

SECRET SERVICE RECRUITMENT AND RETENTION ACT
OF 2017

DECEMBER 4, 2017.—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. 3731]

[Including cost estimate of the Congressional Budget Office]

The Committee on Oversight and Government Reform, to whom was referred the bill (H.R. 3731) to provide overtime pay for employees of the United States Secret Service, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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COMMITTEE STATEMENT AND VIEWS

PURPOSE AND SUMMARY

H.R. 3731, the Secret Service Recruitment and Retention Act of 2017, extends until the end of calendar year 2018 the U.S. Secret

Service-specific waiver of the pay cap for basic and premium overtime pay. Congress authorized this waiver in the Overtime Pay for Protective Services Act of 2016. 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 for retirement annuity or annual leave calculations. In addition, the bill mandates a series of reports and information to Congress to assess future changes that might reduce the agency's reliance on premium overtime pay.

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 three main personnel types: special agents; uniformed division officers; and administrative, professional, and technical staff.³

There is no margin for failure with respect to the Secret Service's protective mission. Unfortunately, a December 2015 Committee investigative report found the Secret Service "is experiencing a staffing crisis that threatens to jeopardize [that] critical mission."⁴ When the report was released, the Secret Service had fewer employees (6,306) than at any point over the previous decade.⁵ Since then, the agency has moved to increase staffing levels, reaching its goal of 6,800 personnel for FY2017.⁶ Even with these modest gains, Secret Service personnel have been required to work excessive overtime to fully staff the agency's protective mission. In addition, due to the size of the President's family, the Secret Service is responsible for 11 more permanent protectees than during the previous Administration.⁷ Together, the agency's staffing shortages and increased protective responsibilities have caused Secret Service personnel to reach the statutory pay cap before the end of the year, meaning some overtime is not compensated.

Total aggregate compensation for a pay period, which includes basic and premium overtime pay, for Secret Service personnel on the General Schedule is capped at the biweekly pay equivalent of an annual salary of \$161,900.⁸ As a result, during any pay period Secret Service personnel can only be compensated for the overtime hours they work until they reach the biweekly pay cap. This overtime cap, commonly referred to as a "max out" within the Secret

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 Sept. 22, 2017).

³ *Join*, U.S. SECRET SERVICE, <https://www.secretservice.gov/join/careers/> (last accessed Sept. 22, 2017).

⁴ H. COMM. ON OVERSIGHT & GOV'T REFORM, UNITED STATES SECRET SERVICE: AN AGENCY IN CRISIS 18 (Dec. 9, 2015) [hereinafter "Committee Report"].

⁵ *Id.* at 117.

⁶ Briefing by Susan Yarwood, Chief Human Capital Officer, U.S. Secret Service, to staff, H. Comm. on Oversight & Gov't Reform (Sept. 15, 2017) [hereinafter "Secret Service Briefing"].

⁷ Leg. Proposal from U.S. Secret Service to Congress, *USSS and DHS Aggregate Pay Cap Legislative Proposal* (n.d.), at 7 [hereinafter "Secret Service Leg. Proposal"].

⁸ 5 U.S.C. § 5547.

Service, has consistently been reported to the Committee as a top issue affecting employee morale and retention.⁹

H.R. 3731 extends the pay cap waiver Congress granted to the Secret Service in 2016 as part of the Overtime Pay for Protective Services Act. That bill raised the cap for all protective work conducted during the 2016 presidential election cycle. For the aforementioned reasons, the Secret Service needs an extended waiver. H.R. 3731 extends the waiver to the end of calendar year 2018 for work on the agency's protective mission. As in the previous Act, H.R. 3731 subjects Secret Service personnel to a new aggregate pay cap of Level II of the Executive Schedule, or \$187,000 in 2017. Approximately 1,300 Secret Service personnel will benefit from the legislation in 2017—with approximately 144 still having some unpaid overtime if the legislation is enacted.¹⁰ However, the bill will provide at least partial relief to all Secret Service personnel with overtime for which they were not compensated.

As the Committee has made clear, the Secret Service cannot continue to rely on expensive premium overtime pay to meet its mission. The agency needs to improve both hiring and retention at the agency so it has an appropriate number of personnel. The Secret Service has made improvements on this front, having decreased its agency-wide attrition by 1.37 percent over the past year.¹¹ The time-to-hire also decreased from an average of 406 days to 117 days.¹² Work remains, however, and the legislation directs the Secret Service to issue a report to Congress on further recruitment and retention initiatives at the agency. It also requires the Secret Service to submit the questions used during polygraph examinations for agency job applicants to Congress so Congress can understand the extent to which the questions might be affecting the agency's effort to recruit and hire new talent.

In addition, the bill will require the Secret Service provide Congress information on the scope of its mission. The Committee's investigative report in 2015 found the Secret Service's mission has dramatically expanded, and the agency and Congress need to assess the effect of the agency's investigative mission on the protective mission in a time of low staffing levels.¹³ The scope of the protective mission should also be assessed. The bill directs the Secret Service to submit updated threat assessments, with some exceptions, to Congress so that it can evaluate if statutory changes are needed to revise who must be protected by the agency. For similar reasons, the bill also directs the Secret Service to notify Congress and provide an updated threat assessment if a protective detail is extended.

Ultimately, H.R. 3731 remedies an immediate problem and does so in a timely manner, as a stop-gap measure. It is incumbent upon the agency to continue making progress with the recruitment and retention of personnel and on Congress to remain engaged with finding a solution to the agency's scope of mission problem. Finally, the bill is tailored for the unique circumstances the agency faces regarding staffing its protective mission, and the Committee will

⁹ Secret Service Briefing, *supra* note 6.

¹⁰ Secret Service Leg. Proposal, *supra* note 7, at 5.

¹¹ Secret Service Briefing, *supra* note 6.

¹² *Id.*

¹³ Committee Report, *supra* note 4, at 178.

not regard it as precedent for waiving pay caps for any other agency.

LEGISLATIVE HISTORY

On September 11, 2017, Representative John Katko (R-NY) introduced H.R. 3731, the Secret Service Recruitment and Retention Act of 2017, with Chairman Trey Gowdy (R-SC); Ranking Member Elijah Cummings (D-MD); Chairman Michael McCaul (R-TX) and Ranking Member Bennie Thompson (D-MS) of the Committee on Homeland Security; Representatives Daniel Donovan (R-NY), Sheila Jackson Lee (D-TX), John Ratcliffe (R-TX), and Bonnie Watson Coleman (D-NJ); and Delegate Eleanor Holmes Norton (D-DC). H.R. 3731 was referred to the House Committee on the Judiciary and in addition the House Committee on Oversight and Government Reform. The Committee on Oversight and Government Reform considered H.R. 3731 at a business meeting on September 13, 2017, and ordered the bill reported favorably, without amendment, by voice vote.

In the 114th Congress, Representative Jason Chaffetz (R-UT) introduced a similar bill to H.R. 3731, which was H.R. 6302, the Overtime Pay for Protective Services Act of 2016. On November 16, 2016, the Committee on Oversight and Government Reform ordered H.R. 6302 reported favorably, without amendment, by voice vote, and on November 30, 2016, the House passed the bill by voice vote under suspension of the rules. The Senate passed H.R. 6302, as amended, on December 10, 2016 by unanimous consent. The House then concurred to the Senate amendments on December 13, 2016 by unanimous consent. On December 16, 2016 President Obama signed H.R. 6302 into law, with the bill becoming Public Law No. 114-311.

Prior to consideration of H.R. 6302, 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, 2016.¹⁴ 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.

SECTION-BY-SECTION

Sec. 1. Short title

Section 1 establishes the short title of the bill.

Sec. 2. Extension of overtime pay exception through 2018 for protective services

Section 2 amends the Overtime Pay for Protective Services Act of 2016 by extending the pay cap waiver for covered employees of the Secret Service from December 31, 2016, to December 31, 2018. Section 2 also requires two reports to the Committee on Homeland Security and the Committee on Oversight and Government Reform of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate on the effects of

¹⁴*Oversight of the Secret Service: Hearing Before the H. Comm. on Oversight & Gov't Reform, 114th Cong. (2016).*

the changes, including the total number of Secret Service personnel receiving additional premium pay; the total amount of additional premium pay paid under the waiver; and other information.

Sec. 3. Recruitment and retention efforts

Section 3 requires the Director of the Secret Service to conduct and transmit to the appropriate committees of Congress, updated threat assessments on most individuals protected by the Secret Service within 180 days of enactment. Relatedly, this section requires the Department to notify those committees when the President exercises the authority to designate additional protectees and threat assessments on them. Section 3 also requires a report on the Secret Service's efforts to remedy the personnel shortage within the agency, and a list of polygraph examination questions be submitted to the committees.

EXPLANATION OF AMENDMENTS

There were no amendments to H.R. 3731 offered or adopted during Committee consideration of the bill.

COMMITTEE CONSIDERATION

On September 13, 2017, the Committee met in open session and, with a quorum being present, ordered the bill favorably reported by voice vote.

ROLL CALL VOTES

There were no roll call votes requested or conducted during Full Committee consideration of H.R. 3731.

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 extends the U.S. Secret Service-specific waiver of the pay cap for basic and premium overtime pay until the end of calendar year 2018. 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 or objective of this bill is to provide overtime pay for employees of the United States Secret Service on a temporary basis.

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

The Committee estimates that enacting 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

Section 423 of the Congressional Budget and Impoundment Control Act (as amended by Section 101(a)(2) of the Unfunded Mandates 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 included below a letter received from the Congressional Budget Office.

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

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:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, November 14, 2017.

Hon. TREY GOWDY,
*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. 3731, the Secret Service Recruitment and Retention Act of 2017.

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

Sincerely,

MARK P. HADLEY
(For Keith Hall, *Director*).

Enclosure.

H.R. 3731—Secret Service Recruitment and Retention Act of 2017

Summary: H.R. 3731 would remove certain limits on premium pay earned by employees of the Secret Service who either provided protective services in calendar year 2017 or will provide them in 2018. The bill's provisions would not apply to years after 2018. CBO estimates that enacting the bill would increase direct spending by \$10 million in fiscal year 2018. We also estimate that implementing the bill would increase spending subject to appropriation by about \$7 million in fiscal year 2018 and \$3 million in fiscal year 2019.

Because enacting H.R. 3731 would affect direct spending, pay-as-you-go procedures apply. Enacting the bill would not affect revenues.

CBO estimates that enacting H.R. 3731 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

H.R. 3731 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary effect of H.R. 3731 is shown in the following table. The costs of this legislation fall within budget function 750 (administration of justice).

	By fiscal year, in millions of dollars—											
	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2018– 2022	2018– 2027
INCREASES IN DIRECT SPENDING												
Estimated Budget Authority ..	10	0	0	0	0	0	0	0	0	0	10	10
Estimated Outlays	10	0	0	0	0	0	0	0	0	0	10	10
INCREASES IN SPENDING SUBJECT TO APPROPRIATION												
Estimated Authorization Level	7	3	0	0	0	0	0	0	0	0	10	10
Estimated Outlays	7	3	0	0	0	0	0	0	0	0	10	10

Basis of estimate: For this estimate, CBO assumes that the bill will be enacted in early 2018 and that the necessary amounts will be appropriated for fiscal years 2018 and 2019. Estimated outlays are based on the historical rate of spending for Secret Service pay.

Direct spending (Retroactive pay)

H.R. 3731 would remove certain limits on premium pay earned by employees of the Secret Service who provided protective services in calendar year 2017. Assuming the bill is enacted in early 2018, nearly all the additional pay earned in calendar year 2017 would be paid retroactively in fiscal year 2018. The retroactive pay authorized by H.R. 3731 would be considered an entitlement for federal employees who have already performed the work for which the bill would provide compensation.

Based on 2017 pay records through September of this year, the Secret Service expects that the legislation would benefit about 1,200 employees who would be paid about \$8,600 more, on average, for hours worked in calendar year 2017. Thus, CBO estimates that enacting the bill would increase direct spending by about \$10 million in fiscal year 2018. (For comparison purposes, the Secret Service disbursed about \$13 million in similar additional premium pay in calendar year 2016, which was a presidential election year and for which limits on employee compensation also were lifted.) If the bill is enacted later in 2018, then it would increase direct spending by more than \$10 million because more retroactive pay would be required.

Spending subject to appropriation

For any hours worked in calendar year 2018—after the assumed enactment of the bill—we expect that any additional compensation would not be retroactive, but would be paid on a regular basis (probably biweekly) as those hours are worked by employees. Based on an analysis of information provided by the Secret Service, CBO estimates that enacting the bill would cost about \$7 million in fiscal year 2018 and about \$3 million in fiscal year 2019, assuming appropriation of the necessary amounts. If the bill is enacted later in 2018, then 2018 spending subject to appropriation would be less than \$7 million because more compensation would be paid retroactively (direct spending).

Pay-As-You-Go considerations: The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. The net changes in outlays that are subject to those pay-as-you-go procedures are shown in the following table.

CBO ESTIMATE OF PAY-AS-YOU-GO EFFECTS FOR H.R. 3731, THE SECRET SERVICE RECRUITMENT AND RETENTION ACT OF 2017, AS ORDERED REPORTED BY THE HOUSE COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM ON SEPTEMBER 13, 2017.

	By fiscal year, in millions of dollars—												
	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2018–2022	2018–2027	
NET INCREASE IN THE DEFICIT													
Statutory Pay-As-You-Go Impact	10	0	0	0	0	0	0	0	0	0	10	10	

Increase in long-term direct spending and deficits: CBO estimates that enacting the legislation would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

Mandates: H.R. 3731 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

Estimate prepared by: Federal costs: Mark Grabowicz; Mandates: Zach Byrum.

Estimate 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 (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

SECTION 1. SHORT TITLE.

This Act may be cited as the “Overtime Pay for Protective Services Act of 2016”.

SEC. 2. PREMIUM PAY EXCEPTION IN [2016] 2016 THROUGH 2018 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]** *during 2016 through 2018*.

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

(1) IN GENERAL.—Notwithstanding any other provision of law, **[during 2016]** *during 2016 through 2018*, section 5547(a) of title 5, United States Code, shall not apply to any covered employee to the extent that its application would prevent a covered employee from receiving premium pay, as provided under the amendment made by paragraph (2).

(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 position 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.

