



# Administratively Uncontrollable Overtime (AUO) Compliance Plans

*July 14, 2015*

Fiscal Year 2015 Report to Congress



Homeland  
Security

*Under Secretary for Management*

# Message from the Under Secretary for Management

JUL 14 2015

I am pleased to present the following report, "Administratively Uncontrollable Overtime (AUO) Compliance Plans," which was prepared by the Department of Homeland Security (DHS) Office of the Chief Human Capital Officer.

This report was compiled pursuant to language set forth in House Report 113-481 accompanying the *Fiscal Year 2015 DHS Appropriations Act* (P.L. 114-4).

Pursuant to congressional guidelines, this report is being provided to the following Members of Congress:



The Honorable John R. Carter  
Chairman, House Appropriations Subcommittee on Homeland Security

The Honorable Lucille Roybal-Allard  
Ranking Member, House Appropriations Subcommittee on Homeland Security

The Honorable John Hoeven  
Chairman, Senate Appropriations Subcommittee on Homeland Security

The Honorable Jeanne Shaheen  
Ranking Member, Senate Appropriations Subcommittee on Homeland Security

Inquiries related to this report may be directed to me at (202) 447-3400 or to the Department's Chief Financial Officer, Chip Fulhum, at (202) 447-5751.

Sincerely,

A handwritten signature in black ink that reads "RC Deyo". The signature is written in a cursive, flowing style.

Russell C. Deyo  
Under Secretary for Management



# Administratively Uncontrollable Overtime (AUO) Compliance Plans

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# I. Legislative Language

This document responds to the language set forth in House Report 113-481 accompanying the *Fiscal Year (FY) 2015 Department of Homeland Security (DHS) Appropriations Act* (P.L. 114-4).

House Report 113-481 states:

## Administratively Uncontrollable Overtime

The Committee has been closely monitoring the Department's application of administratively uncontrollable overtime (AUO) and was pleased to see the internal memorandum from the Deputy Secretary dated May 23, 2014, regarding improvements to AUO administration throughout DHS. The Committee assertively addresses AUO under CBP and NPPD in this report, and has reduced certain accounts due to expected budgetary savings from improvements to AUO oversight and management. The Committee directs DHS to submit to the congressional committees of jurisdiction, not later than 15 days after the date of enactment of this Act, the results of the DHS Office of General Counsel's AUO review and the results of the Office of Special Counsel's investigations, as applicable. Furthermore, the Committee directs DHS to report to the congressional committees of jurisdiction, not later than 15 days after the date of enactment of this Act, on the compliance plans and internal controls and safeguards developed pursuant to the Deputy Secretary's AUO memorandum.

## II. Background

Administratively Uncontrollable Overtime (AUO) pay is an alternative form of payment for irregular, unscheduled overtime work. Agencies may pay AUO to employees who occupy positions that require substantial amounts of irregular, unscheduled overtime work that cannot be controlled administratively, with the employee generally being responsible for recognizing, without supervision, circumstances that require the employee to remain on duty. When DHS was established, several of the agencies that were transferred into DHS included significant number of employees certified to receive AUO pay.

Over the last 18 months, DHS has taken significant action to improve its management of AUO. The Department's Office of the General Counsel, with assistance from the Office of the Chief Human Capital Officer (OCHCO), conducted a Department-wide review of AUO policies and procedures.<sup>1</sup> The DHS Office of Inspector General and other internal investigators have examined specific allegations of AUO misuse.

On May 23, 2014, Deputy Secretary Mayorkas issued a memorandum calling for a series of steps to improve AUO management at DHS. The memorandum instructed OCHCO to prepare internal DHS-wide policies, known as a directive and instruction, to supplement Office of Personnel Management regulations on AUO. In addition, Deputy Secretary Mayorkas's May 23, 2014, memorandum required DHS agencies to submit plans addressing five AUO management difficulties. Section III of this report includes additional detail about the action taken as a result of the Deputy Secretary's May 23, 2014, memorandum.

On December 18, 2014, the President signed the Border Patrol Agent Pay Reform Act (BPAPRA). This statute establishes a new overtime system that will replace AUO for Border Patrol Agents. The Department will transition its Border Patrol Agents to the new overtime system as soon as the Office of Personnel Management's regulations on BPAPRA are final and effective.

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<sup>1</sup> The Office of the General Counsel's review for the Secretary is attorney-client privileged advice and contains information protected by the attorney work-product doctrine. The Department has not waived the privilege that protects this information. This report discusses the Department's actions to improve its AUO compliance rather than focusing on the legal advice provided by the Office of the General Counsel.

### III. Status of Compliance Plans

In accordance with Deputy Secretary Mayorkas's May 23, 2014, memorandum, OCHCO prepared a draft directive and instruction on AUO. The materials cover a broad range of issues related to AUO pay in addition to those specifically addressed by the Deputy Secretary. The draft directive and instruction provide practical and useful guidance, including a sample form for recording overtime hours and a series of modern examples of "sample" work that is and is not appropriate for AUO pay. DHS published the directive and instruction for national consultation pursuant to 5 U.S.C. § 7113 on April 29, 2015, and comments were due from the DHS unions by May 29, 2015.

Pursuant to the Deputy Secretary's May 23, 2014, memorandum, the three DHS agencies that continue to provide AUO compensation—U.S. Customs and Border Protection (CBP), U.S. Immigration and Customs Enforcement (ICE), and U.S. Secret Service (USSS)—have developed plans to improve compliance with AUO-related policies and regulations. These plans include a variety of measures aimed at ensuring compliance and improving management of overtime, many of which are described in this report. On the basis of continuing review, discussion, and changing circumstances, the agencies may submit modifications and updates to their plans. In the interim, ICE, CBP, and USSS have implemented various facets of the plans. In May 2015, ICE and CBP updated their practice for calculating AUO that is consistent with regulation. In executing the plans, DHS will fulfill all collective bargaining obligations as appropriate and as legally required.

In addition to the Department's directive and instruction on AUO, the agencies have developed additional guidance on the use of premium pay. CBP has prepared a draft instruction on AUO, which will supplement the DHS directive on the same topic. ICE prepared and began implementing a comprehensive premium pay guide that discusses AUO and other premium pay mechanisms. Concurrent with the premium pay guide, former ICE Principal Deputy Assistant Secretary Winkowski issued memoranda to all employees and supervisors reminding them of their obligation to appropriately account for all time and attendance, including AUO. USSS also has issued guidance on AUO. This guidance addresses issues such as documenting AUO hours and calculating AUO percentages, criteria for authorizing positions for AUO coverage, and overtime management more generally.

Strong policies and current, sound position eligibility determinations are fundamental to improved AUO management. To ensure that the existing regulations and new policies are carried out, the Department has begun rigorous training for all supervisors who certify AUO. AUO training also will be mandatory for all employees assigned to an AUO-eligible position, the employees' supervisors, and any other employee, supervisor, or

manager with AUO responsibility. At the Department level, OCHCO has begun development of DHS-wide training based on the AUO policy. In addition to the Department's efforts, ICE and CBP have initiated training on premium pay. ICE has developed online premium pay training on Virtual University, ICE's electronic database for training opportunities. Approximately 2,500 ICE managers and supervisors have already completed the online premium pay training. Like ICE, CBP has developed and implemented comprehensive pay training for supervisors and mission support personnel. In addition to addressing AUO, this comprehensive pay training, as applicable, has also addressed the Fair Labor Standards Act, the Federal Employees Pay Act, the Customs Officer Pay Reform Act, and Law Enforcement Availability Pay. To date, CBP has administered supervisory pay training to several sectors and stations with several operational offices.

DHS has also made significant progress toward ensuring that positions designated for AUO pay include sufficient volumes of administratively uncontrollable work. Consistent with the Deputy Secretary's direction to ensure that positions determined to be qualified for AUO continue to satisfy all legal requirements, each Component articulated a plan to review positions for consistency with the regulatory criteria. The Components have made significant progress toward this goal. CBP, for example, has completed its position-by-position review of AUO eligibility. CBP reviewed 187 position descriptions that were previously designated as eligible for AUO. Of those, CBP determined that 48 positions met the eligibility criteria and 139 positions did not meet the criteria. ICE also conducted a position-by-position review and reviewed 64 position descriptions that were previously designated as eligible for AUO. Of the 64 positions descriptions reviewed, 4 additional position descriptions were determined to not meet the criteria for AUO and 3 position descriptions that were previously decertified were determined to meet the criteria for AUO. ICE has not yet identified a date for implementing the results of the review. Going forward, CBP and ICE will conduct position reviews at least every 3 years. USSS assessed position AUO eligibility prior to the issuance of the May 23, 2014, memorandum. Prospectively, USSS plans to re-evaluate AUO eligibility annually. As a result of the various position reviews, DHS ceased AUO pay to approximately 2,363 employees during 2014.

Additionally, CBP recently reached agreement with the National Border Patrol Council, the union representing the Border Patrol Agents, to begin transitioning the Border Patrol Agents from the use of AUO to scheduled overtime. As a result, CBP ended AUO for overtime for Border Patrol Agents on May 17, 2015.

On March 11, 2015, the Special Counsel sent a letter to the President, the Chairman and Ranking Member of the Senate Committee on Homeland Security and Governmental Affairs, and the Chairman and Ranking Member of the House Committee on Homeland Security. The Special Counsel's letter noted the significant progress DHS has made toward improving AUO management:

I am pleased to report that over the last 14 months much has changed. After years of inaction, the entrenched problem of AUO abuse is on a path toward resolution. As detailed below, reforms initiated by DHS will result in greater accountability in AUO payments. In addition, Congress adopted a new pay system for Border Patrol agents that overhauls the outdated AUO system while generating cost savings of \$100 million annually. Collectively, these reforms protect the U.S. taxpayers from ongoing abuse of AUO.<sup>2</sup>

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<sup>2</sup> Letter from Carolyn N. Lerner, Special Counsel to Barack Obama, President of the United States (available at <https://osc.gov/Pages/PublicFiles-FY2015.aspx>).