GAO

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

Information Provided to the Staff of the Senate and House Committees on Appropriations, Senate Committee on Homeland Security and Governmental Affairs, and House Committee on Oversight and Government Reform

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Introduction

- 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]

- The Department of Homeland Security Appropriations Act, 2016, provides that Border Patrol shall maintain an active duty presence of not less than 21,370 full time equivalent (FTE) agents protecting the borders of the United States in fiscal year 2016.[2] Border Patrol was staffed at a level of 20,081 agents as of January 2016.

[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]Pub. L. No. 114-113, div. F, 129 Stat. 2242, 2495 (2015). 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).

Introduction (cont.)

- The Border Patrol Agent Pay Reform Act of 2014 (BPAPRA), enacted on December 18, 2014, restructured how Border Patrol agents receive compensation for overtime hours worked.[3]

- Among other things, BPAPRA amended Title 5 of the U.S. Code by establishing a new overtime compensation system for Border Patrol agents.[4]

- 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.[5]

[3]See Pub. L. No.113–277, 128 Stat. 2995 (2014); S. Rpt. No. 113-248 (Aug. 26, 2016) (accompanying S. 1691, 113th Cong. (2d Sess. 2013)). The term Border Patrol agent means an individual who is appointed to a position assigned to the Border Patrol Enforcement classification series 1896 or any successor series, consistent with classification standards established by the Office of Personnel Management. See Pub. L. No. 113–277, § 2(b), 128 Stat. at 2995 (codified at 5 U.S.C.§ 5550(a)(2)).

[4]Pursuant to BPAPRA, Border Patrol agents are no longer eligible for overtime under the Fair Labor Standards Act. See 29 U.S.C. § 213(a)(18). For hours worked beyond their scheduled tour of duty that have been officially ordered in advance of the workweek, agents are entitled to additional overtime pay under Title 5, and for approved hours worked beyond their scheduled tour of duty that have not been officially ordered in advance are compensable with compensatory time off, subject to any limitations or applicable conditions established in statute. See 5 U.S.C. § 5542(g); 5 C.F.R. §§ 550.1624-550.1625.

[5]CBP Directive 51550-005, implemented in accordance with BPAPRA, specifies an annual election period from November 1 to December 1 whereby a Border Patrol agent may elect one of the three tours of duty established by BPAPRA. See also 5 C.F.R. § 550.1611. 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. § 550(b)(1)(D)(ii), (F); 5 C.F.R. § 550.1611(f)(1).

Introduction (cont.)

- Specifically, overtime pay under BPAPRA is received as a supplemental increase to the agent's standard 8 hour per day base salary.
  - 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.[6]

- 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.[7]

[6]See 5 U.S.C. § 5550(b)(2)-(4).

[7]See 5 U.S.C. § 5550(b)(1)(E) (providing that the requirement to ensure that at least 90 percent of agents assigned to a location are Level 1 may be waived if supported by the staffing analysis conducted under section 2(e) of BPAPRA, and that the 90 percent Level 1 threshold does not apply to headquarters or training locations).

Introduction (cont.)

- To inform and guide how CBP will implement this overtime pay reform for its more than 20,000 Border Patrol agents, BPAPRA mandated that CBP, not later than 1 year after the date of BPAPRA's enactment, conduct a comprehensive staffing analysis and submit a report to the Comptroller General.
  - The staffing analysis report (report) is to, among other things, estimate the costs of staffing requirements at each duty location and include an analysis that compares the costs of assigning the 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.
  - We received the report from CBP on January 20, 2016.[8]

- BPAPRA provides 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 demonstrates otherwise.[9]

[8]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).

[9]Specifically, BPAPRA provides that Border Patrol agents staffed to CBP headquarters or as training instructors 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).

Objective

- 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.[10]

- This briefing provides our assessment of CBP's report and its findings.

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

Scope and Methodology

- To examine the report and assess CBP's findings, we
  - Reviewed BPAPRA, including provisions of the statute specific to the Border Patrol staffing analysis.
  - Examined the report to identify key components, including its findings and methodology.
  - Interviewed CBP officials responsible for developing the report, including from Border Patrol's Strategic Planning and Analysis Directorate, as well from the following offices:
    - Office of Administration
    - Office of Chief Counsel
    - Office of Training and Development
  - 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.
  - Reviewed past GAO work, including reports on human capital strategic planning and other topics relevant to staffing requirements development.[11]

[11]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 Departmentwide Efforts Should Be Strengthened,* GAO-13-65 (Washington, D.C.: Dec. 3, 2012).

Scope and Methodology (cont.)

- We reviewed the cost calculations included in the report to assess the accuracy of the calculations performed, as described by CBP officials.

- We interviewed CBP officials regarding the sources of the data used to develop the cost assumptions underlying the report's cost calculations (e.g., the average cost of recruiting, hiring, training, and deploying a first year Border Patrol agent). On the basis of the information we obtained from CBP, we determined the sources of the cost assumptions to be reasonable for the purposes of this briefing as they were generally developed from CBP's existing payroll data system of record.[12]

- We provided a copy of this briefing to CBP for their review. CBP provided technical comments, which we incorporated as appropriate.

[12]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).

Summary of Observations on the Staffing Analysis Report

- In developing the report, CBP relied on agent hours worked in prior years—and Border Patrol management's judgement on required staffing for certain duty locations—to establish staffing baseline levels for the purposes of the report. Further, in establishing the baseline levels, CBP's efforts were informed in part by the agency's Manpower Requirements Determination (MRD) process. 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 determine specific staffing requirements for each Border Patrol duty location in fiscal year 2017 and thereafter.[13]

- 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.

- 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. Therefore, the sensitivity and reliability of the analysis's data inputs and calculated outputs are unknown.

[13]Specifically, 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 fiscal year 2014 DHS appropriations bill. See H. Rpt. No. 113-91, at 33-34 (May 29, 2013) (accompanying H.R. 2217, 113th Cong. (1st Sess. 2013)). We did not review the MRD process in the course of this audit.

Summary of Observations on the Staffing Analysis Report (cont.)

- The report concluded that allowing all agents 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 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.

- The report concluded that it would cost approximately $380.6 million more, in fiscal year 2017, to hire additional agents and have no agents work regularly scheduled overtime than to cover the same number of hours—using BPAPRA overtime structures—projected to otherwise be worked by the 21,370 Border Patrol agents assumed to be onboard in that year.

- 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.

Background

- As of January 2016, there were 20,081 Border Patrol agents assigned in the field at 131 Border Patrol stations, as well as at CBP headquarters and various training locations.[14] See table 1 for details.

Table 1: Number of Border Patrol agents as of January 2016 by duty location

Location of agents	CBP headquarters	CBP training locations	Field locations	Total across all duty locations[a]
Number of agents	218	248	19,561	20,081
Percentage of total agents	1.1	1.2	97.4	100

Source: GAO analysis of U.S. Customs and Border Protection (CBP) information. | GAO-16-606R

[a]Total across all duty locations includes agents assigned to CBP headquarters, CBP training locations, field locations, as well as 54 additional agents assigned to CBP's Office of Information and Technology, Office of International Affairs, Office of Technology Innovation and Acquisition, Office of Intelligence, and the Office of the Commissioner.

- BPAPRA establishes an overtime compensation system for Border Patrol agents that replaces administratively uncontrollable overtime (AUO), a type of premium pay intended to compensate eligible federal employees for, in general, substantial amounts of irregular, unscheduled overtime that cannot be controlled administratively and that had been a primary source of overtime for Border Patrol agents.

[14]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).

Background (cont.)

- GAO and others previously reported on the inappropriate use of AUO at DHS, and at the Border Patrol in particular.[15] For example, among other things, investigations found that Border Patrol agents in headquarters and training assignments improperly claimed and received AUO pay for performing duties that did not qualify for AUO under law and regulation.[16]

- The Secretary of Homeland Security issued a memorandum in January 2014 that required DHS components to suspend AUO for those employees (1) engaged as full-time training instructors, (2) working in component headquarters' offices, or (3) for whom prior internal investigations had found to be inappropriately provided AUO pay.[17]

[15]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).

[16]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.

[17]Department of Homeland Security, Secretary of Homeland Security, *Interim Measures Concerning Administratively Uncontrollable Overtime,* Memorandum to the Acting Commissioner, U.S. Customs and Border Protection; Acting Assistant Secretary, U.S. Immigration and Customs Enforcement; Director, U.S. Secret Service; Acting Director, U.S. Citizenship and Immigration Services; Acting Under Secretary, DHS National Protection and Program Directorate; and Under Secretary for Management, DHS Directorate for Management (Jan. 27, 2014).

Background (cont.)

- As we reported in December 2014:
  - In fiscal year 2013, CBP accounted for the majority of AUO expenditures within DHS, accounting for nearly 77 percent ($394 million of $512 million) of all AUO paid by DHS that year. This was because CBP also had approximately 77 percent of the AUO-earning employees within the department.
  - AUO-earning employees within CBP were primarily Border Patrol agents, who numbered approximately 21,500 in fiscal year 2013. Specifically, 94 percent of CBP's AUO-earners were Border Patrol agents.[18]
- DHS deauthorized AUO for all Border Patrol agents effective May 17, 2015.
- As a result of continuing questions about Border Patrol's use of AUO, Congress passed BPAPRA in 2014.
  - Agents elected their initial BPAPRA level during the November 1 to December 1, 2015, election period.
  - CBP began paying Border Patrol agents under the system implemented pursuant to BPAPRA effective January 10, 2016, the first pay period in 2016.
  - The system established pursuant to BPAPRA is now the primary mechanism by which agents receive overtime compensation for regularly scheduled overtime hours beyond a standard 8 hour workday, based on the BPAPRA level to which the agent is ultimately assigned.

[18]GAO-15-95.

Background (cont.)

- BPAPRA mandated that CBP conduct a staffing analysis that:
  - examines the staffing requirements for Border Patrol to most effectively meet its operational requirements at each Border Patrol duty station;
  - estimates the cost of the staffing requirements at each Border Patrol duty station; and
  - includes:
    - a position-by-position review at each Border Patrol station to determine: the duties assigned to each position, how the duties relate to the operational requirements of Border Patrol, and the number of hours border patrol agents in that position would need to work each pay period to meet the operational requirements of Border Patrol;
    - the metrics used to determine the number of hours of work performed at each Border Patrol station, broken down by the type of hours worked;
    - a cost analysis of the most recent full fiscal year by the type of FTE hours worked;
    - a cost estimate by the type of FTE hours expected to be worked during the first full fiscal year after the date of enactment of BPAPRA; and
    - an analysis that compares the cost of assigning the FTE hours needed to meet the operational requirements of Border Patrol to existing Border Patrol agents through higher rates of pay versus recruiting, hiring, training, and deploying additional Border Patrol agents.[19]

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

Identification of Border Patrol Baseline Staffing Levels and Future Staffing Requirements

- In developing the report, CBP relied on agent hours worked in prior years—and Border Patrol management's judgement on required staffing for certain duty locations—to establish staffing baseline levels for the purposes of the report. Further, in establishing the staffing baseline levels, CBP's efforts were informed in part by the agency's Manpower Requirements Determination (MRD) process. 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 determine specific staffing requirements for each Border Patrol duty location in fiscal year 2017 and thereafter.

- As the MRD process is ongoing, Border Patrol had not yet identified specific future staffing requirements for each Border Patrol duty location at the time of the report, 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.

Identification of Border Patrol Baseline Staffing Levels and Future Staffing Requirements (cont.)

CBP's methodology for determining baseline staffing levels.

- To develop the baseline staffing levels included in the report, CBP utilized agent personnel data on the total number of hours worked by agents from October 2014 through February 2015—in all locations, including field, headquarters, and training assignments—and extrapolated from that data to determine an estimate for the number of FTE agents working at Border Patrol for the whole of fiscal year 2015.[20,21]
- CBP utilized data from their time and attendance system of record, CBP's Overtime Scheduling System (COSS), to derive the number and types of hours worked by agents (e.g., regular versus overtime hours) during the first five months of fiscal year 2015 as this was the most current available data at the time the report was initiated by CBP in mid-fiscal year 2015.[22]

[20]CBP defined baseline staffing levels in the report as the staffing necessary for Border Patrol to meet its operational needs. For the purposes of the analysis, CBP identified Border Patrol's operational needs as the total number of actual hours worked by agents during October 2014 through February 2015, which served as the basis for extrapolating the total number of hours that would need to be worked by agents during the whole of fiscal year 2015.

[21]CBP defined FTE agents as the number of agents that would need to be employed, working standard 8 hour workdays and 40 hour work weeks, in order to work a given number of total hours. For example, 160 hours of total work in 1 work week would equal 4 FTE agents (i.e., 4 agents multiplied by 40 hours per agent per week = 160 total hours).

[22]According to CBP officials, only 5 months worth of appropriately coded personnel data were available for fiscal year 2015 at the time CBP began developing the report, and the data was inclusive of all Border Patrol agents across all duty stations. CBP officials developed new organizational activity codes for COSS in late fiscal year 2014. These revised codes began to be used in COSS in October 2014. A different system of activity codes for agents were used prior to October 2014 that is not directly comparable to the current codes now in use.

Identification of Border Patrol Baseline Staffing Levels and Future Staffing Requirements (cont.)

The MRD process and its intended outcomes related to staffing requirements.

- When CBP issued the report in January 2016, Border Patrol had not yet identified future staffing requirements for each Border Patrol duty location, but noted that the MRD process is intended to determine specific staffing requirements for each duty location in the future.
  - Border Patrol initiated the MRD process in fiscal year 2014 and expects to yield initial results from the process, including specific staffing requirements for each duty location, in fiscal year 2017.

- According to CBP, the MRD process will:
  - examine Border Patrol agent staffing requirements to most effectively meet its operational needs;
  - identify the functions and duties performed by agents by position and how they relate to the operational requirements of the Border Patrol;
  - explain the factors and criteria used to allocate and redistribute agent resources across duty stations; and
  - justify future staffing decisions based on established staffing requirements.

Identification of Border Patrol Baseline Staffing Levels and Future Staffing Requirements (cont.)

The report contains important caveats about the limitations of the analysis.

- The report acknowledges that Border Patrol has not yet set future staffing requirements for any Border Patrol duty location or position.
  - Rather, the staffing baseline extrapolated from fiscal year 2015 personnel data is used in the report as a proxy metric for future staffing requirements currently being developed through the MRD process.
  - The report assumes that the number of hours worked by agents from October 2014 through February 2015 were the number of hours that actually needed to be worked to meet operational needs.
  - 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.
  - While the MRD process is intended to identify Border Patrol staffing requirements by duty location and position after fiscal year 2017, the effort is currently underway and not yet completed, and therefore the sensitivity and reliability of MRD data inputs and resulting calculated outputs are not yet known.
  - 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.

Identification of Border Patrol Baseline Staffing Levels and Future Staffing Requirements (cont.)

The report contains important caveats about the limitations of the analysis (cont.)

- CBP did not revise the report at the end of the fiscal year to reflect total actual hours worked by agents in fiscal year 2015, instead relying upon the extrapolated figures calculated when CBP began developing the report in mid-fiscal year 2015. According to CBP officials, they did not revise the report at the end of the fiscal year because they believed the extrapolated figures to be an accurate reflection of the total actual hours worked by agents in fiscal year 2015. In addition, CBP officials stated that to do so would have entailed many personnel work hours to perform the extensive data pull required to revise the report, and officials believed that such a revision would not have affected the report's conclusions.

- 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. Therefore, the sensitivity and reliability of the analysis's data inputs and calculated outputs are unknown. According to CBP officials, they did not perform sensitivity or data reliability analyses on the data inputs because they assumed the data input sources to be accurate as presented (e.g., CBP's COSS time and attendance system of record).

- 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. Given the caveats identified in the report, 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 for determining BPAPRA rate of pay eligibility for agents in various duty locations.

Border Patrol Overtime Pay Level Eligibility Determinations by Duty Location under BPAPRA

- The report concluded that all Border Patrol agents—in all locations, including field, headquarters, and training assignments—should be eligible to elect the Level 1 or Level 2 rate of pay under BPAPRA, based in part on CBP concluding that Border Patrol will achieve overall cost savings and greater operational capability by assigning fewer personnel to 10 hour days as compared to hiring additional staff to work 8 hour days with no regularly scheduled overtime.

Border Patrol Overtime Pay Level Eligibility Determinations by Duty Location under BPAPRA: Field

The report concluded that all Border Patrol agents assigned to field locations should be eligible to elect the Level 1 or Level 2 rate of pay under BPAPRA based in part on CBP concluding that Border Patrol will achieve overall cost savings and greater operational capability.[23]

- CBP calculated the number of FTE agents working at Border Patrol field locations for all of fiscal year 2015 based on extrapolation from the 5 months of available COSS data.
  - Specifically, the data showed that roughly 20,000 FTE agents staffed to field locations work additional overtime hours equating to a workforce approximately 3,500 agents larger in size if agents were to only work 8 hour days with no regularly scheduled overtime.

- CBP officials determined, based on the cost assumptions they utilized and the calculations they performed, that it is more cost effective to use overtime pay to maintain the historical number of hours worked by agents (i.e., Border Patrol's baseline staffing level) rather than having agents work only 8 hour shifts (no regularly scheduled overtime) and hiring, training, and deploying additional agents to cover the hours that had previously been performed through overtime.

[23]For the purposes of this briefing, field locations include all Border Patrol duty stations other than CBP headquarters and training locations, and CBP's Office of Information and Technology, Office of International Affairs, Office of Technology Innovation and Acquisition, Office of Intelligence, and the Office of the Commissioner.

Border Patrol Overtime Pay Level Eligibility Determinations by Duty Location under BPAPRA: Field (cont.)

- We reviewed the cost assumptions and calculations underlying the analysis and found the approach taken by CBP was sufficiently reasonable and accurate, while also noting (1) the caveats and limitations contained in the report and (2) that the sensitivity and reliability of the data inputs used in the analysis, and calculated outputs, are unknown. For example,
  - CBP extrapolated from fiscal year 2015 personnel data to identify Border Patrol's staffing baseline for field agents. In doing so, the report assumes that the number of hours worked by field agents from October 2014 through February 2015 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.
  - CBP has not performed sensitivity or data reliability analyses on the fiscal year 2015 COSS data used to extrapolate FTE field agent figures. Therefore, CBP does not know the extent to which the findings in the report may have been affected by changing the cost assumptions and other data input values underlying the report's calculations.

- According to CBP officials, hiring, training, and deploying additional agents to work only 8 hour shifts (no regularly scheduled overtime) would also necessitate the Border Patrol moving from 3 to 4 shift changes per day, thereby impacting Border Patrol's operational capability by decreasing any given agent's overall time in the field patrolling their assigned area of responsibility.[24]

[24]According to CBP officials, agent shift changes require overlap between the shift of an agent on an earlier patrol with the shift of the agent coming on duty to relieve that agent to enable information exchange between the agents. While agents working 10 hour shifts allows for 3 shifts per day with overlap between each shift, agents working 8 hour shifts would require 4 shifts per day to allow for the needed overlap. Three 8 hour shifts per day would cover the 24 hour period only if no overlap occurred between shifts.

Border Patrol Overtime Pay Level Eligibility Determinations by Duty Location under BPAPRA: Headquarters

The report concluded that all Border Patrol agents assigned to headquarters should be eligible to elect the Level 1 or Level 2 rate of pay under BPAPRA based in part on CBP concluding that Border Patrol will achieve overall cost savings and improve Border Patrol management's ability to attract and retain experienced and qualified field agents for such assignments.

- According to the report, agents assigned to CBP headquarters must:
  - be senior agents with broad experience in all aspects of Border Patrol operations, and
  - work on average 50 hours per week in order for the Border Patrol to carry out its functions, in part because the Border Patrol assigns only about 1 percent of its total agent workforce to headquarters.

- CBP calculated hours required to be worked at CBP headquarters in fiscal year 2016 based on the maximum number of agents (252) authorized for headquarters assignments by Border Patrol management.[25]
  - CBP derived the required number of hours from both actual hours worked in fiscal year 2015 at headquarters, as well as hours that will need to be worked by agents assigned to headquarters in the future, as projected by Border Patrol management.
  - Specifically, the data showed that 252 headquarters agents work overtime hours equating to a workforce 63 agents larger in size if agents were to only work 8 hour days with no regularly scheduled overtime.

[25]As of January 2016, Border Patrol had 218 agents assigned to CBP headquarters.

Border Patrol Overtime Pay Level Eligibility Determinations by Duty Location under BPAPRA: Headquarters (cont.)

- CBP determined that it is more cost effective to use overtime pay to fulfill projected headquarters staffing requirements than having agents work only 8 hour shifts (no regularly scheduled overtime) and hiring, training, and deploying 63 additional agents to cover the hours that would otherwise be performed through overtime.
  - CBP calculated a cost savings of over $12.3 million in the first year through the avoidance of relocating 63 experienced field agents to headquarters and then backfilling those 63 positions in the field through new hires.
- We reviewed the cost assumptions and calculations underlying the analysis and found the approach taken by CBP was sufficiently reasonable and accurate, while also noting (1) the caveats and limitations contained in the report and (2) that the sensitivity and reliability of the data inputs used in the analysis, and calculated outputs, are unknown.
- The report also included qualitative narrative explaining that assigning agents at CBP headquarters 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 details at headquarters.
  - Agents staffed to headquarters would effectively have their pay cut by 12.5-25 percent (depending on their assigned BPAPRA level in the field), which would also adversely impact their future retirement annuity.[26]
  - According to CBP officials, the best qualified agents for headquarters assignments may avoid these positions due to the negative financial implications of such an assignment.

[26]According to Border Patrol officials, headquarters assignments are largely staffed by agents who are transferred from frontline positions in the field.

Border Patrol Overtime Pay Level Eligibility Determinations by Duty Location under BPAPRA: Training Locations

The report concluded that all Border Patrol agents assigned to CBP training locations should be eligible to elect the Level 1 or Level 2 rate of pay under BPAPRA based in part on CBP concluding that Border Patrol will achieve overall cost savings and improve Border Patrol management's ability to attract and retain experienced and qualified field agents for such assignments.

- According to the report, agents assigned to CBP training locations must:
  - be agents with senior-level law enforcement experience and expertise, and
  - generally work on average 50 hours per week in order to carry out instructional duties.

  Specifically, Border Patrol instructors are engaged with their students for 8 hours per instructional day and additional hours are required for trainers to, for example, develop lesson plans and grade exams, as well as complete assigned collateral and administrative duties.

- CBP calculated hours required to be worked at CBP training locations in fiscal year 2016 based on the number of agents (289) expected to be needed for training assignments. This number was derived from both actual hours worked in fiscal year 2015 at training locations as well as additional hours projected by Border Patrol management that will need to be worked by agents assigned to training locations in the future.

Border Patrol Overtime Pay Level Eligibility Determinations by Duty Location under BPAPRA: Training Locations (cont.)

- As with agents assigned to headquarters, CBP determined that it is more cost effective to use overtime pay to fulfill projected training location staffing requirements than having agents work only 8 hour shifts (no regularly scheduled overtime) and hiring, training, and deploying additional agents to cover the hours that would otherwise be performed through overtime.
  - CBP calculated the cost of relocating each additional agent to a training location and back out to the field at the end of a 3-year training assignment as $170,000 per agent.
  - In addition, CBP calculated that bringing more field-based agents as instructors to training locations on temporary duty assignments costs approximately $4,000 per month per additional agent, in addition to their salaries, while simultaneously creating a shortfall in the field that would require backfilling.
- We reviewed the cost assumptions and calculations underlying the analysis and found the approach taken by CBP was sufficiently reasonable and accurate, while also noting (1) the caveats and limitations contained in the report and (2) that the sensitivity and reliability of the data inputs used in the analysis, and calculated outputs, are unknown.
- As with agents assigned to headquarters, the report also included qualitative narrative explaining that assigning agents at CBP training locations to the Basic rate of pay would have a negative impact on Border Patrol management's ability to attract and retain experienced and qualified field agents for such assignments.[27]

[27]According to Border Patrol officials, training assignments are largely staffed by agents who are transferred from frontline positions in the field.

CBP's Cost Analysis for FY14 and Projected Cost Comparisons for FY17

- The report concluded that it would cost approximately $380.6 million more, in fiscal year 2017, to hire additional agents and have no agents work regularly scheduled overtime than to cover the same number of hours—using BPAPRA overtime structures—projected to otherwise be worked by the 21,370 Border Patrol agents assumed to be onboard in that year.

CBP's Cost Analysis for FY14 and Projected Cost Comparisons for FY17 (cont.)

- In accordance with BPAPRA section 2(e)(1)(C)(iii), CBP developed a cost analysis for fiscal year 2014.
  - CBP developed the analysis using fiscal year 2014 COSS data for actual hours worked by agents.
  - The cost analysis includes the amount and type of FTE hours worked by agents in fiscal year 2014, the most recent full fiscal year at the time CBP began developing the report.[28]

[28]According to the report, Border Patrol had 20,952 FTE agents in fiscal year 2014.

CBP's Cost Analysis for FY14 and Projected Cost Comparisons for FY17 (cont.)

- In accordance with BPAPRA section 2(e)(1)(C)(iv), CBP developed a cost analysis for fiscal year 2017.[29]

- CBP used **fiscal year 2017 personnel data projections** that were based on the following assumptions:
  - that the Border Patrol would be fully staffed at its current, authorized minimum staffing level of 21,370 agents in fiscal year 2017,
  - that 90 percent of agents would elect BPAPRA Level 1 (25 percent overtime pay),
  - that the remaining 10 percent would elect BPAPRA Level 2 (12.5 percent overtime pay), and
  - that no agents would elect BPAPRA's Basic rate of pay.[30,31]

[29]BPAPRA provided that the staffing analysis include a cost estimate by the type of FTE hours expected to be worked during the first full fiscal year after the date of its enactment. The first full fiscal year after BPAPRA's enactment was fiscal year 2016. Notwithstanding the text of the statute, CBP officials explained that a cost estimate for fiscal year 2017 was used in lieu of fiscal year 2016 because 2017 is the first full fiscal year that Border Patrol will be operating under BPAPRA.

[30]See Pub. L. No. 114-113, div. F, 129 Stat. 2242, 2495 (2015) (providing that Border Patrol shall maintain an active duty presence of not less than 21,370 FTE agents protecting the borders of the U.S. in the fiscal year).

[31]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) (providing also that the requirement to ensure that at least 90 percent of agents assigned to a location are Level 1 may be waived if supported by the staffing analysis conducted under section 2(e) of BPAPRA, and that the 90 percent Level 1 threshold does not apply to headquarters or training locations).

CBP's Cost Analysis for FY14 and Projected Cost Comparisons for FY17 (cont.)

- CBP officials utilized fiscal year 2017 cost projections to compare the cost of 21,370 agents working an extra 4,358 FTE agent days under Level 1 and 2 rates of pay versus the same number of additional agent FTE days being covered by increasing the size of the agent workforce and having agents work at a Basic rate of pay (no regularly scheduled overtime).

- CBP's analysis concluded that it would cost approximately $380.6 million more, in fiscal year 2017, to hire additional agents and have all agents work no regularly scheduled overtime (Basic rate of pay).

- We reviewed the cost assumptions and calculations underlying the fiscal year 2014 cost analysis, the fiscal year 2017 cost projection, and CBP's methodology for comparing agent fiscal year 2017 overtime cost projections versus hiring additional agents, and found the approach taken by CBP was sufficiently reasonable and accurate, while also noting (1) the caveats and limitations contained in the report and (2) that the sensitivity and reliability of the data inputs used in the analysis, and calculated outputs, are unknown.

Appendix – Additional Information on BPAPRA Pay Assignments and Election Eligibility

- 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.[32]
- Border Patrol agents identified their BPAPRA-elections by December 2015 and Border Patrol subsequently assigned agents to a specified BPAPRA level of overtime and related pay.
- Based on data provided by CBP, approximately 95 percent of agents were assigned to a Level 1 rate of pay as of January 2016. See table 2 for more details.

Table 2: Percent of Border Patrol Agents Assigned to the Various Rates of Pay Under the Border Patrol Pay and Reform Act as of January 2016

	CBP headquarters	CBP training locations	Field locations	Total across all duty locations
Percent of agents assigned to Level 1 (number of agents)	89.9 (196)	98.0 (243)	95.0 (18,577)	94.9 (19,064)
Percent of agents assigned to Level 2 (number of agents)	7.8 (17)	1.6 (4)	2.4 (477)	2.5 (504)
Percent of agents assigned to Basic (number of agents)	2.3 (5)	0.4 (1)	2.6 (507)	2.6 (513)
Percent of total agents (number of agents)	100 (218)	100 (248)	100 (19,561)	100 (20,081)

Source: GAO analysis of U.S. Customs and Border Protection (CBP) information. | GAO-16-606R

[32]See 5 U.S.C. § 5550(b)(1)(E) (providing that the requirement to ensure that at least 90 percent of agents assigned to a location are Level 1 may be waived if supported by the staffing analysis conducted under section 2(e) of BPAPRA, and that the 90 percent Level 1 threshold does not apply to headquarters or training locations)

Appendix – Additional Information on BPAPRA Pay Assignments and Election Eligibility (cont.)

- Based on the conclusions reached in the report, CBP determined that agents in all positions and locations are eligible to elect BPAPRA Level 1, Level 2, or Basic rates of pay.
  - According to Border Patrol officials, there are no Border Patrol agent positions or locations where agents are eligible for only BPAPRA Level 2 or Basic rates of pay.

- Notwithstanding the conclusions reached in the report, Border Patrol officials identified limits on the ability of some agents to elect certain rates of pay in accordance with BPAPRA and Border Patrol policy. For example,
  - agents assigned canine care duties must be assigned to Level 1,
  - agents in their control period—the period beginning on the date 3 years before the agent meets age and service requirements for an immediate retirement—must be assigned to a level or combination of levels over the course of the year consistent with their career average,
  - agents who are unable to perform their regularly scheduled overtime on a daily basis must be assigned to Basic, and
  - agents who have had their law enforcement authority revoked must be assigned to Basic.