



## Accessible Version

September 14, 2016

Congressional Committees

### U.S. Customs and Border Protection: Review of the Pay Assignment Continuity Plan

U.S. Customs and Border Protection (CBP), within the Department of Homeland Security (DHS), is responsible for securing U.S. borders to prevent acts of terrorism and the unlawful movement of people, illegal drugs, and other contraband across U.S. borders. Within CBP, the U.S. Border Patrol (Border Patrol) has primary responsibility within the federal government for securing the border between U.S. ports of entry.<sup>1</sup> To fulfill the agency's mission, Border Patrol agents routinely work overtime hours in excess of a standard 8-hour workday.<sup>2</sup>

Enacted in December 2014, the Border Patrol Agent Pay Reform Act of 2014 (BPAPRA) established a new overtime compensation system for Border Patrol agents.<sup>3</sup> Under BPAPRA, Border Patrol agents individually elect, and are subsequently assigned by the agency to, one of three rates of pay commensurate with the amount of scheduled overtime the agents elect or are assigned to work.<sup>4</sup> Specifically, the three rates of pay are as follows:

- Level 1 tour of duty provides an overtime supplement of 25 percent of basic pay with an additional 2 hours of overtime worked every standard workday;

<sup>1</sup>See 6 U.S.C. § 211(e). Ports of entry are facilities that provide for the controlled entry into or departure from the United States. Specifically, a port of entry is any officially designated location (seaport, airport, or land border location) where DHS officers or employees are assigned to clear passengers and merchandise, collect duties, and enforce customs laws, and where a person may apply for admission into the United States pursuant to U.S. immigration law.

<sup>2</sup>CBP utilizes a three-shift rotation, with each shift lasting 10 hours to ensure 24-hour per day coverage with an overlap in shifts. For example, Border Patrol agents in the field may begin and end their patrol shifts at a Border Patrol station to retrieve and return equipment, receive and write intelligence reports, and conduct processing requirements, among other things. In some cases, the stations can be an hour or more away from an agent's patrol area. To ensure agents are able to work 8 hours in their patrol area, Border Patrol uses 10-hour shifts to allow time for agents to conduct their pre- and post-shift activities and travel.

<sup>3</sup>See Pub. L. No. 113-277, § 2, 128 Stat. 2995, 2995-3005 (2014) (amending titles 5 and 29 of the United States Code with respect to overtime compensation for Border Patrol agents). Border Patrol agents had previously earned administratively uncontrollable overtime (AUO) as the primary compensation mechanism for time worked beyond the standard 8-hour workday. In general, AUO is a type of premium pay intended to compensate eligible federal employees for substantial amounts of irregular, unscheduled overtime that cannot be controlled administratively. See 5 U.S.C. § 5545(c)(2); 5 C.F.R. §§ 550.151-550.154. GAO and others have reported on the use of AUO at DHS, and at Border Patrol in particular. See, for example, GAO, *Department of Homeland Security: Continued Action Needed to Strengthen Management of Administratively Uncontrollable Overtime*, GAO-15-95 (Washington, D.C.: Dec. 17, 2014). DHS deauthorized AUO for all Border Patrol agents effective May 17, 2015.

<sup>4</sup>See 5 U.S.C. § 5550(b). In general, BPAPRA provides that at least 90 percent of all Border Patrol agents at each duty location shall be assigned to the Level 1 rate of pay. See 5 U.S.C. § 5550(b)(1)(E). Notwithstanding an agent's election, BPAPRA authorizes Border Patrol to assign an agent to a different tour of duty and, under certain circumstances, must assign agents to a specific tour of duty. See 5 U.S.C. § 5550(b)(1)(D). For example, an agent who is assigned canine care duties must be assigned to a Level 1 tour of duty. See 5 U.S.C. § 5550(b)(1)(D)(ii), (F); 5 C.F.R. § 550.1611(f)(1).

- Level 2 tour of duty provides an overtime supplement of 12.5 percent of basic pay with an additional hour of overtime worked every standard workday; and
- Basic tour of duty provides no overtime supplement with a standard workday.<sup>5</sup>

Border Patrol agents elected their initial BPAPRA level during the November 1 to December 1, 2015, election period and CBP began paying agents under this new system effective January 10, 2016. This system is now the primary mechanism by which agents receive overtime compensation for regularly scheduled overtime hours beyond a standard 8-hour workday. As of January 2016, about 95 percent of the approximately 20,100 Border Patrol agents were assigned the Level 1 tour of duty, while about 2.5 percent of agents were assigned Level 2 and 2.5 percent were assigned Basic tours of duty.

Under BPAPRA, a Border Patrol agent's overtime supplement constitutes basic pay for purposes of determining his or her retirement annuities, which are based on each agent's highest average salary over a 3-year period.<sup>6</sup> The Border Patrol agent position is considered a federal law enforcement officer position, and therefore is eligible for immediate retirement with 20 years of service at 50 years of age or with 25 years of service at any age. Consistent with BPAPRA, the Office of Personnel Management (OPM) promulgated regulations that address the election and assignment of Border Patrol agents' tours of duty and pay assignment continuity.<sup>7</sup> With respect to pay continuity, OPM's Final Rule on Overtime Pay for Border Patrol Agents, which implements section 2 of BPAPRA, explains that the underlying purpose of BPAPRA's pay continuity provisions is to protect the Civil Service Retirement and Disability Fund by ensuring that agents are unable to artificially enhance their retirement annuities by working the maximum allowed overtime during their last 3 years of employment without regard to their career average overtime.<sup>8</sup>

BPAPRA required that CBP, in consultation with OPM, develop and implement a plan to ensure pay assignment continuity during the 3 years of service before an agent becomes eligible for immediate retirement.<sup>9</sup> OPM regulations provided that this requirement would be met by establishing a "control period" beginning 3 years before an agent would first meet age and service requirements for immediate retirement and ending on the date of separation from the Border Patrol agent position.<sup>10</sup> Specifically, the plan must ensure, to the greatest extent practicable, that an agent is assigned to a level of overtime pay during the control period that is

<sup>5</sup>See 5 U.S.C. § 5550(b)(2)-(4). A Border Patrol agent's regular tour of duty consists of 5 workdays per week at 8 hours per day (i.e., a standard workday) plus any obligated overtime hours under BPAPRA for agents working at Level 1 or Level 2 rates of pay.

<sup>6</sup>See 5 U.S.C. § 5550(d); 5 C.F.R. § 550.1633. AUO, which Border Patrol agents had earned prior to BPAPRA's enactment, was also included as part of an agent's basic pay for purposes of calculating federal retirement benefits. See 5 U.S.C. § 8331(3)(D).

<sup>7</sup>See Pub. L. No. 113-277, § 2(h), 128 Stat. at 3005 (authorizing OPM to promulgate regulations to carry out BPAPRA and amendments made by BPAPRA); see also 5 U.S.C. §§ 5548, 5550(b)(1)(B).

<sup>8</sup>See 80 Fed. Reg. 58,094, 58,102 (Sept. 25, 2015). The Civil Service Retirement and Disability Fund is the trust fund that is administered by OPM and finances substantially all civilian federal employees' basic retirement benefits (e.g., annuities).

<sup>9</sup>See 5 U.S.C. § 5550(b)(1)(G).

<sup>10</sup>See 5 C.F.R. § 550.1615(a), (b).

consistent with his or her assigned average rate of overtime pay during the course of the agent's career as a Border Patrol agent. CBP issued its Pay Assignment Continuity Plan, dated March 15, 2016, in response to this requirement. BPAPRA also contains a provision for GAO to examine the effectiveness of CBP's plan in ensuring that Border Patrol agents are not able to artificially enhance their retirement annuities.<sup>11</sup> This report transmits our assessment of CBP's plan.

To determine the extent to which CBP's plan ensures Border Patrol agents' overtime compensation during their control period is consistent with agents' career average overtime, we reviewed CBP's plan and compared it with the pay assignment continuity provisions in BPAPRA and OPM regulations. We reviewed additional documentation provided by CBP, including documentation on the identification of agents that entered the control period in January 2016 and the calculations of agents' career average overtime percentages. We assessed the reliability of the control period data by interviewing agency officials responsible for performing the calculations and testing the data for accuracy and completeness, among other things. We found the control period data to be sufficiently reliable to provide descriptive information on the number of Border Patrol agents in or entering the control period in 2016 and for determining the potential length of agents' control periods. To verify CBP's career average overtime calculations, we selected a non-generalizable random sample of 20 agents for which we collected past overtime pay data to confirm accuracy of CBP's calculations of agents' career average overtime percentages.<sup>12</sup> In addition to reviewing documents and data, we interviewed CBP and OPM officials on the approach used to develop and implement the plan and perspectives on its implementation. We also interviewed officials from CBP's Office of Human Resources Management—the office responsible for developing, implementing, and overseeing CBP's plan—and the Border Patrol to discuss implementation of BPAPRA and management of Border Patrol agents working in the control period. We also interviewed officials from the National Border Patrol Council for their perspectives on the development and implementation of CBP's plan.<sup>13</sup>

We conducted this performance audit from February 2016 to September 2016 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

### **CBP's Plan Is Designed to Ensure Overtime Pay Continuity for Agents Nearing Retirement Eligibility, but Implementation of Pay Assignment Continuity Provisions May Affect Workforce and Retirement Planning**

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<sup>11</sup>See 5 U.S.C. § 5550(1)(G)(iv).

<sup>12</sup>CBP officials stated that the source of the data used to identify agents entering or in the control period is the National Finance Center (NFC) Payroll / Personnel System. In addition, for the career average overtime calculations that included overtime payments made prior to 1992, CBP used OPM's electronic Official Personnel File (eOPF) to access SF-50 forms.

<sup>13</sup>The National Border Patrol Council is the union representing Border Patrol agents that are bargaining unit members.

CBP's Plan Aligns with OPM Regulations and Is Designed to Ensure Agents' Overtime Pay during the Control Period Is Consistent with Their Career Averages

CBP's plan is consistent with the pay assignment continuity provisions in BPAPRA and OPM regulations, and provides that CBP is to identify Border Patrol agents who have reached the control period and ensure those agents' overtime percentages during the control period are consistent with their career average overtime percentages. In accordance with BPAPRA and consistent with OPM regulations, CBP's plan establishes that an agent's control period begins on the date 3 years before the agent meets age and service requirements for immediate retirement and remains in effect during all subsequent service in a Border Patrol agent position.<sup>14</sup> In accordance with CBP's plan, an agent's career average is either the agent's career average overtime percentage—including both administratively uncontrollable overtime (AUO) and overtime worked under BPAPRA—or an agent's BPAPRA overtime percentage worked until he or she enters the control period, whichever is greater. CBP's plan, consistent with OPM regulations, also allowed for certain agents' initial elections under BPAPRA—the elections made from November 1 to December 1, 2015—to, in effect, reset their pre-BPAPRA career overtime averages. Specifically, if an agent's career average overtime percentage was less than 25 percent prior to BPAPRA, and the agent, who was to enter his or her control period on January 10, 2016, elected and was assigned to Level 1 during this initial election period, the agent's career average overtime percentage would essentially be reset to 25 percent without any consideration of that agent's career average overtime prior to BPAPRA's implementation.

The plan describes the process CBP will use to identify and notify agents of their control period status, and inform their managers regarding the necessity to control those agents' assignments in accordance with their overtime tour of duty level. Of the 1,784 agents that entered the control period as of January 2016, CBP assigned approximately 96 percent to the Level 1 tour of duty, which set those agents' career average overtime percentages to 25 percent. For the remaining 4 percent of agents entering the control period who either elected to work under Level 2 or Basic tours of duty, CBP calculated these agents' career average overtime percentages and provided the calculation to each agent in January 2016.<sup>15</sup> CBP's assignment of agents to one of the BPAPRA levels did not, however, always correspond with agents' elections during the annual election period. The remaining 4 percent of agents in the control period that did not elect Level 1 fall into the following three categories:

- agents that elected a lower level (Level 2 or Basic) and were initially assigned to Level 1 to maintain consistency with their career average overtime percentage (2 percent);

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<sup>14</sup>See 5 U.S.C. § 5550(b)(1)(G); 5 C.F.R. § 550.1615. Implementation of BPAPRA's pay assignment continuity provision requires that CBP regulate agents' tours of duty during the 3 years before they become eligible for immediate retirement. However, agents' retirement annuity calculations are based on the highest average salary over a 3 year period, which may or may not fall within either the agents' control period or last 3 years of work. CBP and OPM officials stated that they have not done, and were not aware of, any specific analysis to determine whether agents' high 3 years of pay is typically achieved by agents in their last 3 years of service before eligibility for immediate retirement. CBP and OPM officials also stated that agents may have worked their highest paid 3 years prior to BPAPRA's implementation while earning AUO. As noted earlier, agents can retire after 20 years of service at age 50 or after 25 years of service at any age.

<sup>15</sup>According to CBP's data, CBP calculated approximately 80 agents' career average overtime percentages for 2016. Of these 80 agents, 72 agents entered their control periods as of the first pay period affected by BPAPRA in January 2016 and 8 will enter their control periods later in 2016.

- agents that hit the statutory pay cap elected and were assigned to Level 2 or Basic (1 percent); and
- agents that elected or were assigned Basic for other reasons such as loss of law enforcement authority or a medical condition (less than 0.5 percent).<sup>16</sup>

In cases where agents were initially assigned to the Level 1 tour of duty in January 2016 to maintain consistency with their career average overtime percentage, CBP plans to change those agents to Level 2 or Basic for the number of pay periods later in the year in order to bring each agent's annual average in alignment with his or her career average.<sup>17</sup> Agents that are assigned varied tours of duty during the course of a year will also see their compensation change accordingly (i.e., the agents' bi-weekly pay checks will change based on which tour of duty is assigned at a given time of year). CBP officials stated that they assigned agents to at least some pay periods at the agents' elected level to accommodate agents' elections at least part of the year. For example, an agent with a career average overtime percentage of 23.5 percent who elected Level 2 (12.5 percent) may be assigned to Level 1 for 22 pay periods and assigned to Level 2 for 4 pay periods.

CBP officials stated that they do not currently have an automated process to complete the career average overtime percentage calculations, and therefore had to complete the calculations for 2016 manually. According to CBP officials, CBP identified agents in the control period by searching CBP personnel records for agents with dates of birth and service computation dates (i.e., initial date of federal law enforcement officer employment) that would meet the control period requirement of nearing retirement eligibility. CBP officials stated that they then reviewed National Finance Center (NFC) records for overtime percentage information from 1992 until present day. For earlier years (before 1992), CBP officials relied on scanned SF-50 records from the electronic Official Personnel File (eOPF) to identify agents' overtime percentages. CBP confirmed that, as provided for in the plan, they assumed the overtime percentage was that of the year directly before or after any missing year's information. In our review of career average overtime percentages for a non-generalizable random sample of 20 agents, we found 12 cases where NFC records did not provide an entire record for CBP to calculate agents' career average overtime percentages. CBP officials stated that using their manual process, they were able to fill in those records' gaps using the eOPF. In addition, we found errors in CBP's calculations of some agents' career average overtime percentages. In response, CBP corrected these errors and provided us with revised calculations that changed 6 agents' career average overtime percentages by up to 1.39 percentage points. Changes to an agent's career average overtime percentage calculation could affect his or her control period tour of duty over the course of a year. For example, a less than 1 percentage point change could require an agent to be assigned to Level 1 for 21 pay periods rather than 22 pay periods. CBP officials stated that they are considering other methods that would allow them to collect the

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<sup>16</sup>General Schedule (GS) employees, which include Border Patrol agents, may receive certain types of premium pay for a biweekly pay period only to the extent that the sum of basic pay and premium pay for the pay period does not exceed the greater of the biweekly rate payable for (1) GS-15, step 10 (including any applicable locality payment or special rate supplement), or (2) the rate payable for level V of the Executive Schedule. See 5 U.S.C. § 5547; 5 C.F.R. § 550.105. Discrepancies in percentage totals are due to rounding.

<sup>17</sup>This practice generally aligns with the consistency standard established by OPM in accordance with BPAPRA, which provides that the consistency requirement is considered to be met when the agent's average overtime supplement percentage during the control period is within 2.5 percentage points of the agent's average overtime supplement during the course of the agent's career prior to entering the control period. See 5 C.F.R. § 550.1615(c).

information and determine agents' career average overtime percentages in a more automated or systematic way in future years, and will implement a verification process for calculations for agents entering the control period starting in 2017.

In accordance with OPM regulations, CBP's plan provides that CBP will report annually to OPM on agents in their control period, including agents' control period start dates, mandatory separation dates, service computation dates, and career average overtime percentages, among other things.<sup>18</sup> According to OPM officials, these reports will help OPM assess whether CBP's plan is effective in controlling agents' overall salaries when nearing retirement eligibility beyond the first year of implementation and protecting the Civil Service Retirement and Disability Fund. CBP provided its first report to OPM in April 2016, which according to OPM officials, helps to establish a baseline by which OPM can make an assessment on whether the plan is effective over time in ensuring pay assignment continuity.

### Implementation of Pay Assignment Continuity Provisions May Affect CBP's Workforce Planning and Agents' Retirement Planning

While CBP's plan is designed to ensure pay assignment continuity, in accordance with BPAPRA and consistent with OPM regulations, the implementation of the pay assignment continuity provisions—including the requirements associated with the control period—may have implications for CBP's workforce planning. As noted earlier, the control period starts once an agent is within 3 years of immediate retirement eligibility and effectively locks that agent into the tour or tours of duty that are consistent with his or her career average overtime percentage until the agent retires. Border Patrol agents may retire immediately after reaching 20 years of service and 50 years of age or at 25 years of service at any age. Therefore, an agent that started his or her career at the age of 22, for example, may be able to immediately retire 25 years later at the age of 47, and would have entered his or her control period 3 years earlier at the age of 44. However, if this agent were to work until the age of 57 (typically the mandatory retirement age for Border Patrol agents), the agent would be in the control period for 13 years. For the 1,784 agents that entered the control period in January 2016, CBP's data show that the control period would range from roughly 2 months to 14 years, if agents were to work to the age of mandatory retirement. On average, agents who entered the control period in January 2016 would be in the control period for about 6.2 years, if working until mandatory retirement.

CBP's plan requires CBP to manage the tours of duty for agents for the entire time that they are in their control period to keep agents' overtime percentage consistent with their career averages. For example, an agent who chooses to work at Level 2 for 5 years of a potential 25 year career as a Border Patrol agent ultimately affects his or her career overtime average under BPAPRA, making his or her career overtime average lower than the maximum 25 percent (around 22 percent). In this situation, to ensure that the agent in his or her control period works at a pay level consistent with the agent's career average, the agent would have to work a combination of tours of duty over the course of a year to maintain an annual average overtime of 22 percent. Consequently, CBP's plan, in accordance with BPAPRA and consistent with OPM

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<sup>18</sup>See 5 C.F.R. § 1550.1615(e)(1). CBP is also required to report annual data to OPM for all Border Patrol agents—not just those in the control period. See 5 C.F.R. § 1550.1615(e)(2). For example, CBP is required to report information about the amount of earnings subject to retirement deductions including overtime supplement payments, service computation dates and service computation dates with law enforcement officer service credit, and date of birth, among other things.

regulations, does not permit the agent to work permanently at either Level 1 or Level 2 during the control period, even if willing and able to do so. Therefore, CBP's staffing decisions will have to take into account the number of overtime hours that an individual agent is permitted or required to work during his or her control period. CBP, Border Patrol, and OPM officials stated that controlling agents' tours of duty elections will create an administrative burden on CBP and Border Patrol's management. This is because CBP management will have to determine how to schedule individual agents in order to meet overall agency and each duty location's (e.g., sector or station) needs as well as maintain agents' control period consistency requirements to produce the right percentage of overtime pay over the course of every year the agent is in his or her control period until retirement.<sup>19</sup> Though the current cohort of control period agents is relatively small, that number will grow as current agents remain in the control period and new agents enter the control period in coming years. According to Border Patrol officials, the growing number of control period agents and the lack of flexibility in scheduling those agents will increase the administrative burden on CBP and Border Patrol management, and potentially have adverse effects on operations.

Implementation of the pay assignment continuity provisions also may have implications on agents' retirement planning. Because agents' control periods may last more than 10 years and may include their high 3 years' salary on which their retirement annuity is based, decisions made on overtime levels early in agents' careers will have lasting implications on their future retirement annuity. CBP, OPM, and National Border Patrol Council officials stated that Border Patrol agents are the only federal law enforcement officer positions for which the overtime they work over the course of their careers affects the amount of overtime they will work as they near retirement eligibility (i.e., once they enter their control period) and the amount of their retirement annuities.<sup>20</sup> In addition, CBP, Border Patrol, and National Border Patrol Council officials stated that the lack of flexibility for agents to elect to work less overtime at certain points in their careers (such as for family or medical reasons) or during their control period may affect CBP's hiring and retention of Border Patrol agents.<sup>21</sup>

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<sup>19</sup>OPM regulations provide, in general, that the consistency requirements are considered to be met when an agent's average overtime supplement percentage during all consecutive 3-year periods within the control period is within 2.5 percentage points of the agent's average overtime supplement percentage during the course of the agent's career prior to the beginning of the agent's control period. See 5 C.F.R. § 550.1615(c).

<sup>20</sup>According to OPM officials, the overtime worked by CBP officers, who are CBP employees but not federal law enforcement officers, over the course of their careers may have a similar impact on the amount of overtime that a CBP officer can work as he or she nears retirement eligibility. See 19 C.F.R. § 24.16 (providing, in general, that for CBP officers within 3 years of their statutory retirement eligibility, the amount of overtime that can be worked is limited to, for the purposes of annuity integrity, the average yearly number of overtime hours the officer worked during his or her career as a CBP officer). CBP officials cited Law Enforcement Availability Pay (LEAP) as an example of an overtime compensation scheme that does not impose limitations comparable to what Border Patrol agents may experience under BPAPRA. First authorized in 1994, LEAP provides mandatory payment of 25 percent of base pay to federal criminal investigators (e.g., FBI agents) for working or being available to work an annual average of 2 hours or more of unscheduled duty per standard workday and, unlike the overtime supplement authorized by BPAPRA, the LEAP percentage is fixed throughout a criminal investigator's career and is not subject to change based on employee elections. See 5 U.S.C. § 5545a; 5 C.F.R. §§ 550.181-550.187. Under LEAP, an agent is compensated for being available to work the additional hours but circumstances may not actually require that an agent perform his or her duty during that time. Border Patrol agents assigned to a Level 1 tour of duty under BPAPRA, which also provides a 25 percent increase to base pay, however, are scheduled for and must work the additional 2 hours per workday. LEAP, like overtime authorized under BPAPRA, is included as part of a law enforcement officer's basic pay for purposes of calculating federal retirement benefits.

<sup>21</sup>Among other factors limiting agents' flexibility with regard to the amount of overtime worked is the requirement in BPAPRA that, except as otherwise provided in the statute, at least 90 percent of all Border Patrol agents at each duty

Border Patrol and OPM officials stated that other methods for preventing agents from artificially enhancing retirement annuities by working more overtime than usual later in their careers may be more efficient. Border Patrol officials stated that one option could be to allow a period during which agents would be considered to have fully contributed toward their retirement-eligible overtime and thus allow agents to elect any BPAPRA level during their control period. OPM officials explained that one alternative for preventing agents from artificially enhancing their retirement annuities would be to adjust agents' high 3 average salaries based on the average overtime worked over their entire careers. OPM officials stated that another alternative would be to allow agents to elect any BPAPRA level while in their control period, but only allow a certain amount of the overtime to be retirement-eligible. OPM officials stated, however, that they were not necessarily endorsing these options but were merely providing them as hypothetical examples of alternatives to the current BPAPRA control period requirements. Pursuant to the pay assignment continuity provisions of BPAPRA, OPM officials stated that they had limited flexibility to implement other mechanisms in regulation to prevent agents from artificially enhancing their retirement annuities.

Officials from Border Patrol management and the National Border Patrol Council said that they are concerned about the lack of flexibility in scheduling overtime, and commented that operational decisions should not be driven by retirement pay continuity requirements. Border Patrol management officials also noted that they have communicated to agents the potential implications of BPAPRA tour of duty elections on the agents' retirement annuities and future ability to work overtime once in their control period. In light of these concerns, officials from Border Patrol management and the National Border Patrol Council said that they are exploring options, such as legislative amendments, that would provide more flexibility regarding managing the control period for agents, but that it is too early to determine what actions they would take. Given that CBP's plan to ensure retirement pay continuity has only recently been implemented, it is too soon to determine the extent of its effects on CBP's workforce planning, individual agents' retirement benefits, or CBP's recruitment and retention of agents.

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location shall be assigned to the Level 1 rate of pay. See 5 U.S.C. § 5550(b)(1)(E). We reported that as of January 2016, approximately 95 percent of Border Patrol agents were assigned to the Level 1 tour of duty. See GAO, *U.S. Customs and Border Protection: Review of the Staffing Analysis Report under the Border Patrol Pay Reform Act of 2014*, GAO-16-606R (Washington, D.C.: May 26, 2016).

## Agency Comments

We provided DHS and OPM with a draft of this report for review and comment. DHS and OPM provided technical comments, which we incorporated as appropriate.

We are sending copies of this report to the appropriate congressional committees, the Secretary of Homeland Security, the Commissioner of the U.S. Customs and Border Protection, the Acting Director of the Office of Personnel Management, and other interested parties. In addition, the report is available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (202) 512-8777 or [GamblerR@gao.gov](mailto:GamblerR@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report include Adam Hoffman (Assistant Director), Michele Fejfar, Jennifer Kamara, Thomas Lombardi, Elizabeth Luke, and Joseph Silvestri.

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

Rebecca Gambler  
Director, Homeland Security and Justice

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