United States Senate
WASHINGTON, DC 20510

January 30, 2024

VIA ELECTRONIC TRANSMISSION

The Honorable Steven Dettelbach
Director
Bureau of Alcohol, Tobacco, Firearms, and Explosives

The Honorable Jolene A. Lauria
Assistant Attorney General for Administration
Justice Management Division
Department of Justice

Dear Director Dettelbach and Ms. Lauria:

We write to you today concerning the Office of Personnel Management's (OPM) determination to restore the authority of the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) to classify positions in the 1800 series—i.e. law enforcement positions.[1] On November 2, 2020, OPM suspended ATF's classification authority for 1800 positions after finding misconduct from an evaluation of ATF's performance management system.[2] This was in addition to the first-hand testimony of two whistleblowers who exposed ATF's practice of intentionally misclassifying human resources, administrative, and other non-law enforcement positions, as law enforcement in violation of applicable statutory and regulatory law. [3] According to OPM, "ATF established a requirement for law enforcement employees to perform administrative functions in its headquarters to be eligible to enter leadership positions."[4] As a result of ATF's illegal misclassification scheme, employees assigned to misclassified positions received enhanced law enforcement pay and benefits without performing law enforcement duties, leaving taxpayers to pick up the tab.[5]

On May 2, 2023, the Office of Special Counsel (OSC) reported that subsequent investigations confirmed the whistleblower allegations, finding "substantial waste,

[1] Letter from Mark Lambert to Jolene A. Lauria (Nov. 6, 2023) (on file with staff).
[2] Letter from Senator Charles E. Grassley to OPM (Oct. 6, 2021) https://www.grassley.senate.gov/imo/media/doc/grassley_to_doj_atf_-_leap.pdf.
[3] Letter from Senator Charles E. Grassley to OPM (Oct. 6, 2021) https://www.grassley.senate.gov/imo/media/doc/grassley_to_doj_atf_-_leap.pdf.
[4] Letter from Alethea Predeoux Director of Congressional, Legislative, and Intergovernmental Affairs, OPM to Senator Charles E. Grassley, (Dec. 29, 2021) (on file with our offices).
[5] Office of Special Counsel, *ATF Unlawfully Paid Agents Millions of Dollars in Wrongful Benefits*, (May 5, 2023) https://osc.gov/News/Pages/22-07-ATF-Wrongful-Benefits.aspx.

mismanagement, and unlawful employment practices at the [ATF]."[6] According to OSC's letter transmitting these substantiated allegations to President Biden, OSC stated ATF would work with OPM and the Justice Management Division (JMD) within the U.S. Department of Justice to properly classify the misclassified positions and "ATF's Internal Affairs Division is currently investigating the circumstances surrounding the implementation of the illegal policies and practices."[7] According to OPM's November 6, 2023, letter to JMD, "OPM suspended ATF's authority to classify positions in the 1800 job family until such time as all positions identified were properly classified, demonstrating ATF's adherence to merit system principles, Federal law, and regulation."[8] The letter also noted OPM determined that even though ATF admitted it was "unable to provide the necessary evidence and analysis normally required to support its classification determinations," OPM restored ATF's classification authority.[9] On November 8, 2023, Director Dettelbach notified ATF employees that OPM restored its classification authority, and ATF worked to "address the issues outlined in the audit, and to further modernize our HR function."[10]

We write to you today requesting answers concerning the findings of the ATF Internal Affairs Division investigation and the actions taken to hold those employees accountable who were notified of the illegal misclassification scheme but allowed it to continue. According to legally protected disclosures made to our offices, ATF management was notified as early as 2018 that the agency's decades-long practice of misclassifying non-law enforcement positions as law enforcement, including leadership positions, was in violation of the law, but ATF failed to take corrective action.

According to emails from January 2018, then ATF Deputy Assistant Director (DAD) of Human Resources Division, Lisa Boykin, was notified that the position of Chief of the ATF's Recruitment, Diversity, and Hiring division was misclassified.[11] The email provides that the classification of this Chief position as an 1800 law enforcement position violated statutory and regulatory provisions because the position performed human resources and not law enforcement duties.[12] In a follow up email, DAD Boykin acknowledged receipt and stated she would respond to this allegation "as soon as practicable."[13] DAD Boykin never responded.

Further, on June 26, 2018, the position misclassification issue was raised with then Assistant Director (AD) Kent Croke of ATF Human Resources during an in-person meeting that

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[6] Office of Special Counsel, *ATF Unlawfully Paid Agents Millions of Dollars in Wrongful Benefits*, (May 5, 2023) https://osc.gov/News/Pages/22-07-ATF-Wrongful-Benefits.aspx.
[7] OSC Letter to the President (May 2, 2023) at 4 https://osc.gov/Documents/Public%20Files/FY23/DI-19-004250;%20DI-20-000696/REDACTED%20OSC%20Letter%20to%20President%20DI-19-004250%20and%20DI-20-000696.pdf.
[8] OPM letter *supra* note 1.
[9] *Id*.
[10] ATF, *Special Message from the Director: ATF's Classification Authority Fully Restored*, (Nov. 8, 2023) (on file with our offices).
[11] Email to DAD Lisa Boykin (January 12, 2018) (on file with our offices).
[12] *Id*.
[13] Email from DAD Lisa Boykin (January 16, 2018) (on file with our offices).

was also attended by DAD Boykin.[14] A follow up email sent that same day to AD Croke extensively described how ATF was in violation of applicable regulatory and statutory provisions because the duties and responsibilities of the employees in certain 1800 positions performed no law enforcement duties as defined by OPM guidelines.[15] The email also provides AD Croke with two examples involving the U.S. Patent and Trademark Office and the Immigration and Naturalization Service to show "how classification and qualification can go wrong and the result."[16] Moreover, an offer was made to set up a meeting between AD Croke and OPM for guidance on ATF's position misclassification problem and to confirm the allegations raised during the meeting.[17] Records provided to our offices indicate AD Croke did not take up this offer. Specifically, email records from July 2, 2018, show AD Croke and DAD Boykin were "upset" at the topic of the proposed meeting and directed that, in the future, issues should be sent up the "chain of command" before being taken to executive management.[18]

In addition, it is also alleged that the illegality of ATF's position misclassification scheme was raised with JMD prior to OSC's involvement and the conclusion of OPM's audit, but JMD failed to take any action. On July 15, 2019, Michael Sena, the Assistant Director of Human Resource Policy and Advisory Services for JMD, was notified via email that ATF management was aware that human resources positions were misclassified, but ATF took no action to address these statutory and regulatory violations.[19] The email states that the law enforcement availability pay (LEAP) the employees in these misclassified positions received was an overpayment because the duties of their positions did not meet the definition of law enforcement.[20] JMD AD Sena responded that he would do some checking, and "get back to you soonest."[21] Just like ATF's DAD Boykin and AD Croke, records provided to our offices show JMD AD Sena did nothing.[22] After repeated attempts for ATF and JMD leadership to comply with applicable statutes and regulations concerning its misclassified positions, the whistleblowers then notified OSC in 2019 and 2020. If the ATF and JMD dispute these allegations, we welcome your explanation.

We provide this extensive background of what led to OSC substantiating the whistleblowers' claims to exemplify ATF management's long history of failing to take the necessary actions to investigate and correct its misclassified positions when presented with evidence the agency broke the law. Appropriate corrective action must be taken in regards to all

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[14] Email to AD Kenneth Croke (June 26, 2018) (on file with our offices).
[15] Email to AD Kenneth Croke (Jun. 26, 2018) (on file with our offices).
[16] *Id.*; see U.S. Department of Commerce Office of the Inspector General, *USPTO Needs Strong Office of Human Resources Management Capable of Addressing Current and Future Challenges*, Report No. BTD-16432-4-0001/June 2004 (Jun. 16, 2004) https://www.oig.doc.gov/OIGPublications/BTD-16432.pdf; Special Counsel v. James A. Brown and Jennifer R. Nelson, Merit Systems Protection Board (Apr. 11, 1994) https://www.mspb.gov/decisions/precedential/BROWN_JAMES_A_CB910033T1_OPINION_AND_ORDER_246403.pdf.
[17] *Id*.
[18] Email from Beth Haransky (July 2, 2018) (on file with our offices).
[19] Email to Michael Sena (July 15, 2019) (on file with our offices).
[20] *Id*.
[21] *Id*.
[22] *Id*.

employees that allowed taxpayer dollars to be wasted after notification of the aforementioned misconduct. The American public must know ATF will not revert to its previous impropriety after the restoration of its classification authority.[23]

The whistleblowers also allege the 91 misclassified positions OPM identified may not represent the full scope of ATF's illegally misclassified positions. It is alleged that hundreds of ATF employees from across the country were hired under individual position descriptions OPM identified as misclassified; however, a full audit or review has not been conducted to ensure that all the employees in these positions are performing law enforcement duties and not unlawfully receiving enhanced benefits and pay at the cost to taxpayers. Therefore, while OSC found that ATF's misconduct led to overpaying employees up to $20 million from 2016-2021, the true cost to taxpayers could be substantially more.[24] For example, it is alleged that up to 800 employees across ATF Divisions and Field Offices still occupy positions OPM identified as misclassified. Even if half of these positions are misclassified, during the five-year period reviewed by OPM, ATF would have wasted close to $88 million in taxpayer dollars, more than four times the figure OSC identified.

For this reason, ATF and JMD must conduct a comprehensive evaluation and review of all the employees occupying the misclassified position descriptions OPM identified, and look back further than the five years to understand the full scope of ATF's systematic wrongdoing. No amount of waste of taxpayer dollars is acceptable. Taxpayers deserve to know how much of their money was wasted due to ATF's failure to follow the law.

As Director of the ATF and Assistant Attorney General of JMD, you both should appreciate the actions of the brave and patriotic whistleblowers who risked their careers and livelihoods to stand up and do the right thing. That is why it is extremely concerning our offices have received credible allegations that ATF engaged in retaliation against the whistleblowers who exposed ATF's substantial waste, fraud, and abuse. If these allegations are true, we demand that the ATF cease retaliating against these whistleblowers, commit to not engage in future reprisal, and hold those employees accountable who engaged in the unlawful retaliation. Whistleblower retaliation is the enemy of a transparent government and corrective action must be taken against all those engaged in reprisal.

So that we may conduct objective and independent oversight of ATF's actions and efforts to correct its misclassified law enforcement positions and hold accountable those who engaged in misconduct, please provide answers to the following no later than February 13, 2024.

1. Has ATF Internal Affairs Division completed its investigation into the circumstances surrounding the implementation and ongoing use of the illegal hiring policies and

[23] ATF, *Special Message from the Director: ATF's Classification Authority Fully Restored*, (Nov. 8, 2023) (on file with our offices).
[24] Letter from DOJ to OSC (Mar. 29, 2022) https://osc.gov/Documents/Public%20Files/FY23/DI-19-004250;%20DI-20-000696/REDACTED%20CL%20and%20ATF%20Report%20of%20Investigation%20DI-20-000696%20-004250.pdf.

practices? If yes, provide the full, unredacted report and related records.[25] If not, why not?

2. What corrective action has DOJ and ATF taken to hold employees who misclassified these positions, or failed to correct the misclassification of these positions, accountable? Provide records of the corrective action taken.
3. From January 2017 to present, provide all records between ATF and JMD related to ATF's classification authority and misclassified positions.
4. Concerning Director Dettelbach's November 8, 2023 notification:
    a. What changes did ATF make to address the issues outlined in the OPM audit report?
    b. What changes did ATF make to "further modernize" its HR function?
    c. What processes and procedures are in place to prevent position misclassifications from occurring in the future?
    d. Provide all guidance, policies, and similar records concerning ATF's 1800 job series classification, including the ATF's Special Agent Career Plans before and after OPM audit.
5. OPM identified a litany of misclassified position descriptions. Has ATF conducted a nationwide review of the responsibilities of the employees assigned to the misclassified position descriptions across all of its Field Offices and Divisions to ensure the employees assigned to these positions are performing law enforcement duties? If not, why not? If yes, please provide records evidencing the review, and for each individual identified as performing non-law enforcement duties provide:
    a. The Field Office, Division, position title, organization, series, grade, and position description number.
    b. The total number of ATF employees employed in misclassified positions performing non-law enforcement duties.
    c. The total cost to taxpayers for each individual employed in a misclassified position, as well as the amount of excess pay each individual received as a result of the misclassification.
6. Does DOJ plan to conduct a retroactive review of misclassified positions beyond the five years reviewed by OPM? If yes, provide the status of this review and all findings. If not, why not?
7. Prior to OPM's audit, how often was ATF required to assess and review its position descriptions and classifications pursuant to ATF or DOJ regulations, policy, or similar guidance? Was ATF in full compliance? If not, what ATF office and personnel were responsible for ensuring ATF compliance? If yes, provide records of ATF's compliance.

[25] "Records" include any written, recorded, or graphic material of any kind, including letters, memoranda, reports, notes, electronic data (e-mails, email attachments, and any other electronically-created or stored information), calendar entries, inter-office communications, meeting minutes, recordings or memorialization of phone calls, voicemails, or recordings/records of verbal communications, and any drafts of official documents (whether or not they resulted in final documents).

8. According to the National Academy of Public Administration (NAPA), JMD requested NAPA "to conduct an independent study of the use of classification authority for the GS-1811 series positions within the DOJ component agencies."[26] In regards to this study:
    a. Provide the date JMD requested NAPA to conduct the study.
    b. Provide the full, unredacted NAPA report with the findings and recommendations.
    c. Provide all records related to the NAPA study.

Thank you for your prompt review and responses. If you have any questions, please contact Brian Randolph of Senator Grassley's Committee staff and Aaron Gottesman of Senator Ernst's staff.

Sincerely,

Charles E. Grassley
Ranking Member
Committee on the Budget

Joni K. Ernst
United States Senator

cc: The Honorable Merrick Garland
Attorney General
Department of Justice

Enclosures

[26] National Academy of Public Administration, *DOJ Law Enforcement Classification Study*, https://napawash.org/academy-studies/doj-law-enforcement-classification-study.

UNITED STATES OFFICE OF PERSONNEL MANAGEMENT
Washington, DC 20415

Merit System
Accountability and
Compliance

Jolene A. Lauria
Acting Assistant Attorney General
for Administration
U.S. Department of Justice

Dear Ms. Lauria:

Thank you for your 10/23/2023 and 10/24/2023 submissions of classification packages to address the outstanding FY2020 required actions from OPM's FY 2020 human capital management evaluation. In these submissions, we received position descriptions and related documents for the positions of:

- Supervisory Criminal Investigator, GS-1811-15 (Deputy Chief) (23-008)
- Supervisory Criminal Investigator, GS-1811-15 (Chief) (23-009)
- Supervisory Criminal Investigator, GS-1811-14 (Branch Chief) (23-010)
- Criminal Investigator, GS-1811-13 (Training Manager) (23-011)
- Criminal Investigator, GS-1811-14 (Senior Training Manager) (23-012)
- Assistant Director (OPRSO), ES-1811-00 (ES-163)
- Deputy Assistant Director (OPRSO), ES-1811-00 (ES-164)
- Special Agent in Charge (National Academy Operations), ES-1811-00 (ES-166)
- Deputy Assistant Director (Chief Learning Officer), ES-0340-00 (ES-xxx)

In FY 2020, OPM determined ATF used its classification authority to improperly classify numerous positions in the 1800 job family. This provided individuals with numerous pay and retirement benefits associated with law enforcement work for which they were not entitled while performing administrative duties. For this reason, OPM suspended ATF's authority to classify positions in the 1800 job family until such time as all positions identified were properly classified, demonstrating ATF's adherence to merit system principles, Federal law, and regulation. ATF has maintained classification authority for positions in all other job families, therefore, the proposed position description for the Chief Learning Officer position is not addressed.

Effective immediately, upon receipt of this letter, ATF's authority to classify positions in the 1800 job family is, hereby, restored. OPM's determination is based on the review of work described in the position descriptions, as written. However, due to the positions being redescribed and currently vacant, ATF has stated it is unable to provide the necessary evidence and analysis normally required to support its classification

determinations. Therefore, as standard practice in such cases, ATF will be required to conduct a thorough analysis of each of the positions above classified in the 1811 series six months after appointing incumbents.

In accordance with OPM's oversight authority, established under title 5, U.S. Code, part 5112, DOJ must submit the following evidence to OPM within eight months following the first appointment to each 1811 position above:

- Performance work plans issued, with elements and standards;
- Analysis of all work performed/described applying the appropriate GS Classification Standards and Functional Guides including factor level evaluation supported by work samples and other documentation (e.g., internal agency studies);
- Analysis of all SES work performed to support a determination that 1811 is the predominant series of work performed;
- Certification of work performed that supports the 1811 series, specifically work associated with law enforcement availability pay criteria.

This documentation will serve as DOJ's certification that work is being performed as described in the position descriptions. Documentation must address concerns raised by OPM regarding organizational/job design (e.g., position management or organizational and reporting structures); application of classification policy (e.g., series determination, use of functional guides – supervisory, instructional, and leader guides); properly crediting work levels (e.g., factor level evaluation); leadership and supervisory roles (e.g., distinction between leadership and supervisory roles by applying appropriate policy criteria); and supporting evaluation evidence illustrating work performed (e.g., job analysis, desk audits) aligned with the work included in the position descriptions.

We would like to thank ATF and JMD for their cooperation throughout this process. The proper classification of work is integral to meeting the requirements of a merit system that is based on equitable pay and benefits for federal employees. For this reason, OPM has plans to address numerous issues identified with classifying work associated with law enforcement training facilities by conducting a Governmentwide study. We look forward to partnering with DOJ again in these matters at that time.

Sincerely,

MARK LAMBERT

Digitally signed by MARK LAMBERT
Date: 2023.11.06 17:59:42 -05'00'

Mark W. Lambert
Associate Director

cc: Mike Williams
Deputy Assistant Attorney General
Human Resources and Administration
Chief Human Capital Officer
U.S. Department of Justice
[redacted]

Ms. Valarie Mulcahy
Human Resources Director and Deputy Chief Human Capital Officer
Justice Management Division
U.S. Department of Justice
[redacted]

F. Michael Sena
Acting Director
Human Resources
Justice Management Division
U.S. Department of Justice
[redacted]

Ms. Kamaron Kellum-Cloman
Assistant Director
Human Capital Management and Accountability
Justice Management Division
U.S. Department of Justice
[redacted]

Sent by email to: [redacted] on behalf of Ms. Lauria

No hard copy to follow.

UNITED STATES OFFICE OF PERSONNEL MANAGEMENT
Washington, DC 20415

Congressional
Legislative and
Intergovernmental
Affairs

DEC 29 2021

The Honorable Charles E. Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Ranking Member Grassley:

Thank you for your interest regarding the U.S. Office of Personnel Management's (OPM) human capital evaluation findings and suspension of classification authority at the Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF).

You asked what circumstances, if any, prompted OPM to conduct its evaluation of ATF's performance management system. OPM plans and evaluates agency human capital management systems routinely each year in accordance with its statutory authority under 5 U.S.C. 1104. In scheduling ATF for evaluation, OPM considered the length of time since a human capital evaluation was conducted on ATF (more than four years). OPM established its FY20 evaluation schedule in the fourth quarter of FY19. DOJ was first notified of OPM's intent to conduct this evaluation on October 23, 2019.

You asked whether the partial suspension of ATF's position classification system is still in effect. That suspension is still in effect. On August 23, 2021, DOJ was notified of the outstanding corrective actions and the continuation of the suspension.

You requested additional details regarding how the skills of the workers in misclassified positions diverged from the skills necessary to fill these positions once properly classified, and whether the misclassification was due to the nature of the positions the employees were filling. The misclassification refers only to the nature of work being performed in those positions and the classification of that work to OPM's General Schedule Classification Standards.

You asked whether the employees meet the background or qualification requirements to fill criminal investigator positions. Employees who were reassigned from law enforcement positions to the administrative positions would not have qualified for the administrative positions (if properly classified) based on experience in the GS-1801 or GS-1811 positions. At least one year of experience directly related to the administrative position (equivalent to the appropriate next lower grade) is required to meet the minimum qualifications. In our case sample, individuals

were not qualified upon assignment, but after performing the duties for one year or more, obtained the required experience. ATF was directed by OPM to determine if any incumbents were assigned and did not meet the qualifications when our report was issued.

With respect to your question regarding specific experience that the employees lacked, the employees lacked one year of specialized experience (related directly to the administrative duties of the position) equivalent to the next lower grade.

You asked what rationale ATF gave for these employees filling the positions within HRPD. ATF stated (orally) the reassignments were part of a developmental plan for all law enforcement. ATF established a requirement for law enforcement employees to perform administrative functions in its headquarters to be eligible to enter leadership positions (supervisory or managerial positions). This requirement is part of ATF's Special Agent Career Plan, dated February 24, 2015.

You asked whether the misclassified positions identified by OPM represent the total number of misclassified positions within all of ATF, or if the audit was limited in scope. The scope of OPM's evaluation was limited to ATF positions classified in the GS-1800 job family. The number of positions identified in our report as misclassified (94) was comprised of all GS-1800 positions assigned to organizations that appeared to be administrative in nature.

You asked whether in the last ten years OPM has suspended classification for ATF or any other agency within DOJ, or any other agency across government. No, OPM has not suspended classification authority of any other agency in the last ten years.

You asked whether OPM has made any other referrals to OSC for suspected or potential prohibited personnel practices. OPM has made referrals to OSC for suspected prohibited personnel practices in the past 10 years; however, none were for a similar pattern of misclassifying work.

You asked whether OSC or the DOJ Inspector General has taken any action in response to OPM's referral on this matter. On July 2, 2021, OSC submitted its request for documents to OPM. OPM transmitted case documents on August 18, 2021, via email. On October 22, 2021, DOJ's Inspector General submitted its request for documents to OPM. OPM transmitted case documents on October 29, 2021, via email.

You asked the total value of benefits such as LEAP and enhanced retirement eligibility that were inappropriately provided to misclassified employees. OPM did not compute the value of benefits. ATF would need to use individual payroll records to determine the benefits paid to each law enforcement employee assigned to administrative duties.

You asked if the misclassified positions were officially approved as secondary positions under LEO retirement provisions. No, the provisions of secondary law enforcement were not met or certified for those positions.

You asked if OPM granted approval for any misclassified workers to be reassigned to or allowed to retire in their current positions. OPM instructed ATF to reassign the misclassified employees to appropriately classified positions. This included reassigning individuals to administrative positions (non-law enforcement) or to properly established law enforcement positions in ATF. OPM did not approve individual personnel actions taken by ATF. ATF has been required by OPM to submit evidence of all personnel actions taken.

You asked if OPM allowed any misclassified workers to retire in their positions, if they retired with pay and benefits reflecting an 1800 series worker or with pay and benefits of the role they retired from, after being properly classified. Yes, employees could retire with pay and benefits of an 1800 series worker if they met the requirements of the law enforcement retirement system, as certified by the employing agency.

You asked if the employees filling the misclassified positions have any expectation of rotating or returning to a properly classified 1800 series position, or of being available to perform any law enforcement function while serving in the misclassified position. OPM is not aware of employee expectations communicated to ATF.

You asked how long the positions have been misclassified by ATF, and how many positions have been impacted over time. OPM's evaluation identified law enforcement employees in administrative positions for more than three years, but our review did not include a historical search of prior incumbents to determine the period of time some positions were misclassified.

Thank you for your interest in this very important matter. If you have any questions or concerns, please contact me directly at [redacted]

Sincerely,

Director
Congressional, Legislative,
and Intergovernmental Affairs

From: Boykin, Lisa T.
To: [redacted]
Subject: RE: Non-Qualified Candidate - 17-MER-488-ADB (17-MER-477-ADB).
Date: Tuesday, January 16, 2018 12:37:08 PM

Good afternoon [redacted],

I just returned to the office today and am acknowledging receipt of your e-mail below. I will review all of responses as well as the references you cite in detail below and then be prepared to discuss with you as soon as practicable.

Thank you.

Lisa

From: [redacted]
Sent: Friday, January 12, 2018 2:32 PM
To: Boykin, Lisa T. [redacted]@atf.gov>
Subject: FW: Non-Qualified Candidate - 17-MER-488-ADB (17-MER-477-ADB).

Good Day, forwarding my applicant inquiry sent January 6, 2018 to HRPD, Executive/Supervisory Staffing Center in reference to the subject JOA and haven't gotten a response.

Executive/Supervisory Staffing Center determination that I failed to meet the basic requirements of the Supervisory Industry Operations Investigator (Chief, Recruitment, Diversity and Hiring Division) (1801) was a violated of "employment practice" codified in 5 C.F.R. 300.103(b), primarily because there is no "rational relationship" between performance in the position and the requirements of the Industry Operations Investigator Career Plan ATF O 2311.5A Paragraph 16, page 11 dated December 8, 2014 cited in [redacted] October 24, 2017 notice of record.

5 C.F.R. 300.103(b) prohibits the establishment of an alternative requirement or supplemental qualification standards as reference in ATF O 2311.5A as it relates to the duties of this position. My experience based on years of experience as a HR Specialist and related achievements and awards exceeded the basic requirements for the position, and ATF's misapplication of an invalid requirement cited in ATF O 2311.5A constitutes an appealable employment practice.

5 C.F.R. 300 requires that employment practice must be based on a "job analysis to identify: (1) The basic duties and responsibilities; (2) The knowledges, skills, and abilities required to perform the duties and responsibilities; and (3) The factors that are important in evaluating candidates." 5 C.F.R. 300.103(a). There must also "be a rational relationship between performance in the position to be filled . . . and the employment practice used," proof of which includes a showing that "the employment practice was professionally developed." 5 C.F.R. 300.103(b) – And because there is no rational relationship between the requirement set forth in ATF O 2311.5A e.g., minimum of eight years of service as an ATF Industry Operations Investigator or completion of two years as an area supervisor and performance in the Chief, Recruitment, Diversity and Hiring position, it violates the provisions of 300.103(b).

If the Executive/Supervisory Staffing Center is redefining the requirement of the position contrarily to the aforementioned regulatory requirements, I will like to address my concerns under 5 CFR 335.103(d)?

Thank you

From: [redacted]
Sent: Saturday, January 6, 2018 11:37 AM
To: [redacted]@atf.gov>
Cc: [redacted]@atf.gov>
Subject: Non-Qualified Candidate - 17-MER-488-ADB (17-MER-477-ADB).

Good Morning [redacted], and thanks for the correspondence in reference to 17-MER-488-ADB (17-MER-477-ADB).

I have read the classification and qualification standard repeatedly for the past few weeks and I am unclear how I was found unqualified for a position that's clearly in the 0201 Job family, that was intentionally misclassified as 1801/1811, and simultaneously announced in the respective series.

It is **indisputable** the Supervisory Industry Operations Investigator (Chief, Recruitment, Diversity and Hiring Division) (1801) was classified contrary to the intent of 5 U.S.C. 5101 -5106. These provisions require agencies to classify positions based on the duties and responsibilities of the position and the qualifications to do the work. Agencies are responsible for classifying their positions appropriately and ensuring recruitment tools and personnel actions are based on the classified duties and responsibilities.

ATF must have added unclassified duties and qualifications to this Supervisory Industry Operations Investigator (Chief, Recruitment, Diversity and Hiring Division) (1801) position that are ONLY associated with the classified duties of a 0201 position. Furthermore, ATF use of a selective factor "Industry Operations Investigator Career Plan ATF O 2311.5A Paragraph 16, page 11 dated December 8, 2014." in the required job analysis of this position based on those unclassified duties and qualifications, instead of the classified ones as 0201.

Secondly, the JOAs used an assessment questionnaire to rate and rank applicants with questionnaire focused on experience and requirements linked to an inappropriate selective factor rather than on the experience necessary for the successful performance of the classified duties of the position. Furthermore, this position was advertised as a GS-15 in the 1801 and 1811 series - where NONE of the applicants referred as 1801 or 1811 will not be capable of demonstrate possession of the minimum requirement of one year specialized experience at the GS-14 level overseeing recruitment; diversity, or hiring.

Based on this hiring process, I find the process was predisposed to select someone that's in the 1801 or 1811 series using an improper evaluating process; leading to making an improper selection, that would result in an illegal appointment. Subsequently, violating my right and other eligible applicants under 5 U.S.C. 2301(b), and consequently 5 U.S.C 2302(b).

QUESTION: What is ATF internal process to address my concerns under 5 CFR 335.103(d)?

Thank you!

On Tue, Oct 24, 2017 at 3:14 PM, [redacted]@atf.gov> wrote:

[redacted]

Supervisory Industry Operations Investigator (Chief, Recruitment, Diversity and Hiring Division) (1801)
17-MER-488-ADB
15
Washington, DC, US

This refers to the recent application you submitted under the above Vacancy Announcement.

For the GS-15 position, based on the information provided in your package, you were rated ineligible for the following reasons(s):

( ) Your resume is incomplete or not submitted.

( ) You were outside the area of consideration specified in the vacancy announcement. The entry in the Who May Apply section of the vacancy announcement is considered the area of consideration.

( ) You did not meet the time-in-grade requirements as of the closing date of the vacancy

From: [redacted]
To: Croke, Kenneth J.
Bcc: [redacted]
Subject: Classification and Qualifications
Date: Tuesday, June 26, 2018 3:30:00 PM
Attachments: USPTO Needs Strong Office of Human Resources Management Capable of Addre....pdf
SPECIAL COUNSEL, Petitioner, v. JAMES A. BROWN, JENNIFER R. NELSON.PDF
Gap Analysis Report and Improvement Plan for HRPD HR Specialist - SAMPLE.xlsx

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It was a pleasure having the sit down with you today to discuss some of [redacted] concerns.

First error: developing position description that are contrary to 5 U.S.C. 5101, 5106. The provisions codified in 5101 & 5106 requires agencies to classify the position based on the duties and responsibilities of the position and the qualifications to do the work.

ATF is responsible for classifying the position appropriately and ensuring recruitment tools and personnel actions was based on classified duties and responsibilities. The addition of unclassified duties and qualifications to any position that are not associated with the classified duties of a position, e.g., use of a selective factor in the required job analysis of a position based on those unclassified duties and qualifications, instead of the classified ones.

Second Error: because of the aforementioned first error of an improperly classified PD, and the use of an invalid assessment tool. The selectee wouldn't have been within reach, nor met the required specialized experience required to be deemed best qualified; hence making the appointment an illegal violation, an improper selection will have been made from the erroneous certificate.

Using [redacted] position as an example, the basic requirements of the Division Chief of based on the duties and responsibilities of the position and the qualifications to do the work would have been unrelated to his 1811 duties and responsibilities and would have not met the qualifications to do the work of the position is properly classified as Chief Learning Office 0201-15.

The is deemed a violated of "employment practice" codified in 5 C.F.R. 300.103(b), primarily because there is no "rational relationship" between performance in the position and the requirements of the Criminal Investigator Career Plan ATF O 2311.5A dated December 8, 2014.

5 C.F.R. 300.103(b) prohibits the establishment of an alternative requirement or supplemental qualification standards as reference in ATF O 2311.5A as it relates to the duties of this position. The experience of a Chief Learning Office 0201-14 or 15 and related achievements and awards would exceed or meet basic requirements for the position, and ATF misapplication of filling the position with the misclassified PD would have constitutes an appealable employment practice.

5 C.F.R. 300 requires that employment practice must be based on a "job analysis to identify: (1) The basic duties and responsibilities; (2) The knowledges, skills, and abilities required to perform the duties and responsibilities; and (3) The factors that are important in evaluating candidates." 5 C.F.R. 300.103(a). There must also "be a rational relationship between performance in the position to be filled . . . and the employment practice used," proof of which includes a showing that "the employment practice was professionally developed." 5 C.F.R.

300.103(b) – And because there is no rational relationship between the requirement set forth in ATF O 2311.5A e.g., minimum of eight years of service as an ATF Industry Operations Investigator or completion of two years as an area supervisor and performance in the Chief, Recruitment, Diversity and Hiring position, it violates the provisions of 300.103(b).

If we're redefining any of the aforementioned requirement of position classification and using an invalid assessment tool in making selection decisions, the appointment will all be illegal appointments.
The two attached case files tells a story of how classification and qualification can go wrong- and the result.

Thank you

P.S. I know some of the folk managing position classification at OPM, if you want me to set up an UNOFFICIAL call for advice to confirm some of these relevant information, please let me know.

To my point, [redacted] has a Gap Analysis tool [redacted] we can use to measure the proficiency level of all the staff within HRPD as it relates to HR duties and responsibilities

[redacted]

From: Arbogast, Beth
To: [redacted]
Subject: Meeting with AD and DAD
Date: Monday, July 2, 2018 4:31:11 PM

[redacted]–

I know you were upset about our conversation today and I approved you leaving early to give you some time to think about the context of your meeting with the AD and DAD. As a follow-up to our conversation I wanted to again stress the particular areas where the AD and DAD had concerns.

As I indicated, the AD felt deceived because the subject of the meeting differed from your original explanation of a suggestion for improvement. Both the AD and DAD were upset by the meeting's subject and felt that it was insulting to the employees in staffing and classification, that you spoke on a topic outside of your subject matter expertise to include qualifications of managers in HRPD, staffing specialists, and classification specialists, and they felt that you did not back up your thoughts with specific facts or solutions.

According to [redacted], it was your idea to hold the meeting and [redacted] was only there to answer questions and fill in where you lacked knowledge on the topic. There were also others in HRPD, who felt that you had gone on a fact finding mission when you asked about their knowledge of training regulations in order to further support your argument. Overall, HRPD management viewed the conversation as a way to skip the chain of command and throw some of your colleagues under the bus without giving them the opportunity to discuss your concerns before they were escalated to executive management. You indicated that you're intent was a suggestion for improvement, but the conversation with the AD and DAD did not come across that way. Suggestions for improvement should be relative to your subject matter expertise in terms of HR systems and should not be used as a way to complain about the work or expertise of colleagues.

In the future, please bring these types of concerns to me first and we can discuss the best course of action before escalating to the executive level. If you are unhappy with the outcome of our discussion on any particular topic you should then go to Chris Kopeck with your concerns.

If you would like to discuss further or have any questions once you've had some time to reflect on the conversation, please let me know.

Beth Arbogast Haransky
Chief, HR Information Technology Branch
HROD/HRPD
Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF)
US Department of Justice

From: [redacted]
To: [redacted]
Subject: Fwd: Need your opinion on a Classification issue at ATF
Date: Monday, July 15, 2019 2:45:21 PM

From: [redacted] <[redacted]>
Date: July 15, 2019 at 14:22:12 EDT
To: "Sena, F. Michael (JMD)" <[redacted]@usdoj.gov>
Subject: Re: Need your opinion on a Classification issue at ATF

Thanks. Sure you've seen my email to Lisa from over a year ago.

This matter is no long something ATF can address, and then reason I'm at your front door.

I'm [redacted] to address ATFs discriminatory practice for the violations of employment practice.

ATF has no plan as far as I've seen to address it, and the last discussion on this a few weeks ago was for me to move on by the 1811 that benefited from the improper hiring process. Thanks

On Jul 15, 2019, at 14:10, Sena, F. Michael (JMD) [redacted]@usdoj.gov> wrote:

[redacted] – it is good to hear from a former CPMSer (lol). Thanks for your inquiry. I am unaware of such a blanket waiver; however, let's us do some checking and we will get back to you soonest.

v/r

F. Michael Sena
Assistant Director
Human Resources Policy and Advisory Services
Justice Management Division
U.S. Department of Justice
[redacted] – Desk Phone
[redacted] - Cell

From: [redacted]>
Sent: Monday, July 15, 2019 1:43 PM
To: Sena, F. Michael (JMD) [redacted]@jmd.usdoj.gov>
Subject: Re: Need your opinion on a Classification issue at ATF

Hello Sena, I hear we're both out of CPMS. I was CPMS/DOD for close to a decade.

My inquiry here is not simple as i suggested to [redacted]. I have two GS-1811-14 & 15 classified as Chief Recruitment and Diversity in ATFs HRPD.

ATF management is aware of my point of view on how its contrary to 5 USC chapter 51, and how the LEAP pay these employees receive for doing HR work is an over payment, because the positions at HRPD does not meet the definition of LEO in 5 USC 5545.

Notwithstanding the employment practice violation that made them eligible and qualified as announced "Chief, Recruitment, Diversity and Hiring Division GS-1811-15.

ATF classification office claims they have a waiver from JMD to classified any position as 1811. Since you're new there, maybe someone with historical knowledge may bring me up to speed. Thanks

On Jul 15, 2019, at 13:02, [redacted]@usdoj.gov> wrote:

[redacted],

Thank you for your call. I am sure Mr. Sena will be able to assist you. His number is [redacted] and [redacted] is ([redacted]. Both individuals are on this email.

[redacted]
Department of Justice/ JMD HR/9W.128
145 N. Street, NE Washington DC 20530
[redacted]

From: [redacted]>
Sent: Monday, July 15, 2019 11:39 AM
To: [redacted]@jmd.usdoj.gov>
Subject: Need your opinion on a Classification issue at ATF

Good morning [redacted], I have a ***simple*** class question I'm sure you can help me with. Please let me know a good time to give you a call.

I'm across the street at Bureau of Alcohol, Tobacco, Firearms and Explosives aka ATF.

Thanks
[redacted]

SPECIAL MESSAGE FROM
THE DIRECTOR

Special Message from the Director
ATF's Classification Authority Fully Restored

November 8, 2023

ATF,

I have some great news to share!

We just got word from OPM that ATF's classification authority has been fully and immediately restored! This means that, after three difficult years, ATF again will have the full scope of basic HR tools needed to support our critical public safety mission. As One ATF, we will now be able to better support all of you, the great people who carry out that mission every day.

When I arrived at ATF just over a year ago, I immediately saw the real and negative impact that these longstanding restrictions were having on ATF operations. People here work so hard each day doing the important and often dangerous work of keeping Americans safe from violent crime. So, it was very hard to watch the good people at ATF bearing additional burdens on top of that. As you know, for instance, there were too many folks performing tough jobs in "acting" roles and far too many critical spots remaining vacant, putting more pressure on all of us. Yet, as folks at ATF always do, you all stepped up for the American people. I cannot thank you enough for that effort.

Because of that immense burden on our mission, it became one of our highest priorities to have our authority restored. So, with a tenacious and hard-working group of people, we set about to explain our positions to OPM, to address the issues outlined in the audit, and to further modernize our HR function. Throughout this process, ATF worked cooperatively and methodically to resolve this matter in accordance with our ongoing commitment to comply with our legal obligations.

It was not easy. It took a lot of work. It took a lot of time. It took a lot of great people. And it sure took a lot of patience to get ATF through this. I can't even begin to thank by name all the ATF heroes on this thankless task. I want to, but I would certainly leave people out. Suffice it to say that people pulled together like only ATF does. They addressed the issues in literally scores of submissions, calls and meetings, and we are finally on the other side, and with an improved HR function.

ATF also had many outside supporters throughout this, including Department leadership and our partners in the DOJ and law enforcement family. They were with us every step of the way, and we owe them all a lot.

But most of all, we owe each of you. We owe the ATF people all over this nation who stepped up in tough times to help protect total strangers from violent crime. The entire American public owes the men and women of ATF a great debt of gratitude. I know that I do.

So, once more, thank you, ATF.

Now, onward!

Steven M. Dettelbach, Director
Bureau of Alcohol, Tobacco, Firearms and Explosives