

DARRELL E. ISSA, CALIFORNIA  
CHAIRMAN

JOHN L. MICA, FLORIDA  
MICHAEL R. TURNER, OHIO  
JOHN J. DUNCAN, JR., TENNESSEE  
PATRICK T. McHENRY, NORTH CAROLINA  
JIM JORDAN, OHIO  
JASON CHAFFETZ, UTAH  
TIM WALBERG, MICHIGAN  
JAMES LANKFORD, OKLAHOMA  
JUSTIN AMASH, MICHIGAN  
PAUL A. GOSAR, ARIZONA  
PATRICK MEEHAN, PENNSYLVANIA  
SCOTT DESJARLAIS, TENNESSEE  
TREY GOWDY, SOUTH CAROLINA  
BLAKE FARENTHOLD, TEXAS  
DOC HASTINGS, WASHINGTON  
CYNTHIA M. LUMMIS, WYOMING  
ROB WOODALL, GEORGIA  
THOMAS MASSIE, KENTUCKY  
DOUG COLLINS, GEORGIA  
MARK MEADOWS, NORTH CAROLINA  
KERRY L. BENTIVOLIO, MICHIGAN  
RON DESANTIS, FLORIDA

LAWRENCE J. BRADY  
STAFF DIRECTOR

ONE HUNDRED THIRTEENTH CONGRESS

# Congress of the United States

## House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5074  
FACSIMILE (202) 225-3974  
MINORITY (202) 225-5051

<http://oversight.house.gov>

ELIJAH E. CUMMINGS, MARYLAND  
RANKING MINORITY MEMBER

CAROLYN B. MALONEY, NEW YORK  
ELEANOR HOLMES NORTON,  
DISTRICT OF COLUMBIA  
JOHN F. TIERNEY, MASSACHUSETTS  
WM. LACY CLAY, MISSOURI  
STEPHEN F. LYNCH, MASSACHUSETTS  
JIM COOPER, TENNESSEE  
GERALD E. CONNOLLY, VIRGINIA  
JACKIE SPEIER, CALIFORNIA  
MATTHEW A. CARTWRIGHT, PENNSYLVANIA  
MARK POCAN, WISCONSIN  
L. TAMMY DUCKWORTH, ILLINOIS  
ROBIN L. KELLY, ILLINOIS  
DANNY K. DAVIS, ILLINOIS  
PETER WELCH, VERMONT  
TONY CARDENAS, CALIFORNIA  
STEVEN A. HORSFORD, NEVADA  
MICHELLE LUJAN GRISHAM, NEW MEXICO

### Opening Statement Rep. John F. Tierney, Ranking Member

### Subcommittee on National Security Committee on Oversight and Government Reform Hearing on "Abuse of Overtime at DHS: Padding Paychecks and Pensions at Taxpayer Expense"

November 20, 2013

Thank you, Chairman Chaffetz, for holding this hearing to discuss concerns raised by a recent Office of Special Counsel report regarding the misuse of overtime payments called Administratively Uncontrollable Overtime (AUO) by employees at the Department of Homeland Security (DHS).

Regulation restricts the use of this type of overtime to a limited set of circumstances, such as when a Border Patrol Agent is investigating criminal activity. According to the report, however, over the last year, seven whistleblowers have alleged routine misuse of AUO in separate DHS offices amounting to nearly \$9 million per year. I understand that two of these cases have now been substantiated by agency investigation after referral from the Special Counsel, one other case was resolved through mediation, and the remaining four cases are pending agency investigation.

In one of the substantiated cases, the Department confirmed that numerous employees and managers in a Customs and Border Protection (CBP) headquarters unit called the Commissioner's Situation Room regularly misused AUO by claiming two hours of AUO following their assigned shift nearly every day and in the absence of a compelling law enforcement need. The Department also confirmed that the Director and Assistant Director authorized and abetted this improper practice. The whistleblower told investigators that instead of working, these employees routinely spent their AUO hours relaxing, surfing the internet, watching television shows, or taking care of personal matters.

Other whistleblowers, like Mr. John Florence, who will be testifying today via videoconference, have alleged that AUO is routinely being used to improperly complete administrative tasks or to cover shift changes. It also has been alleged that some employees were not even present at their duty station during the claimed AUO period. I welcome Mr. Florence's testimony on this topic, and appreciate his willingness to share his story with us.

Special Counsel Lerner, who is with us here today, has expressed serious concerns that these cases and a prior disclosure in 2007 reveal “long-standing abuse of overtime payments by the Department” and strongly indicate that “DHS has a profound and entrenched problem.”

In her report, Special Counsel Lerner also questions the ability and willingness of DHS and CBP to address the AUO problem. After revelations of routine abuses in 2008, CBP promised to issue and implement an agency-wide directive on AUO. Five years later, such a directive has not yet been issued.

These disclosures and DHS’ slow progress in addressing the issue appear to point to a larger and more fundamental problem – the misuse of AUO has become ingrained. The Special Counsel has noted that collecting AUO has become a “culturally acceptable practice” and the National Border Patrol Council has stated that AUO long been “promised, advertised and used by every single agent who’s a non-supervisor.”

While misuse of AUO cannot be tolerated, I fully appreciate the importance of AUO for frontline agents and officers who protect our borders. I want to make sure that AUO will be available for those DHS employees who really need it to carry out the agency’s mission.

I hope that DHS, CBP, and the National Border Patrol Council will be able to provide this Subcommittee with insight into how AUO is being used, any challenges the Department and its components face under the current system, and how the problem is being addressed. I also look forward to hearing our witnesses’ thoughts on whether AUO—which was created 40 years ago—can be fixed or whether it should be replaced by an alternative overtime pay system.

Before I conclude my statement, I would like to ask my colleagues to not let their outrage over these whistleblower disclosures taint our view of federal workers, the vast majority of whom are hardworking and dedicated civil servants who devote their lives to honorably serving and protecting the American people.

---

Contact: Jennifer Hoffman, Communications Director, (202) 226-5181.