

SECRET SERVICE OVERTIME PAY EXTENSION ACT

DECEMBER 10, 2018.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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

R E P O R T

[To accompany H.R. 6893]

[Including cost estimate of the Congressional Budget Office]

The Committee on Oversight and Government Reform, to whom was referred the bill (H.R. 6893) to amend the Overtime Pay for Protective Services Act of 2016 to extend the Secret Service overtime pay exception through 2019, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

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The amendments are as follows:
 Section 2 is amended—

- (1) in the heading for such section, by striking “2019” and inserting “2020”;
- (2) in paragraph (1), by striking “2019” and inserting “2020”;
- (3) in paragraph (2), by striking “or 2019” and inserting “2019, or 2020”; and
- (4) in paragraph (3)—
 - (A) by striking “or 2018” and inserting “and 2018”; and
 - (B) by striking “or 2019” and inserting “2019, and 2020”.

SUMMARY AND PURPOSE OF LEGISLATION

H.R. 6893, the Secret Service Overtime Pay Extension Act extends a waiver of the annual pay cap for basic and premium overtime pay for the U.S. Secret Service until the end of calendar year 2020. Congress first authorized this waiver in the Overtime Pay for Protective Services Act of 2016 (P.L. 114–311), and extended it in the Secret Service Recruitment and Retention Act of 2018 (P.L. 115–160). Lifting the pay cap allows Secret Service personnel to be partially compensated for overtime hours that result in owed compensation above the cap. The additional premium overtime pay will not be creditable toward the 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, the Vice President of the United States, immediate families of the occupants of both positions, and select other individuals and events of national significance.¹ The Secret Service also has a role in investigating certain cybercrimes and currency counterfeiting.² The agency has four main personnel types: special agents; uniformed division officers; administrative, professional, and technical staff; and special officers.³

The Committee has a longstanding interest in the Secret Service’s recruitment and retention issues and a number of outstanding recommendations to address them.⁴ In a July 2018 briefing for Committee staff, the Secret Service provided information on its significant efforts to rectify its staffing shortage. As of July 27, 2018, the Secret Service was projecting net growth of 350 personnel in fiscal year (FY) 2018, with total personnel totals reaching 7,250.⁵ In addition, overall attrition rates were projected to decline to 7.55 percent, a 1.2 percentage point drop from FY 2016.⁶ While attrition is expected to oscillate during election years due to the additional

¹ 18 U.S.C. 3056.

² *Reporting Computer, Internet-Related, or Intellectual Property Crime*, DEP’T OF JUSTICE, <https://www.justice.gov/criminal-ccips/reporting-computer-internet-related-or-intellectual-property-crime> (last accessed Oct. 1, 2018).

³ *See, e.g.*, Join, U.S. SECRET SERVICE, <https://www.secretservice.gov/join/careers/> (last accessed Oct. 1, 2018).

⁴ *See* H. COMM. ON OVERSIGHT & GOV’T REFORM, SECRET SERVICE RECRUITMENT AND RETENTION ACT OF 2017 1–4, 115th Cong. (Dec. 4, 2017) (H. Rep. 115–435, Part I); H. COMM. ON OVERSIGHT & GOV’T REFORM, UNITED STATES SECRET SERVICE: AN AGENCY IN CRISIS, 114th Cong. (Dec. 9, 2015) (H. Rep. 114–385).

⁵ Briefing by staff, U.S. Secret Service, to staffs, H. Comm. on Oversight & Gov’t Reform, S. Comm. on Homeland Sec. & Governmental Affairs, H. Comm. on Homeland Sec., H. Comm. on the Judiciary, & S. Comm. on the Judiciary (July 27, 2018) [hereinafter U.S. Secret Service Briefing].

⁶ *Id.*

workload, the overall trend of declining attrition represents progress.

Even with these modest gains, Secret Service personnel are required to work excessive overtime to ensure the agency's protective mission is fully staffed. In calendar year 2017, for example, 1,171 Secret Service personnel worked enough overtime to reach the statutory annual premium pay cap.⁷ The statutory annual premium pay cap limits total aggregate compensation, which includes basic and premium overtime pay, for all Federal employees on the General Schedule at the biweekly pay equivalent of an annual salary of \$163,654.⁸

Together, the agency's staffing shortages and increased protective responsibilities have consistently caused Secret Service personnel to reach the statutory pay cap before the end of the year, meaning some overtime is not compensated.⁹ "Maxing out," as it is known within the Secret Service, has been reported as a top issue affecting employee morale and retention.¹⁰ In response, Congress raised the premium pay cap limitation to level II of the Executive Schedule, which was \$189,600 in 2018, for calendar years 2016–2018.¹¹ Raising the premium pay cap limitation resulted in Secret Service personnel receiving over \$9.7 million in 2017.¹² The average increase in pay was \$8,324, while the median increase was \$6,211.¹³ The greatest amount received by an individual was \$26,961.¹⁴

H.R. 6893 will further extend the premium pay cap waiver provided to the Secret Service for work on the agency's protective mission through the 2020 election year. This is done to ensure the Secret Service does not backtrack on its staffing improvements and to give more time for the Committee to receive the reports required in the most recent extension of the premium pay cap waiver.¹⁵ In keeping with previous practice, the bill subjects Secret Service personnel to a new aggregate pay cap of level II of the Executive Schedule. Due to changes made by the Secret Service Recruitment and Retention Act, Secret Service personnel will only be able to collect the additional money if the agency is specifically appropriated the additional funds.¹⁶

Between 700 and 900 Secret Service personnel will be eligible for the raised premium pay cap in calendar year 2019, while 1,100–

⁷ U.S. SECRET SERVICE, SECRET SERVICE OVERTIME PAYMENTS FOR PROTECTIVE SERVICES FOR CALENDAR YEAR 2017 3 (Sept. 25, 2018) [hereinafter U.S. Secret Service Report].

⁸ 5 U.S.C. 5547; See also Office of Personnel Mgmt., *Biweekly Caps on Premium Pay*, <https://www.opm.gov/policy-data-oversight/pay-leave/pay-administration/#url=Biweekly-Pay-Caps> (last accessed Oct. 3, 2018); The biweekly rate of pay limitation is adjusted for locality pay area, and so may be lower or higher depending on the individual's duty location. The \$163,654 limitation is for the Washington, D.C., locality pay area in 2018, the highest in the country. Because the limitation is tied to the rate of pay applicable to certain positions (GS–15, step 10 locality rate, or level V of the Executive Schedule), the value of the limitation will also fluctuate depending on any pay increases approved by the President or Congress.

⁹ U.S. Secret Service Briefing, *supra* note 5.

¹⁰ *Id.*

¹¹ Overtime Pay for Protective Services Act of 2016, Pub. L. No. 114–311, 130 Stat. 1531, 1532; Secret Service Recruitment and Retention Act of 2017, Pub. L. No. 115–160, 132 Stat. 1246, 1248.

¹² U.S. Secret Service Report, *supra* note 7.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Secret Service Recruitment and Retention Act of 2017, Pub. L. No. 115–160, 132 Stat. 1246, 1248, 2(c), 3.

¹⁶ *Id.*, at 2(a)(1)(C).

1,200 will be eligible in 2020.¹⁷ Between 80 and 120 will not be fully compensated in 2019, while 300–500 will still have some unpaid overtime in 2020 if the legislation is enacted.¹⁸ However, H.R. 6893 provides partial relief to all Secret Service personnel with overtime for which they would not otherwise be compensated.

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 previous section.

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 or objective of this bill is to amend the Overtime Pay for Protective Services Act of 2016 to extend the Secret Service overtime pay exception through 2020.

LEGISLATIVE HISTORY

On September 25, 2018, Representative Steve Russell (R–OK) introduced H.R. 6893, the Secret Service Overtime Pay Extension Act, with Representatives John Katko (R–NY) and Bonnie Watson Coleman (D–NJ). H.R. 6893 was referred to the Committee on Oversight and Government Reform. The Committee considered H.R. 6893 at a business meeting on September 27, 2018 and ordered the bill favorably reported, as amended, by voice vote.

H.R. 6893 extends the Secret Service-specific annual premium pay cap waiver previously authorized by H.R. 3731, the Secret Service Recruitment and Retention Act of 2018, and H.R. 6302, the Overtime Pay for Protective Services Act of 2016. The latter was considered in the 114th Congress. Both were enacted into law as P.L. 115–160 and P.L. 114–311, respectively.

Prior to consideration of H.R. 6302 in the 114th Congress, the Committee on Oversight and Government Reform held a hearing on compensation and staffing problems at the Secret Service. The hearing was held on November 15, 2016.¹⁹ At that hearing, Members discussed the Secret Service's challenges in hiring and retaining a sufficient number of special agents in order to mitigate excessive overtime in violation of the pay cap.

COMMITTEE CONSIDERATION

On September 27, 2018, the Committee met in open session and, with a quorum being present, ordered the bill favorably reported, as amended, by voice vote.

¹⁷ U.S. Secret Service Briefing, *supra* note 5

¹⁸ *Id.*

¹⁹ *Oversight of the Secret Service: Hearing Before the H. Comm. on Oversight & Gov't Reform, 114th Cong. (2016).*

ROLL CALL VOTES

There were no roll call votes requested or conducted during Committee consideration of H.R. 6893.

EXPLANATION OF AMENDMENTS

During Committee consideration of the bill, Representative Elijah Cummings (D-MD), the Ranking Minority Member of the Committee, offered an amendment to extend the life of the Secret Service-specific annual premium pay cap waiver through 2020. The introduced version of the bill allowed for an extension through 2019. The amendment was adopted by voice vote.

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 amends the Overtime Pay for Protective Services Act of 2016 to extend the Secret Service overtime pay exception through 2020. As such, this bill does not relate to employment or access to public services and accommodations in the legislative branch.

DUPLICATION OF FEDERAL PROGRAMS

In accordance with clause 2(c)(5) of rule XIII 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

This bill does not direct the completion of any specific rule makings within the meaning of section 551 of title 5, United States Code.

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 Section 5(b) of the appendix to title 5, United States Code.

UNFUNDED MANDATES STATEMENT

Pursuant to section 423 of the Congressional Budget Act of 1974 the Committee has included a letter received from the Congressional Budget Office below.

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 of the House of Representatives.

COMMITTEE ESTIMATE

Pursuant to clause 3(d)(2)(B) of rule XIII of the Rules of the House of Representatives, the Committee includes below a cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974.

NEW BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE
COST ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the House of Representatives, the cost estimate prepared by the Congressional Budget Office and submitted pursuant to section 402 of the Congressional Budget Act of 1974 is as follows:

H.R. 6893—Secret Service Overtime Pay Extension Act

H.R. 6893 would remove certain limits on premium pay for employees of the Secret Service who provide protective services in calendar years 2019 and 2020. The bill's provisions would not apply to years after 2020. The bill would extend the provisions that governed such premium pay during calendar years 2016, 2017, and 2018.

Under current law, the Secret Service disbursed a total of about \$23 million in additional premium pay for calendar years 2016 (a presidential election year) and 2017. The agency expects such premium pay to decline somewhat in 2019 and 2020 because a recent increase in permanent staff has reduced the need for overtime. Using information from the Secret Service, CBO estimates that implementing the bill would cost a total of \$17 million over the fiscal year 2019–2021 period, assuming appropriation of the necessary amounts. We expect overtime spending to surge in the first quarter of fiscal year 2021 (October through December) as a result of the 2020 presidential election. The costs of this bill are shown in the following table and fall within budget function 750 (administration of justice).

	By fiscal year, in millions of dollars—					
	2019	2020	2021	2022	2023	2019– 2023
INCREASES IN SPENDING SUBJECT TO APPROPRIATION						
Estimated Authorization Level	5	8	4	0	0	17
Estimated Outlays	5	8	4	0	0	17

Enacting the bill would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

CBO estimates that enacting H.R. 6893 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2029.

H.R. 6893 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

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

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

Section 1 establishes the short title of the bill.

Section 2. Extension of overtime pay exception through 2020 for protective services

Section 2 amends the Overtime Pay for Protective Services Act of 2016 by extending the waiver of the Secret Service-specific annual premium pay cap in section 5547 of title 5, United States Code, for covered employees of the Secret Service to the end of 2020. The new premium pay cap will be set at level II of the Executive Schedule, consistent with previous extensions of the annual premium pay cap waiver at the Secret Service.

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 (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

**OVERTIME PAY FOR PROTECTIVE SERVICES ACT OF
2016**

* * * * *

**SEC. 2. PREMIUM PAY EXCEPTION DURING 2016 THROUGH [2018] 2020
FOR PROTECTIVE SERVICES.**

(a) DEFINITION.—In this section, the term “covered employee” means any officer, employee, or agent employed by the United States Secret Service who performs protective services for an individual or event protected by the United States Secret Service during 2016, 2017, [or 2018] 2018, 2019, or 2020.

(b) EXCEPTION TO THE LIMITATION ON PREMIUM PAY FOR PROTECTIVE SERVICES.—

(1) IN GENERAL.—Notwithstanding any other provision of law, including section 5547(a) of title 5, United States Code, and only to the extent that an appropriation is provided specifically in an appropriations Act for premium pay in excess of the annual equivalent of the limitation on the rate of pay contained in section 5547(a), any covered employee may receive premium pay during 2016, 2017, [and 2018] 2018, 2019, and 2020, to the extent provided under section 118 of the Treasury and General Government Appropriations Act, 2001 (5 U.S.C. 5547 note).

(2) TECHNICAL AND CONFORMING AMENDMENT.—Section 118 of the Treasury and General Government Appropriations Act, 2001 (as enacted into law by section 1(3) of Public Law 106-554; 114 Stat. 2763A-134) is amended, in the first sentence, by inserting “or, if the employee qualifies for an exception to such limitation under section 2(b)(1) of the Overtime Pay for Protective Services Act of 2016, to the extent that such aggregate amount would exceed the rate of basic pay payable for a posi-

tion at level II of the Executive Schedule under section 5313 of title 5, United States Code” after “of that limitation”.

(c) TREATMENT OF ADDITIONAL PAY.—If subsection (b) results in the payment of additional premium pay to a covered employee of a type that is normally creditable as basic pay for retirement or any other purpose, that additional pay shall not—

(1) be considered to be basic pay of the covered employee for any purpose; or

(2) be used in computing a lump-sum payment to the covered employee for accumulated and accrued annual leave under section 5551 or section 5552 of title 5, United States Code.

(d) AGGREGATE LIMIT.—With respect to the application of section 5307 of title 5, United States Code, the payment of any additional premium pay to a covered employee as a result of subsection (b) shall not be counted as part of the aggregate compensation of the covered employee.

(e) EFFECTIVE DATE.—This section and the amendments made by this section shall take effect as if enacted on December 31, 2015.