U.S. GOVERNMENT ACCOUNTABILITY OFFICE

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Washington, DC 20548

Accessible Version

May 26, 2016

Congressional Committees

U.S. Customs and Border Protection: Review of the Staffing Analysis Report under the Border Patrol Agent Pay Reform Act of 2014

U.S. Customs and Border Protection (CBP), within the Department of Homeland Security (DHS), is responsible for securing U.S. borders to prevent acts of terrorism and the unlawful movement of people, illegal drugs, and other contraband across U.S. borders. The U.S. Border Patrol (Border Patrol), a component within CBP, is the federal agency with primary responsibility for securing the border between U.S. ports of entry.[1] Border Patrol agents are stationed throughout the country, including at the border, at CBP headquarters, and at CBP training facilities as training instructors.[2] Border Patrol was staffed at a level of 20,081 agents as of January 2016.

Border Patrol agents routinely work overtime hours in excess of a standard 8 hour work day. Historically, agents were compensated for these additional hours through administratively uncontrollable overtime (AUO), a type of premium pay intended to compensate eligible federal employees for substantial amounts of irregular, unscheduled overtime that cannot be controlled administratively.[3] GAO and others previously reported on the inappropriate use of AUO at DHS, and at Border Patrol in particular.[4] For example, investigations found that Border Patrol agents

[1]Ports of entry are facilities that provide for the controlled entry into or departure from the United States. Specifically, a port of entry is any officially designated location (seaport, airport, or land border location) where DHS officers or employees are assigned to clear passengers and merchandise, collect duties, and enforce customs laws, and where a person may apply for admission into the United States pursuant to U.S. immigration law.

[2]Border Patrol agent assignments at CBP headquarters include, among other things: day-to-day command and control activities for Border Patrol national operations; development of strategic and tactical policies, standard operating procedures, and plans; budget formulation; and representing the Border Patrol in relations with other governmental and non-governmental organizations. CBP training location assignments include, among others, those at the Border Patrol Agent Academy (New Mexico), the Use of Force Center of Excellence at the Advanced Training Center (West Virginia), various Canine Program locations (Texas and Virginia), and the Field Operations Academy (Georgia and South Carolina).

[3]See 5 U.S.C. § 5545(c)(2); 5 C.F.R. §§ 550.151-550.154; OPM, *Memorandum for Directors of Personnel (CPM 97-5: Guidance on AUO Pay* (June 13, 1997)).

[4]Various entities have reviewed the use of AUO by DHS components. For example, the DHS Office of Inspector General and DHS components' offices of internal affairs have conducted investigations and reviews of AUO at DHS. For a listing and more details on selected past investigations and reviews of DHS components' use of AUO, see Appendix II of GAO, *Department of Homeland Security: Continued Action Needed to Strengthen Management of Administratively Uncontrollable Overtime,* GAO-15-95 (Washington, D.C.: Dec. 17, 2014).

in headquarters and training assignments improperly claimed and received AUO pay for performing duties that did not qualify for AUO under law and regulation.[5]

As a result of continuing questions about Border Patrol's use of AUO, among other reasons, Congress passed the Border Patrol Agent Pay Reform Act of 2014 (BPAPRA), which established a new overtime compensation system for Border Patrol agents that replaced AUO.[6] Under BPAPRA, agents individually elect and are subsequently assigned by the agency to one of three rates of pay commensurate with the amount of scheduled overtime the agents elect or are assigned to work.[7] Overtime pay under BPAPRA is received as a supplemental increase to the agent's standard 8 hour per day base salary. Specifically, the three rates of pay are as follows:

- Level 1: 10 hour daily schedule, 5 workdays per week, yielding a 25 percent overtime supplement.
- Level 2: 9 hour daily schedule, 5 workdays per week, yielding a 12.5 percent overtime supplement.
- Basic: 8 hour daily schedule, 5 workdays per week, with no regularly scheduled overtime or associated pay supplement.

Agents elected their initial BPAPRA level during the November 1 to December 1, 2015, election period and CBP began paying Border Patrol agents under this new system effective January 10, 2016. This system is now the primary mechanism by which agents receive overtime compensation for regularly scheduled overtime hours beyond a standard eight hour workday. BPAPRA also provides, however, that certain specified agent assignments, including agents staffed to CBP headquarters or as a training instructor at a CBP training facility, should be assigned to the Basic rate of pay unless the staffing analysis required under section 2(e) of the statute indicates otherwise.[8]

To inform and guide how CBP will implement this overtime pay reform, BPAPRA provided that CBP, not later than 1 year after the date of its enactment (enacted December 18, 2014), conduct a comprehensive staffing analysis and submit a report to the Comptroller General.[9] Among other things, the staffing analysis is to estimate the costs of staffing requirements at

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[5]A determination that AUO was not the appropriate means for compensating overtime hours worked was not necessarily a determination that another means of compensation would have been inappropriate.

[6]See Pub. L. No. 113-277, 128 Stat. 2995 (2014) (amending titles 5 and 29 of the United States Code with respect to overtime compensation for Border Patrol agents).

[7]See 5 U.S.C. § 5550(b). In general, BPAPRA provides that at least 90 percent of all Border Patrol agents at each duty location shall be assigned to the Level 1 rate of pay. See 5 U.S.C. § 5550(b)(1)(E). Notwithstanding an agent's election, BPAPRA authorizes Border Patrol to assign an agent to a different tour of duty and, under certain circumstances, must assign agents to a specific tour of duty. See 5 U.S.C. § 5550(b)(1)(D). For example, an agent who is assigned canine care duties must be assigned to a Level 1 tour of duty. See 5 U.S.C. § 5550(b)(1)(D)(ii), (F); 5 C.F.R. § 550.1611(f)(1).

[8]Specifically, BPAPRA provides that Border Patrol agents staffed to CBP headquarters or as a training instructor at a CBP training facility, among other specified positions, shall be assigned to the Basic rate of pay (i.e., no regularly scheduled overtime) unless the staffing analysis performed in accordance with section 2(e) of the statute indicates that such agents should be allowed to elect or be assigned to Level 1 or Level 2 rates of pay to more adequately fulfill the operational requirements of CBP. See 5 U.S.C. § 5550(b)(1)(D)(iv).

[9]See Pub. L. No.113–277, § 2(e)(1), 128 Stat. at 3003-04.

each duty location and include an analysis that compares the costs of assigning the full time equivalent (FTE) hours needed to meet Border Patrol's operational requirements through higher rates of pay (overtime supplement) versus recruiting, hiring, training, and deploying additional agents.[10] We received the staffing analysis report (report) from CBP on January 20, 2016.[11]

BPAPRA contains a provision for GAO to submit a report to the Committees on Homeland Security and Governmental Affairs and Appropriations of the Senate and the Committees on Oversight and Government Reform and Appropriations of the House of Representatives that examines the methodology used by CBP to perform the staffing analysis and includes GAO's assessment of CBP's findings.[12] This report transmits, in the form of the enclosed briefing, our assessment of CBP's report and its findings. We provided the enclosed briefing slides to you electronically on April 19, 2016.

To examine CBP's report and assess its findings we reviewed BPAPRA, including provisions of the statute specific to the Border Patrol staffing analysis, and examined the report to identify key components, including its findings and methodology. We reviewed additional documentation provided by CBP related to the contents of the report, including documentation on the cost assumptions used in the report's cost calculations, and reviewed past GAO work, including reports on human capital strategic planning and other relevant topics pertaining to staffing requirements development.[13] We also reviewed the cost calculations included in the report to assess the accuracy of the calculations performed, as described by CBP officials, and interviewed CBP officials regarding the sources of the data used to develop the cost assumptions underlying the report's cost calculations.

We conducted this performance audit from January 2016 to May 2016 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

In summary, we found that in developing the staffing analysis report, CBP relied on agent hours worked in prior years and Border Patrol management's judgment on required staffing for certain duty locations to establish staffing baseline levels for the purposes of the report. In establishing the baseline levels, CBP's efforts were informed in part by the agency's Manpower Requirements Determination (MRD) process.[14] According to Border Patrol officials, the MRD is initially a 3 to 5 year implementation effort—begun in fiscal year 2014—that is intended to

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[10]Id. One FTE agent equals the total number of hours worked by one agent in one year working standard 8 hour workdays and 40 hour work weeks (i.e., 40 hours per week multiplied by 52 weeks per year = 2,080 hours = 1 FTE).

[11]Department of Homeland Security, U.S. Customs and Border Protection, *Comprehensive Border Patrol Staffing Analysis: Report to the Comptroller General of the United States* (Washington, D.C.: Jan. 19, 2016).

[12]See Pub. L. No. 113-277, § 2(e)(2), 128 Stat. at 3004.

[13]For example, see GAO, *DHS Recruiting and Hiring: DHS Is Generally Filling Mission-Critical Positions, but Could Better Track Costs of Coordinated Recruiting Efforts,* GAO-13-742 (Washington, D.C.: Sept. 17, 2013) and GAO, *DHS Strategic Workforce Planning: Oversight of Department wide Efforts Should Be Strengthened,* GAO-13-65 (Washington, D.C.: Dec. 3, 2012).

[14]DHS explained in its written comments for this report that CBP has since renamed the MRD process the Personnel Requirements Determination process. Consistent with the briefing slides we delivered to you on April 19, 2016, we use the phrase "Manpower Requirements Determination" and the MRD acronym throughout this report.

determine specific staffing requirements for each Border Patrol duty location in fiscal year 2017 and thereafter.[15] As the MRD process is ongoing, Border Patrol had not yet identified specific future staffing requirements for each Border Patrol duty location (e.g., stations, sectors, headquarters) at the time of the report's issuance, and therefore did not include such requirements in the report. As a result, it is too early for us to determine the extent to which the MRD process will result in identification of future staffing requirements for each Border Patrol duty location and position.[16] Further, CBP has not to date performed sensitivity or data reliability analyses on the data inputs used to develop the report's cost assumptions and calculations.[17] Therefore, the sensitivity and reliability of the analysis's data inputs and calculated outputs are unknown.

CBP's report concluded that allowing all agents in all duty locations to elect the BPAPRA Level 1 or 2 rate of pay will achieve overall cost savings by assigning fewer personnel to 10 hour days as compared to hiring additional staff to work 8 hour days with no regularly scheduled overtime, as well as achieve greater operational flexibility. This conclusion is based, in part, on CBP's analysis of agent hours worked in prior years and qualitative narratives in the report explaining that assigning agents at CBP headquarters and training locations to the Basic rate of pay (no regularly scheduled overtime) would have a negative impact on Border Patrol management's ability to attract and retain experienced and qualified field agents (earning Level 1 or 2 rate of pay) for assignments at these locations, thereby potentially decreasing the operational capability of the agency.

Given the caveats identified in the report—such as the report's reliance on agent hours worked in prior years rather than developing specific staffing requirements for each Border Patrol duty location—updating the report's data inputs based on future analyses, to include assessing data sensitivity and reliability, will be important for determining whether the conclusions reached in the report remain valid to support future determinations of BPAPRA rates of pay for agents across all duty locations. According to CBP officials, their analysis of agent hours worked in prior fiscal years will be updated in future years as part of the MRD process, specifically in relation to the MRD's identification of future staffing requirements.

Agency Comments

We provided a draft of this product to DHS for comment. DHS provided written comments, which are reproduced in full in enclosure II, and technical comments, which were incorporated as appropriate. In its written comments, DHS noted that the implementation of BPAPRA has

[15]CBP initiated the MRD process in accordance with direction included in the report of the Committee on Appropriations of the House of Representatives accompanying the DHS's fiscal year 2014 appropriations bill. See H. Rpt. No. 113-91, at 33-34 (May 29, 2013) (accompanying H.R. 2217, 113th Cong. (1st Sess. 2013)).

[16]CBP extrapolated from fiscal year 2015 personnel data to identify Border Patrol's staffing baselines for field agents. In doing so, the report assumes that the number of hours worked by field agents from October 2014 through February 2015—the basis of the extrapolation— were the number of hours that actually needed to be worked to meet operational needs. In contrast, the MRD process is intended to develop future staffing requirements through analytical processes in lieu of relying solely on agent hours worked in prior years (i.e., the staffing baseline) as the proxy metric. We did not review the MRD process in the course of this audit.

[17]As the data were pulled from CBP's existing payroll data system of record, we did not review the original source data underlying the cost assumptions CBP used in their calculations, and therefore we did not independently assess the sensitivity or reliability of the cost assumptions as calculated by the agency. Sensitivity analyses examine the effects of changing underlying assumptions used to develop estimates. Such analyses aim to describe how much data output values are affected by changes in data input values. See GAO, *Cost Estimating and Assessment Guide: Best Practices for Developing and Managing Capital Program Costs,* GAO-09-3SP (Washington, D.C.: March 2009).

provided Border Patrol agents more stable and predictable work schedules and pay, as well as increased CBP's mission capability. DHS also commented that Border Patrol will achieve cost savings by allowing Border Patrol agents in CBP headquarters and training location assignments to receive higher rates of pay under BPAPRA instead of hiring, training, and deploying additional agents to meet workload requirements in these locations. DHS noted that achieving cost savings was a key driver in CBP's report and that achieving such savings will continue to be a key driver of CBP's future staffing decisions.

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We are sending copies of this report to the appropriate congressional committees, the Secretary of Homeland Security, the Commissioner of the U.S. Customs and Border Protection, and other interested parties. In addition, the report is available at no charge on the GAO website at http://www.gao.gov.

If you or your staff have any questions about this report, please contact me at (202) 512-6912 or GamblerR@GAO.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report include Adam Hoffman (Assistant Director), Michele Fejfar, Jennifer Kamara, Thomas Lombardi, David Lysy, and Carl Potenzieri.

Rebecca Gambler
Director, Homeland Security and Justice
Enclosure(s) – 2

(100535)

List of Committees

The Honorable Thad Cochran
Chairman
The Honorable Barbara Mikulski
Ranking Member
Committee on Appropriations
United States Senate
The Honorable Ron Johnson
Chairman
The Honorable Thomas R. Carper
Ranking Member
Committee on Homeland Security and Governmental Affairs
United States Senate
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The Honorable Nita M. Lowey
Ranking Member
Committee on Appropriations
House of Representatives
The Honorable Jason Chaffetz
Chairman
The Honorable Elijah E. Cummings
Ranking Member
Committee on Oversight and Government Reform
House of Representatives

Enclosure I (briefing slides – see attached 508 PDF in portfolio)

Enclosure II Agency Comment Letter from Homeland Security (text immediately below)

U.S. Department of Homeland Security
Washington, DC 20528

Homeland Security

May 20, 2016

Rebecca Gambler
Director, Homeland Security and Justice
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548

Re: Draft Report GAO-16-606R, "U.S. Customs and Border Protection: Review of the Staffing Analysis Report under the Border Patrol Agent Pay Reform Act of 2014 (BPAPRA)"

Dear Ms. Gambler:

Thank you for the opportunity to review and comment on this draft report. The U.S. Department of Homeland Security (DHS) appreciates the U.S. Government Accountability Office's (GAO) work in planning and conducting its review and issuing this report.

The U.S. Customs and Border Protection's (CBP) U.S. Border Patrol (USBP) plays a critical role in securing our Nation's borders between ports of entry. The USBP deploys its resources and capabilities to align with border security threats using a risk-based approach that enables rapid response to the areas of greatest risk. This approach enables CBP to remain agile and adaptable to changing and emerging threats to America's borders.

The implementation of BPAPRA provides Border Patrol agents with more stable and predictable work schedules and pay. The work schedules increase USBP's mission capability and provide more Border Patrol agent hours. BPAPRA not only makes it easier to predict overtime costs, but also enables Border Patrol agents to anticipate how much overtime they will work with greater accuracy. All Border Patrol agents are now covered by the BPAPRA, which was effective January 10, 2016. The new overtime system for Border Patrol agents has been effectively implemented and agents are being scheduled and paid under the new system.

In April 2013, USBP initiated the development of a Manpower Requirements Determination (currently referred to as the Personnel Requirements Determination (PRD)) process. PRD is a verifiable method that collects and analyzes human capital data for the purpose of quantifying the personnel levels the USBP believes may be

required to perform its mission now and into the future. The PRD provides a rigorous methodology to evaluate and determine the human capital requirements for changing mission requirements, and includes the use of commonly practiced methods of sensitivity, regression analysis or data reliability analyses on the data inputs. To date, the mission requirements analysis process, availability model, planned versus actual, and table of organization components have been established and are in a continual process of development.

USBP compared the costs of assigning higher rates of pay to existing headquarters and training academy personnel to the costs of hiring new agents to meet headquarters and training workload requirements. The cost-benefit analysis indicated that it was more cost effective to use overtime to maintain operations at those locations and to manage nationwide border security operations, rather than hiring, training, and deploying additional agents. Through applying the cost-benefit analysis and assigning fewer personnel to 10-hour days at headquarters and training locations, as opposed to hiring additional staff at eight-hour days, the USBP will achieve overall cost savings. This underlying fact is a key driver of this analysis and will continue to be a key driver in the USBP's future staffing decisions.

Again, thank you for the opportunity to review and comment on this draft report. Technical comments were previously provided under separate cover. Please feel free to contact me if you have any questions. We look forward to working with you in the future.

Sincerely,

Jim H. Crumpacker, CIA, CFE
Director
Departmental GAO-OIG Liaison Office

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Enclosure II Agency Comment Letter from Homeland Security

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May 20, 2016

Rebecca Gambler

Director, Homeland Security and Justice

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JH. Crumpacker, CIA, CFE Director

Departmental GAO-OIG Liaison Office