

118TH CONGRESS
1ST SESSION

H. R. 1323

To amend title 5, United States Code, to provide that for purposes of computing the annuity of certain law enforcement officers, any hours worked in excess of the limitation applicable to law enforcement premium pay shall be included in such computation, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 1, 2023

Mr. PASCRELL (for himself, Mr. BACON, Mr. FITZPATRICK, and Mr. CONNOLLY) introduced the following bill; which was referred to the Committee on Oversight and Accountability, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend title 5, United States Code, to provide that for purposes of computing the annuity of certain law enforcement officers, any hours worked in excess of the limitation applicable to law enforcement premium pay shall be included in such computation, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE; FINDINGS.**

2 (a) SHORT TITLE.—This Act may be cited as the
3 “LEO Fair Retirement Act of 2023”.

4 (b) FINDINGS.—Congress finds the following:

5 (1) Federal law enforcement officers are never
6 “off-duty”. They are counted on to respond at any
7 time of the day or night, regardless of their official
8 duty status, to protect the public safety. Outside of
9 our Nation’s Armed Forces, theirs is the only pro-
10 fession comprised of individuals who are routinely
11 called upon to put their lives on the line to keep
12 America safe.

13 (2) Though the Federal Government may house
14 the largest variety of occupations of any U.S. em-
15 ployer across its panoply of agencies and entities,
16 Federal law enforcement is absolutely unique among
17 them, and the Federal law enforcement officer has
18 no counterpart in the private sector. It is one of the
19 most stressful, most dangerous, and most rewarding
20 careers for those who meet the rigorous require-
21 ments of the job.

22 (3) It was in recognition of the unique nature
23 of the occupation, and the demanding schedules re-
24 quired of those who fill its ranks, that Congress es-
25 tablished distinct pay and benefit systems for Fed-

1 eral law enforcement positions. This includes basic
2 pay, retirement, and even overtime compensation.

3 (4) Under current law, however, the payment of
4 overtime compensation is limited, and is only pay-
5 able to the extent that the payments do not cause
6 the aggregate of the law enforcement officer's bi-
7 weekly or annual pay to exceed the pay caps estab-
8 lished under section 5547 of title 5, United States
9 Code. This often results in a law enforcement officer
10 working significant amounts of overtime hours year
11 after year for which the officer is never com-
12 pensated.

13 (5) In light of the continuing homeland and na-
14 tional security threats facing our Nation, it is in the
15 interest of the Federal Government to ensure that it
16 can continue to recruit and retain the highest caliber
17 personnel by allowing Federal law enforcement offi-
18 cers the opportunity to reclaim full credit in retire-
19 ment for overtime hours worked but never paid.

20 **SEC. 2. COMPUTATION OF ANNUITY FOR HOURS WORKED**
21 **IN EXCESS OF LAW ENFORCEMENT PREMIUM**
22 **PAY LIMITATIONS.**

23 (a) CSRS.—

1 (1) IN GENERAL.—Section 8339 of title 5,
2 United States Code, is amended by adding at the
3 end the following:

4 “(v)(1) Notwithstanding any other provision of this
5 title, including sections 5545a and 5547, and consistent
6 with the requirements of paragraph (2), any premium pay
7 described in section 5547(a) that would have been received
8 by a law enforcement officer but for the limitation pro-
9 vided in such section shall be included in the average pay
10 of such officer for purposes of computing the annuity of
11 such officer under this section.

12 “(2)(A) Paragraph (1) shall not apply unless the law
13 enforcement officer makes a lump-sum payment to the Of-
14 fice in the manner prescribed under this paragraph.

15 “(B) The officer may—

16 “(i) not later than 180 days before the date
17 that the officer’s annuity will commence, request
18 from the Office an estimate (expressed as a dollar
19 figure) of—

20 “(I) the lump-sum payment described
21 under subparagraph (C);

22 “(II) the amount of the officer’s monthly
23 annuity payment if the officer elects to make
24 the lump-sum payment and receive an amended

1 annuity that includes the application of para-
2 graph (1); and

3 “(III) the amount of such officer’s monthly
4 annuity payment if the officer does not make
5 such an election; and

6 “(ii) consistent with the requirements of sub-
7 paragraph (D), not later than 90 days after receipt
8 of the estimate under clause (i), irrevocably elect to
9 make the lump-sum payment to the Office.

10 “(C) If a law enforcement officer makes an election
11 pursuant to subparagraph (B)(ii), such officer shall make
12 a lump-sum payment to the Office equal to the difference
13 between—

14 “(i) the amount that would have been contrib-
15 uted by the officer and the employer under section
16 8334 during the 3 consecutive years used to deter-
17 mine average pay (as described under section
18 8331(4)) if the rate of basic pay of the officer dur-
19 ing such period of years included any premium pay
20 described in section 5547(a) that would have been
21 received by a law enforcement officer but for the
22 limitation provided in such section; and

23 “(ii) the amount that was so contributed during
24 such period of years.

1 “(D) The officer may elect an actuarial annuity re-
 2 duction, consistent with regulations prescribed by the Of-
 3 fice, in lieu of the lump-sum payment required under sub-
 4 paragraphs (B) and (C).

5 “(3) In this subsection, the term ‘law enforcement of-
 6 ficer’ has the meaning given the term ‘qualified public
 7 safety employee’ in section 72(t)(10) of the Internal Rev-
 8 enue Code of 1986.”.

9 (2) CLARIFICATION WITH RESPECT TO ANNUITY
 10 LIMIT.—The limitation provided in section 8339(f)
 11 of title 5, United States Code, shall apply to any an-
 12 nuity calculated pursuant to subsection (v) of such
 13 section (as added by paragraph (1)).

14 (b) FERS.—Section 8415 of title 5, United States
 15 Code, is amended by adding at the end the following:

16 “(o)(1) Notwithstanding any other provision of this
 17 title, including sections 5545a and 5547, and consistent
 18 with the requirements of paragraph (2), any premium pay
 19 described in section 5547(a) that would have been received
 20 by a law enforcement officer but for the limitation pro-
 21 vided in such section shall be included in the average pay
 22 of such officer for purposes of computing the annuity of
 23 such officer under this section.

24 “(2) Paragraph (1) shall not apply unless the law en-
 25 forcement officer makes a lump-sum payment to the Office

1 in the same manner as prescribed under section
2 8339(v)(2).

3 “(3) In this subsection, the term ‘law enforcement of-
4 ficer’ has the meaning given the term ‘qualified public
5 safety employee’ in section 72(t)(10) of the Internal Rev-
6 enue Code of 1986.”.

7 (c) APPLICATION.—The amendments made by sub-
8 sections (a) and (b) shall apply to any applicable annuity
9 calculated on or after the date that is one year after the
10 date of enactment of this Act.

11 (d) REGULATIONS.—

12 (1) IN GENERAL.—Not later than 1 year after
13 the date of enactment of this Act, the Director of
14 the Office of Personnel Management shall promul-
15 gate regulations to carry out sections 8339(v) and
16 8415(o) of title 5, United States Code, as added by
17 subsections (a) and (b).

18 (2) LUMP-SUM PAYMENT.—Such regulations
19 shall include—

20 (A) procedures under which any law en-
21 forcement officer covered by such sections may
22 make the lump-sum payment as described
23 under sections 8339(v)(2) and 8415(o)(2) of
24 title 5, United States Code, as added by sub-

1 sections (a) and (b), from amounts within the
2 officer's Thrift Savings Fund account; and

3 (B) procedures, promulgated in consulta-
4 tion with the Thrift Savings Board, under
5 which a transfer may be made from such ac-
6 count to the Office of Personnel Management.

7 (3) SOLICITATION OF PAYROLL INFORMA-
8 TION.—Such regulations shall include—

9 (A) guidance for agencies employing law
10 enforcement officers for proper retention of
11 payroll information required to carry out the
12 amendments made by subsections (a) and (b),
13 including, for each creditable year of service,
14 the difference between the amount the law en-
15 forcement officer received in gross compensa-
16 tion and the amount that would have been re-
17 ceived as gross compensation but for the appli-
18 cation of the premium pay caps in section 5547
19 of title 5, United States Code; and

20 (B) procedures for the Director to solicit
21 sufficient payroll information from the head of
22 each applicable agency to provide for the com-
23 putations required by the amendments made by
24 this Act.

1 **SEC. 3. ELIGIBILITY FOR AVAILABILITY PAY.**

2 (a) IN GENERAL.—Section 5545a of title 5, United
3 States Code, is amended by adding at the end the fol-
4 lowing:

5 “(l)(1) The provisions of subsections (a)–(h) pro-
6 viding for availability pay shall apply to a covered em-
7 ployee. For the purpose of this section, section 5542(d)
8 of this title, and section 13(a)(16) and (b)(30) of the Fair
9 Labor Standards Act of 1938 (29 U.S.C. 213(a)(16) and
10 (b)(30)), a covered employee shall be deemed to be a crimi-
11 nal investigator as defined in this section.

12 “(2) In this subsection, the term ‘covered employee’
13 means—

14 “(A) a Postal Inspector (referred to in section
15 1003(e) of title 39);

16 “(B) a criminal investigator classified under the
17 GS–1811 series (or any successor series);

18 “(C) a Federal air marshal;

19 “(D) a special agent in the Diplomatic Security
20 Service;

21 “(E) a probation officer (referred to in section
22 3672 of title 18); and

23 “(F) a pretrial services officer (referred to in
24 section 3153 of title 18).”.

25 (b) CONFORMING AMENDMENT.—Section 410(b)(11)
26 of title 39, United States Code, is amended by striking

1 “section 5520a” and inserting “sections 5520a and
2 5545a”.

3 **SEC. 4. CREDIT FOR CERTAIN LUMP-SUM PAYMENTS OF**
4 **UNCOMPENSATED LAW ENFORCEMENT PRE-**
5 **MIUM PAY.**

6 (a) IN GENERAL.—In the case of an individual, there
7 shall be allowed as a credit against the tax imposed by
8 chapter 1 of the Internal Revenue Code of 1986 for the
9 taxable year an amount equal to the sum of the lump-
10 sum payments made by the individual during such taxable
11 year pursuant to section 8339(v)(2) or 8415(o)(2) of title
12 5, United States Code, with respect to an annuity of such
13 individual.

14 (b) TREATED AS NON-REFUNDABLE PERSONAL
15 CREDIT.—For purposes of the Internal Revenue Code of
16 1986, the credit allowed under subsection (a) shall be
17 treated as a credit allowed under subpart A of part IV
18 of subchapter A of chapter 1 of such Code.

○