

**The Federal Protective
Service Has Not
Managed Overtime
Effectively**





DHS OIG HIGHLIGHTS

The Federal Protective Service Has Not Managed Overtime Effectively

December 11, 2018

Why We Did This Inspection

In November 2017, the National Protection and Programs Directorate (NPPD) Chief of Staff requested a review to determine whether Federal Protective Service (FPS) inspectors' positions were classified correctly for purposes of earning overtime under the *Fair Labor Standards Act*. We conducted this inspection to determine whether FPS inspector positions are properly classified and whether FPS effectively managed the use of overtime.

What We Recommend

We made four recommendations for NPPD and FPS to determine the propriety of overtime payments, develop detailed guidance on the use of overtime and WebTA, monitor and track overtime, and retain documentation as required.

For Further Information:

Contact our Office of Public Affairs at (202) 981-6000, or email us at DHS-OIG.OfficePublicAffairs@oig.dhs.gov

What We Found

After analyzing FPS inspectors' duties and comparing those duties against criteria in the *Fair Labor Standards Act* (FLSA) and applicable regulations, we determined that FPS inspectors were appropriately classified as non-exempt, and therefore, their FLSA overtime pay is not subject to the biweekly premium cap. Although properly classified as non-exempt, inspectors' excessive use of overtime does raise significant concerns. Specifically, 11 of the 19 inspectors reviewed frequently worked multiple 17- to 21-hour shifts with no days off in between. This kind of extensive overtime allowed seven inspectors to earn more than the most senior executives in the Federal Government, with three earning more than the Vice President of the United States. Furthermore, FPS' increasing use of overtime contributed to a projected budget shortfall for fiscal year 2018, potentially putting the FPS mission at risk. The inspectors were able to accumulate the extensive overtime because of poor internal controls, such as management not monitoring the use of overtime. Additionally, inspectors and supervisors did not follow NPPD and FPS guidance on submitting and approving overtime. Although FPS released new requirements in December 2017 and the use of overtime has declined, FPS needs to develop more detailed overtime guidance and communicate it to the workforce more effectively.

NPPD Response

NPPD concurred with the recommendations and described corrective actions to address the issues identified in this report. We consider one recommendation unresolved and open, one recommendation resolved and open, and two recommendations closed.



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Department of Homeland Security

Washington, DC 20528 / www.oig.dhs.gov

December 11, 2018

MEMORANDUM FOR: The Honorable Christopher C. Krebs
Under Secretary
National Protection and Programs Directorate

L. Eric Patterson
Director
Federal Protective Service

FROM: John V. Kelly 
Senior Official Performing the Duties of the
Inspector General

SUBJECT: *The Federal Protective Service Has Not Managed
Overtime Effectively*

Attached for your action is our final report, *The Federal Protective Service Has Not Managed Overtime Effectively*. We incorporated the formal comments from the NPPD and FPS in the final report.

The report contains four recommendations to enhance the program's overall effectiveness. NPPD concurred with all recommendations. Based on information provided in your response to the draft report, we consider one recommendation unresolved and open, one recommendation resolved and open, and two recommendations closed. Once your office has fully implemented the recommendations, please submit a formal closeout letter to us within 30 days so that we may close the recommendations. The memorandum should be accompanied by evidence showing completion of the agreed-upon corrective actions. Please send your response or closure request to OIGInspectionsFollowup@oig.dhs.gov.

Consistent with our responsibility under the *Inspector General Act*, we will provide copies of our report to congressional committees with oversight and appropriation responsibility over the Department of Homeland Security. We will post the report on our website for public dissemination.

Please call me with any questions, or your staff may contact Jennifer L. Costello, Deputy Inspector General, or Tatyana Martell, Chief Inspector, at (202) 981-6000.



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Abbreviations

CFR	Code of Federal Regulations
FLSA	<i>Fair Labor Standards Act</i>
FPS	Federal Protective Service
GAO	Government Accountability Office
GS	general schedule
NPPD	National Protection and Programs Directorate
OIG	Office of Inspector General
OMB	Office of Management and Budget
OPM	Office of Personnel Management
SES	Senior Executive Service
USC	United States Code



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Background

The Federal Protective Service (FPS), within the Department of Homeland Security's National Protection and Programs Directorate (NPPD), protects buildings, grounds, and property that are owned, occupied, or secured by the Federal Government. To help carry out this mission, FPS employs inspectors whose duties include preserving property; controlling vehicular and pedestrian traffic; enforcing regulations that prohibit disturbances; and preventing the possession of weapons and explosives, as well as the possession and use of narcotics and other drugs on Federal property.

In November 2017, the DHS Office of Inspector General (OIG) Hotline received a complaint from the NPPD Chief of Staff requesting a review to determine whether NPPD had correctly classified the inspectors' positions for purposes of earning overtime under the *Fair Labor Standards Act* (FLSA).¹ The complaint noted that an analysis conducted by the NPPD Office of Human Capital found the amount of overtime for 19 inspectors exceeded the general schedule (GS)² biweekly premium pay cap established by the Office of Personnel Management (OPM).³

In general, Federal employees are either not covered by the FLSA (exempt) or covered by the FLSA (non-exempt).⁴ Exempt employees may receive "premium pay" beyond their basic rate for working certain types of hours or under certain types of conditions,⁵ but this pay is subject to the biweekly cap mentioned previously. In contrast, when non-exempt employees earn overtime pay, only

¹ *Fair Labor Standards Act of 1938*, ch. 676, § 1, 52 Stat. 1060 (codified as amended at 29 United States Code (USC) §§ 201-19)

² The GS classification and pay system covers the majority of civilian white-collar Federal employees in professional, technical, administrative, and clerical positions. Each agency classifies its GS positions and appoints and pays its GS employees filling those positions following statutory and OPM guidelines.

³ There are 26, 2-week (80 hour) pay periods in the calendar year. Under 5 USC 5547(a) and 5 Code of Federal Regulations (CFR) 550.105, premium pay cannot be paid to the extent that doing so would cause an employee's basic pay, overtime pay, the dollar value of compensatory time off, night pay, annual premium pay, Sunday premium pay, and holiday premium pay to exceed the greater of the biweekly rate for:

- GS-15, step 10 (including any applicable special salary rate or locality rate of pay), or
- Level V of the Executive Schedule.

⁴ 5 CFR § 551.201

⁵ 5 CFR § 550.103 defines premium pay as "the dollar value of earned hours of compensatory time off and additional pay authorized by subchapter V of chapter 55 of title 5, United States Code, and this subpart for overtime, night, Sunday, or holiday work; or for standby duty, administratively uncontrollable overtime work, or availability duty. This excludes overtime pay paid to employees under the *Fair Labor Standards Act* and compensatory time off earned in lieu of such overtime pay."



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Sunday and night pay are considered “premium pay” and are subject to pay caps.⁶ All other overtime pay is not considered “premium pay” and therefore does not count toward the biweekly caps. FLSA overtime pay is also excluded from aggregate compensation calculations for purposes of determining maximum GS pay limitations.⁷

Regardless of an employee’s FLSA status, overtime should generally be used to meet temporary needs during emergencies or for certain special projects that cannot be completed during normal work hours. The Code of Federal Regulations⁸ provides guidance on the authorization of overtime, noting that hours worked in excess of 8 hours in a day, or in excess of 40 hours in a workweek, must be officially ordered or approved only in writing by an officer or employee to whom this authority has been specifically delegated. Although this is not a requirement for FLSA non-exempt employees, FPS included similar language in its own overtime guidance. Furthermore, the Office of Management and Budget (OMB) has stated that agency officials are responsible for ensuring adequate approval procedures are in place to avoid overtime abuses.⁹

Federal employees are required to repay the government if they receive salary payments in error, including overtime pay. However, employees may request that an agency waive the debt, which the agency may do if it determines collecting it “would be against equity and good conscience and not in the best interests of the United States.”¹⁰ Agencies may not waive the debt when there is any “indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee or any other person having an interest in obtaining a waiver of the claim.”¹¹

This report (1) addresses whether FPS inspectors’ FLSA status is correct, (2) discusses FPS’ inadequate management of overtime, and (3) describes a records’ retention issue discovered during the course of our work.

⁶ Under 5 CFR § 550.172 and 5 CFR § 550.121, FLSA non-exempt employees may still earn other premium pay, such as Sunday premium pay and night pay, which remain subject to the premium pay biweekly and annual limitations.

⁷ 5 CFR § 530.202

⁸ 5 CFR § 550.111

⁹ Circular A-11, *Preparation, Submission, and Execution of the Budget* (July 2016)

¹⁰ 5 USC § 5584(a)

¹¹ 5 USC § 5584(b)(1)



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Results of Inspection

After analyzing FPS inspectors' duties and comparing those duties against criteria in the FLSA and applicable regulations, we determined that FPS inspectors were appropriately classified as non-exempt, and therefore, their FLSA overtime pay is not subject to the biweekly premium cap. Although properly classified as non-exempt, inspectors' excessive use of overtime does raise significant concerns. Specifically, 11 of the 19 inspectors reviewed frequently worked multiple 17- to 21-hour shifts with no days off in between. This kind of extensive overtime allowed seven inspectors to earn more than the most senior executives in the Federal Government, with three earning more than the Vice President of the United States. Furthermore, the overtime use ultimately contributed to a projected budget shortfall for fiscal year 2018, potentially putting the FPS mission at risk. The inspectors were able to accumulate the extensive overtime because of poor internal controls, such as management not monitoring the use of overtime. Additionally, inspectors and supervisors did not follow NPPD and FPS guidance on submitting and approving overtime. Although FPS released new requirements in December 2017 and the use of overtime has declined, FPS needs to develop more detailed overtime guidance and communicate it to the workforce more effectively.

Inspectors Are Correctly Classified as FLSA Non-Exempt

After analyzing FPS inspectors' duties and comparing those duties against criteria in the FLSA and applicable regulations, we determined that NPPD appropriately classified the inspectors as non-exempt, and therefore, their FLSA overtime pay is not subject to caps on biweekly premium pay or aggregate compensation.

According to the FLSA regulations, each employee is presumed to be FLSA non-exempt unless the employing agency correctly determines that the employee "clearly meets the criteria for exemption" to overcome that presumption.¹² The FLSA determination "must ultimately rest on the duties actually performed by the employee."¹³ The regulations permit exemption of executive, administrative, learned professional, creative professional, and computer employees.

The 19 FPS inspectors in question were classified at the non-supervisory GS-12 level. Their duties include ensuring compliance with security standards and investigating physical and technical security protective measures. These duties do not meet the requirements of any of the aforementioned exemptions. For example, the three professional and computer employee exemptions require

¹² 5 CFR § 551.202(a); 5 CFR § 551.202(d)

¹³ 5 CFR § 551.202(e)



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advanced knowledge and specialized skills in the fields of science, learning, or art, while the executive exemption covers employees whose primary duty is management. With regard to the administrative exemption, the FLSA regulations specifically note that ordinary inspection work “does not meet the duties requirements for the administrative exemption” because inspectors “perform specialized work along standardized lines involving well-established techniques and procedures which may have been catalogued and described in manuals or other sources.”

Ineffective Management of Overtime Leads to Potential Fraud and Budget Shortfalls, Though New Policies Show Improvement

Although we did not identify any problems with the FPS inspectors’ FLSA classification, their excessive use of overtime does raise significant concerns. For example, 11 of the 19 inspectors frequently worked multiple 17- to 21-hour shifts with no days off in between, resulting in unusually high earnings for calendar year 2017. Specifically, through overtime, 7 of the 19 inspectors earned more than some of the most senior executives in the Federal Government, and 4 earned a gross pay of double what they earned through regular and other pay alone. Such overtime use and earnings can be an indicator of time and attendance fraud, unless there is a reasonable justification for the work. The overtime use contributed to a projected budget shortfall for FY 2018, potentially putting the FPS mission at risk. In September 2017, NPPD identified problems with the use of overtime, and FPS subsequently added a requirement that any overtime exceeding 25 hours in a pay period required additional review and validation by regional and headquarters leadership. Since the additional oversight requirement, it appears the use of overtime has declined.

FPS Inspectors Work Excessive Amounts of Overtime

According to FPS officials, inspectors may incur overtime as part of their normal duties. For example, they may need to respond to after-hours service calls, conduct covert security, and complete police reports. Unscheduled events requiring FPS participation can also incur overtime, including providing protection at protests and demonstrations impacting a Federal building and responding to emergencies and natural disasters, such as hurricanes. Overtime is also needed to cover shifts when there is a shortage of inspectors due to sick calls or training. FPS inspectors and supervisors we spoke with said that inspectors may work 16 hours in a day when they work a regular 8-hour shift and then work a second 8-hour shift covering for another inspector. K-9 inspectors (inspectors who work with dogs trained to detect explosives) can work upwards of 19 hours in 1 day. However, we question whether working these types of back-to-back shifts is sustainable as there is little rest time



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between shifts. Further, as shown in table 1, the frequency of the overtime use resulted in extremely high salaries for several of the inspectors.

Table 1: FPS Inspector Pay and Overtime Hours for Calendar Year 2017

Number	Overtime Hours	Overtime Pay	Regular and Other Pay ^a	Gross Pay
1	910.00	\$52,028.96	\$79,699.81	\$131,728.77
2 (K-9) ^b	589.00	\$42,202.38	\$101,430.87	\$143,633.25
3	808.00	\$57,442.83	\$99,185.83	\$156,628.66
4	1,246.50	\$73,942.48	\$87,275.38	\$161,217.86
5 (K-9)	1,002.00	\$65,949.14	\$96,025.39	\$161,974.53
6	949.50	\$64,956.19	\$98,001.58	\$162,957.77
7	1,190.50	\$76,034.85	\$94,628.51	\$170,663.36
8 (K-9)	985.25	\$69,716.36	\$101,885.65	\$171,602.01
9 (K-9)	938.50	\$67,449.97	\$107,487.70	\$174,937.67
10 (K-9)	990.50	\$72,184.73	\$103,073.77	\$175,258.50
11	1,269.00	\$81,862.89	\$99,226.43	\$181,089.32
12	1,214.75	\$78,150.81	\$103,055.18	\$181,205.99
13	1,228.50	\$88,057.13	\$105,143.21	\$193,200.34
14	1,360.00	\$94,638.27	\$103,711.71	\$198,349.98
15 (K-9)	1,327.50	\$99,453.56	\$116,075.37	\$215,528.93
16	1,722.50	\$119,948.84	\$103,566.30	\$223,515.14
17 (K-9)	1,763.00	\$125,249.63	\$115,672.58	\$240,922.21
18 (K-9)	3,000.00	\$209,069.14	\$107,386.63	\$316,455.77
19 (K-9)	3,202.50	\$230,429.91	\$112,904.84	\$343,334.75
Total:		\$1,768,768.07		\$3,704,204.81

Source: OIG analysis of FPS data

^a. Regular pay is standard, actual hours worked. Other pay includes compensation inspectors receive for achievement awards, annual leave, sick leave, holiday, and compensatory time, as well as additional pay for nights and Sundays that is premium pay and not considered FLSA overtime.

^b. K-9 handlers receive an hour each day in FLSA overtime to care for their dogs; up to 365 days per year. Thus, their FLSA overtime hours and FLSA overtime pay are higher.

Overtime pay for the 19 inspectors comprised 48 percent of their total compensation and cost FPS \$1,768,768 in calendar year 2017; in contrast, FPS’ overall overtime budget for FY 2017 was \$11.2 million.¹⁴ With regard to individual compensation, 7 of the 19 inspectors’ gross pay exceeded \$187,000, the maximum pay rate for members of the Senior Executive Service (SES) during 2017.¹⁵ Of these seven inspectors, five earned more than \$215,000, well

¹⁴ The FY 2017 total FPS budget was \$1.4 billion.

¹⁵ The SES leads America’s workforce. As the keystone of the *Civil Service Reform Act of 1978*, the SES was established to “ensure that the executive management of the Government of the



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over the \$207,800 maximum rate of pay for many of the most senior political appointees, including cabinet-level Secretaries. Three earned more than \$240,100, the salary of the Vice President of the United States.

After reviewing earning and leave statements and WebTA data, we determined that there were no errors or other irregularities in the actual pay calculations; the inspectors' high salaries can be attributed solely to the use of FLSA overtime. Nonetheless, we have concerns about the inspectors' ability to work the amount of overtime that they claimed. For example, 12 of the 19 inspectors each reported working more than 1,000 hours of overtime in 2017 and claimed an average of 63 overtime hours for each 80 hour pay period. Further, 11 of the 19 inspectors frequently worked multiple 17- to 21-hour shifts with no days off in between. Examples include the following:

- Inspector 13 worked more than 172 hours in one 80-hour pay period.
- Inspector 16 worked 90 hours over a 5-day period.
- Inspector 17 worked more than 60 hours of overtime in 16 pay periods.
- Inspector 18 worked almost every day from January 1 through August 23, 2017, including multiple 17-, 18-, and 19-hour shifts on consecutive days. Inspector 18 also reported working an average of 116 hours of overtime every pay period for the first 21 pay periods of 2017.
- Inspector 19 worked almost every day from January 1 through October 31, 2017, working as many as 13 consecutive 17-hour shifts.

FPS Inspectors and Supervisors Failed to Comply with Overtime Request and Approval Process

NPPD and FPS did not have formal policies related to the use of overtime, but instead issued guidance through emails to employees in September 2014 and July 2017, respectively. Taken together, the guidance stated that employees needed to submit written requests for overtime and that their immediate supervisors needed to approve the request in advance before the individual would be entitled to work the overtime. In cases where it was not feasible to obtain written approval in advance, employees needed to submit a written

United States is responsive to the needs, policies, and goals of the Nation and otherwise is of the highest quality." Members of the SES serve in the key positions just below the top Presidential appointees.



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request as soon as possible, but no later than 48 hours after the overtime work was completed.¹⁶ The written request had to:

- describe the work to be performed;
- explain why such work cannot (or could not) be performed during regular work hours;
- show the names, FLSA designations, and grades of the employees required to work; and
- include an estimate (or statement) of the total number of hours required and the dates on which the work is to be (or was) performed.

The guidance noted that as an interim record-keeping method, employees and supervisors will use the WebTA¹⁷ system to document the request and approval process. The system contains a feature for requesting overtime in advance allowing employees to list total hours of overtime requested per day, specific start and end times, and includes comment boxes for employees and supervisors to add additional information. The July 2017 guidance clarified that in “emergent” situations, requests and approvals could be done orally or via email, but entered in WebTA as soon as possible, and the supervisor must note the reason for the request and approval delay as part of the approval process.

Our review of WebTA timesheets for the 19 FPS inspectors showed that collectively these inspectors worked about 2,620 instances of overtime ranging from 1 to 18 hours during calendar year 2017.¹⁸ Due to a system error, we were not able to obtain all the request and approval information associated with the WebTA timesheets. Therefore, we could only calculate compliance for 2,110 instances of overtime requests. When we completed this analysis, we could not find a single instance where the request and the approval for overtime met all the criteria described in the aforementioned guidance. For example:

- Inspectors submitted only 33 percent of requests (700 out of 2,110) in advance in WebTA. Of these requests submitted in advance, supervisors approved 53 percent (369 out of 700) before the overtime work occurred and 47 percent (331 out of 700) after the overtime work occurred.

¹⁶ The guidance states that supervisors will ensure such requests be approved in a timely manner, and does not place a specific deadline for supervisory approval.

¹⁷ WebTA is a web-based Time and Attendance system used by Federal employees to enter and validate their biweekly hours worked and leave taken.

¹⁸ This number includes multiple instances of overtime during each pay period.



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- Inspectors submitted 67 percent of requests (1,410 out of 2,110) in WebTA after the overtime had already been performed, but 68 percent of these requests (962 out of 1,410) did not meet the requirement to submit requests within 48 hours after the overtime work was completed.
- FPS supervisors never noted reasons for delays when approving the overtime request, as the July 2017 memo required.
- The inspectors used vague phrases that make it difficult to determine what they were doing specifically. Examples of these entries include “OBS,” “Central District,” “manpower shortage,” “extended coverage,” or “SE, MD, Central, Days, Nights, Mids,” instead of describing the work to be performed.
- None of the requests explained why the overtime work could not be performed during regular work hours.

FPS inspectors and supervisors told us that they thought they had sufficiently documented the overtime in WebTA. They stated that they were not aware of any specific overtime guidance and explained they probably missed such guidance if it was disseminated through email. Furthermore, the inspectors thought their comments in WebTA provided enough information to support the need for overtime because the requests to perform the overtime came directly from their supervisors. The inspectors and supervisors described a practice in which the supervisor determined the need for overtime and then requested, orally or via email, available inspectors to volunteer to work. If multiple inspectors volunteered, the supervisor made a selection and then notified the selected volunteer that he or she would be performing overtime.

As previously noted, overtime should generally be used to meet temporary needs during emergencies or for certain special projects that cannot be completed during normal work hours. Hours worked in excess of 8 hours in a day, or in excess of 40 hours in a workweek, must be officially ordered or approved only in writing by an officer or employee to whom this authority has been specifically delegated.¹⁹ FPS’s failure to adequately justify and document overtime in this manner presents a real threat to the organization.

Multiple Government Accountability Office (GAO) reports, OIG reports, and congressional testimony over the past 40 years have detailed the risks associated with not properly authorizing overtime charges. In particular, an unusually high number of overtime hours worked, coupled with a failure to

¹⁹ 5 CFR § 550.111



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properly document and supervise overtime use, is a key indicator of fraud.²⁰ Hence, we are questioning the \$1,768,768 in overtime payments as unsupported costs because overtime requests were vague and not supported by justifications describing official requirements of work that could not be performed during normal work hours.

Excessive Overtime Caused Projected Budget Shortfalls

In addition to instances of potential fraud, the excessive overtime spending we described earlier contributed to a projected budget shortfall for FY 2018, prompting the FPS Director to send a memo to FPS management to warn of a “substantial budget shortfall” for FY 2018. Although all overtime spending in FY 2017 was under 1.5 percent of the total FPS budget for FY 2017,²¹ FPS has increasingly exceeded its overtime budget for the last 3 years.

As shown in figure 1, in FY 2015 FPS exceeded the overtime budget by 22 percent, in FY 2016 by 38 percent, and in FY 2017 by 55 percent. According to FPS officials, when FPS exceeds its overtime budget, they have to rely on leftover funding from previous fiscal years (carry-over funds). However, according to the Financial Management Division Director, when no carry-over funds are available, FPS has to limit spending in other areas and may not be able to fully complete their mission. For example, in FY 2018, FPS was under a self-imposed hiring freeze, because, according to FPS management officials, “FPS did not have the money.” Both OMB²² and GAO²³ have stressed the need for management to monitor the use of overtime and to ensure that internal controls are functioning correctly. However, we found no policies requiring FPS management to monitor overtime use.

²⁰ See, e.g., Government Accountability Office (GAO), *Federal Overtime Practices*, October 26, 1978, Testimony before the House Committee on Post Office and Civil Service: Compensation and Employee Benefits Subcommittee by H.L. Krieger, Director, Federal Personnel and Compensation Division; Amtrak OIG, *Management of Overtime Best Practice Controls Can Help in Developing Needed Policies and Procedures*, OIG-A-2013-009, March 26, 2013; U.S. Agency for International Development, *Audit of USAID/Afghanistan’s Management Controls Over Overtime Compensation*, F-306-14-001-P, March 23, 2014; Environmental Protection Agency (EPA) OIG, *EPA Not Fully Compliant With Overtime Policies*, 15-P-0293, September 22, 2015.

²¹ The total FPS budget for FY 2017 was \$1.4 billion, with actual overtime spent totaling \$17 million.

²² Circular A-11, *Preparation, Submission, and Execution of the Budget* (July 2014)

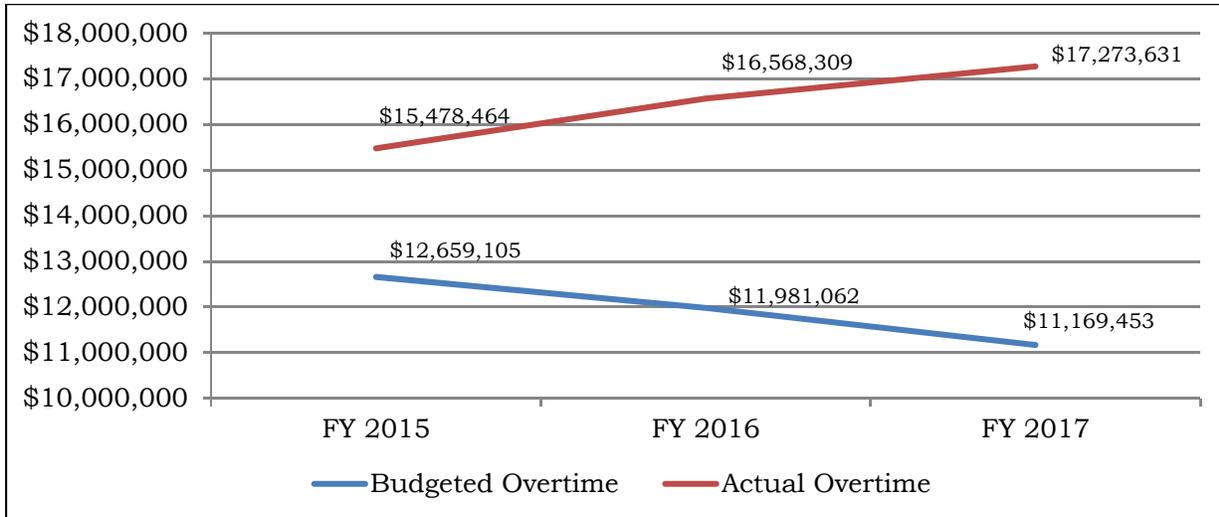
²³ GAO, *Standards for Internal Controls in the Federal Government*, GAO-14-704G, September 2014, at 16.01 (management should establish and operate monitoring activities to monitor the internal control system and evaluate the results) and at OV4.01 (management needs to understand the controls each service organization has designed, has implemented, and operates for the assigned operational process and how the service organization’s internal control system impacts the entity’s internal control system).



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Figure 1: Overtime Paid to All FPS Employees, Budgeted and Actual, FYs 2015 – 2017



Source: OIG analysis of FPS data

FPS Is Better Managing Overtime Use

NPPD first became concerned about the issue of excessive overtime in September 2017. In October 2017, NPPD’s Office of Human Capital conducted a biweekly pay cap analysis of FPS inspectors and found 19 exceeded the pay cap²⁴ for several 2017 pay periods. On November 2, 2017, NPPD sent a memo to the FPS Director summarizing the problems with the 19 inspectors. FPS then notified its management of increased need for oversight of overtime, including accomplishing work during the standard workday or workweek, and instructed the Financial Management Division to monitor the overtime and report on it monthly. In addition, on December 2, 2017, FPS Financial Management Division emailed FPS leadership additional requirements that:

- any overtime over 25 hours in a pay period have additional review and validation by regional and headquarters leadership;
- supervisors and managers, when assigning work, note if any duties will require an employee to work overtime and maintain records of overtime authorizations;
- supervisors provide written justifications for overtime approvals in WebTA, and vague justifications such as “OBS,” “Demonstration,” and “PSO Oversight” would not be accepted; and

²⁴ FPS inspectors are classified as *Fair Labor Standards Act (FLSA)* non-exempt and therefore do not have pay caps. The NPPD Chief of Staff requested this review to determine whether FPS inspector positions were properly classified, based on analysis conducted by NPPD.



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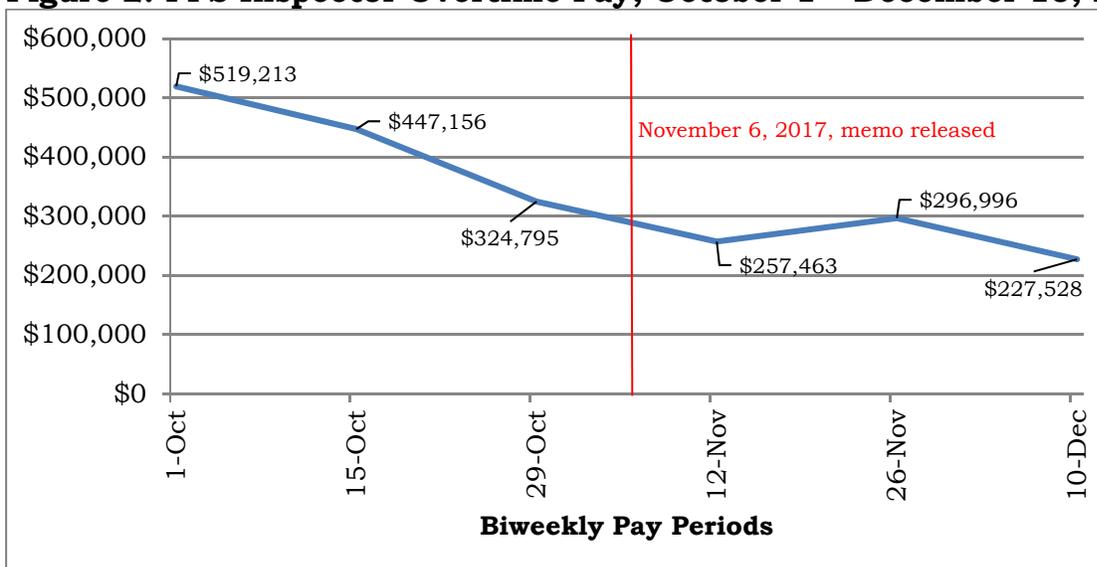
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- all employees receive their supervisor's approval in advance for any requested unscheduled overtime.

FPS inspectors and supervisors we spoke with said they adhere to the 25-hour rule. If an inspector works more than 25 hours of overtime in a pay period, the regional director has to personally approve any overtime for that inspector. FPS staff said the 25-hour rule stopped the back-to-back shifts that contributed to excessive overtime. One supervisor said the new rule has helped him manage the overtime his inspectors work.

According to our analysis, the emphasis on reducing overtime use has been effective. As shown in figure 2, from October 1 through December 10, 2017, overtime pay for FPS inspectors declined. FPS managers told us FPS has been meeting the demands of its mission without relying on excessive overtime; however, inspectors and supervisors are concerned with the safety of inspectors and those they protect if they do not have enough coverage.

Figure 2: FPS Inspector Overtime Pay, October 1 – December 10, 2017



Source: OIG analysis of FPS data

However, in order for this to be a permanent solution to excessive overtime spending, FPS needs to formalize the guidance rather than sending emails, effectively communicate the guidance to all staff, not just management, and monitor overtime for compliance with guidance.



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NPPD Did Not Retain Documentation on Job Classification Approval for FPS Inspectors

During our analysis of inspector duties, we found that NPPD had reclassified FPS inspectors from physical security specialists (0080 series) to law enforcement specialists (1801 series) in May 2015.²⁵ Although this reclassification did not affect our analysis of the inspectors' FLSA status, we note that NPPD did not retain documentation of its approval for the reclassification. The National Archives and Records Administration requires agencies to retain final decisions on a position classification appeal.²⁶ To ensure compliance with these requirements, NPPD should have retained these records.

Recommendations

We recommend the Federal Protective Service Director:

Recommendation 1: Initiate collection actions to recover \$1,768,768 in unsupported costs representing overtime payments determined to be ineligible for payment.

Recommendation 2: Develop formal detailed guidance for inspectors and supervisors on the use of overtime and WebTA, communicate it to the workforce, and maintain it in an easily accessible place for all staff.

Recommendation 3: Establish and implement a long-term policy, similar to the December 2017 guidance, to monitor and track overtime and overtime budget. In addition, evaluate all overtime usage across Federal Protective Service inspectors' staff classified as FLSA non-exempt since May 2015.

We recommend the National Protection and Programs Directorate Under Secretary:

Recommendation 4: Establish a process to retain documentation to comply with National Archives and Records Administration requirements.

²⁵ The primary duties for 0080 job series positions involve developing and evaluating methods to safeguard property and personnel, while the 1801 job series covers positions that supervise, lead, or perform inspection, investigation, enforcement, or compliance work. Based on our work, the 1801 series is a more appropriate classification for FPS inspectors.

²⁶ National Archives and Records Administration, *The General Records Schedule*, December 2017; Section 2.1 Employee Acquisition Records, Items 010, 030, and 040



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Management Comments and OIG Analysis

NPPD concurred with our recommendations. Appendix B contains a copy of NPPD's management comments in their entirety. We also received technical comments and incorporated them into the report where appropriate. We consider one recommendation unresolved and open, one recommendation resolved and open, and two recommendations closed. A summary of NPPD's response and our analysis follows.

NPPD Response to Recommendation 1: NPPD concurred with the recommendation, but would not commit to initializing collection of the unsupported costs until it completes its investigation of the 19 FPS employees. NPPD cited title 5 CFR § 551.401(a)(2) stating that all time spent by an employee performing an activity for the benefit of an agency and under the control or direction of the agency is "hours of work." NPPD noted it must collect specific evidence or analysis to establish that specific employees did not work all or some of the specific overtime claimed, that false statements were made, or that overtime was incorrectly recorded for each hour of overtime at issue. On August 28, 2018, FPS began an investigative inquiry to determine whether there is any evidence that the high overtime hours of 19 FPS employees in 2017 were the result of fraud. NPPD will seek to collect unsupported costs if further investigation concludes that employees were improperly paid.

OIG Analysis: NPPD comments and proposed actions are not fully responsive to the recommendation. This recommendation is considered unresolved and open until NPPD can provide evidence and analysis that employees actually worked under the control or direction of the agency for the benefit of the agency during the time overtime was claimed for each of the 19 FPS inspectors. NPPD also needs to provide evidence of fraud if any overtime hours of 19 FPS inspectors resulted in fraud. Finally, NPPD must also provide records of successful collection of costs where inspectors were improperly paid or evidence of fraud was found.

NPPD Response to Recommendation 2: NPPD concurred with the recommendation and explained that the FPS Director approved an FPS Overtime Pay Directive on September 11, 2018. The directive was posted on the FPS Enterprise Information System, which stores all FPS National and Regional Directives. The FPS Principal Deputy Director also distributed the directive to the FPS workforce using a broadcast message. The directive provides guidance and procedures for reviewing, approving, and recording overtime.

OIG Analysis: We consider these actions responsive to the recommendation, and consider the recommendation closed.



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NPPD Response to Recommendation 3: NPPD concurred with the recommendation and explained that the September 11, 2018 FPS Overtime Pay Directive provides detailed guidance for monitoring and tracking overtime. FPS will also review payroll data from May 2015 through the end of September 2017 to determine if similar overtime usage patterns exist for FLSA non-exempt FPS inspectors.

OIG Analysis: We consider these actions responsive to the recommendation, which is resolved and open. We will close this recommendation when we receive confirmation the September 11, 2018 policy includes guidance for monitoring and tracking overtime, and after FPS completes its review of overtime usage from May 2015 through September 2017.

NPPD Response to Recommendation 4: NPPD concurred with the recommendation and stated that in January 2017 NPPD implemented a File Plan in compliance with the National Archives and Records Administration's General Records Schedule. The plan addresses human capital records and contains a disposition schedule for those records, including position classifications.

OIG Analysis: We consider these actions responsive to the recommendation, and consider the recommendation closed.



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Appendix A

Objective, Scope, and Methodology

DHS OIG was established by the *Homeland Security Act of 2002* (Public Law 107-296) by amendment to the *Inspector General Act of 1978*.

The objective of this inspection was to determine whether FPS inspector positions are properly classified and whether there are caps on the inspectors' pay. To achieve our objective we reviewed position descriptions, reclassification documents, Federal regulations and guidance, FPS and NPPD guidance regarding overtime, and FPS budget information. Additionally, we analyzed earning and leave statements, time and attendance sheets, and overtime requests and approvals. We interviewed officials at NPPD and FPS headquarters, and FPS inspectors and supervisors.

We conducted this review January to July 2018 under the authority of the *Inspector General Act of 1978*, as amended, and according to the *Quality Standards for Inspection and Evaluation* issued by the Council of the Inspectors General on Integrity and Efficiency.

Office of Inspections and Evaluations major contributors to this report are Tatyana Martell, Chief Inspector; Carie Mellies, Lead Inspector; Adam Brown, Senior Inspector; Ayana Henry, Senior Inspector; Gaven Ehrlich, Program Analyst; Mai Huynh, Program Analyst; and Michael Brooks, Independent Referencer.



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Appendix B
NPPD Comments to the Draft Report

U.S. Department of Homeland Security
Washington, DC 20528



**Homeland
Security**

November 9, 2018

MEMORANDUM FOR: John V. Kelly
Senior Official Performing the Duties of the
Inspector General

FROM: Christopher C. Krebs 
Under Secretary
National Protection and Programs Directorate

SUBJECT: Management's Response to OIG Draft Report: "The Federal
Protective Service Has Not Managed Overtime Effectively"
(Project No. 18-035-ISP-NPPD)

Thank you for the opportunity to review and comment on this draft report. The U.S. Department of Homeland Security (DHS), National Protection and Programs Directorate (NPPD) appreciates the work of the Office of Inspector General (OIG) in planning and conducting its review and issuing this report.

NPPD is pleased to note the OIG's positive recognition that the Federal Protective Service (FPS) has appropriately classified its Inspector positions as non-exempt for the purposes of earning overtime under the Fair Labor Standards Act (FLSA). In addition, the OIG recognized that NPPD and FPS efforts to better manage and reduce overtime use had been effective once the excessive use of overtime problem became known. NPPD and FPS will continue to work closely to be good stewards of taxpayer dollars and to implement effective human capital strategies to maintain successful, high-performing organizations.

The draft report contained four recommendations with which NPPD concurs. Attached find our detailed response to each recommendation. Technical comments were previously provided under separate cover.

Again, thank you for the opportunity to review and comment on this draft report. Please feel free to contact me if you have any questions. We look forward to working with you in the future.

Attachment



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Department of Homeland Security

Attachment: Management Response to Recommendations Contained in the Report for Project No. 18-035-ISP-NPPD

The OIG recommended that the FPS Director:

Recommendation 1: Initiate collection actions to recover \$1,768,768 in unsupported costs representing overtime payments determined to be ineligible for payment.

Response: Concur; if sufficient evidence is uncovered to establish that some or all of the FPS employees in question received overtime payments for hours that were not actually worked, NPPD and FPS agree that any such unsupported overtime payments should be recouped. It is important to note, however, that in accordance with 5 C.F.R. § 551.401(a)(2) – All time spent by an employee performing an activity for the benefit of an agency and under the control or direction of the agency is “hours of work.” Such time includes, “[t]ime during which an employee is suffered or permitted to work.” Thus, employees entitled to overtime under the FLSA (non-exempt employees) are entitled to FLSA overtime for all hours worked for which the employer knows or has reason to know the employee is doing so, including those hours that were worked without authorization. *See, e.g., Chao v. Gotham Registry, Inc.*, 514F.3d280, 286-87 (2d Cir. 2008).

Although the OIG’s draft report identifies deficiencies in overtime request and approval processes, and excessive amounts of overtime, the report does not include specific evidence or analysis to establish that specific employees did not work all or some of the specific overtime claimed, that false statements were made, or that overtime was incorrectly recorded. Successful collection actions against the FLSA nonexempt employees would require that these thresholds be met. Therefore, NPPD/FPS cannot commit to initiating collection of a specific amount, including the amount identified in this recommendation, until such evidence is collected and analyzed for each hour of overtime at issue. NPPD/FPS, however, will seek to collect unsupported costs if further investigation concludes that employees were improperly paid.

On August 28, 2018, FPS began conducting an investigative inquiry to determine whether there is any evidence that the unusually high overtime hours of 19 FPS employees in 2017 were the result of fraud. Depending on the results of this inquiry, further action by FPS may be appropriate, including but not limited to referral(s) to the DHS OIG for criminal investigation and/or potential collections actions against the employees involved, as appropriate.

Estimated Completion Date (ECD): January 31, 2019.



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Recommendation 2: Develop formal detailed guidance for inspectors and supervisors on the use of overtime and WebTA, communicate it to the workforce, and maintain it in an easily accessible place for all staff.

Response: Concur. FPS assembled a working group to draft and establish an Overtime Pay directive which provides guidance and procedures for reviewing, approving, and recording overtime. Members of the working group included representatives from the following areas: FPS Headquarters Divisions (e.g., Policy, Workforce Planning, Financial Management, and Performance, Quality, & Compliance); FPS Associate Director for Field Operations (Central Zone), FPS Training and Professional Development Directorate, Attorney Advisor from the DHS Office of General Counsel, and NPPD/Human Capital Employee & Labor Relations.

An FPS Overtime Pay Directive was approved by the FPS Director on September 11, 2018, and subsequently posted on the FPS Enterprise Information System (EIS) which stores all FPS National and Regional directives. In addition, the FPS Principal Deputy Director distributed the directive using a broadcast message to the FPS workforce to announce the approval of the directive containing formal detailed guidance for all employees. A copy of the directive and broadcast message have been sent to the OIG under separate cover.

We request that the OIG consider this recommendation resolved and closed as implemented.

Recommendation 3: Establish and implement a long-term policy, similar to the December 2017 guidance, to monitor and track overtime and overtime budget. In addition, evaluate all overtime usage across Federal Protective Service inspectors' staff classified as FLSA non-exempt since May 2015.

Response: Concur. FPS assembled a working group to develop a policy, finalized on September 11, 2018, that provides detailed guidance for monitoring and tracking overtime (see response to Recommendation 2). FPS will review payroll data from prior years from May 2015 through September 30, 2017 to determine if similar overtime usage patterns exist for FLSA non-exempt FPS inspectors and take additional action(s), as appropriate. ECD: December 31, 2018.

The OIG recommended that the NPPD Under Secretary:

Recommendation 4: Establish a process to retain documentation to comply with National Archives and Records Administration [NARA] requirements.

Response: Concur. NPPD already has a process in place to retain documentation to comply with NARA requirements. For example, NPPD's Office of Human Capital



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(OHC) and Records Management Office have since collaborated to develop and implement a File Plan to be in compliance with NARA's General Records Schedule. A copy of this File Plan has been sent to the OIG under separate cover.

The File Plan was implemented in January 2017, and addresses a multitude of human capital records, and contains a disposition schedule for those records, including position classification. The File Plan was distributed within OHC to the staff responsible for managing and maintaining human capital records. No further action by OHC is required at this time; OHC will remain compliant with NARA's General Records Schedule as outlined in the NPPD File Plan.

We request that the OIG consider this recommendation resolved and closed as implemented.



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Appendix C
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