process (see figure 9). Although managers believe personal favoritism is a factor in the promotion process at a lower rate than do non-managers, more immediate managers than not see favoritism in the promotion process. Additionally, 27% of senior managers indicated that favoritism is a factor in the promotion process.

Figure 9: Personal favoritism is not a factor in the promotion process, by pay band.



A majority of respondents believe in-position increases are not based on merit (56%) (see figure 10) and that personal favoritism is a factor when awarding these raises (54%) (see figure 11). Fewer managers than non-managers believe in-position increases are not based on merit. The survey revealed that 21% of senior managers and 37% of intermediate managers believe favoritism is a factor in in-position increases.

Figure 10: In-position increases are based on merit, by pay band.

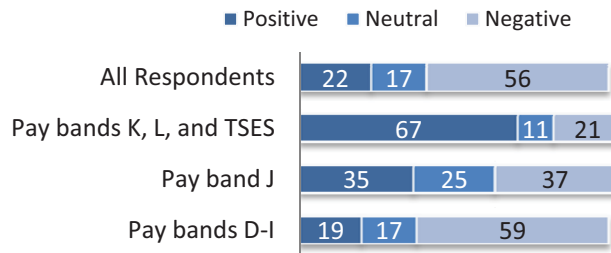
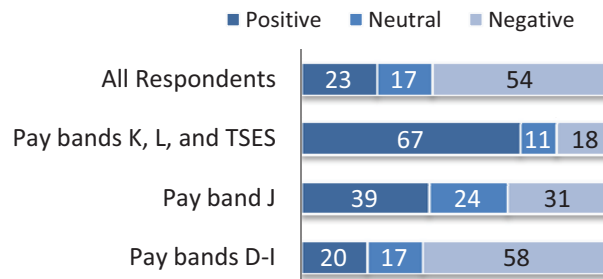


Figure 11: Personal favoritism is not a factor when awarding in-position increases, by pay band.



Almost half of all respondents (47%) believe cash and time-off awards are not based on merit (see figure 12) and personal favoritism is a factor when awarding cash and time off (see figure 13). Fewer managers than non-managers believe cash and time-off

awards are not based on merit. The survey revealed that 21% of senior managers and 29% of immediate managers believe that cash and time-off awards are not based on merit.

Figure 12: Cash and time-off awards are based on merit, by pay band.

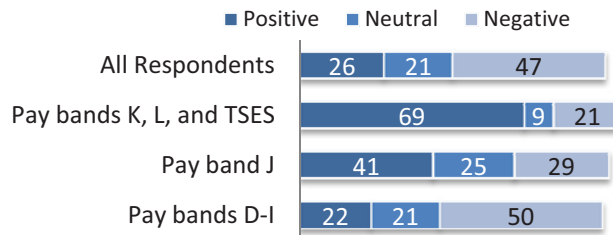
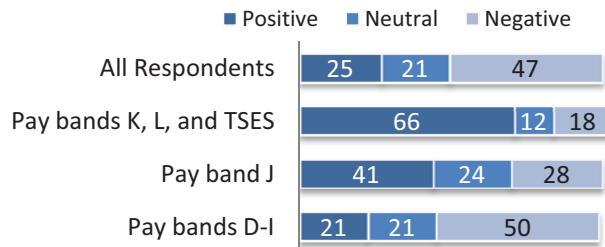
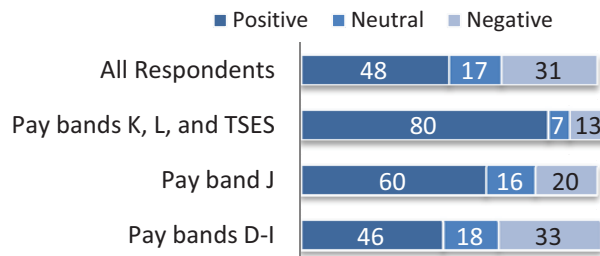


Figure 13: Personal favoritism is not a factor when awarding cash and time off, by pay band.



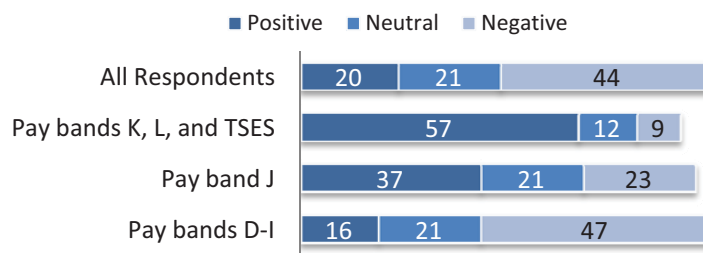
Perceptions of favoritism in performance ratings and work assignments are mixed. Almost half of all respondents (48%) believe their supervisors do not consider personal favoritism when rating them. Employees' perception of favoritism in ratings differs depending on their pay band, but more respondents agree that favoritism is not a factor their supervisor considers when rating them (see figure 14). Although the majority of managers believe favoritism is not a factor when rating employees, 33% of non-managers think it is.

Figure 14: Personal favoritism is not a factor my supervisor considers when rating me, by pay band.



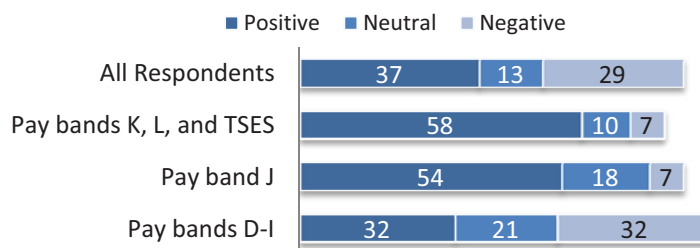
Thirty-one percent of respondents believe employees selected for ground-based assignments meet the stated criteria. Twenty-four percent believe employees selected for ground-based assignments do not meet the stated criteria. Forty-four percent of respondents believe personal favoritism is considered when ground-based assignments are selected. Twenty percent believe personal favoritism is not considered when ground-based assignments are selected (see figure 15).

Figure 15: Personal favoritism is not considered when ground-based assignments are selected, by pay band.



Thirty-seven percent of respondents believe personal favoritism is not a factor when international missions are assigned. Twenty-nine percent believe personal favoritism is a factor when international missions are assigned (see figure 16).

Figure 16: Personal favoritism is not considered when international missions are assigned, by pay band.



Fear of Retaliation and Discrimination Reduce the Likelihood That Employees Will Report Misconduct or Illegal Activity

More than two-thirds of respondents (72%) indicated that they would report misconduct or illegal activity to the appropriate FAMS officials. More than three-quarters of respondents (84%) who do not believe they have been retaliated against or discriminated against would report misconduct or illegal activity to

FAMS. However, a much smaller percentage of respondents who feel they have been retaliated or discriminated against (55%) would report misconduct or illegal activity to FAMS. Managers are more likely to report misconduct or illegal activity (83%) than non-managers (71%). There is little difference between races and genders when it comes to the likelihood of reporting misconduct or illegal activity.

Employees are supposed to make complaints or discuss concerns with their supervisors and managers. According to FAMS, the immediate supervisor is the employee's primary contact for workplace concerns or conflicts. But it is the responsibility of managers to maintain an environment where employees trust supervisors and feel free to raise issues without fear of reprisal.

If an employee does not express complaints or concerns to a supervisor or manager, the employee has several other options for making the complaint or concern known. Those options include contacting TSA's Office of the Ombudsman, Office for Civil Rights and Liberties, or Office of Inspections, the DHS Office of Inspector General, or the U.S. Office of Special Counsel. FAMS has also provided avenues for its employees to raise concerns, including field office focus groups and anonymous emails to the FAMS Director. FAMS makes employees aware of these outlets for registering complaints or raising concerns when they join the organization, and through periodic training and email announcements.

Despite available avenues, our survey showed that 47% of respondents do not think they can disclose a suspected violation of law, rule, or regulation without fear of retaliation. These respondents are less likely to report misconduct or illegal activity than those who do not fear retaliation. Ninety-seven percent of respondents who believe they can disclose violations without fear of retaliation would report misconduct or illegal activity to FAMS. Fewer respondents (54%) who believe they cannot disclose violations without retaliation would report misconduct or illegal activity to FAMS.

Fourteen percent of respondents took no action in response to perceived discrimination, retaliation, or unfair treatment, because they feared retaliation or further retaliation.¹⁸ On average, only 10%

¹⁸ This is the total number of respondents who answered "Fear of retaliation" or "Fear of further retaliation" for questions 56, 65, and 73, represented as a percentage of all respondents.

of respondents who did attempt to resolve the problem of retaliation or unfavorable treatment felt their actions were effective.¹⁹

Perceptions of Policies and Procedures for Addressing Complaints and Disputes Are Mixed

Forty-six percent of respondents believe appropriate policies or procedures exist to address complaints and disputes. Non-managers are evenly split, with 38% who believe appropriate policies or procedures exist and 38% who believe they do not exist. Two-thirds of first-line managers (66%) believe appropriate policies or procedures exist. More than three-quarters of senior managers (82%) believe appropriate policies or procedures exist.

Only 18% of respondents who do not think they can disclose a suspected violation of law, rule, or regulation without fear of retaliation believe there are appropriate policies and procedures for addressing complaints and disputes. This is a lower percentage than respondents who believe they can disclose a suspected violation of law, rule, or regulation without fear of retaliation.

More than half of respondents (56%) trust their supervisor to respond appropriately to reported misconduct, complaints, or disputes. However, on average, fewer than one-third of respondents who believe they have been discriminated or retaliated against notified their immediate supervisor.²⁰ This difference may be due to the belief among 66% of these respondents that a senior manager in their office is responsible and 52% of these respondents that their immediate supervisor is responsible for the perceived discrimination or retaliation.²¹ Respondents who do not think they can disclose a suspected violation of law, rule, or regulation without fear of retaliation (47%) are less likely to trust their supervisor.

Discipline Is Perceived as Unfair, Inconsistent, and Not at the Appropriate Level of Severity

The majority of respondents believe discipline is unfair (see figure 17) and inconsistent (see figure 18), and almost half believe discipline is not at the appropriate level of severity (see figure 19). Non-managers are more likely to have these perceptions, but a considerable number of managers do as well. TSA is restructuring

¹⁹ This is an average of “No” responses for questions 55, 64, and 72.

²⁰ This is an average of responses to survey questions 54, 63, and 70.

²¹ These are an average of responses to survey questions 51, 60, and 68. Respondents could select more than one option.

how it administers discipline across the agency. The new process is a positive development that will address some of these concerns.

The 41% of respondents who believe they have been discriminated or retaliated against or treated unfavorably have a far more negative view of the discipline process within FAMS. They are much more likely to believe managers are not held accountable for misconduct or illegal activity and that the discipline process is unfair, inconsistent, and not at the appropriate level of severity.

Figure 17: The discipline process is fair, by pay band.

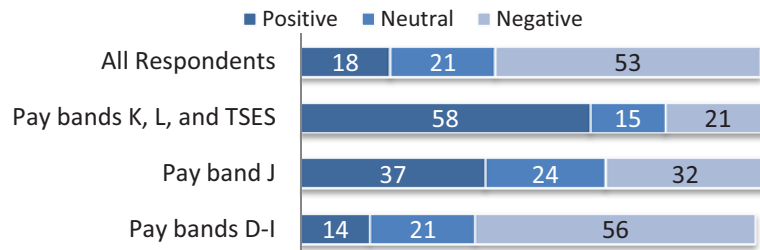


Figure 18: Disciplinary actions are applied consistently for similar offenses, by pay band.

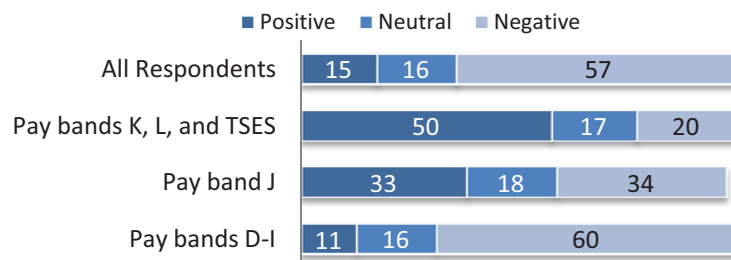
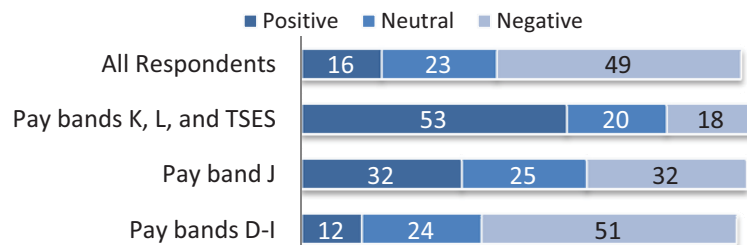


Figure 19: Disciplinary actions are at the appropriate level of severity given the offense, by pay band.



Fifty-two percent of respondents believe senior managers are not held accountable if they engage in misconduct or illegal activity. Additionally, 40% of respondents believe law enforcement supervisors are not held accountable. This is a much lower

percentage than the 76% of respondents who believe Federal Air Marshals are held accountable.

Job Satisfaction

Our survey incorporated job satisfaction questions similar to those in the 2010 DHS Viewpoint Survey.²² Measuring job satisfaction is important because it allows organizations to focus on employee perceptions that ultimately drive productivity. Comparing rates of job satisfaction across demographic characteristics such as race and gender can also be informative because it allows organizations to examine whether job experiences may be different for certain groups of people. Even further, comparing the experiences and perceptions of whites and nonwhites is a popular approach that can yield informative results.

According to our survey, 53% of respondents reported that they were very satisfied or satisfied with their job, compared with 68% of respondents to the same question on the 2010 DHS Viewpoint Survey. Additionally, 23% of our survey respondents expressed that they were very satisfied or satisfied with their opportunity to get a better job in the organization compared with 40% of DHS respondents to the same question.

All groups reported similar levels of overall job satisfaction, considering everything. However, notable percentages of American Indian/Alaska Natives, Hispanics, African-Americans, and females responded less favorably to specific questions related to job satisfaction. For example, our survey results indicated—

- Thirty-five percent of Hispanics, compared with 43% of all respondents and 44% of white respondents, agreed or strongly agreed that they are given an opportunity to improve their skills in the organization;
- Twenty-seven percent of Hispanics, compared with 36% of all respondents and 37% of white respondents, feel encouraged to come up with new and better ways of doing things;
- Thirty-one percent of African-Americans and 31% of Hispanics believe their talents are used well in the workplace, compared with 39% of all respondents and 41% of white respondents; and

²² The survey results in our report are unweighted and represent only FAMS employees who completed surveys. As a result, data may be biased because some subgroups of the survey population could be under- or overrepresented. Unweighted survey findings that compare subgroups should not be generalized.

-
- Sixty-seven percent of females agreed or strongly agreed that the people they work with cooperate to get the job done, compared with 75% of all respondents.

Recommendation

We recommend that the TSA Administrator:

Recommendation #12: Create and implement an action plan to address workplace issues identified in our survey. The plan should include training for supervisors on communication and conflict management that is tailored to the unique Federal Air Marshal Service mission.

Management Comments and OIG Analysis

Management Comments to Recommendation #12

TSA concurred with this recommendation. The FAMS Director's Office is creating an action plan to address issues identified in the OIG survey and will provide a copy to us upon completion. The plan will include information about the SFAM Leadership Initiative, of which FAMS recently completed a pilot session.

OIG Analysis

We concur with TSA's response. The plan should include management's strategy for addressing perceptions of discrimination, retaliation, and favoritism, as well as strengthening the current workplace environment, communication, diversity, reporting and addressing misconduct, and job satisfaction. We will close this recommendation pending receipt and review of TSA's action plan.

This recommendation is Resolved – Open.

FAMS Leadership Is Addressing Workforce Issues

FAMS senior leadership has implemented various initiatives to address workforce issues, deter misconduct and illegal discrimination and retaliation, and respond to complaints, investigations, and adjudications. Those initiatives include the creation of the SAC Advisory Council, FAMS Advisory Council, J-Band Working Group, and Succession Planning Working Groups. In addition, all-hands meetings were held to discuss and identify workplace issues, develop recommended courses of

action, and designate committees to plan for implementation of the agreed course of action based on operational requirements. These initiatives have provided useful forums for increasing communication and collaboration between senior leadership and the workforce, particularly the field offices, and addressing workplace issues.

As a result of the continued allegations of retaliation and discrimination in the Orlando field office and elsewhere, the FAMS Director visited several field offices to meet with employees. In August 2010, in an unprecedented move, the Director temporarily suspended operational activity at the Orlando and Tampa field offices to conduct a mandatory meeting for all FAMS employees assigned to those offices. The purpose of the meeting was to speak candidly with staff and to restore trust.

Senior management has sought to build a culture of accountability. According to the Director, this culture is expected at all levels of the organization, from senior management to Federal Air Marshals and support personnel. People at every level must be accountable to their colleagues, agency, fellow law enforcement and industry partners, families, and Nation. It is an expectation that pertains not only to what they must do to improve the organization but also what they should do for the organization and for each other.

The FAMS Advisory Council enhances communications and outreach efforts, promotes greater job satisfaction, and improves organizational effectiveness. Senior leadership also implemented additional processes and initiatives to address workforce issues. At the first FAMS Advisory Council meeting in September 2009, the Director challenged council members to identify how to cultivate and sustain a professional code of conduct and esprit de corps that would be inherent in their culture of accountability. As a result, the council identified continuous peer-to-peer and employee-to-supervisory communications as a top practice, with professional competence and personal responsibility having the most impact on job performance, personal advancement, and agency success.

To promote a common culture within FAMS and address the “us versus them” perceptions, the Director accepted and implemented the FAMS Advisory Council’s recommendation to change the titles of first-line supervisors. He removed the term Special Agent from FAMS terminology, and in January 2011 he announced the following title changes:

- Assistant to the Special Agent in Charge is now Supervisory Federal Air Marshal.
- Assistant Special Agent in Charge is now Assistant Supervisory Air Marshal in Charge.

-
- Deputy Special Agent in Charge is now Deputy Supervisory Air Marshal in Charge.
 - Special Agent in Charge is now Supervisory Air Marshal in Charge.
 - Senior FAMS titles of Deputy Assistant Director, Assistant Director, Deputy Director, and Director are unchanged.

In limited conversations, we noted that reaction to the title changes has been positive.

In 2010, FAMS executive staff created the Succession Planning Working Group to address and recommend the initial steps to implement succession planning within FAMS. The Succession Planning Working Group held its first meeting in November 2010 and reviewed 10 succession plans of law enforcement entities from federal, state, local, civilian, and private sectors. The group made six recommendations to senior leadership, including creating a Leadership Development Program while focusing on organizational operations, strategic direction, leadership, and professional development for all employees; providing personnel opportunities through temporary developmental assignments; and establishing career paths for Federal Air Marshals and mission support personnel so that the employees can determine which career path coincides with their background and work experiences. At the time of our report, senior leadership was considering the group's recommendations. Implementing these recommendations would assist personnel in directing the course of their careers.

On February 11, 2011, the Director met with all headquarters personnel to discuss changing the cultural mindset at all levels of the organization from one of a top-down management structure to one of solving problems for Federal Air Marshals who protect flights worldwide every day.

Senior management believes some personnel have interpreted the culture of accountability as a "gotcha" mentality, in which managers should discipline rigidly to achieve compliance. Although employees who are involved in misconduct will be disciplined, the Director expects personnel at all levels to practice leadership and where appropriate develop their staff to grow with the organization. The culture of accountability is a "help you" mentality in which accountability and leadership go hand in hand.

The Director intends to deliver this message during field office visits throughout the year and is developing a leadership initiative in which all supervisors will participate. The leadership initiative will permit all supervisors to pause and reflect upon their leadership style while learning about resilient leadership and critical incident awareness. The training will conclude with a case study workshop designed to identify, through open dialogue with peers, possible solutions to a set of scenarios that

supervisors may encounter concerning other employees. During the initiative, each SFAM will also have the opportunity to meet with the Director or Deputy Director to discuss expectations for leading the FAMS workforce.

In 2011, FAMS, in partnership with TSA's Office of Civil Rights and Liberties, established collateral duty assignments for Federal Air Marshals to serve as liaisons between FAMS field offices and the TSA EEO program. The liaison role was created to facilitate the flow of information between FAMS employees and EEO program staff regarding the informal and formal complaint processes. In addition, liaisons provide referrals to EEO staff at TSA headquarters and assist with accessing information about EEO and diversity training. Liaisons were selected for each FAMS field office, and they participated in 3 days of training in June 2011.

We reviewed allegations of widespread misconduct and illegal discrimination and retaliation in FAMS. In January 2010, Senator Nelson asked that we review allegations of illegal discrimination and retaliation in the Orlando, Florida, FAMS field office and the extent to which those alleged conditions existed nationwide. In February 2010, Representative Towns asked that we review the creation and use of an offensive training tool. In July 2010, Representative Issa asked that we review the use of an offensive assignment board and how FAMS and TSA handled the matter. Our objectives were to determine whether (1) the facts confirm specific allegations of misconduct and illegal discrimination and retaliation in Orlando; (2) the TSA Office of Inspections provided objective, complete investigations of the allegations in Orlando; (3) FAMS management responded appropriately to the allegations in Orlando; (4) misconduct and illegal discrimination and retaliation are widespread in FAMS; and (5) FAMS has established effective processes for deterring misconduct and illegal discrimination and retaliation and for responding to complaints, investigations, and adjudications.

We reviewed applicable laws, regulations, and directives regarding EEO and the various complaint processes. We also reviewed demographics, conduct and performance information, and TSA and FAMS standards, policies, and procedures. In addition, we reviewed TSA OOI investigation and inspection reports and discussed their results with TSA OOI officials.

We conducted more than 300 interviews of officials within DHS, TSA and FAMS headquarters, the EEOC, the MSPB, and current and former FAMS personnel from various field offices. TSA and FAMS senior leadership cooperated and consulted with us throughout the review. We conducted site visits to the FAMS Orlando and Tampa, Cincinnati, Minneapolis, Charlotte, and Dallas field offices. During our site visits, we obtained or reviewed employee, operational, and discipline records. Additionally, individual Federal Air Marshals provided us with a variety of documents. The majority of Federal Air Marshals we interviewed in field offices asked to be interviewed. We requested and conducted interviews with all supervisors and managers in each of the five field offices. Of the more than 300 interviews, 23 were telephone interviews with FAMS personnel from the following field offices: Atlanta, Chicago, Los Angeles, Miami, New York, Reston, and Washington, DC.

We selected FYs 2006 to 2010 for purposes of analyzing discipline data, court decisions, and other records. We did not investigate

Appendix A

Purpose, Scope, and Methodology

any ongoing cases or complaints; however, we did refer numerous inquiries to the OIG Hotline.

From February to April 2011, we conducted a confidential survey of the FAMS workforce to measure employees' perceptions of discrimination, retaliation, and favoritism. The survey was administered electronically over a 36-day period. We consulted DHS' CRCL and FAMS on our survey questions before launching the survey. The survey results in our report are unweighted and represent only FAMS employees who completed surveys. Unweighted data may be biased because some subgroups of the survey population are under- or overrepresented. Unweighted survey findings that compare subgroups cannot be generalized to the survey population.

We began our fieldwork in May 2010 and ended it in April 2011. This review was conducted under the authority of the *Inspector General Act of 1978*, as amended, and according to the *Quality Standards for Inspections* issued by the President's Council on Integrity and Efficiency.

We recommend that the TSA Administrator:

Recommendation #1: Identify other means to obtain information on Federal Air Marshals' performance that could assist supervisors when preparing evaluations.

Recommendation #2 (Revised): Provide guidance regarding the types of incidents the Federal Air Marshal Service should and should not report to the Office of Inspection in an incident tracking report.

Recommendation #3: Provide additional guidance and clarification regarding employee ineligibility for favorable personnel actions when there is a pending disciplinary matter that spans performance cycles, including when the period of ineligibility begins and ends. The guidance should be disseminated to all Federal Air Marshal Service personnel.

Recommendation #4: In consultation with the Director of the Federal Air Marshal Service, the Assistant Administrator of the Office of Professional Responsibility, and the Assistant Administrator of the Office of Human Capital, provide guidance and clarification regarding how long prior corrective or discipline actions should be considered and for which types of incidents. Current training to supervisors and the workforce concerning conduct should be assessed and additional training provided as necessary.

Recommendation #5: Develop a comprehensive system to track all stages of the discipline process.

Recommendation #6: Establish additional guidelines that set forth selection criteria for Federal Air Marshal ground-based positions.

Recommendation #7: Provide additional guidance and clarification for awards and in-position increases, including whether they can be rotated among staff and given to the same employee in back-to-back years, and to what extent managers should consider discipline issues.

Recommendation #8: Evaluate whether the Federal Air Marshal Service should remove specific limits on the number of Senior Federal Air Marshals allowed in each office and establish eligibility criteria for designation as a Senior Federal Air Marshal

Appendix B

Recommendations

based on specific mission and length-of-service achievements, in addition to the performance requirements already in place.

Recommendation #9: Communicate specific application criteria to all J-band promotion applicants at the beginning of each promotion cycle.

Recommendation #10: Review evaluation and assessment procedures for the J-band promotion process and revise as necessary to ensure that certification lists contain the best qualified candidates.

Recommendation #11: Develop guidelines to define when Federal Air Marshals can be removed from international flight schedules, including what performance and conduct issues can cause a Federal Air Marshal to be removed and the duration of the restriction.

Recommendation #12: Create and implement an action plan to address workplace issues identified in our survey. The plan should include training for supervisors on communication and conflict management that is tailored to the unique Federal Air Marshal Service mission.

Appendix C

Management Comments to the Draft Report

U.S. Department of Homeland Security
601 South 12th Street
Arlington, VA 20598



Transportation
Security
Administration

NOV 29 2011

INFORMATION

MEMORANDUM FOR: Charles Edwards
Acting Inspector General
U.S. Department of Homeland Security (DHS)

FROM: John S. Pistole, Administrator *John S. Pistole*

SUBJECT: Response to Draft Report, *Allegations of Misconduct and Illegal Discrimination and Retaliation in the Federal Air Marshal Service*, August 2011

Purpose:

This memorandum constitutes the Transportation Security Administration's (TSA's) response to the DHS Office of the Inspector General (OIG) draft report, *Allegations of Misconduct and Illegal Discrimination and Retaliation in the Federal Air Marshal Service*, dated August 2011.

Background:

In March 2010, OIG initiated a review of allegations of widespread misconduct and illegal discrimination and retaliation in the Office of Law Enforcement/Federal Air Marshal Service (OLE/FAMS). The review began after allegations were made regarding the FAMS Orlando Field Office. The review was requested by Senator Bill Nelson and Congressmen Edolphus Towns and Darrell Issa.

As noted by the OIG in their report, TSA and FAMS leadership closely cooperated with the OIG during the course of this extensive review. During this review, the OIG visited five FAMS Field Offices; interviewed more than 300 DHS, TSA and FAMS officials; and conducted a survey of the FAMS workforce, which was administered electronically over a 36 day period and in which approximately 50 percent of the FAMS workforce participated.

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The OIG's draft report concludes that their review did not support a finding of widespread discrimination or retaliation in the FAMS. However, the draft report did state that employees' perceptions of discrimination and retaliation are extensive.

The draft report issued by OIG identified 12 recommendations for TSA. The recommendations include formalizing in writing or clarifying policies or guidance in a variety of topics related to human capital, work assignments, discipline processes, and awards. The recommendations also include FAMS creating an action plan to address workplace issues identified in the OIG's workforce survey.

Discussion:

TSA greatly appreciates the work done by OIG during the course of this review and intends to use this valuable information to assist our efforts to continue to improve TSA and the FAMS.

While OIG found no evidence of widespread retaliation or discrimination in FAMS, we understand the importance of OIG's additional findings that employees' perceptions of discrimination and retaliation are extensive and that limited transparency in management decisions and poor communication are at the center of these perceptions.

The FAMS is the Office of Law Enforcement within TSA and is a critical layer of TSA's security for the Nation's transportation systems. It is therefore important to note OIG's finding that the FAMS' mission performance was found to not be adversely affected.

As OIG notes in their report, FAMS has experienced many organizational challenges since 9/11, including being built up at an incredibly fast rate to meet the Nations' security challenges, merging the culture of many different law enforcement and security agencies, and migrating between three different parent organizations.

OIG's report notes that the vast majority of cases filed involving the FAMS have been decided in the Agency's favor. Since 2005 (when FAMS returned to TSA from U.S. Immigration and Customs Enforcement) less than 3 percent of the discrimination cases brought before the Equal Employment Opportunity Commission, to date, have resulted in a finding of discrimination. Furthermore, as is noted in the report, since 2005 more than 94 percent of Merit Systems Protection Board appeals involving FAMS have been decided in the Agency's favor. Also, noted in the OIG report, since 2005 there has not been a single finding of discrimination against FAMS or TSA in a Federal district court case involving FAMS.

The OIG notes that FAMS and TSA senior leadership have implemented numerous proactive measures to work on addressing the issues raised in the report.

Most notably, the Director of the FAMS has implemented a Culture of Accountability within the FAMS. The Culture of Accountability at FAMS requires that all FAMS employees be

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accountable to the mission, the Agency, fellow law enforcement and industry partners, their families and the Nation. As the OIG notes in their report, the Culture of Accountability outlines what FAMS employees are obligated to do to both improve the organization as well as how they should treat each other.

Other proactive measures taken by FAMS and TSA, many of which were noted by OIG in their report, include:

- FAMS/Office of Civil Rights and Liberties (OCRL) Equal Employment Opportunity (EEO) Points of Contact (POCs)—FAMS, in partnership with TSA OCRL, has established collateral duty assignments to serve as liaisons between FAMS Field Offices and the TSA OCRL Program. The purpose of this new assignment is to assist with the easy flow of information between FAMS employees and the OCRL staff. FAMS/OCRL EEO POCs are now established in each FAMS Field Office.
- Supervisory Federal Air Marshal (SFAM) Leadership Initiative—FAMS has recently completed a pilot session of the SFAM Leadership Initiative for new FAMS supervisors. This initiative requires each SFAM to participate in training at OLE/FAMS Headquarters. The training emphasizes the importance of communication, relationship-building, and support of personnel to continue the transformation of the OLE/FAMS culture. Discussions during the initiative emphasize the welfare of employees and focuses on mission performance in an environment of resilient leadership.
- OLE/FAMS Advisory Council—The OLE/FAMS Advisory Council provides the opportunity for sustained engagement with the OLE/FAMS workforce and provides OLE/FAMS personnel a structured forum to identify issues, communicate key topics to OLE/FAMS Senior Leadership, and identify recommendations for action that impact service-wide operations. The OLE/FAMS Advisory Council is composed of non-supervisory Federal Air Marshals (FAMs) and non-supervisory Mission Support Personnel from throughout the OLE/FAMS workforce.
- OLE/FAMS Listening Sessions—The FAMS Director hosts several listening sessions per year for SFAMs and FAMs from field offices throughout the country. Attendees travel to OLE/FAMS Headquarters and are encouraged to ask questions and present issues to subject matter experts at each listening session. The listening sessions promote the direct exchange of information and resolution of issues arising in the field. The Director and Deputy Director also hold quarterly sessions with a group of FAMs to discuss issues in a less formal offsite environment to enhance communication and outreach efforts with mission flight status FAMs.
- OLE/FAMS Working Groups—Since April 2006, OLE/FAMS has conducted a number of assessments focused on various program areas through the formation of working groups. These working groups are structured to review a specific program area or issue. They develop recommendations to enhance Agency operations and the quality of life for

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OLE/FAMS personnel. The working groups have included OLE/FAMS personnel representing all levels of the workforce.

- Senior Executive Personnel Field Office Visits—There is a new structured effort to coordinate OLE/FAMS senior executives' visits to FAMS Field Offices. Senior executive personnel have visited a number of OLE/FAMS Field Offices during the past year. During the Field Office visits, the senior executives meet with the Field Office non-supervisory and management personnel to discuss current issues and exchange information.
- OCRL/Supervisory Air Marshals in Charge (SAC) Conference—A 3 day SAC and executive level (Assistant Directors/Deputy Assistant Directors) conference, coordinated with TSA OCRL, devoted exclusively to discussion/training around EEO and diversity issues. As a result of the conference, all Field Office SACs are required to develop and implement an EEO/Diversity Action Plan for their offices.

Furthermore, as is also noted in the report, FAMS has made a number of significant leadership reassignments to maintain consistency with the new Culture of Accountability. In addition, TSA believes that the new discipline process for FAMS and TSA, most notably the creation of the new Office of Professional Responsibility, will create far greater transparency and consistency for the FAMS discipline process.

TSA intends to continue to vigorously pursue these proactive measures to address workforce issues identified by the OIG in this report. TSA and FAMS will also work closely with the OIG to implement the important recommendations made in this report. TSA believes these actions will create better communication and will improve the understanding and implementation of policies set forth by TSA. In addition, TSA is reviewing the OIG survey and plans to further address the topics and concerns that it raises.

For additional and specific comments regarding the report, please see TSA's response to the OIG recommendations that follows.

Conclusion:

FAMS and TSA recognize the important issues set forth in this report and are committed to working to resolve these issues. The unprecedented level of cooperation between OIG and TSA and FAMS leadership has made this review especially productive.

TSA has already begun to formulate plans to implement the recommendations contained in the report. Our specific response to each recommendation follows.

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U.S. Department of Homeland Security
Transportation Security Administration (TSA)

Response to Office of the Inspector General (OIG) Draft Report,
*Allegations of Misconduct and Illegal Discrimination and
Retaliation in the Federal Air Marshal Service*

Recommendation 1: Identify other means to obtain information on Federal Air Marshals' performance that could assist supervisors when preparing evaluations.

TSA concurs. OIG acknowledges the unique nature of the Office of Law Enforcement/Federal Air Marshal Service (OLE/FAMS) mission. The challenges in supervising and managing a largely mobile workforce are similarly unique.

We believe it would be beneficial to OLE/FAMS if an independent entity were able to assess this issue and make recommendations concerning its resolution. Therefore, TSA and FAMS are in the process of identifying an independent entity to conduct a review of this issue and make necessary recommendations. This action is contingent upon obtaining adequate funding. OLE/FAMS will notify the OIG of its progress in identifying an independent entity and will provide regular updates on its progress.

Recommendation 2: Provide guidance regarding the types of incidents the Federal Air Marshal Service should and should not report to the Office of Inspection in an incident tracking report, the types of incidents the Office of Inspection can delegate to the Federal Air Marshal Service for investigation, and the Office of Professional Responsibility's oversight responsibility for disciplinary actions taken against Federal Air Marshals.

TSA concurs. TSA has promulgated new policies providing that all allegations of misconduct involving Federal Air Marshals will be investigated by the Office of Inspection (OOI) and adjudicated by the Office of Professional Responsibility (OPR). This is set forth in TSA Management Directive (MD) 1100.75-7, Office of Professional Responsibility, and will ensure independence in the investigation and adjudication process.

Accordingly, we suggest that the current draft Recommendation be revised to read: "Provide guidance regarding the types of incidents the Federal Air Marshal Service should and should not report to the Office of Inspection in an incident tracking report."

Recommendation 3: Provide additional guidance and clarification regarding employee ineligibility for favorable personnel actions when there is a pending disciplinary matter that spans performance cycles, including when the period of ineligibility begins and ends. The guidance should be disseminated to all Federal Air Marshal Service personnel.

TSA concurs. OLE/FAMS and the TSA Office of Human Capital (OHC) are working together to address these issues. Guidance will be developed to streamline the use and interpretation of

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TSA MD 1100.53-8 *Setting Pay After Appointment*, pinpointing any needs specific to the FAMS. More detailed guidance will be issued to supervisors in particular, and clarification will be provided to the staff as well.

While guidance and clarification can and will be provided, definitive timelines cannot be given regarding employee ineligibility for favorable personnel actions when there is a pending disciplinary matter because it limits supervisors' ability to manage issues on a case-by-case basis.

Recommendation 4: In consultation with the Director of the Federal Air Marshal Service, the Assistant Administrator of the Office of Professional Responsibility, and the Assistant Administrator of the Office of Human Capital, provide guidance and clarification regarding how long prior corrective or discipline actions should be considered and for which types of incidents. Current training to supervisors and the workforce concerning conduct should be assessed and additional training provided as necessary.

TSA concurs. Based on discussions with OIG representatives, the underlying concern for this recommendation relates to the retention and continued use of Letters of Counseling and/or Letters of Warning. Letters of Counseling are considered corrective, not disciplinary, action and depending on the particular infraction, management has the discretion to consider such actions in assessing future incidents of misconduct. Letters of Reprimand are the least severe form of disciplinary action that may be issued to address unacceptable performance or conduct, and are maintained for a limited time and purpose.

OHC, OPR, and OLE/FAMS are working together to develop additional guidance and clarification to supervisors. Training materials and reminders on conduct will be assessed and issued.

Recommendation 5: Develop a comprehensive system to track all stages of the discipline process.

TSA concurs. In April, 2011, TSA began a collaborative effort between the TSA OHC, OPR, OOI, and Chief Information Office to create one common database to track all phases of the disciplinary process. An Integrated Project Team (IPT) was created with representatives and/or subject matter experts from each of these offices. The IPT has met on a regular basis since April 2011, with the majority of meetings occurring on a weekly basis.

The Employee Relations Case Management Tracking system was designated to be the platform to expand and provide functionality for OPR and OOI. Since OPR's requirements were similar to the existing system, the functionality to enter and track OPR cases was an easy solution and was implemented in June 2011. Since developing the OPR's initial requirements, which was done prior to receiving cases, additional functionality was identified and implemented in October 2011.

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The majority of the focus of the IPT has been to understand OOI's functional requirements and the process flow from each office. This is a more extensive effort and in September 2011, the functional requirements were approved. Throughout the remainder of 2011, the functionality for OOI and process flow between these offices will be developed, tested, and implemented.

Recommendation 6: Establish additional guidelines that set forth selection criteria for Federal Air Marshal ground-based positions.

TSA concurs. In March 2011, a guidance e-mail was sent to all Field Office Supervisory Air Marshals in Charge (SACs) regarding the length of Ground Based Assignments (GBAs) and the granting of extensions for these assignments. All announcements for GBA assignments both at the national and local level include verbiage on how to apply, what core competencies are required and the length of time a FAM can occupy the assignment.

Field Office SACs have been informed to communicate with their workforce on how the selection process is structured, and to employ a panel of supervisors to review, interview, and rank the GBA candidates. Those not selected will be provided feedback in what way they can improve for possible future selections.

The Field Office SAC has some discretion on the length of GBAs for G, H and I-Band FAMs at Field Office; specifically in Operations, Training, Airport Operations and Joint Terrorism Task Force positions. Generally, the length of the GBA assignment by new guidance should not exceed thirty-six consecutive months. However, individual assignment length may be subject to adjustment based on operational necessity. If a special circumstance requires a GBA assignment to be extended, a memorandum requesting the extension must be submitted to their Regional Deputy Assistant Director (DAD) for approval.

A FAM who completed a 36 month assignment in one of the above GBA positions shall not be eligible for another GBA until he/she has been on mission flight status for twelve consecutive months.

In addition, on April 1, 2011, new guidance was set for the length of GBA Visible Intermodal Prevention and Response (VIPR) Program assignments at Field Offices. At the SACs' discretion, they may extend the assignment up to a maximum of one year. All of these noted guidance e-mails have previously been provided to the OIG.

Although these guidance e-mails have previously been provided to FAMS Field Offices in regard to GBAs, OLE/FAMS is preparing additional consolidated guidelines setting forth GBA selection criteria that will be provided to the Field Offices.

Recommendation 7: Provide additional guidance and clarification for awards and in-position increases, including whether they can be rotated among staff and given to the same

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employee in back-to-back years, and to what extent managers should consider discipline issues.

TSA concurs. OHC and FAMS are working together to address these issues. Guidance will be developed to clarify TSA MD 1100.45-1, *Awards and Recognition*, and TSA MD 1100.53-8, *Setting Pay After Appointment*, to especially focus on pinpointing any needs specific to the FAMS.

Clarification will be given on awards and in-position increases explaining why flexibility is necessary to allow management to reward top performers on a regular basis. Guidance and clarification on existing policy will serve to mitigate issues surrounding the perception of favoritism, while still allowing management to use their judgment and discretion concerning the granting of an appropriate award or in-position increase. Issues relating to the applicability of disciplinary actions will be discussed between OHC and OLE/FAMS to provide clarification to the workforce.

Recommendation 8: Evaluate whether the Federal Air Marshal Service should remove specific limits on the number of Senior Federal Air Marshals allowed in each office and establish eligibility criteria for designation as a Senior Federal Air Marshal based on specific mission and length-of-service achievements, in addition to the performance requirements already in place. The Federal Air Marshal Service should clearly articulate any new criteria to field offices.

TSA concurs. The OLE/FAMS is examining the Senior Federal Air Marshal (Senior FAM) Program to determine any changes that may be necessary.

OLE/FAMS Senior Leadership believes that the Senior FAM Program has served a beneficial purpose recognizing many deserving Federal Air Marshals meeting the determined mission and performance qualifications. However, OLE/FAMS Senior Leadership has tasked the Supervisory Air Marshal in Charge (SAC) Advisory Council and the OLE/FAMS Advisory Council to consider all facets of the Senior FAM Program in an effort to develop a program better suited for the development and recognition of Federal Air Marshals.

An ad hoc committee made up of representatives from the SAC and OLE/FAMS Advisory Councils will convene in the coming months to discuss recommendations from each Council regarding the Senior FAM Program. All facets of the program will be considered, including the items cited in this recommendation. A primary consideration of the ad hoc committee regarding the Senior FAM Program will be consistency in application throughout OLE/FAMS. The ad hoc committee will develop recommendations for consideration and implementation by senior leadership. Any new criteria for the program will be communicated to the entire FAMS.

Recommendation 9: Communicate specific application criteria to all J-band promotion applicants at the beginning of each promotion cycle.

TSA concurs but would note that TSA has already addressed this recommendation. The FAM J-Band promotion job opportunity is posted on USAJobs.gov to reach all interested FAM applicants. The process is also communicated to all FAMS employees via a FAMS broadcast message which includes a timeline for the process, instructions on how to apply, and resource materials for the applicant. Resource materials include the standardized job description for the position, a candidate preparation manual, and a frequently asked questions reference sheet. There are also two informational sessions conducted to provide an overview of the J-Band application process. One of the sessions is also recorded and added to the FAMS homepage so individuals may listen to the session in the event he or she is not able to participate. Employees are also made aware of the TSA Career Coaching Services to assist personnel with a variety of career development issues including completing application packages. Detailed information regarding the career coaching services available to assist FAMS with completing the application is also available on the FAM J Band Promotion Process site on the FAMS Homepage.

In addition to the items noted above, the Candidate Dashboard was recently implemented for the FAM J-Band Promotion Process effective on October 1, 2011. The Candidate Dashboard is an electronic hiring system that enables each applicant to track their status through each phase of the application process.

Recommendation 10: Review evaluation and assessment procedures for the J-band promotion process and revise as necessary to ensure that certification lists contain the best qualified candidates.

TSA concurs. OHC is currently partnering with OLE/FAMS to review and recommend improved candidate evaluation and assessments specifically in regards to J-band promotions. TSA will continue to further these efforts to ensure that certification lists contain the best qualified candidates.

Recommendation 11: Develop guidelines to define when Federal Air Marshals can be removed from international flight schedules, including what performance and conduct issues can cause a Federal Air Marshal to be removed and the duration of the restriction.

TSA concurs. As OIG notes in their report, international missions are the most sensitive missions that a Federal Air Marshal (FAM) will fly. OIG rightly points out that these missions are long and often in areas where there is no immediate ground landing possible and no immediate FAM or other U.S. support available. International missions are highly sensitive missions whereby a FAM must subscribe to the rules and laws of the nation they are visiting and where issues could potentially affect FAMS missions overseas and/or create other serious diplomatic ramifications.

Therefore, international missions are assigned to FAMS who are performing at or above expected levels; who have gained their supervisor's confidence; and have demonstrated the requisite professionalism, ability, and skills. Employees not performing up to these expectations—who do

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not demonstrate the ability to follow supervisory direction or work independently while following FAM policies or procedures—have to be scheduled less sensitive work assignments. This type of personnel determination must be evaluated on a case-by-case basis. For these reasons, final supervisory authority regarding FAMs and international missions must rest with the Field Office management who best know the strengths and weaknesses of each FAM. However, clarification regarding the removal of FAMs from international missions will be provided to the Field Offices.

Recommendation 12: Create and implement an action plan to address workplace issues identified in our survey. The plan should include training for supervisors on communication and conflict management that is tailored to the unique Federal Air Marshal mission.

TSA Concurs. The FAMS Director's Office is actively creating an action plan to address the important workplace issues identified in the OIG workforce satisfaction survey and a copy will be provided to OIG upon completion.

TSA notes that FAMS has recently completed a pilot session of the Supervisory Federal Air Marshal (SFAM) Leadership Initiative. This initiative requires each SFAM to participate in training at OLE/FAMS Headquarters. The training emphasizes the importance of communication, relationship-building, and support of personnel to continue the transformation of the OLE/FAMS culture. Further information about the SFAM Leadership Initiative and other actions taken by OLE/FAMS will be provided to the OIG in the action plan.

Appendix D

Selected EEO Laws, Regulations, and Executive Orders

EEO is set forth in a number of laws, federal regulations, and Executive orders that, among other things, prohibit retaliation against an individual who complains about discrimination, files a charge of discrimination, or participates in an investigation or lawsuit pertaining to discrimination in the workplace. The laws, federal regulations, and Executive orders pertaining to EEO include the following:

Laws

Title VII of the Civil Rights Act of 1964

This law prohibits employment discrimination based on race, color, religion, sex, or national origin. Employers also must provide reasonable accommodation of an employee's religious beliefs or practices, unless doing so would cause an undue hardship on the employer.

The Pregnancy Discrimination Act

An amendment to Title VII, this law prohibits employment discrimination against a woman on the basis of pregnancy, childbirth, or a medical condition related to pregnancy or childbirth.

The Equal Pay Act of 1963

This law protects men and women who perform substantially equal work in the same establishment from wage discrimination based on their sex.

The Age Discrimination in Employment Act of 1967

This law protects people who are 40 years of age or older from employment discrimination based on age.

Sections 102 and 103 of the Civil Rights Act of 1991

This law amends Title VII and the *Americans with Disabilities Act* by permitting jury trials and the award of compensatory and punitive damages in cases of intentional employment discrimination.

Sections 501 and 505 of the Rehabilitation Act of 1973

This law prohibits employment discrimination against qualified individuals with disabilities in the federal government. Employers also must provide reasonable accommodation for known physical or mental limitations of an otherwise qualified individual, unless doing so would cause undue hardship on the employer.

The Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (The No FEAR Act of 2002)

This law holds federal agencies accountable for violations of antidiscrimination and whistleblower protection laws by requiring that each agency post certain statistical data pertaining to EEO complaints filed

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against it. Federal agencies also must make employees aware of the various antidiscrimination and whistleblower protection laws.

The Whistleblower Protection Act of 1989

This law protects employees, former employees, and job applicants from retaliation or adverse treatment for disclosing information reasonably believed to constitute a violation of law, rule, or regulation, or gross mismanagement, gross waste of funds, abuse of authority, or substantial danger to public health or safety.

Executive Orders

Executive Order 11478, as amended (1971): This directive reiterated the federal government's policy to provide equal employment opportunity on the basis of merit and fitness and "without discrimination because of race, color, religion, sex, or national origin."

Executive Order 12106 (1978): This directive amended Executive Order 11478 to expand its coverage to include nondiscrimination based on age and disability.

Executive Order 12968 (1995): This directive bars denial of a security clearance on the basis of sexual orientation.

Executive Order 13087 (1998): This directive further amended Executive Order 11478 to prohibit discrimination based on sexual orientation in the federal civilian workforce.

Executive Order 13163 (2000): This directive promotes a policy designed to increase opportunities for individuals with disabilities employed at all levels and occupations in the federal government.

Executive Order 13164 (2000): This directive requires federal agencies to establish written procedures to facilitate the provision that "reasonable accommodations" be made under the *Rehabilitation Act of 1973*.

Appendix E

Factors to Consider in Determining Discipline

The following factors should be considered in determining an appropriate penalty. Not all factors are relevant to every case.

- 1) The nature and seriousness of the offense, and its relation to the employee's duties, position, and responsibilities, including whether the offense was intentional or technical or inadvertent, was committed maliciously or for gain, or was frequently repeated;
- 2) The employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position;
- 3) The employee's past disciplinary record;
- 4) The employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability;
- 5) The effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon supervisors' confidence in the employee's work ability to perform assigned duties;
- 6) Consistency of the penalty with those imposed upon similarly situated employees for the same or similar offenses;
- 7) Consistency of the penalty with any applicable agency table of penalties;
- 8) The notoriety of the offense or its impact upon the reputation of the agency;
- 9) The clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question;
- 10) The potential for the employee's rehabilitation;
- 11) Mitigating circumstances surrounding the offense, such as unusual job tensions, personality problems, mental impairment, harassment, or bad faith, malice, or provocation on the part of others involved in the matter; and
- 12) The adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

Source: *Douglas vs. Veterans Administration*, 5 MSPR 280 (1981).

Appendix F

Survey Questions and Responses

Our survey included 85 questions. Respondents answered a minimum of 65 questions. Respondents could have answered as many as 20 additional questions based on how they answered survey questions 50, 58, and 66, which asked respondents whether they believe they have been treated unfavorably because of any one of a provided list of reasons.

Forty-eight of our survey questions, 1–48, used the Likert scale, a common survey methodology, which measures respondents' agreement or disagreement or their satisfaction or dissatisfaction with a statement. The table below shows how to interpret the results of all Likert items except for question 33. For question 33, "Strongly agree" and "Agree" are negative and "Strongly disagree" or "Disagree" are positive. "Neither agree nor disagree" and "Do not know" are interpreted the same for question 33 as for the other Likert Items.

Positive Responses		Neutral Response	Negative Response		Agnostic
Strongly Agree	Agree	Neither agree nor disagree	Disagree	Strongly Disagree	Do Not Know
Strongly Agree	Agree	Neither agree nor disagree	Disagree	Strongly Disagree	
Very Satisfied	Satisfied	Neither Satisfied nor Dissatisfied	Dissatisfied	Very Dissatisfied	

Seven of our survey questions asked respondents to answer "Yes" or "No" to a question. Thirty of our survey questions presented many possible answers for respondents to choose from. In many questions, respondents could select more than one answer.

Our survey asked 12 demographic questions covering areas such as length of service, job function, pay band, duty location, gender, race, and age. Appendix I gives select survey respondent demographics.

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Survey Questions and Responses

	Percent Positive	Strongly Agree	Agree	Neither Agree Nor Disagree	Disagree	Strongly Disagree	Do Not Know
Performance Standards							
1. The performance standards, upon which my rating is based, are appropriate for the work that I do.	49.5%	8.3%	41.2%	14.3%	20.1%	14.8%	1.2%
2. My supervisor has enough information concerning the performance of my duties to accurately rate me.	51.1%	12.8%	38.3%	13.3%	20.1%	14.7%	0.9%
3. Personal favoritism is not a factor my supervisor considers when rating me.	48.0%	15.2%	32.8%	17.1%	13.5%	17.6%	3.7%
4. My current performance appraisal is an accurate reflection of my performance.	52.0%	13.2%	38.8%	20.2%	18.0%	9.8%	
5. My supervisor provides me with constructive suggestions to improve my job performance.	46.4%	11.7%	34.7%	21.7%	20.4%	11.4%	
Awards and Promotions							
6. I understand what I have to do to receive an in-position increase.	31.4%	7.0%	24.4%	15.1%	27.2%	26.2%	
7. In-position increases are based on merit.	21.9%	5.6%	16.3%	17.3%	20.5%	35.4%	4.9%
8. Personal favoritism is not a factor when awarding in-position increases.	23.2%	6.9%	16.3%	17.0%	21.0%	33.5%	5.2%
9. I understand what I have to do to receive a cash or time-off award.	31.8%	6.9%	24.9%	17.4%	29.9%	20.9%	
10. Cash and time-off awards are based on merit.	25.7%	6.1%	19.6%	20.6%	18.7%	28.1%	6.9%
11. Personal favoritism is not a factor when awarding cash or time off.	24.8%	6.8%	18.0%	20.9%	19.7%	27.3%	7.3%
12. I understand the promotion process.	39.8%	7.7%	32.1%	17.2%	21.7%	21.3%	
13. Promotions are based on merit.	17.1%	3.9%	13.2%	18.6%	20.4%	39.7%	4.3%
14. Personal favoritism is not a factor in the promotion process.	15.4%	4.0%	11.4%	18.5%	20.8%	40.1%	5.2%

Appendix F

Survey Questions and Responses

Ground-Based Assignments and International Missions							
15. The criteria for being selected for ground-based assignments are clearly communicated.	41.9%	7.7%	34.2%	16.3%	15.3%	15.9%	10.6%
16. Those employees selected for ground-based assignments meet the stated criteria.	31.4%	5.8%	25.6%	26.1%	12.2%	12.0%	18.4%
17. Personal favoritism is not considered when ground-based assignments are selected.	20.3%	5.1%	15.2%	20.7%	19.1%	24.6%	15.3%
18. The criteria for being assigned to international missions are clearly communicated.	46.2%	10.9%	35.3%	18.7%	11.4%	11.1%	12.5%
19. Personal favoritism is not a factor when international missions are assigned.	36.6%	10.0%	26.6%	19.8%	13.1%	16.1%	14.3%
Reporting and Addressing Misconduct							
20. Appropriate policies and procedures are in place to address workplace complaints and disputes.	42.2%	8.0%	34.2%	18.5%	16.0%	19.0%	4.3%
21. I can disclose a suspected violation of any law, rule, or regulation without fear of retaliation.	31.2%	8.5%	22.7%	21.6%	22.5%	24.8%	
22. I trust my immediate supervisor to respond appropriately to reported misconduct, complaints, or disputes.	56.3%	17.0%	39.3%	19.8%	11.1%	12.8%	
23. I trust my immediate supervisor to respond timely to reported misconduct, complaints, or disputes.	56.8%	16.5%	40.3%	20.6%	10.8%	11.7%	
24. If I suspected that my co-workers or managers were engaged in misconduct or illegal activity, I would report it to the appropriate OLE/FAMS officials.	72.0%	32.5%	39.5%	14.9%	7.1%	6.0%	
25. If I suspected that my co-workers or managers were engaged in misconduct or illegal activity, I would report it to the appropriate TSA officials.	66.2%	29.0%	37.2%	18.5%	8.9%	6.4%	
26. If a senior manager in OLE/FAMS engages in misconduct or illegal activity, they are held accountable.	20.5%	6.7%	13.8%	15.3%	17.4%	34.4%	12.4%

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Survey Questions and Responses

27. If a law enforcement supervisor engages in misconduct or illegal activity, they are held accountable.	29.6%	8.6%	21.0%	17.7%	16.6%	23.0%	13.2%
28. If a Federal Air Marshal engages in misconduct or illegal activity, they are held accountable.	76.3%	37.5%	38.8%	9.7%	4.0%	4.1%	5.8%
29. If a professional, technical, or administrative staff member engages in misconduct or illegal activity, they are held accountable.	38.9%	11.7%	27.2%	24.0%	7.8%	7.1%	22.2%
30. The disciplinary process is fair.	17.8%	3.9%	13.9%	20.5%	20.2%	32.7%	8.8%
31. Disciplinary actions are applied consistently for similar offenses.	14.6%	3.2%	11.4%	16.3%	20.8%	35.7%	12.5%
32. Disciplinary actions are at the appropriate level of severity given the offense.	16.0%	3.3%	12.7%	23.3%	19.7%	28.8%	12.1%
33. Disciplinary actions are used as a tool to retaliate against employees.	21.9%	20.6%	21.9%	26.0%	12.8%	9.1%	9.5%
Workplace Culture							
34. My supervisor supports diversity in the workplace.	63.0%	19.0%	44.0%	20.6%	4.5%	5.6%	6.2%
35. Policies and programs promote diversity in the workplace (for example, recruiting minorities and women, diversity training, mentoring).	57.0%	17.1%	39.9%	22.5%	6.5%	6.8%	7.0%
36. Supervisors work well with employees of different backgrounds.	57.0%	15.3%	41.7%	22.5%	8.4%	8.3%	3.7%
37. Personal favoritism is not tolerated in my workplace.	21.8%	5.8%	16.0%	20.0%	23.4%	31.5%	3.3%
38. Prohibited Personnel Practices (for example, illegally discriminating for or against any employee/applicant, obstructing a person's right to compete for employment, knowingly violating veterans' preference requirements) are not tolerated.	40.9%	12.4%	28.5%	22.1%	10.3%	13.4%	13.4%
39. My supervisor supports my need to balance work and other life issues.	58.8%	18.6%	40.2%	15.8%	9.9%	14.3%	1.3%
Job Satisfaction							
40. I am given an opportunity to improve my skills in my organization.	43.2%	9.8%	33.4%	21.0%	21.6%	14.2%	
41. I feel encouraged to come up with new and better ways of doing things.	36.1%	9.8%	26.3%	22.3%	24.7%	16.9%	

Appendix F

Survey Questions and Responses

42. My work gives me a feeling of personal accomplishment.	55.9%	17.5%	38.4%	17.4%	14.2%	12.5%
43. My talents are used well in the workplace.	39.0%	9.9%	29.1%	20.3%	22.0%	18.7%
44. The people I work with cooperate to get the job done.	75.5%	17.8%	57.7%	14.5%	6.3%	3.7%
45. Creativity and innovation are rewarded.	24.3%	5.8%	18.5%	32.0%	26.3%	17.5%
	Percent Positive	Very Satisfied	Satisfied	Neither Satisfied Nor Dissatisfied	Dissatisfied	Very Dissatisfied
46. How satisfied are you with the recognition you receive for doing a good job?	34.6%	8.2%	26.4%	24.7%	23.1%	17.6%
47. How satisfied are you with your opportunity to get a better job in your organization?	23.3%	5.3%	18.0%	24.5%	24.6%	27.5%
48. Considering everything, how satisfied are you with your job?	53.4%	14.4%	39.0%	21.6%	14.9%	10.1%
Discrimination and Unfavorable Treatment						
49. Do you know who to contact if you feel you are or have been discriminated against or harassed on the job?						
Yes	77.0%					
No	23.0%					
50. Do you believe that you have been treated unfavorably because of any of the following? [More than one can be selected]						
Race or Color	14.0%					
National origin	3.7%					
Sex, including pregnancy or sexual orientation	6.2%					
Religion, including because you requested a reasonable accommodation	1.6%					
Age	13.1%					
Disability, including because you requested a reasonable accommodation	3.9%					
I have not been treated unfavorably because of any of the above reasons.	74.6%					
51. Who was it that treated you unfavorably? [More than one can be selected]						
Senior manager in my office	62.4%					
Senior manager outside of my office	24.9%					
Immediate supervisor	43.6%					
Co-worker	18.9%					
Other	12.8%					

Appendix F

Survey Questions and Responses

52. Did the incident(s) of unfavorable treatment occur within the last 24 months?

Yes	51.5%
An incident or incidents occurred within the last 24 months, but other incidents occurred earlier than that.	27.6%
No	20.9%

53. Where did the incident(s) take place? [More than one can be selected]

Headquarters	Atlantic City	6.0%
	Herndon	5.7%
	Ashburn	0.3%
	Reston	5.0%
	Arlington	1.7%
Field Offices	Atlanta	8.6%
	Baltimore	1.3%
	Boston	2.5%
	Charlotte	2.6%
	Chicago	4.8%
	Cincinnati	1.6%
	Cleveland	1.1%
	Dallas	7.8%
	Denver	1.7%
	Detroit	3.3%
	Houston	5.4%
	Las Vegas	2.3%
	Los Angeles	4.5%
	Miami	3.8%
	Minneapolis	0.9%
	Newark	3.7%
	New York	9.0%
	Orlando	4.2%
	Philadelphia	2.5%
	Phoenix	0.7%
	Pittsburgh	1.6%
	San Diego	0.4%
	San Francisco	1.1%
	Seattle	1.9%
	Tampa	1.1%
	Washington	14.0%
Other		8.7%

Appendix F

Survey Questions and Responses

54. What actions did you take regarding your treatment? [More than one can be selected]

Notified your immediate supervisor	30.1%
Notified someone in your office other than your immediate supervisor	25.7%
Notified the Director of OLE/FAMS by sending an anonymous email	4.6%
Contacted the Ombudsman	14.3%
Contacted an equal employment opportunity office	14.2%
Filed an equal employment opportunity complaint (informal or formal)	12.8%
Filed an appeal with the Merit Systems Protection Board	1.5%
Filed a lawsuit against the agency	3.3%
Contacted the TSA Office of Inspection	3.7%
Contacted the DHS Office of Inspector General	4.0%
Contacted a member of Congress	6.6%
None	39.6%
Other	14.2%

55. Were the actions you took effective in resolving the problem of unfavorable treatment?

Yes	9.8%
No	90.2%

56. Why did you take no action regarding your treatment?

I did not feel that the incident was severe enough to warrant action	11.8%
The issue was resolved without action on my part	3.0%
Unsure who to contact to take action	2.7%
Fear of retaliation	64.9%
I am considering taking action	4.4%
Other	13.2%

Appendix F

Survey Questions and Responses

Retaliation and Unfavorable Treatment	
57. Do you know who to contact if you feel you are or have been retaliated against?	
Yes	69.7%
No	30.3%
58. Do you believe that TSA or FAMS has retaliated against you or treated you unfavorably because you did any of the following? [More than one can be selected]	
Disclosed information that you believe to be a violation of any law, rule, or regulation	6.3%
Disclosed information that you believe to be a gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety	7.8%
Exercised any appeal, complaint, or grievance right granted by any law, rule, or regulation	8.6%
Testified for or otherwise lawfully assisted any individual in the exercise of their right of appeal, complaint, or grievance right	3.3%
Cooperated with or disclosed information to the Inspector General of an agency, or the Special Counsel, in accordance with applicable provisions of law	2.7%
Refused to obey an order that would require the individual to violate a law	1.0%
I have not been retaliated against or treated unfavorably because of any of the above reasons	84.0%
59. What form did the retaliation or unfavorable treatment take? [More than one can be selected]	
A personnel action	44.5%
Verbal counseling	27.9%
Written counseling	24.1%
Conduct that was unprofessional	50.4%
Other	43.6%
60. Who do you believe retaliated against you or treated you unfavorably? [More than one can be selected]	
Senior Manager in my office	72.1%
Senior Manager outside of my office	24.1%
Immediate supervisor	56.4%
Co-worker	13.7%
Other	10.8%
61. Did this retaliation or unfavorable treatment take place within the last 24 months?	
Yes	51.3%
An incident or incidents occurred within the last 24 months, but other incidents occurred earlier than that.	26.9%
No	21.7%

Appendix F

Survey Questions and Responses

62. Where did the incident(s) of retaliation or unfavorable treatment take place? [More than one can be selected]

Headquarters	Atlantic City	5.3%
	Herndon	5.5%
	Ashburn	0.0%
	Reston	5.1%
	Arlington	2.2%
Field Offices	Atlanta	7.3%
	Baltimore	2.2%
	Boston	3.1%
	Charlotte	1.3%
	Chicago	4.2%
	Cincinnati	2.4%
	Cleveland	1.5%
	Dallas	8.2%
	Denver	3.1%
	Detroit	3.3%
	Houston	5.8%
	Las Vegas	2.2%
	Los Angeles	5.3%
	Miami	3.1%
	Minneapolis	0.0%
	Newark	2.9%
	New York	9.7%
	Orlando	4.6%
	Philadelphia	5.3%
	Phoenix	0.4%
	Pittsburgh	2.0%
	San Diego	0.2%
	San Francisco	0.9%
	Seattle	2.7%
	Tampa	2.2%
	Washington	13.3%
Other		5.5%

Appendix F

Survey Questions and Responses

63. What actions did you take in response to the retaliation or unfavorable treatment? [More than one can be selected]

Notified your immediate supervisor	37.8%
Notified someone in your office other than your immediate supervisor	35.8%
Notified the Director of OLE/FAMS by sending an anonymous email	6.6%
Contacted the Ombudsman	19.7%
Contacted an equal employment opportunity office	17.9%
Filed an equal employment opportunity complaint (informal or formal)	15.7%
Filed an appeal with the Merit Systems Protection Board	3.5%
Filed a lawsuit against the agency	5.5%
Contacted the TSA Office of Inspection	6.4%
Contacted the DHS Office of Inspector General	7.3%
Contacted the Office of Special Counsel	5.3%
Contacted a member of Congress	8.8%
None	27.0%
Other	23.7%

64. Were the actions you took effective in resolving the problem of retaliation or unfavorable treatment?

Yes	11.2%
No	88.8%

65. Why did you take no action regarding the retaliation or unfavorable treatment?

I did not feel that the incident was severe enough to warrant action	5.8%
The issue was resolved without action on my part	0.0%
Unsure who to contact to take action	2.5%
Fear of further retaliation	80.8%
I am considering taking action	3.3%
Other	7.5%

Appendix F

Survey Questions and Responses

66. Do you believe that TSA or FAMS has retaliated against you or treated you unfavorably because you did any of the following? [More than one can be selected]

Questioned policies or procedures	20.6%
Proposed changes to policy or procedures	9.8%
Questioned decisions made by your immediate supervisor or senior management	21.6%
Requested annual leave	3.7%
Requested sick leave	10.2%
Requested leave under the <i>Family and Medical Leave Act</i>	3.3%
Requested leave for military duty	2.1%
Requested schedule adjustments	5.4%
Requested light duty	4.2%
I have not been retaliated against or treated unfavorably because any of the above reasons	68.5%

67. What form did the retaliation or unfavorable treatment take? [More than one can be selected]

A personnel action	28.9%
Verbal counseling	24.2%
Written counseling	15.4%
Conduct that was unprofessional	39.6%
Other	46.0%

68. Who do you believe retaliated against you or treated you unfavorably? [More than one can be selected]

Senior Manager in my office	64.3%
Senior Manager outside of my office	16.5%
Immediate supervisor	54.9%
Co-worker	9.4%
Other	9.6%

69. Did this retaliation or unfavorable treatment take place within the last 24 months?

Yes	49.0%
An incident or incidents occurred within the last 24 months, but other incidents occurred earlier than that.	22.1%
No	28.9%

Appendix F

Survey Questions and Responses

70. Where did the incident(s) of retaliation or unfavorable treatment take place? [More than one can be selected]

Headquarters	Atlantic City	3.4%
	Herndon	4.6%
	Ashburn	0.3%
	Reston	4.0%
	Arlington	1.5%
Field Offices	Atlanta	6.5%
	Baltimore	1.4%
	Boston	2.2%
	Charlotte	1.9%
	Chicago	4.5%
	Cincinnati	2.0%
	Cleveland	1.1%
	Dallas	8.3%
	Denver	2.4%
	Detroit	3.5%
	Houston	5.3%
	Las Vegas	2.0%
	Los Angeles	4.1%
	Miami	2.7%
	Minneapolis	0.2%
	Newark	3.2%
	New York	12.1%
	Orlando	4.0%
	Philadelphia	4.6%
	Phoenix	0.3%
	Pittsburgh	2.3%
	San Diego	0.4%
	San Francisco	0.7%
	Seattle	1.9%
	Tampa	1.4%
	Washington	11.9%
Other		6.2%

Appendix F

Survey Questions and Responses

71. What actions did you take in response to the retaliation or unfavorable treatment? [More than one can be selected]

Notified your immediate supervisor	26.7%
Notified someone in your office other than your immediate supervisor	24.3%
Notified the Director of OLE/FAMS by sending an anonymous email	4.2%
Contacted the Ombudsman	10.4%
Contacted an equal employment opportunity office	9.6%
Filed an equal employment opportunity complaint (informal or formal)	7.3%
Filed an appeal with the Merit Systems Protection Board	1.5%
Filed a lawsuit against the agency	2.5%
Contacted the TSA Office of Inspection	2.7%
Contacted the DHS Office of Inspector General	3.7%
Contacted the Office of Special Counsel	2.5%
Contacted a member of Congress	3.9%
None	47.9%
Other	14.5%

72. Were the actions you took effective in resolving the problem of retaliation?

Yes	11.5%
No	88.5%

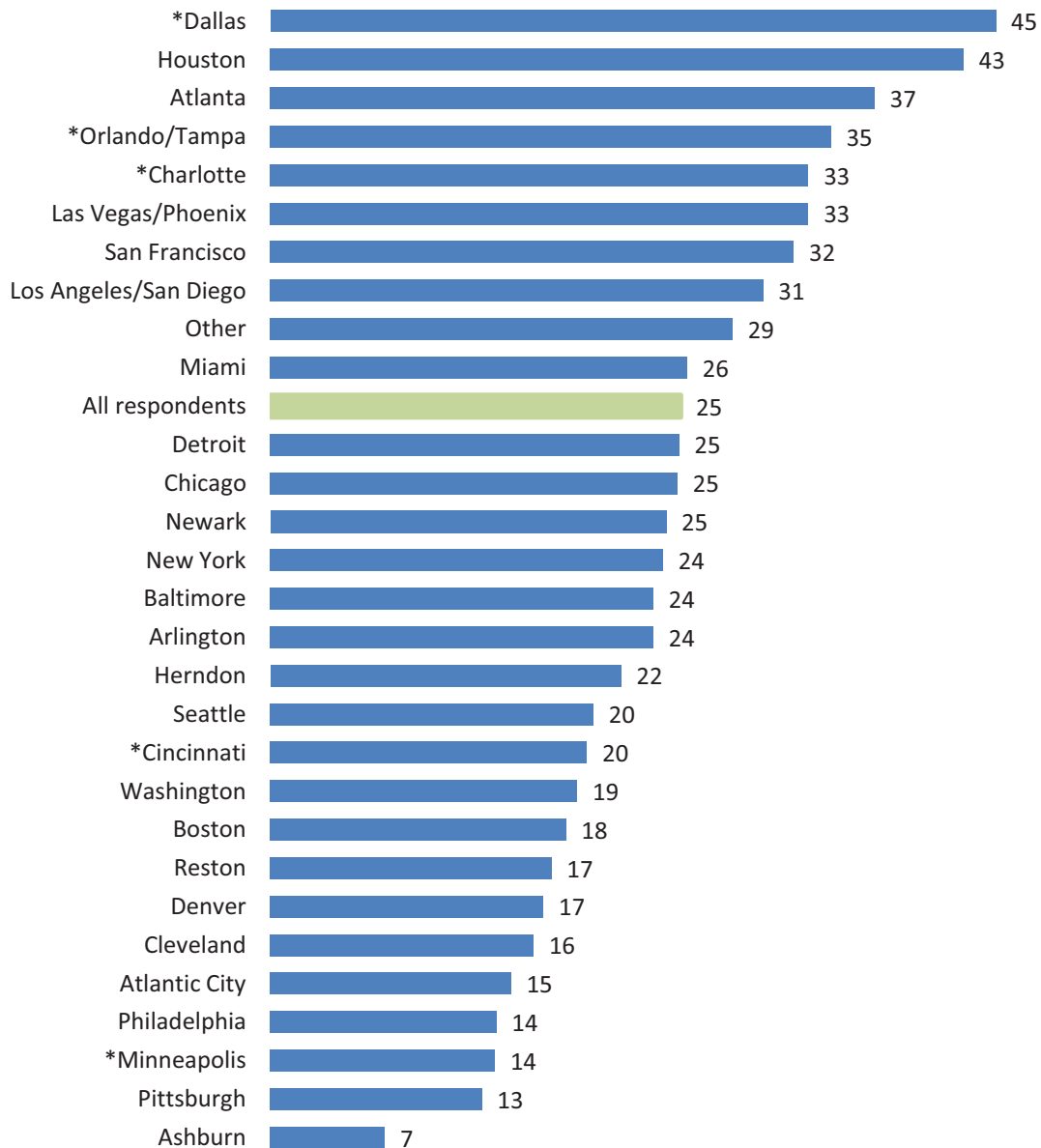
73. Why did you take no action regarding the retaliation or unfavorable treatment?

I did not feel that the incident was severe enough to warrant action	16.6%
The issue was resolved without action on my part	2.3%
Unsure who to contact to take action	1.9%
Fear of further retaliation	62.5%
I am considering taking action	2.3%
Other	14.5%

Appendix G

Select Survey Responses by Location

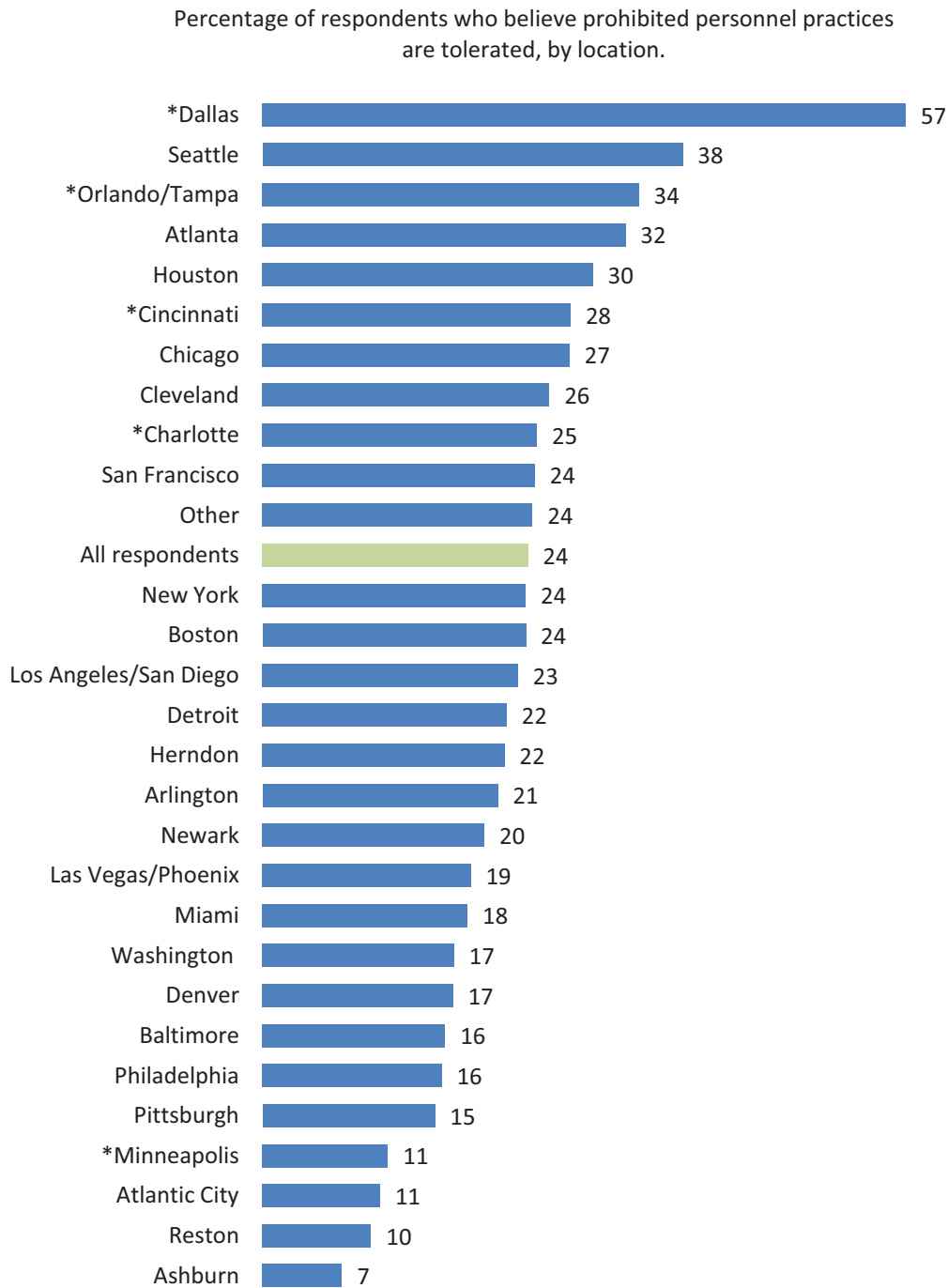
Percentage of respondents who believe they were treated unfavorably because they are in a protected class (discrimination), by location.



*Denotes a field office we visited prior to conducting our survey.

Appendix G

Select Survey Responses by Location

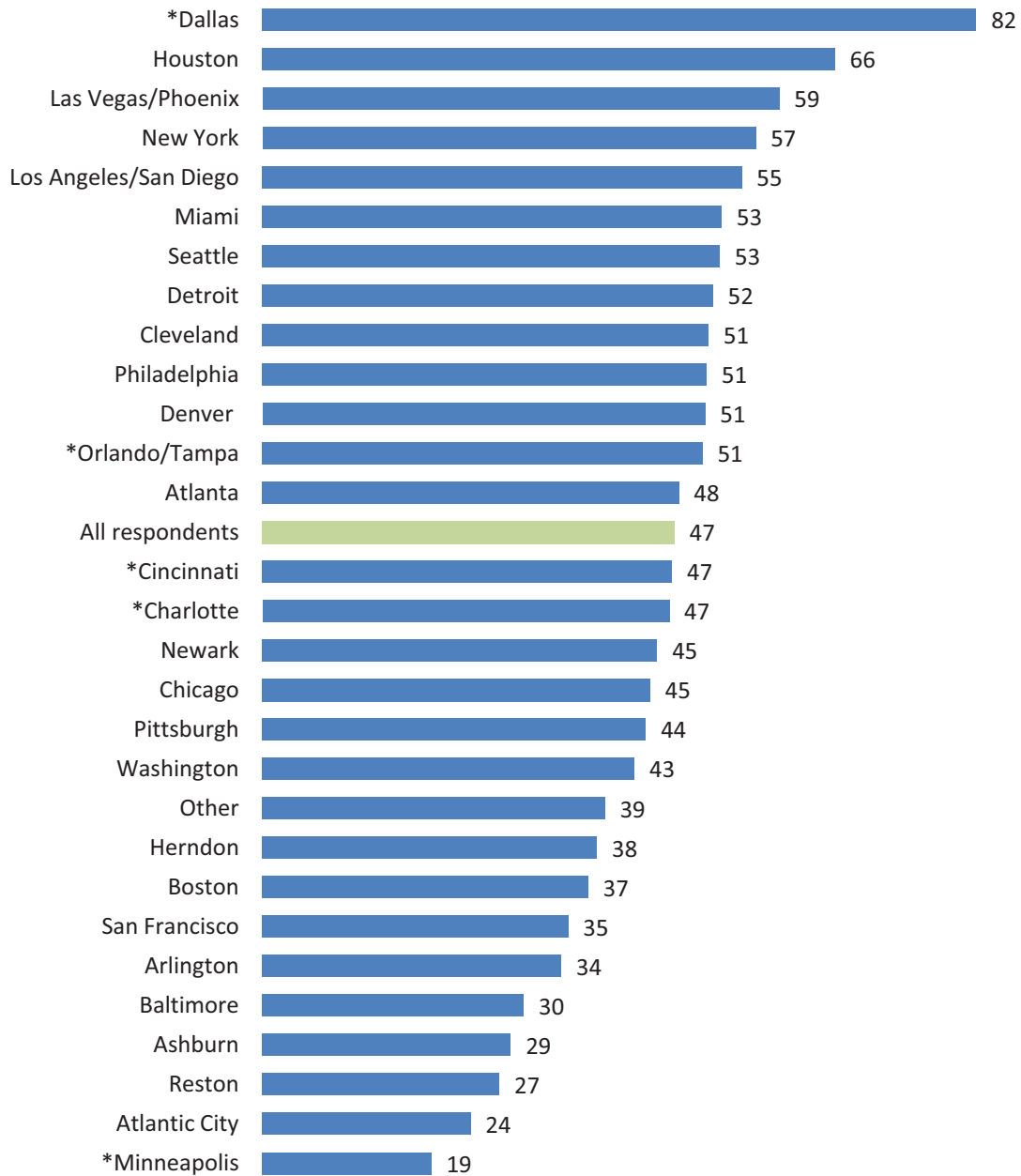


*Denotes a field office we visited prior to conducting our survey.

Appendix G

Select Survey Responses by Location

Percentage of respondents who believe they cannot disclose a violation of any rule, law, or regulation without fear of retaliation, by location.

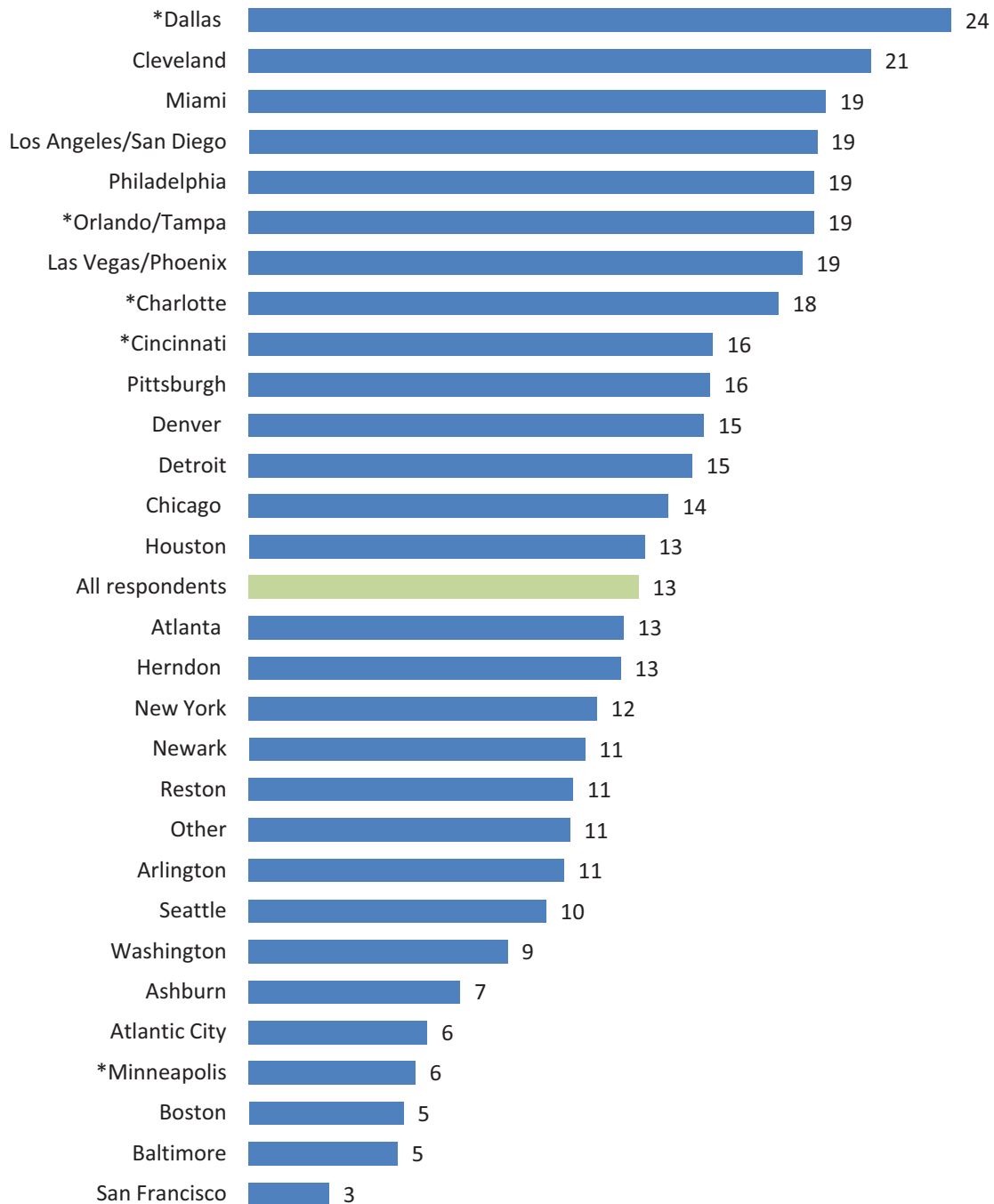


*Denotes a field office we visited prior to conducting our survey.

Appendix G

Select Survey Responses by Location

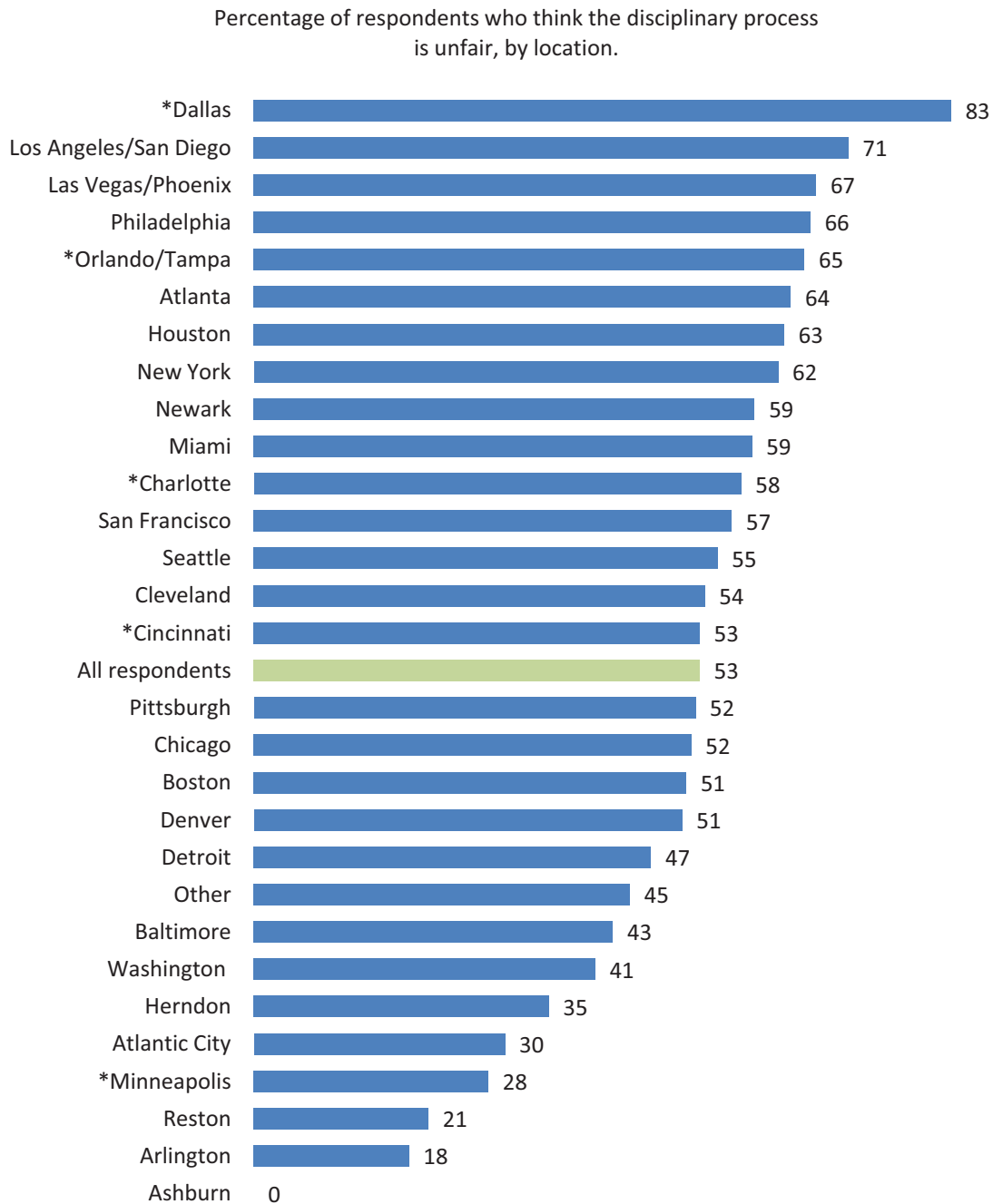
Percentage of respondents who would not report misconduct or illegal activity to the appropriate FAMS official, by location.



*Denotes a field office we visited prior to conducting our survey.

Appendix G

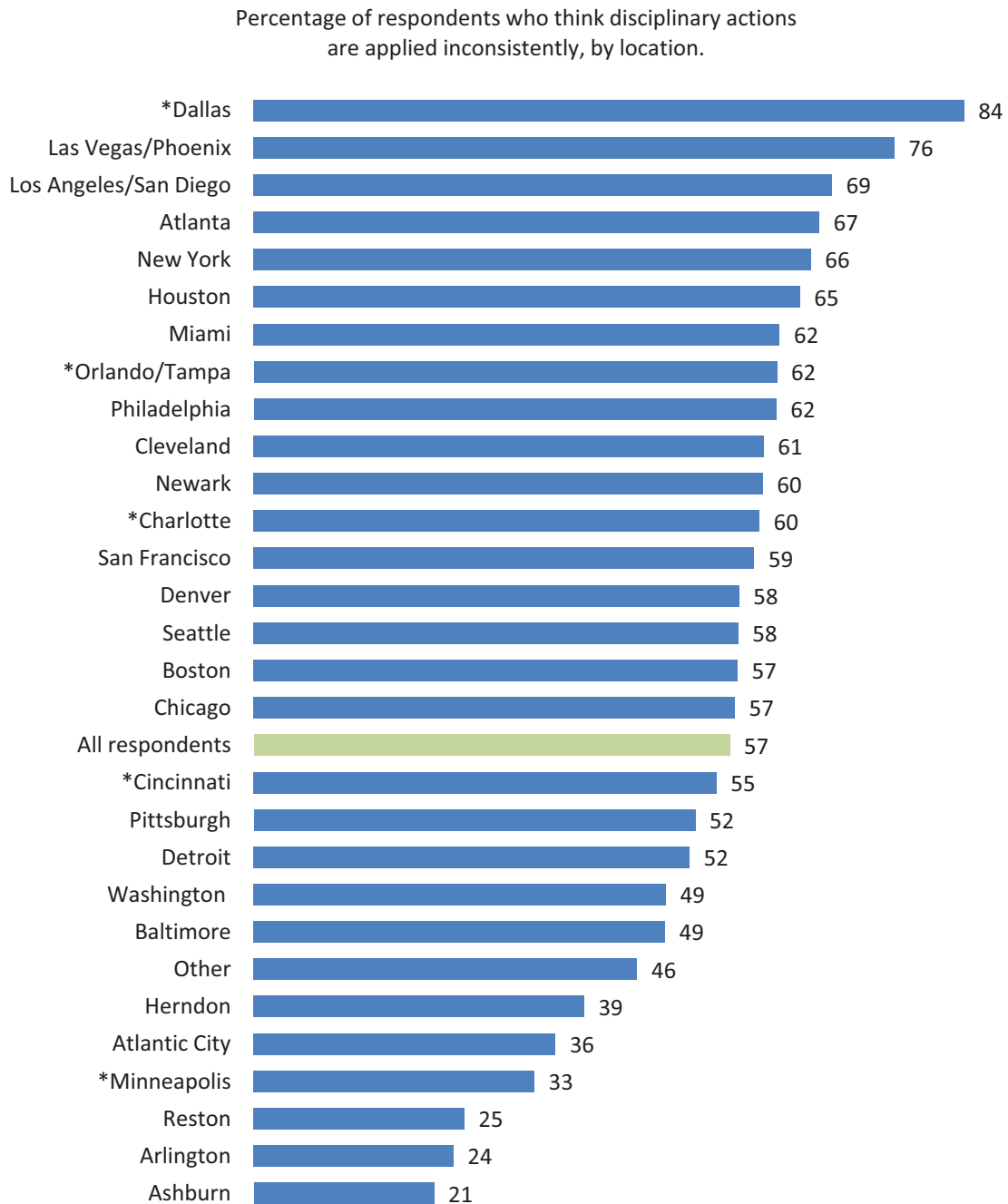
Select Survey Responses by Location



*Denotes a field office we visited prior to conducting our survey.

Appendix G

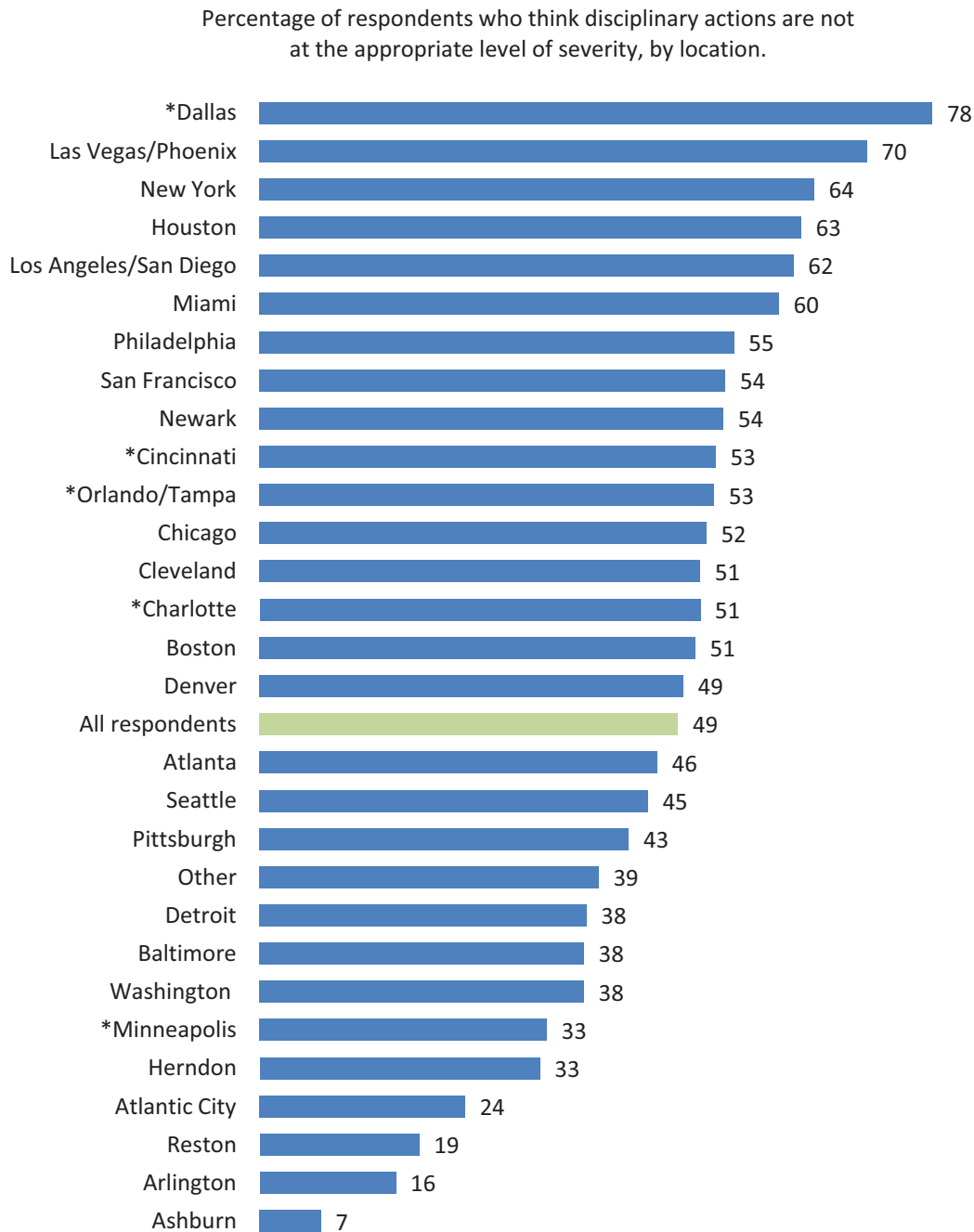
Select Survey Responses by Location



*Denotes a field office we visited prior to conducting our survey.

Appendix G

Select Survey Responses by Location

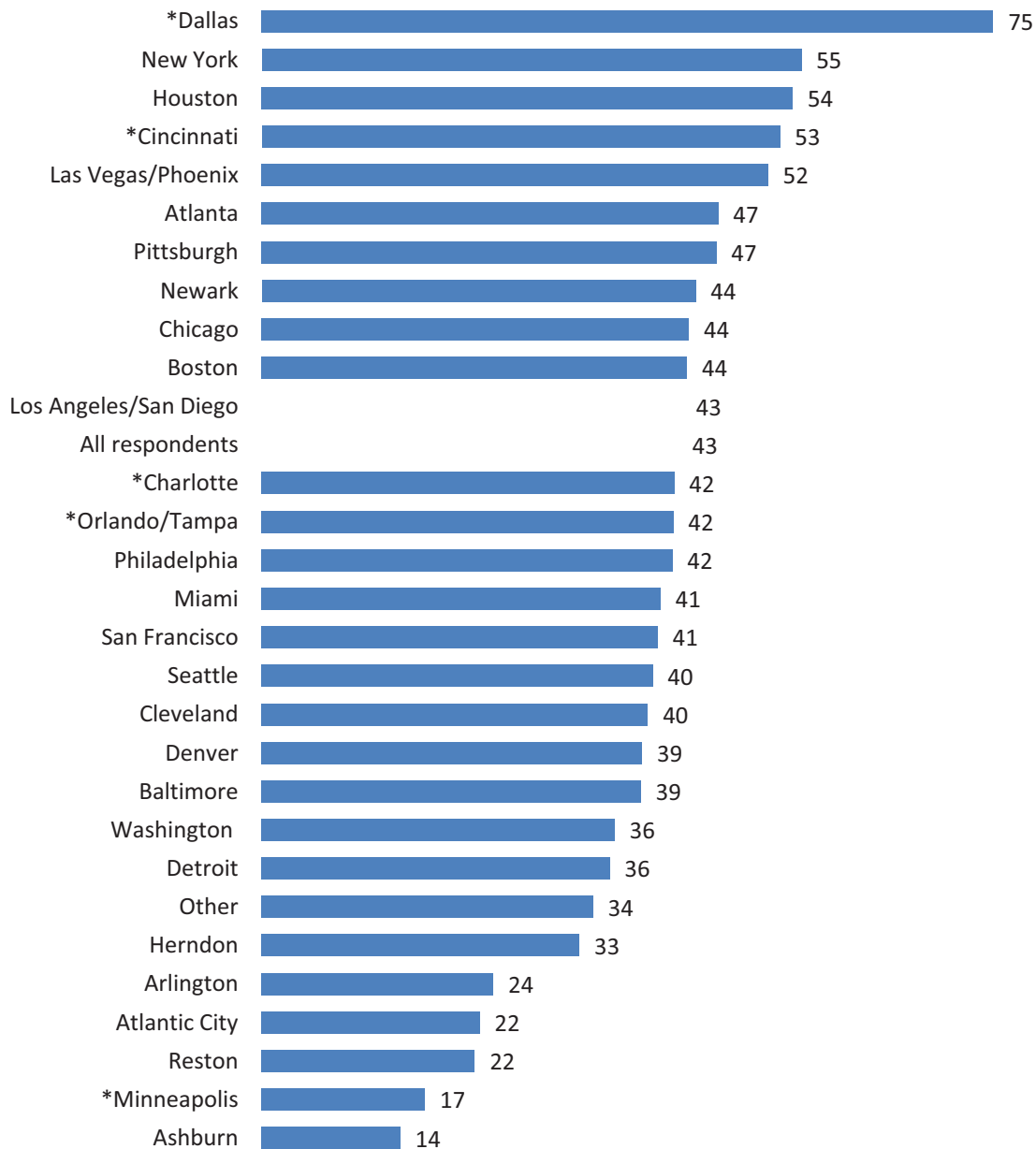


*Denotes a field office we visited prior to conducting our survey.

Appendix G

Select Survey Responses by Location

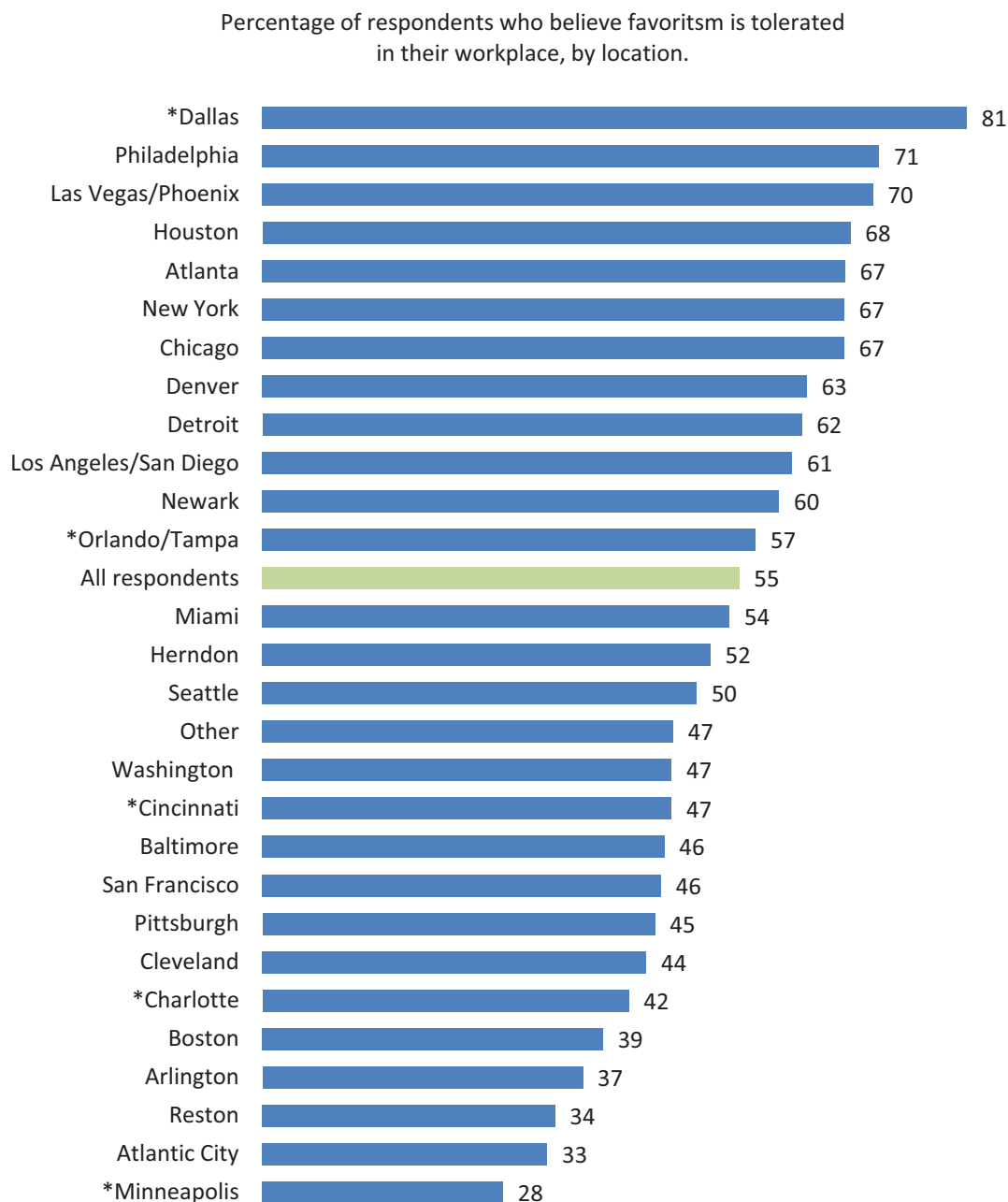
Percentage of respondents who think discipline is used as a tool to retaliate against employees, by location.



*Denotes a field office we visited prior to conducting our survey.

Appendix G

Select Survey Responses by Location



*Denotes a field office we visited prior to conducting our survey.

Appendix H

Select Questions – OIG FAMS Survey Compared to 2010 DHS-wide Survey

Following are 16 questions from our survey and the identical or nearly identical questions OPM posed during its 2010 survey of DHS employees and the corresponding responses. For purposes of this comparison, we unweighted DHS' results.

	Percent Positive	Strongly Agree	Agree	Neither Agree Nor Disagree	Disagree	Strongly Disagree	Do Not Know
<u>OIG FAMS #4</u> My current performance appraisal is an accurate reflection of my performance.	52.0%	13.2%	38.8%	20.2%	18.0%	9.8%	
<u>2010 DHS Viewpoint Survey #15</u> My performance appraisal is a fair reflection of my performance.	67.1%	24.4%	42.7%	13.9%	8.9%	8.4%	1.8%
<u>OIG FAMS #13</u> Promotions are based on merit.	17.1%	3.9%	13.2%	18.6%	20.4%	39.7%	4.3%
<u>2010 DHS Viewpoint Survey #22</u> Promotions in my work unit are based on merit.	34.0%	8.6%	25.4%	23.9%	18.0%	19%	5.1%
<u>OIG FAMS #21</u> I can disclose a suspected violation of any law, rule, or regulation without fear of retaliation.	31.2%	8.5%	22.7%	21.6%	22.5%	24.8%	
<u>2010 DHS Viewpoint Survey #17</u> I can disclose a suspected violation of any law, rule, or regulation without fear of reprisal.	57.4%	22.1%	35.3%	18.2%	9.7%	10.7%	4.0%
<u>OIG FAMS #35</u> Policies and programs promote diversity in the workplace (for example, recruiting minorities and women, diversity training, mentoring).	57.0%	17.1%	39.9%	22.5%	6.5%	6.8%	7.0%
<u>2010 DHS Viewpoint Survey #34</u> Same question.	60.4%	22.0%	38.4%	17.9%	6.3%	8.6%	6.8%
<u>OIG FAMS #36</u> Supervisors work well with employees of different backgrounds.	57.0%	15.3%	41.7%	22.5%	8.4%	8.3%	3.7%
<u>2010 DHS Viewpoint Survey #55</u> Managers/supervisors/team leaders work well with employees of different backgrounds.	61.5%	16.9%	44.6%	19.8%	8.4%	7.2%	3.1%

Appendix H

Select Questions – OIG FAMS Survey Compared to 2010 DHS-wide Survey

	Percent Positive	Strongly Agree	Agree	Neither Agree Nor Disagree	Disagree	Strongly Disagree	Do Not Know
<u>OIG FAMS #38</u> Prohibited Personnel Practices (for example, illegally discriminating for or against any employee/applicant, obstructing a person's right to compete for employment, knowingly violating veterans' preference requirements) are not tolerated.	40.9%	12.4%	28.5%	22.1%	10.3%	13.4%	13.4%
<u>2010 DHS Viewpoint Survey #38</u> Same question.	60.4%	22.0%	38.4%	17.9%	6.3%	8.6%	6.8%
<u>OIG FAMS #39</u> My supervisor supports my need to balance work and other life issues.	58.8%	18.6%	40.2%	15.8%	9.9%	14.3%	1.3%
<u>2010 DHS Viewpoint Survey #42</u> Same question.	74.3%	31.4%	42.9%	12.6%	7.0%	5.5%	0.6%
<u>OIG FAMS #40</u> I am given an opportunity to improve my skills in my organization.	43.2%	9.8%	33.4%	21.0%	21.6%	14.2%	
<u>2010 DHS Viewpoint Survey #1</u> I am given a real opportunity to improve my skills in my organization.	61.7%	18.1%	43.6%	16.9%	15.7%	5.7%	
<u>OIG FAMS #41</u> I feel encouraged to come up with new and better ways of doing things.	36.1%	9.8%	26.3%	22.3%	24.7%	16.9%	
<u>2010 DHS Viewpoint Survey #3</u> Same question.	55.0%	19.4%	35.6%	18.3%	17.8%	8.8%	
<u>OIG FAMS #42</u> My work gives me a feeling of personal accomplishment.	55.9%	17.5%	38.4%	17.4%	14.2%	12.5%	
<u>2010 DHS Viewpoint Survey #4</u> Same question.	70.6%	27.7%	42.9%	14.6%	9.6%	5.2%	

Appendix H

Select Questions – OIG FAMS Survey Compared to 2010 DHS-wide Survey

	Percent Positive	Strongly Agree	Agree	Neither Agree Nor Disagree	Disagree	Strongly Disagree	Do Not Know
<u>OIG FAMS #43</u> My talents are used well in the workplace.	39.0%	9.9%	29.1%	20.3%	22.0%	18.7%	
<u>2010 DHS Viewpoint Survey #11</u> Same question.	55.2%	14.6%	40.6%	16.4%	16.2%	12.2%	
<u>OIG FAMS #44</u> The people I work with cooperate to get the job done.	75.5%	17.8%	57.7%	14.5%	6.3%	3.7%	
<u>2010 DHS Viewpoint Survey #20</u> Same question.	74.3%	22.9%	51.4%	12.9%	9.8%	3.0%	
<u>OIG FAMS #45</u> Creativity and innovation are rewarded.	24.3%	5.8%	18.5%	32.0%	26.3%	17.5%	
<u>2010 DHS Viewpoint Survey #32</u> Same question.	39.6%	10.2%	29.4%	25.9%	19.0%	13.0%	2.7%
	Percent Positive	Very Satisfied	Satisfied	Neither Satisfied Nor Dissatisfied	Dissatisfied	Very Dissatisfied	
<u>OIG FAMS #46</u> How satisfied are you with the recognition you receive for doing a good job?	34.6%	8.2%	26.4%	24.7%	23.1%	17.6%	
<u>2010 DHS Viewpoint Survey #65</u> Same question.	51.0%	15.5%	35.5%	22.2%	17.6%	9.3%	
<u>OIG FAMS #47</u> How satisfied are you with your opportunity to get a better job in your organization?	23.3%	5.3%	18.0%	24.5%	24.6%	27.5%	
<u>2010 DHS Viewpoint Survey #67</u> Same question.	40.3%	10.7%	29.6%	27.3%	18.2%	14.1%	
<u>OIG FAMS #48</u> Considering everything, how satisfied are you with your job?	53.4%	14.4%	39.0%	21.6%	14.9%	10.1%	
<u>2010 DHS Viewpoint Survey #69</u> Same question.	67.6%	22.9%	44.7%	16.7%	10.5%	5.2%	

Appendix I

Survey Demographics

Respondents by Race/National Origin

Race/National Origin	FAMS Workforce	Survey Respondents
American Indian or Alaska Native ¹	1.1%	3.1%
Asian ¹	3.5%	2.3%
Black or African-American	12.0%	11.8%
Hispanic / Latino	11.3%	11.7%
Native Hawaiian or Other Pacific Islander ¹	0.0%	0.8%
Other / More than one race ²	0.4	N/A
Other	N/A	7.9%
White	71.7%	78.8%

¹ The limited size of these populations should be considered when interpreting survey results that list these demographic populations.

² Our survey did not have an option of “Other/More than one race.” Instead, respondents could select more than one option.

Respondents by Gender

Gender	FAMS Workforce	Survey Respondents
Male	87.5%	87.7%
Female	12.5%	12.3%

Respondents by Age

Age	FAMS Workforce	Survey Respondents
29 or Younger	11.3%	6.2%
30–39	37.1%	34.1%
40–49	41.1%	47.1%
50–59	8.3%	10.2%
60 or Older	2.2%	2.4%

Respondents by Pay Band

Pay Band	FAMS Workforce	Survey Respondents
D	0.1%	0.2%
E	0.4%	0.6%
F	2.7%	3.0%
G	10.1%	4.5%
H	9.1%	6.2%
I	65.0%	70.0%
J	8.8%	11.2%
K	2.7%	3.3%
L	0.2%	0.3%
TSES	0.5%	0.7%

Appendix J

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