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(Original Signature of Member)

118TH CONGRESS  
1ST SESSION

# H. R.

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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.

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## IN THE HOUSE OF REPRESENTATIVES

Mr. PASCRELL introduced the following bill; which was referred to the Committee on \_\_\_\_\_

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# 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,*

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

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

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

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

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

19 (3) It was in recognition of the unique nature  
20 of the occupation, and the demanding schedules re-  
21 quired of those who fill its ranks, that Congress es-  
22 tablished distinct pay and benefit systems for Fed-  
23 eral law enforcement positions. This includes basic  
24 pay, retirement, and even overtime compensation.

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

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

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

21 (a) CSRS.—

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

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

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

12           “(B) The officer may—

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

17                         “(I) the lump-sum payment described  
18 under subparagraph (C);

19                         “(II) the amount of the officer’s monthly  
20 annuity payment if the officer elects to make  
21 the lump-sum payment and receive an amended  
22 annuity that includes the application of para-  
23 graph (1); and

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

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

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

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

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

23           “(D) The officer may elect an actuarial annuity re-  
24          duction, consistent with regulations prescribed by the Of-

1 fice, in lieu of the lump-sum payment required under sub-  
2 paragraphs (B) and (C).

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

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

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

22 “(2) Paragraph (1) shall not apply unless the law en-  
23 forcement officer makes a lump-sum payment to the Office  
24 in the same manner as prescribed under section  
25 8339(v)(2).

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

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

9           (d) REGULATIONS.—

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

16           (2) LUMP-SUM PAYMENT.—Such regulations  
17 shall include—

18           (A) procedures under which any law en-  
19 forcement officer covered by such sections may  
20 make the lump-sum payment as described  
21 under sections 8339(v)(2) and 8415(o)(2) of  
22 title 5, United States Code, as added by sub-  
23 sections (a) and (b), from amounts within the  
24 officer’s Thrift Savings Fund account; and

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

5 (3) SOLICITATION OF PAYROLL INFORMA-  
6 TION.—Such regulations shall include—

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

18 (B) procedures for the Director to solicit  
19 sufficient payroll information from the head of  
20 each applicable agency to provide for the com-  
21 putations required by the amendments made by  
22 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 “(1)(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.