

OVERTIME PAY FOR SECRET SERVICE AGENTS ACT OF
 2016

NOVEMBER 29, 2016.—Committed to the Committee of the Whole House on the
 State of the Union and ordered to be printed

Mr. CHAFFETZ, from the Committee on Oversight and Government
 Reform, submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 6302]

[Including cost estimate of the Congressional Budget Office]

The Committee on Oversight and Government Reform, to whom
 was referred the bill (H.R. 6302) to provide an increase in premium
 pay for United States Secret Service agents performing protective
 services during 2016, and for other purposes, having considered the
 same, report favorably thereon without amendment and rec-
 ommend that the bill do pass.

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COMMITTEE STATEMENT AND VIEWS

PURPOSE AND SUMMARY

H.R. 6302, the Overtime Pay for Secret Service Agents Act of 2016, lifts the biweekly pay cap for basic and premium overtime pay to Level II of the Executive Schedule for the 2016 calendar year for Secret Service special agents. Lifting the pay cap allows Secret Service special agents who worked on the 2016 presidential election to be partially compensated for the overtime hours they worked that were in excess of the normal biweekly pay cap. The additional premium overtime pay would not be creditable for retirement annuity or annual leave calculations.

BACKGROUND AND NEED FOR LEGISLATION

The United States Secret Service is a federal law enforcement agency whose chief responsibility is the protection of the President of the United States and his or her family.¹ In 1968, the mission of the Secret Service was expanded to include the protection of major presidential candidates and their spouses during a presidential election year.²

In December 2015, the Committee issued an investigative report finding the Secret Service “is experiencing a staffing crisis that threatens to jeopardize its critical mission.”³ At the time of the report’s publication, the Secret Service had fewer employees than at any point over the previous decade.⁴ Special agents have been required to work excessive overtime to fulfill the agency’s protective mission and, in some cases, this overtime is not compensated.

The “protective mission [of the Secret Service] requires continued, uninterrupted coverage for . . . protectees”⁵, meaning overtime hours for special agents can be high relative to other law enforcement agencies. While increased overtime in a presidential election year is normal, the agency’s staffing shortages have exacerbated the amount of overtime worked by special agents in 2016.

Total aggregate compensation for a pay period, which includes basic and premium overtime pay, for special agents on the General Schedule is capped at the biweekly pay equivalent of an annual salary of \$160,300.⁶ As a result, during any pay period Secret Service special agents can only be compensated for the overtime hours they may work until they reach the biweekly pay cap. This overtime cap, commonly referred to as a “max out” within the Secret Service, has consistently been reported to the Committee as a top issue affecting employee morale and retention.⁷

H.R. 6302 would raise the biweekly pay cap for special agents who worked on the presidential campaign in calendar year 2016 to the pay period equivalent of Level II of the Executive Schedule, \$185,100. Under the proposal, every Secret Service special agent

¹ 18 U.S.C. § 3056.

² Pub. L. No. 90-331 (1968).

³ H. Comm. on Oversight and Government Reform, *United States Secret Service: An Agency in Crisis*, 114th Cong. (Dec. 9, 2015).

⁴ *Id.*

⁵ H. Comm. on Oversight and Government Reform, *Oversight of the Secret Service*, 114th Cong. (Nov. 15, 2016) (written statement of Thomas E. Dougherty, Chief Strategy Officer, Office of Strategic Planning and Policy, United States Secret Service).

⁶ 5 U.S.C. § 5547.

⁷ U.S. Secret Service, *U.S. Secret Service Workforce Retention Initiatives Legislative Proposals* (Feb. 24, 2016).

with overtime for which they were not compensated would receive partial relief for their unpaid overtime. In 2016, 1,077 Secret Service employees exceeded the present pay cap by some amount.⁸ The Committee calculates that special agents with outstanding overtime will receive, on average, \$20,427 in additional compensation for the overtime they have worked under this legislation. The Committee urges that appropriations sufficient to fund this additional overtime be included in any measure making appropriations for the remainder of 2016. Based on information provided by the Secret Service, the Committee estimates that approximately 170 employees will still have some unpaid overtime under the bill.⁹

Ultimately, H.R. 6302 remedies an immediate problem facing the Secret Service and does so in a timely manner. It provides additional compensation for hours already worked to individuals who put their lives on hold and at risk during the 2016 presidential election. However, this legislation does not solve the challenges facing the Secret Service. In fact, it remains incumbent on Secret Service management to take action to immediately address all of the causes that have led to its poor staffing levels and high attrition rates. The agency must continue to improve its hiring practices and management effectiveness and reduce collateral or non-essential aspects of Secret Service's mission. Additionally, the bill is specifically tailored for the circumstances regarding the agency's staffing and protective mission and is not intended to serve as precedent for waiving pay caps for any other agency.

LEGISLATIVE HISTORY

H.R. 6302 was introduced on November 14, 2016 by Chairman Jason Chaffetz (R-UT) and referred to the Committee on Oversight and Government Reform. On November 16, 2016, the Committee ordered H.R. 6302 favorably reported to the House by voice vote.

Prior to consideration of H.R. 6302, the Committee held a hearing on compensation and staffing problems at the Secret Service on November 15, 2016.¹⁰ At that hearing, Members discussed the Secret Service's challenges in hiring and retaining special agents necessary to ensure staffing levels sufficient to mitigate excessive overtime in violation of the pay cap.

SECTION-BY-SECTION

Section 1. Short title

Designates the short title of the bill as the "Overtime Pay for Secret Service Agents Act of 2016."

Section 2. Premium pay exception in 2016 for work authorized under Section 3056 of Title 18

Subsection (a) authorizes Secret Service special agents who worked overtime during the presidential election in calendar year 2016 to be paid for the overtime so long as their total annual com-

⁸ Email from U.S. Secret Service to H. Comm. on Oversight and Government Reform staff (Nov. 4, 2016).

⁹ Email and phone calls from U.S. Secret Service to H. Comm. on Oversight and Government Reform staff (Nov. 7, 2016).

¹⁰ H. Comm. on Oversight and Government Reform, *Oversight of the Secret Service*, 114th Cong. (Nov. 15, 2016).

pensation does not exceed the annual amount payable in basic pay to Level II of the Executive Schedule.

Subsection (b) prohibits the overtime compensation authorized to be paid to Secret Service special agents during the presidential election in calendar year 2016 from being used to calculate a special agent's retirement or annual leave benefits.

Subsection (c) defines employee as a special agent of the Secret Service that is a law enforcement officer but is not a member of the Secret Service's Uniformed Division or an officer, employee, agent, or law enforcement officer of any other Federal agency.

Subsection (d) makes a conforming amendment to ensure that Secret Service special agents' bi-weekly compensation may include the pay they receive for the overtime they have worked during the presidential election in calendar year 2016.

EXPLANATION OF AMENDMENTS

During Full Committee consideration of the bill, Ranking Member Elijah Cummings (D-MD) offered an amendment that would raise the pay cap to Level I of the Executive Schedule and make it applicable to all future presidential elections. The amendment was ultimately withdrawn by Rep. Cummings after a colloquy with the Chairman during which it was agreed that the Committee would receive quarterly updates from the Secret Service to inform the Committee's further consideration of the pay cap issue next year.

COMMITTEE CONSIDERATION

On November 16, 2016, the Committee met in open session and ordered reported favorably the bill, H.R. 6302, by voice vote, a quorum being present.

ROLL CALL VOTES

No roll call votes were requested or conducted during Full Committee consideration of H.R. 6302.

APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104-1 requires a description of the application of this bill to the legislative branch where the bill relates to the terms and conditions of employment or access to public services and accommodations. This bill provides an increase in premium pay for United States Secret Service agents performing protective services during 2016. As such this bill does not relate to employment or access to public services and accommodations.

STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE

In compliance with clause 3(c)(1) of rule XIII and clause (2)(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the descriptive portions of this report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee's performance goal and objective of the bill is to provide an increase in premium pay for United States Secret Service agents performing protective services during 2016.

DUPLICATION OF FEDERAL PROGRAMS

No provision of this bill establishes or reauthorizes a program of the federal government known to be duplicative of another federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

DISCLOSURE OF DIRECTED RULE MAKINGS

The Committee estimates that enacting this bill does not direct the completion of any specific rule makings within the meaning of 5 U.S.C. § 551.

FEDERAL ADVISORY COMMITTEE ACT

The Committee finds that the legislation does not establish or authorize the establishment of an advisory committee within the definition of 5 U.S.C. App., Section 5(b).

UNFUNDED MANDATE STATEMENT

Section 423 of the Congressional Budget and Impoundment Control Act (as amended by Section 101(a)(2) of the Unfunded Mandate Reform Act, P.L. 104-4) requires a statement as to whether the provisions of the reported include unfunded mandates. In compliance with this requirement the Committee has received a letter from the Congressional Budget Office included herein.

EARMARK IDENTIFICATION

This bill does not include any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

COMMITTEE ESTIMATE

Clause 3(d)(1) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs that would be incurred in carrying out this bill. However, clause 3(d)(2)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974.

BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the

Congressional Budget Act of 1974 and with respect to requirements of clause (3)(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, November 29, 2016.

Hon. JASON CHAFFETZ,
*Chairman, Committee on Oversight and Government Reform,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 6302, the Overtime Pay for Secret Service Agents Act of 2016.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Grabowicz.

Sincerely,

KEITH HALL.

Enclosure.

H.R. 6302—Overtime Pay for Secret Service Agents Act of 2016

H.R. 6302 would remove certain limits on premium pay earned by special agents of the Secret Service who provided protective services in calendar year 2016; the bill's provisions would not apply to years after 2016. The agency expects the legislation to benefit about 1,200 agents who would be paid about \$13,000 more, on average, for hours worked in 2016.

Based on that information provided by the Secret Service, CBO estimates that enacting the bill would increase direct spending by \$16 million in fiscal year 2017. The cost could be more depending on the number of hours worked by agents in December. The retroactive pay authorized by H.R. 6302 would be considered an entitlement for federal employees who have already performed the work for which the bill would provide compensation. Thus, the bill would increase direct spending and pay-as-you-go procedures apply. Enacting the legislation would not affect revenues.

CBO estimates that enacting H.R. 6302 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2027.

H.R. 6302 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

The CBO staff contact for this estimate is Mark Grabowicz. The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic and existing law in which no change is proposed is shown in roman):

**TREASURY AND GENERAL GOVERNMENT
APPROPRIATIONS ACT, 2001**

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**TITLE I—DEPARTMENT OF THE
TREASURY**

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SEC. 118. Hereafter, *and except as provided in section 2 of the Overtime Pay for Secret Service Agents Act of 2016*, funds made available by this or any other Act may be used to pay premium pay for protective services authorized by section 3056(a) of title 18, United States Code, without regard to the restrictions contained in section 5547 of title 5, United States Code, except that such premium pay shall not be payable to an employee to the extent that the aggregate of the employee's basic and premium pay for the year would otherwise exceed the annual equivalent of that limitation. The term premium pay refers to the provisions of law cited in the first sentence of section 5547(a) of title 5, United States Code. Payment of additional premium pay payable under this section may be made in a lump sum on the last payday of the calendar year.

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ADDITIONAL VIEWS

Committee Democrats support H.R. 6302, the Overtime Pay for Secret Service Agents Act of 2016. The bill would authorize an increase in the annual salary and overtime limit up to level II of the Executive Schedule so that Secret Service agents would be eligible to receive additional back pay for overtime they worked in 2016.

Last year, the Committee adopted a bipartisan report concluding that the Secret Service “is experiencing a staffing crisis that threatens to jeopardize its critical mission” due in large part to “significant cuts imposed by the Budget Control Act of 2011.” The unanimous report recommended that Congress “ensure that Secret Service has sufficient funds to restore staffing to required levels.”¹

Although 2016 has been a year of extraordinary demand and strain on the Secret Service, significant hours of overtime are required in every presidential campaign year. In addition to providing protection at large-scale national security events, additional staffing resources will be needed in future presidential election years for national political conventions and around-the-clock protection of candidates and their families.

For these reasons, all Committee Democrats joined together to introduce more substantial legislation to ensure that Secret Service agents are paid for the overtime they have worked in 2016 and will work in all future presidential years. On November 16, 2016, they introduced H.R. 6318, the Fair Pay for Presidential Protection Act of 2016, which would also authorize a greater level of overtime compensation than H.R. 6302.

The Federal Law Enforcement Officers Association, which represents rank-and-file Secret Service agents, testified before the Committee that there should be a legislative fix to raise the overtime pay cap “at a minimum, during a presidential campaign year.” The witness added that although “this last election season was unprecedented in many respects, we do not believe it will prove to be unique in the years ahead,” and he stressed “the importance of working together to find a permanent solution to the effect that the pay cap has on the USSS.”

During the markup of H.R. 6302 on November 16, 2016, Ranking Member Cummings offered an amendment that would have incorporated provisions of H.R. 6318 by proposing a permanent solution that would have authorized increasing the salary caps in all future presidential election years.

Ranking Member Cummings withdrew the amendment after a colloquy in which Chairman Chaffetz agreed that the Committee will ask the Secret Service to provide additional updates on the overtime pay issue and staffing on a quarterly basis. Chairman

¹House Committee on Oversight and Government Reform, *United States Secret Service: An Agency in Crisis* (Dec. 9, 2015).

Chaffetz also agreed to hold a roundtable or public hearings with the Secret Service on these issues in 2017.

ELIJAH E. CUMMINGS,
Ranking Member.

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