

**National Border Patrol Council
FLSA Exemption & AUO Excludability Q&A**

Q1. How will the agency's recent decision to exempt BPA's from FLSA impact me?

A1. The impact will be financial in the form of a pay reduction (*loss of FLSA payment*) for Pay Period 8, the period covering April 19, 2015 – May 2, 2015. We anticipate that with the passage of a Technical Amendment that will be introduced by Senator McCain, all agents will recoup the loss of FLSA for both Pay Periods 8 and 9.

Q2. I am a canine handler, and in Pay Period 8, for each day that I kept my assigned canine at home with me, I worked and claimed the additional hour of canine maintenance (17/17 pay) authorized under the negotiated and agreed upon Canine Policy. How will the exemption of FLSA affect those hours that I worked and claimed?

A2. Due to the FLSA exemption, you will be paid overtime (code 21) for those hours worked and claimed in Pay Period 8. But as with the above answer, we anticipate recouping the loss of FLSA for Pay Period 8.

Q3. I was authorized and claimed FLSA for travel during Pay Period 8; how will I be paid for those hours?

Q3. The agent will have one of two options. The agent may accept comp time as per law or the agent can wait until the Technical Amendment passes at which time the agent will be entitled to submit an amended T&A to recoup their FLSA Travel.

Q4. What effort is the Union undertaking to mitigate the loss of pay from the FLSA exemption for BPA's?

A4. The NBPC has negotiated a plan that will ensure that in Pay Period 9 (May 3, 2015), the agency will pay two (2) hours of FEPA overtime *in addition to* AUO to all BPA's, so for those BPA's that are not currently de-certified from earning AUO, they will earn an additional two (2) hours of overtime per day to mitigate the loss of pay from the FLSA exemption. For those who are currently de-certified from earning AUO, the loss of FLSA will only be mitigated upon a legislative fix to correct the exemption.

Q5. Are there any legislative efforts underway to mitigate the FLSA exemption?

A5. The Union is currently working with Congress in order to introduce an amendment to the BPAPRA that would postpone the FLSA exemption until such time that the BPAPRA is fully enacted; thereby allowing BPA's to earn FLSA until the enactment of the BPAPRA. This legislative fix will ensure that agents will earn FEPA plus FLSA. With FEPA plus FLSA, agents will make more money than they otherwise would with 25% AUO plus FLSA.

- Q6. How will I claim AUO and FEPA on my T&A for Pay Period 9?**
- A6.** For hours worked beyond your 8-hour shift during Pay Period 9, you will claim 2 hours of FEPA (code 21); however, for any *additional* hours beyond the 2 hours of FEPA, you will claim AUO (code 41).
- Q7. If I am scheduled for a training day during Pay Period 9, will I be allowed to work additional FEPA hours after my training day ends?**
- A7.** Yes, you will be allowed to perform additional work beyond your regular training day, up to 2 hours of FEPA. This also extends to any other duty day (non-leave) that was previously categorized as an “excludable day.”
- Q8. What duties can be performed during FEPA hours?**
- A8.** Any duty, excluding Union duties, can be compensated using FEPA, to include VLC courses, administrative functions, weapon cleaning, etc.
- Q9. Why is the Union fighting for FLSA only until the enactment of the BPAPRA? Why did the legislation not include FLSA with the BPAPRA?**
- A9.** The Union is fighting for FLSA until the enactment of the BPAPRA because the Agency is choosing to only implement the FLSA exemption *WITHOUT* the portion of the BPAPRA that counters the loss of FLSA pay, which is the payment of 25% if your election is Level 1 pay. The Union’s position is that the Agency should not “piece” together the portions of the BPAPRA that it wants, while ignoring the portions that counter the loss of pay for agents. The Union attempted to get FLSA in the BPAPRA; however, Congress refused to allow BPA’s to get overtime “baked” in to their pay along with FLSA thereby making BP the only federal law enforcement agency who has overtime as a guarantee along with FLSA.
- Q10. Why did the Union enter into an agreement to allow the agency to implement the Overtime Transition Plan?**
- A10.** The Union fought for a plan that would mitigate the loss of pay that was going to occur with the Agency’s implementation of their “new” AUO regulations that would’ve guaranteed that BPA’s would be at 10% AUO nationwide, due to their stringent standards of what qualifies as AUO, as well as the incremental justifications for each quarter hour of AUO. As stated above, the overtime transition plan (FEPA plus FLSA) will ensure agents make more money than they otherwise would have made with 25% AUO plus FLSA.
- Q11. Will I have to pay back money that the government claims was “erroneously paid” due to the interpretation from the agency and OPM that BPA’s were FLSA exempt on December 18, 2014?**
- A11.** No, the agency has indicated that they will not seek back pay from BPA’s due to the FLSA exemption; however, in the unlikely event that they do, the NBPC will seek individual waivers for all members.

Q12. When will the Overtime Transition Plan (OTP) take effect, and what impact will it have on pay?

A12. The OTP will become effective Pay Period 10 (May 17, 2015). On that date, AUO will no longer be paid to BPA's; however, all hours spent beyond your scheduled workday will be compensated with FEPA. The NBPC is hopeful that Congress passes the legislative fix discussed in "A5" in order to allow BPA's to also earn FLSA until the BPAPRA is fully enacted. In the event that a legislative fix is not set by that date, back pay retroactive to the FLSA exemption will be sought when a legislative fix is enacted.

