



Border Patrol Agent Pay Reform

December 13, 2016
Fiscal Year 2016 Report to Congress



**Homeland
Security**

U.S. Customs and Border Protection

Message from the Deputy Commissioner of CBP

December 13, 2016

I am pleased to submit the following Report, “Border Patrol Agent Pay Reform,” prepared by U.S. Customs and Border Protection.

This report has been compiled pursuant to a requirement in Senate Report 114-68 accompanying the Fiscal Year 2016 Department of Homeland Security Appropriations Act (P.L. 114-113). The report provides an overview of the progress of implementation of the Border Patrol Agent Pay Reform Act of 2014 (BPAPRA) and related information.

Pursuant to congressional requirements, this report is being provided to the following Members of Congress:



The Honorable John R. Carter
Chairman, House Appropriations Subcommittee on Homeland Security

The Honorable Lucille Roybal-Allard
Ranking Member, House Appropriations Subcommittee on Homeland Security

The Honorable John Hoeven
Chairman, Senate Appropriations Subcommittee on Homeland Security

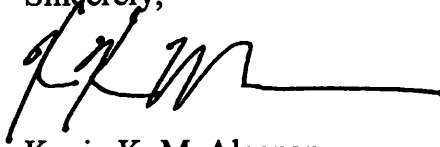
The Honorable Jeanne Shaheen
Ranking Member, Senate Appropriations Subcommittee on Homeland Security

The Honorable Ron Johnson
Chairman, Senate Committee on Homeland Security and Governmental Affairs

The Honorable Thomas R. Carper
Ranking Member, Senate Committee on Homeland Security and Governmental Affairs

I would be pleased to respond to any questions you may have. Please do not hesitate to contact me at (202) 344-2001 or the Department's Deputy Under Secretary for Management and Chief Financial Officer, Chip Fulghum, at (202) 447-5751.

Sincerely,

A handwritten signature in black ink, appearing to read 'K. McAleenan', with a long horizontal line extending to the right.

Kevin K. McAleenan
Deputy Commissioner
U.S. Customs and Border Protection

Executive Summary

BPAPRA created a new overtime pay program under Title 5 of the U.S. Code for Border Patrol agents. Under BPAPRA, there are three tours of duty or schedules, each with a corresponding overtime pay supplement. Each year, agents can elect their preferred tour of duty and receive a corresponding overtime pay supplement.

The implementation of BPAPRA represents a significant change for how Border Patrol agents are scheduled and compensated for the important work that they do. The law and regulations supporting BPAPRA are complex and have required further clarification to ensure that Border Patrol agents fully understand and are in compliance with BPAPRA. Additionally, payroll system changes were required to support the successful implementation of the new compensation system. While some of these changes have been completed, other changes, aimed at ensuring that all provisions of the law and regulations are efficiently and effectively carried out, have not yet reached completion.



Border Patrol Agent Pay Reform Report

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I. Legislative Language

This document was compiled pursuant to language set forth in Senate Report 114-68 accompanying the Fiscal Year (FY) 2016 Department of Homeland Security (DHS) Appropriations Act (P.L. 114-113).

Senate Report 114-68 states:

BORDER PATROL PAY REFORM REPORT

The Committee directs DHS to submit to the Committee, as well as the Committee on Homeland Security and Governmental Affairs, not later than 180 days after January 1, 2016, a report regarding the progress of implementation of the provisions of Public Laws 113-277 and 114-13. Specifically, the report should include (1) a general overview of the implementation of the newly-promulgated regulations under such laws; (2) classification and numbers of employees within the three pay schedules under the law; (3) Border Patrol Agents' new pay ranges relative to what they were before the law was enacted and rules were promulgated; and (4) areas of regulation implementation requiring additional regulatory or statutory action.

II. Background

On December 18, 2014, the President of the United States signed into law the Border Patrol Agent Pay Reform Act of 2014 (BPAPRA), which went into effect on January 10, 2016. BPAPRA established a method for compensating Border Patrol agents in U.S. Customs and Border Protection (CBP) for overtime under Title 5. BPAPRA replaced Administratively Uncontrollable Overtime (AUO) and the Fair Labor Standards Act (FLSA) for overtime compensation for Border Patrol agents. AUO was discontinued in May 2015 because it became clear that AUO was costly and no longer meeting the scheduling flexibility and operational needs of the U.S. Border Patrol.

BPAPRA represents a significant change in the way that agents are compensated and scheduled, and facilitates operational flexibility for Border Patrol agents. Each year, agents elect their preferred tour of duty, which corresponds to an overtime supplement. The tours of duty are:

- Level 1 – five 10-hour workdays each week, with a 25-percent overtime pay supplement
- Level 2 – five 9-hour workdays each week, with a 12.5-percent overtime pay supplement
- Basic – five 8-hour workdays each week, with no overtime pay supplement

BPAPRA ensures that Border Patrol agents are sufficiently ready to conduct necessary work and to perform overtime hours in excess of a 40-hour workweek based on CBP's needs. With BPAPRA, CBP has the flexibility to cover shift changes and retains the right to assign scheduled and unscheduled work for mission requirements.

III. Report

A. Overview of the BPAPRA Implementation

BPAPRA was signed into law by the President on December 18, 2014. Subsequently, Congress amended BPAPRA for the purpose of clarifying the effective date of certain provisions,¹ and, on September 25, 2015, the Office of Personnel Management (OPM) issued final BPAPRA regulations. CBP issued an internal Management Directive on January 6, 2016, which established the responsibilities of all Border Patrol agents and officials responsible for administering BPAPRA to comply with the statute, regulations, and related CBP policy. Border Patrol agents selected their preferred tours of duty for the 2016 calendar leave year between November 1, 2015, and December 1, 2015, which was the first election opportunity following the enactment of BPAPRA.

BPAPRA is a new compensation program with a broad range of provisions articulated in the law and related regulations issued by OPM. The implementation of BPAPRA has required extensive coordination within CBP, and with DHS, OPM, the National Finance Center (NFC), the U.S. Department of Agriculture (USDA), and the National Border Patrol Council. These efforts were made more complex by the short timeframe between issuance of the final regulations and their effective date(s), with some provisions being effective October 15, 2015, and the remaining provisions becoming effective on January 10, 2016.

CBP established an integrated BPAPRA Implementation Team comprised of staff from across the Agency in areas such as operations, pay and compensation, human resources policy, finance, information technology and systems, retirement, legal, and training. This team coordinated with internal and external stakeholders to ensure that BPAPRA was fully understood and effectively implemented. Additionally, training and a variety of communication means have been developed and shared with Border Patrol agents, supervisors and managers, timekeepers, payroll administrators, and mission support personnel in support of BPAPRA's implementation.

¹ Section 1(a) of [Public Law 114-13](#) added a new subsection (i) in section 2 of BPAPRA. That section 2(i) provided that subsections (b), (c), (d), and (g) of section 2 of BPAPRA are effective on the first day of the first pay period beginning on or after January 1, 2016, except that (1) any provision of [5 U.S.C. 5550\(b\)](#) (as added by section 2(b) of BPAPRA) relating to administering elections and making advance assignments to a regular tour of duty is applicable before the January 2016 effective date to the extent determined necessary by the OPM Director and (2) the OPM Director's authority to issue regulations (in particular, the authority in [5 U.S.C. 5550\(b\)\(1\)\(B\)](#) related to election procedures) is effective as necessary before the January 2016 effective date.

While many of the BPAPRA provisions have been put in place effectively, implementation efforts are continuing through 2016. These efforts include further system changes and refinements, both within CBP and in coordination with NFC and USDA, including additional communication and training, administration and process enhancements, the development of further reporting capabilities, and ongoing issue identification and resolution. The BPAPRA Implementation Team continues to work on these and related BPAPRA issues to ensure the long-term success of BPAPRA.

In addition to system changes, and pursuant to BPAPRA requirements, CBP completed a Comprehensive Border Patrol Staffing Analysis in January 2016 and implemented the required Pay Assignment Continuity Plan. The staffing analysis was conducted at each Border Patrol station to: (1) examine the staffing requirements necessary to most effectively meet operational requirements; (2) estimate the cost of staffing requirements; and (3) include a position-by-position review. The staffing analysis also: (1) determined the metrics used to calculate the number of hours worked; (2) provided a cost analysis of the most recent full fiscal year by the type of full-time equivalent hours worked; (3) estimated the cost of the type of full-time equivalent hours expected to be worked during the first full fiscal year after the Act's enactment; and (4) analyzed the cost of the full-time equivalent hours needed through higher rates of pay versus recruiting, hiring, training, and deploying additional agents. A comprehensive analysis determined that Border Patrol agents assigned to all positions are eligible to elect and be assigned to any pay level established under BPAPRA.

The Pay Assignment Continuity Plan was implemented upon BPAPRA's enactment and ensures that agents who are within 3 years of retirement eligibility or who are eligible for immediate retirement are assigned tours of duty consistent with their career average overtime percentages. CBP provided its report on pay assignment continuity, required by BPAPRA, to Congress in March 2016.

B. Classification and Numbers of Employees at Each BPAPRA Level

Each year, all GS-1896 Border Patrol agents can elect their preferred tour of duty, which is the BPAPRA level to which they would like to be assigned for the following calendar year. The first election period under BPAPRA took place November 1 – December 1, 2015.

Effective January 10, 2016 (beginning of the first pay period in 2016), the following numbers of GS-1896 Border Patrol agents were assigned to the respective BPAPRA levels:

BPAPRA Level	Number of Agents Assigned	Percent
Level 1 – five 10-hour workdays each week – 25% overtime pay supplement	19,064	94.9%
Level 2 – five 9-hour workdays each week – 12.5% overtime pay supplement	504	2.5%
Basic – five 8-hour workdays each week – no overtime pay supplement	513	2.6%
Total:	20,081	100%

BPAPRA requires that not more than 10 percent of Border Patrol agents stationed at a location are assigned to Level 2 or Basic. In 2016, less than six percent of Border Patrol agents were assigned to Level 2 or Basic out of 20 Border Patrol sectors. On average, approximately five percent of Border Patrol agents in each sector are assigned to Level 2 or Basic (i.e., approximately 95 percent are assigned to Level 1).

C. Border Patrol Agents’ Pay Ranges

Historically, Border Patrol agents were compensated for irregular and unscheduled overtime through AUO and were also eligible for overtime under FLSA and Title 5 for scheduled overtime. Under AUO, agents received an additional 10–25 percent of base pay, based on the amount of AUO qualifying and other irregular or occasional overtime hours previously worked and anticipated to be worked.

Agents were decertified from AUO on May 17, 2015, and were compensated with Title 5 and FLSA overtime prior to implementation of BPAPRA.

Under BPAPRA, overtime outside of the agents’ regular tours of duty that is scheduled in advance of the administrative workweek may be compensated with Title 5 overtime, whereas irregular overtime not scheduled in advance of the administrative workweek is compensated exclusively with BPAPRA compensatory time off.

BPAPRA results in more consistent work schedules and compensation for Border Patrol agents. AUO compensation levels were reviewed and adjusted quarterly, whereas BPAPRA provides Border Patrol agents the opportunity to annually elect their desired tour of duty and earn the corresponding overtime pay supplement. An agent’s assigned BPAPRA level can be changed during the year only in limited circumstances.

Because agent compensation has changed in other ways unrelated to BPAPRA implementation, pay ranges under AUO and under BPAPRA are not easily compared. For example, current compensation for Border Patrol agents was impacted not only by the move to BPAPRA and the FLSA exemption, but also by the following: an increase in the journeyman level for the Border Patrol Agent position, from GS-11 to GS-12 (which

took place in August 2010); varying levels of overtime; annual pay increases; changes in locality pay rates; and progressions in grade and step. These changes impacted agent compensation levels in various ways, depending on how much other overtime and premium pay agents were earning, their pay grades and steps, and changes in scheduling management (e.g., new approaches to holiday scheduling).

The following chart depicts the fiscal year cost comparison of prior Border Patrol agent overtime to forecasted BPAPRA expenses for 2010 to 2017. The comparison of “AUO” versus “Compared to Full Year BPAPRA” indicates the cost savings of BPAPRA.

Fiscal Year	Border Patrol Agent Base Pay Adjustment Factor	FLSA (in thousands)	Federal Employee Pay Act (FEPA) (in thousands)	AUO (in thousands)	BPAPRA (in thousands)	Total (in thousands)	Compared to Full Year BPAPRA (in thousands)
2010 ¹	32.89%	147,619	16,346	386,484	0	550,449	149,452
2011 ¹	22.07%	149,537	12,961	404,398	0	566,896	165,899
2012 ¹	16.14%	149,712	4,521	419,010	0	573,243	172,246
2013 ¹	10.45%	115,718	829	404,103	0	520,650	119,653
2014 ¹	6.34%	99,184	8,708	336,354	0	444,246	43,249
2015 ¹	2.94%	121,872	183,974	167,339	0	473,185	72,188
2016 ²	0.00%	48,563	99,830	0	288,373	436,766	35,769
2017 ³	-1.20%	0	1,577	0	399,420	400,997	N/A

¹ Overtime expenses adjusted for comparison to current and forecasted BPAPRA. Adjustment factor calculated by a comparison of prior fiscal year average base salary rates to current FY 2016 average. The adjustment factor includes the impact of the FY 2010 increase in the journeyman level and the OPM-prescribed pay increases, as well as workforce maturation.

² BPAPRA implemented in January 2016.

³ 3/4 year of 1.6% pay raise. Based on employee-level forecast of BPAPRA earnings in FY 2017.

The change to BPAPRA, and in particular the exemption of Border Patrol agents from FLSA, has had a more notable impact on the compensation of agents who previously earned large amounts of FLSA overtime. This includes canine handlers who, under the prior compensation structure, received 1 hour per day (approximately 14 hours per pay period) of FLSA overtime for canine care. This was in addition to overtime worked and compensated under AUO. Under BPAPRA, canine agents are compensated for canine care via the crediting of 1 hour of scheduled overtime on each regular workday within the agent’s regular tour of duty and the receipt of a Level 1 overtime supplement. Currently, 800 Border Patrol agents are assigned to canine duties.

The move from AUO to BPAPRA did not impact agents’ base pay rates. Both AUO and BPAPRA provide for up to a 25-percent level of overtime pay (under AUO, agents could be at 0, 10, 15, 20, or 25 percent; under BPAPRA, agents can be at 0, 12.5, or 25 percent). Most agents are at the same or a higher percentage under BPAPRA as they were under AUO, with approximately 95 percent assigned to the BPAPRA Level 1, which provides an overtime supplement of 25 percent; unlike AUO, that supplement is provided at the employee’s election and is available, absent limited circumstances. Therefore, any notable impact on an agent’s compensation resulting from the transition to BPAPRA results from changes to other overtime, notably FLSA.

Under BPAPRA, Title 5 (FEPA) overtime, which is paid for additional regularly scheduled overtime beyond an Agent’s tour of duty and is scheduled in advance of the workweek, is to be kept to a minimum, and is at least an agent’s hourly rate but as much as one-and-a-half times the hourly rate. While BPAPRA provides more consistent and predictable work schedules for agents, with the vast majority of agents being scheduled for 10-hour shifts, this also means a reduced need for Title 5 (FEPA) overtime hours.

Representational examples of Border Patrol agent pay under AUO and BPAPRA Level 1 (using 2016 pay rates; examples do not include differential pay, such as night and Sunday premium payments):

GS-12 (journey-level), step 5, Border Patrol agent in Tucson Sector

	AUO & FLSA	BPAPRA
Base Salary	\$80,593	\$80,593
Base Hourly Rate	\$38.62	\$38.62
AUO 25%	\$20,148	n/a
BPAPRA Level 1 25%	n/a	\$20,148
FLSA overtime	\$5,793	n/a
Title 5 overtime	\$1,081	\$1,661
Total (not including additional overtime and differential pay)	\$107,615	\$102,402

GS-12 (journey-level), step 5, Border Patrol agent
assigned to canine duties in the Tucson Sector

	AUO & FLSA	BPAPRA
Base Salary	\$80,593	\$80,593
Base Hourly Rate	\$38.62	\$38.62
AUO 25%	\$20,148	n/a
BPAPRA Level 1 25%	n/a	\$20,148
FLSA for canine care (14 hours per pay period at 1.5 times base hourly rate)	\$21,087	n/a
BPAPRA Canine care is included in the Level 1 pay for canine agents	n/a	n/a
Representation of Annual Earnings (not including additional overtime and differential pay)	\$121,828	\$100,741

Some agents have experienced a decrease in pay due to the loss of FLSA overtime pay. However, other agents experienced a pay increase where their previous AUO rate was lower than the Level 1 overtime pay supplement under BPAPRA. Base pay for all agents was not changed in BPAPRA implementation.

D. Areas Requiring Additional Statutory or Regulatory Action

BPAPRA's implementation has presented many challenges given the complexity of the new system and its law and regulations. While CBP has undertaken significant effort and coordination to implement BPAPRA, it also has identified areas where the implementation of these provisions has created unintended consequences and administrative inefficiencies. Therefore, CBP is working with its partners to identify opportunities for change that would be more operationally and administratively practical while ensuring that the intent of the legislation is met.

IV. Conclusion

CBP is successfully implementing BPAPRA, which represents a significant change to how Border Patrol agents are compensated for the mission-critical work they perform. Following implementation of BPAPRA, 95 percent of Border Patrol agents were assigned to Level 1 tours of duty commencing January 2016. These agents are assigned to five 10-hour workdays each week in support of CBP's border security mission and receive a 25-percent overtime pay supplement. The vast majority of agents are assigned to 10-hour shifts, which is enhancing operational effectiveness and providing greater consistency with respect to agent compensation and scheduling.

CBP continues to further refine systems and processes and to evaluate future changes and enhancements to support Border Patrol agents and their mission-critical work in securing our Nation's borders between the ports of entry.

V. Appendix—List of Acronyms

Acronym	Definition
AUO	Administratively Uncontrollable Overtime
BPAPRA	Border Patrol Agent Pay Reform Act of 2014
CBP	U.S. Customs and Border Protection
DHS	U.S. Department of Homeland Security
FLSA	Fair Labor Standards Act
FEPA	Federal Employee Pay Act (FEPA is now codified in title 5; FEPA overtime is paid under 5 U.S.C. 5542)
FY	Fiscal Year
NFC	National Finance Center
OPM	Office of Personnel Management
USDA	U.S. Department of Agriculture