

Joint Statement for the Record

of

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Oversight & Government Reform Subcommittee on National Security

November 20, 2013

Chairman Chaffetz, Ranking Member Tierney, Members of the Subcommittee, thank you for the opportunity to appear before you today to address the Department of Homeland Security's (DHS's) use of Administratively Uncontrollable Overtime (AUO). This is a matter of concern to DHS and we welcome the opportunity to work with you on finding solutions at an affordable cost. Properly paying our border and homeland security personnel, and properly managing that pay system are essential to the Department's missions. DHS takes its responsibility to ensure proper use of taxpayer funds seriously. While many frontline officers and agents across the Department require work hour flexibility, misuse of over-time funds will not be tolerated.

Mr. Chairman, the Department welcomes your interest in addressing the challenges posed by AUO. As you know, the Department has sought legislative changes for several years that would enable U.S. Customs and Border Protection (CBP) to reform and rationalize its compensation structure. AUO no longer meets the needs of a 21st century law enforcement environment where increasing amounts of surveillance and border security are conducted remotely. The work of securing the border is more than simply physical presence on the border and the pay system should not be one built only for those needs.

The Department has been working to institute pay reform, including AUO, since at least 2009. CBP developed a plan to replace AUO with Law Enforcement Availability Pay (LEAP), as part of its effort to upgrade the journeyman Border Patrol Agent position from GS-11 to GS-12. That transition began in 2010, and the President's fiscal year 2011 Budget request submitted in April 2010 would have significantly offset the long-term costs associated with that grade increase. The replacement of AUO with LEAP required statutory changes, and a legislative pay reform proposal was submitted as part of the President's fiscal year 2012 Budget Request, and formally submitted to Congress in September 2011.

Unfortunately, Congress did not take any action on this proposal. The Department again restated the proposal in the President's Fiscal Year 2013 Budget Request submitted to Congress in February 2012. The Department's proposal would have provided fair payment for all of CBP's overtime-eligible law enforcement agents and officers.

In many areas of human capital policy at DHS, we strive to create more uniform policies. However, premium pay, or overtime, poses challenges to achieving uniformity, as a result of the patchwork of authorities and systems that cover DHS employees. Some components do not even share the same mechanisms for employee compensation across their various organizations. These differences can be attributed to several factors, including the disparate missions of our workforce; the number of unions that represent our employees and the range of concerns of those they represent; the budgetary impacts of various types of pay reform that have been considered; the difficulty in managing various types of pay systems and their impact on current mission operations; and the need for legislation to implement most pay reforms.

### Administratively Uncontrollable Overtime

AUO was established by Congress in 1966 (Public Law 89-554), and is a payment mechanism that allows the compensation of certain employees for irregular, unscheduled, but necessary overtime. Currently, approximately 77% of AUO paid at DHS goes to employees of CBP. AUO

pay is a form of payment for irregular overtime pay and is determined as a percentage - not less than 10 percent nor more than 25 percent - of an employee's rate of basic pay fixed by law or administrative action for the position held by the employee.<sup>1</sup> Under Office of Personnel Management (OPM) regulations, the rate of AUO pay that is authorized for a position is based on the average number of hours of irregular or occasional overtime work performed per week. For example, a 25 percent rate is authorized for a position that requires an average of over 9 hours per week of irregular or occasional overtime work.<sup>2</sup>

### Current Activities

The Department takes its responsibility to be good stewards of taxpayer dollars very seriously. Any misuse of government funds will not be tolerated. Following a request by the Special Counsel, on October 31, 2013, Acting Secretary of Homeland Security Rand Beers ordered an expeditious and “comprehensive, Department-wide review of our compliance with rules governing the use of AUO.” The Office of the General Counsel (OGC) is conducting the compliance review, and will include a review of both “current practices related to designating positions as eligible for AUO pay and the compliance with all applicable laws and rules in recording and paying for AUO.”

The Office of the Chief Human Capital Officer, CBP and all other relevant components of DHS are working closely with OGC on this review, and will be integral in implementing any decisions that result from OGC’s findings and recommendations to the Secretary. The Department will also work to implement new structures that will be more effective in securing the country and serving the taxpayer, while continuing to fairly compensate our dedicated employees.

Prior to the issuance of the Special Counsel’s Report, CBP initiated an internal working group on AUO to review current practices as well as update AUO internal policies, where applicable, in an effort to modernize this form of pay with the roles and responsibilities of the positions earning AUO. For example, the Border Patrol issues official guidance on AUO to all Chief Patrol Agents and Division chiefs, most recently via a December 2012 memorandum. This guidance contains a list of all regulations and policy governing the administration and management of AUO for eligible Border Patrol agents, including 5 U.S.C. § 5545(c)(2), CFR § 550.151-164, and Section 1.3.103 of the Administrative Manual. The guidance also includes criteria that a position must meet to be authorized and deemed eligible for payment of AUO; steps for legitimately claiming AUO; and the responsibilities required of employees, supervisors and management in order to legitimately earn and oversee the AUO structure.

In particular, CBP’s mission requires that compensation structures maintain flexibility to ensure continuous agent coverage, provide equal pay for equal work, and enable better budget forecasting. The Department would welcome a legislative solution that promotes efficiency and meets the agency’s critical mission.

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<sup>1</sup> See P.L. 101-509, Section 404; 5 U.S.G. 5304; 5 CFR part 531, subpart G; CFR 550.151

<sup>2</sup> See 5 CFR 550.154

H.R.3463: The Border Patrol Pay Reform Act of 2013

The Department and CBP are committed to working with Congress to modernize and streamline compensation structures, to align them with evolving missions, and to reflect the expanded responsibilities of our workforce.

Although the Department has not yet had an opportunity to sufficiently analyze H.R. 3463 or the immediate or long term costs that may be associated with it, the fact that your bipartisan legislation has a companion bill with bipartisan sponsorship in the Senate, reassures us that Congress is willing to help us with a legislative fix. We note, however, that the proposed legislation would only address the pay of the Border Patrol, and we would like the opportunity to work with you on pay reform elsewhere in CBP and in other Components of the Department.

Thank you for allowing us the opportunity to testify before you today. I look forward to answering your questions.