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[Report No. 115–270]

To provide U.S. Customs and Border Protection with adequate flexibility
in its employment authorities.

IN THE SENATE OF THE UNITED STATES

JUNE 7, 2017

Mr. FLAKE (for himself and Ms. HEITKAMP) introduced the following bill;
which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

JUNE 7, 2018

Reported by Mr. JOHNSON, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

A BILL

To provide U.S. Customs and Border Protection with
adequate flexibility in its employment authorities.

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.**

2 This Act may be cited as the “U.S. Customs and Bor-
3 der Protection Hiring and Retention Act of 2017” or the
4 “CBP HiRe Act”.

5 **SEC. 2. FLEXIBILITY IN EMPLOYMENT AUTHORITIES.**

6 (a) IN GENERAL.—Chapter 97 of title 5, United
7 States Code, is amended by adding at the end the fol-
8 lowing:

9 **“§ 9702. U.S. Customs and Border Protection employ-
10 ment authorities**

11 **“(a) DEFINITIONS.—In this section—**

12 **“(1) the term ‘Commissioner’ means the Com-
13 missioner of U.S. Customs and Border Protection;**

14 **“(2) the term ‘covered CBP employee’ means—**

15 **“(A) a customs and border protection offi-
16 cer, as defined in section 8331(31); and**

17 **“(B) a border patrol agent, as defined in
18 section 5550(a);**

19 **“(3) the term ‘Director’ means the Director of
20 the Office of Personnel Management;**

21 **“(4) the term ‘local infrastructure’ means—**

22 **“(A) established communities;**

23 **“(B) suitable places of residence, including
24 sufficient affordable housing choices;**

1 ~~“(C) amenities and services, including~~
2 ~~medical care, child care, and schools, that con-~~
3 ~~tribute to quality of life;~~

4 ~~“(D) consumer goods and services; or~~

5 ~~“(E) other local infrastructure, as deter-~~
6 ~~mined by the Commissioner; and~~

7 ~~“(5) the term ‘rural or remote area’ means an~~
8 ~~area within the United States—~~

9 ~~“(A) in which a facility of U.S. Customs~~
10 ~~and Border Protection is located;~~

11 ~~“(B) that is so distant from the nearest~~
12 ~~local infrastructure as to require an appreciable~~
13 ~~degree of expense, hardship, and inconvenience,~~
14 ~~beyond that normally encountered in metropoli-~~
15 ~~tan life, on the part of an individual living or~~
16 ~~working in the area; and~~

17 ~~“(C) that—~~

18 ~~“(i) has not been defined and des-~~
19 ~~ignated as an urbanized area by the Bu-~~
20 ~~reau of the Census during the most re-~~
21 ~~cently completed decennial census; or~~

22 ~~“(ii) has been determined by the Com-~~
23 ~~missioner to be a rural or remote area~~
24 ~~based on any other factors that the Com-~~
25 ~~missioner considers relevant.~~

1 “(b) DEMONSTRATION OF RECRUITMENT AND RE-
 2 TENTION DIFFICULTIES IN RURAL OR REMOTE AREAS.—
 3 For purposes of subsections (c), (d), and (e), the Commis-
 4 sioner shall demonstrate a direct relationship between the
 5 rural or remote nature of a rural or remote area, and dif-
 6 ficulty in the recruitment and retention of covered CBP
 7 employees in the area, by providing evidence—

8 “(1) that the Commissioner—

9 “(A) is unable to efficiently and effectively
 10 recruit individuals for positions as covered CBP
 11 employees, which may be demonstrated with
 12 various types of evidence, including—

13 “(i) evidence that multiple positions
 14 have been continuously vacant for signifi-
 15 cantly longer than the national average pe-
 16 riod for which similar positions in U.S.
 17 Customs and Border Protection are va-
 18 cant; or

19 “(ii) recruitment studies that dem-
 20 onstrate the inability of the Commissioner
 21 to efficiently and effectively recruit covered
 22 CBP employees for positions in the area;
 23 or

24 “(B) experiences a consistent inability to
 25 retain covered CBP employees that negatively

1 impacts agency operations at a local or regional
2 level; or

3 ~~“(2) of any other inability, directly related to~~
4 ~~recruitment or retention difficulties, that the Com-~~
5 ~~missioner determines sufficient.~~

6 ~~“(c) DIRECT HIRE AUTHORITY; RECRUITMENT AND~~
7 ~~RELOCATION BONUSES; RETENTION BONUSES.—~~

8 ~~“(1) DIRECT HIRE AUTHORITY.—~~

9 ~~“(A) IN GENERAL.—In addition to the au-~~
10 ~~thority under section 3304(a)(3)(B), the Com-~~
11 ~~missioner may appoint, without regard to the~~
12 ~~provision of sections 3309 through 3318, can-~~
13 ~~didates to positions as covered CBP employees~~
14 ~~if the Commissioner determines that there ex-~~
15 ~~ists a severe shortage of highly qualified can-~~
16 ~~didates because the positions are in a rural or~~
17 ~~remote area.~~

18 ~~“(B) PRIORITIZATION OF HIRING VET-~~
19 ~~ERANS.—If the Commissioner uses the direct~~
20 ~~hiring authority under subparagraph (A), the~~
21 ~~Commissioner shall work to prioritize the hiring~~
22 ~~of veterans by following the principles contained~~
23 ~~in part 307 of title 5, Code of Federal Regula-~~
24 ~~tions, or any successor regulation, regarding the~~

1 appointment of qualified veterans to the com-
 2 petitive service.

3 ~~“(2) RECRUITMENT AND RELOCATION BO-~~
 4 ~~NUSES.—The Commissioner may pay a bonus to an~~
 5 ~~individual if the Commissioner determines that—~~

6 ~~“(A) the conditions under paragraphs (1)~~
 7 ~~and (2) of subsection (b) of section 5753 are~~
 8 ~~satisfied with respect to the individual (without~~
 9 ~~regard to any other provision of that section);~~
 10 ~~and~~

11 ~~“(B) the position to which the individual is~~
 12 ~~appointed or to which the individual moves or~~
 13 ~~must relocate—~~

14 ~~“(i) is a position as a covered CBP~~
 15 ~~employee; and~~

16 ~~“(ii) is in a rural or remote area.~~

17 ~~“(3) RETENTION BONUSES.—The Commis-~~
 18 ~~sioner may pay a retention bonus to a covered CBP~~
 19 ~~employee if the Commissioner determines that—~~

20 ~~“(A) the condition under subsection (b)(1)~~
 21 ~~of section 5754 is satisfied (without regard to~~
 22 ~~any other provision of that section);~~

23 ~~“(B) the covered CBP employee is em-~~
 24 ~~ployed in a rural or remote area; and~~

1 ~~“(C) in the absence of a retention bonus;~~
 2 ~~the covered CBP employee would be likely to~~
 3 ~~leave—~~

4 ~~“(i) the Federal service; or~~

5 ~~“(ii) for a different position in the~~
 6 ~~Federal service, including a position in an-~~
 7 ~~other agency or component of the Depart-~~
 8 ~~ment of Homeland Security.~~

9 ~~“(4) OPM OVERSIGHT.—The Director—~~

10 ~~“(A) may set aside a determination of the~~
 11 ~~Commissioner under this subsection only if the~~
 12 ~~Director finds substantial evidence that the~~
 13 ~~Commissioner abused the discretion of the~~
 14 ~~Commissioner in making the determination; and~~

15 ~~“(B) shall oversee the compliance of the~~
 16 ~~Commissioner with this subsection.~~

17 ~~“(d) SPECIAL PAY AUTHORITY.—In addition to the~~
 18 ~~circumstances described in subsection (b) of section 5305,~~
 19 ~~the Director may establish special rates of pay in accord-~~
 20 ~~ance with that section if the Director finds that the re-~~
 21 ~~ruitment or retention efforts of the Commissioner with~~
 22 ~~respect to positions for covered CBP employees in one or~~
 23 ~~more areas or locations are, or are likely to become, sig-~~
 24 ~~nificantly handicapped because the positions are located~~
 25 ~~in a rural or remote area.~~

1 “(e) ALLOWANCE BASED ON DUTY AT REMOTE
2 WORKSITES.—

3 ~~“(1) IN GENERAL.—~~Section 5942(a) shall be
4 applied, with respect to a covered CBP employee, as
5 if ‘of not to exceed \$10 a day’ and all that follows
6 were replaced with ‘for the cost of the commute at
7 a mileage reimbursement rate determined by the Di-
8 rector of the Office of Personnel Management’.

9 ~~“(2) OPM DETERMINATION.—~~For purposes of
10 section 5942(a), as applied in accordance with para-
11 graph (1) of this subsection, the Director shall pub-
12 lish in the Federal Register a notice of a mileage re-
13 imbursement rate that is equivalent, to the max-
14 imum extent practicable, to the mileage reimburse-
15 ment rate for privately owned automobiles prescribed
16 by the Administrator of General Services under sec-
17 tion 5707(b)(2).

18 ~~“(3) NON-COMMUTING FACTORS.—~~

19 ~~“(A) IN GENERAL.—~~A covered CBP em-
20 ployee who is assigned to duty, except tem-
21 porary duty, at a location in a rural or remote
22 area is eligible for, in addition to pay otherwise
23 due the employee, an allowance in an amount
24 not to exceed the necessary amount per day, as

determined by the Commissioner in accordance with subparagraph (C).

“(B) EXCEPTION.—The Commissioner shall not be required to pay the allowance under subparagraph (A) if the covered CBP employee does not routinely operate the personal vehicle of the employee for transportation between the duty station and place of residence of the employee.

“(C) DETERMINATION OF NECESSARY AMOUNT; OPM APPROVAL.—

“(i) DETERMINATION OF NECESSARY AMOUNT.—In determining the necessary amount of an allowance under subparagraph (A), the Commissioner shall consider the factors considered by the Director under regulations implementing section 5942.

“(ii) OPM APPROVAL.—The Commissioner may not pay an allowance under subparagraph (A) unless the Director approves the amount of the allowance.

“(f) IMPROVING CBP HIRING AND RETENTION.—

“(1) EDUCATION OF CBP HIRING OFFICIALS.—

Not later than 180 days after the date of enactment

1 of the U.S. Customs and Border Protection Hiring
2 and Retention Act of 2017, and in conjunction with
3 the Chief Human Capital Officer of the Department
4 of Homeland Security, the Commissioner shall de-
5 velop and implement a strategy to improve education
6 regarding hiring and human resources flexibilities
7 (including hiring and human resources flexibilities
8 for locations in rural or remote areas) for all em-
9 ployees, serving in agency headquarters or field of-
10 fices, who are involved in the recruitment, hiring, as-
11 sessment, or selection of candidates for locations in
12 a rural or remote area, as well as the retention of
13 current employees.

14 “(2) ELEMENTS.—Elements of the strategy
15 under paragraph (1) shall include the following:

16 “(A) Developing or updating training and
17 educational materials on hiring and human re-
18 sources flexibilities for employees who are in-
19 volved in the recruitment, hiring, assessment, or
20 selection of candidates, as well as the retention
21 of current employees.

22 “(B) Regular training sessions for per-
23 sonnel who are critical to filling open positions
24 in rural or remote areas.

1 “(C) The development of pilot programs or
2 other programs, as appropriate, to address
3 identified hiring challenges in rural or remote
4 areas.

5 “(D) Developing and enhancing strategic
6 recruiting efforts through relationships with
7 local colleges and universities, veterans transi-
8 tion and employment centers, and job place-
9 ment program in regions that could assist in
10 filling positions in rural or remote areas.

11 “(E) Examination of existing agency pro-
12 grams on how to most effectively aid spouses
13 and families of individuals who are candidates
14 or new hires in a rural or remote area.

15 “(F) Feedback from individuals who are
16 candidates or new hires at locations in a rural
17 or remote area, including feedback on the qual-
18 ity of life in rural or remote areas for new hires
19 and their families.

20 “(G) Feedback from covered CBP employ-
21 ees, other than new hires, who are stationed at
22 locations in a rural or remote area, including
23 feedback on the quality of life in rural or re-
24 mote areas for those covered CBP employees
25 and their families.

1 “(H) Evaluation of Department of Home-
2 land Security internship programs and the use-
3 fulness of those programs in improving hiring
4 by the Commissioner in rural or remote areas.

5 “(3) EVALUATION.—

6 “(A) IN GENERAL.—Each year, the Com-
7 missioner shall—

8 “(i) evaluate, on an annual basis, the
9 extent to which the strategy developed and
10 implemented under paragraph (1) has im-
11 proved the hiring and retention ability of
12 the Commissioner; and

13 “(ii) make any appropriate updates to
14 the strategy under paragraph (1).

15 “(B) INFORMATION.—The evaluation con-
16 ducted under subparagraph (A) shall include—

17 “(i) any reduction in the time taken
18 by the Commissioner to fill mission-critical
19 positions in rural or remote areas;

20 “(ii) a general assessment of the im-
21 pact of the strategy implemented under
22 paragraph (1) on hiring challenges in rural
23 or remote areas; and

24 “(iii) other information the Commis-
25 sioner determines relevant.

1 “(g) LIMITATION ON USE OF POLYGRAPHS.—

2 “(1) IN GENERAL.—If an applicant for a posi-
 3 tion in U.S. Customs and Border Protection does
 4 not successfully complete a polygraph examination
 5 required for appointment to that position, the Com-
 6 missioner may not disclose the results of the poly-
 7 graph examination to any other Federal agency or
 8 non-Federal employer unless the applicant signs a
 9 release granting the Commissioner permission to re-
 10 lease all background investigation and adjudication
 11 materials to another Federal agency or a non-Fed-
 12 eral employer.

13 “(2) DISCLOSURES.—

14 “(A) IN GENERAL.—The Commissioner
 15 shall provide each applicant for a position in
 16 U.S. Customs and Border Protection who will
 17 be required to successfully complete a polygraph
 18 examination before appointment to the position
 19 a list of actions or conduct of, or events relating
 20 to, the applicant that could disqualify the appli-
 21 cant from being appointed to the position,
 22 which may include—

23 “(i) the criteria for making a suit-
 24 ability determination under part 731 of

1 title 5, Code of Federal Regulations (or
2 any successor regulation); or

3 “(ii) the criteria for making an eligi-
4 bility determination under part 732 of title
5 5, Code of Federal Regulations (or any
6 successor regulation).

7 “(B) LIST REQUIREMENTS.—When pro-
8 viding the list required under subparagraph
9 (A), the Commissioner shall clearly inform all
10 applicants that the list may not constitute the
11 complete list of potential disqualifying actions,
12 conduct, or events.

13 “(3) USE OF POLYGRAPHS.—Paragraph (1)
14 shall not—

15 “(A) restrict the authority of the Commis-
16 sioner to report or refer an admission of crimi-
17 nal conduct or activity made by an applicant
18 during a polygraph examination to appropriate
19 law enforcement officials;

20 “(B) limit the authority of the Commis-
21 sioner to use the results of a polygraph exam-
22 ination administered as a requirement for ap-
23 pointment to a position in U.S. Customs and
24 Border Protection, in whole or in part, in deter-

1 mining whether to appoint the individual to the
2 position; or

3 “(C) limit the authority of another Federal
4 agency or another agency or component of the
5 Department of Homeland Security to use the
6 results of a polygraph examination administered
7 to an individual by a Federal agency other than
8 U.S. Customs and Border Protection, in whole
9 or in part, in determining whether to appoint
10 the individual to a position in the agency or
11 component.

12 “(h) **RULE OF CONSTRUCTION.**—Nothing in this sec-
13 tion shall be construed to exempt the Commissioner or the
14 Director from the applicability of the merit system prin-
15 ciples under section 2301.”.

16 “(b) **TECHNICAL AND CONFORMING AMENDMENT.**—
17 The table of sections for chapter 97 of title 5, United
18 States Code, is amended by adding at the end the fol-
19 lowing:

“9702. U.S. Customs and Border Protection employment authorities.”.

20 **SECTION 1. SHORT TITLE.**

21 *This Act may be cited as the “U.S. Customs and Bor-*
22 *der Protection Hiring and Retention Act of 2017” or the*
23 *“CBP HiRe Act”.*

1 **SEC. 2. FLEXIBILITY IN EMPLOYMENT AUTHORITIES.**

2 (a) *IN GENERAL.*—Chapter 97 of title 5, United States
3 Code, is amended by adding at the end the following:

4 **“§9702. U.S. Customs and Border Protection employ-**
5 **ment authorities**

6 “(a) *DEFINITIONS.*—In this section—

7 “(1) the term ‘CBP employee’ means an em-
8 ployee of U.S. Customs and Border Protection;

9 “(2) the term ‘Commissioner’ means the Com-
10 missioner of U.S. Customs and Border Protection;

11 “(3) the term ‘Director’ means the Director of the
12 Office of Personnel Management;

13 “(4) the term ‘rural or remote area’ means an
14 area within the United States that is not within an
15 area defined and designated as an urbanized area by
16 the Bureau of the Census in the most recently com-
17 pleted decennial census; and

18 “(5) the term ‘Secretary’ means the Secretary of
19 Homeland Security.

20 “(b) *DEMONSTRATION OF RECRUITMENT AND RETEN-*
21 *TION DIFFICULTIES IN RURAL OR REMOTE AREAS.*—

22 “(1) *IN GENERAL.*—For purposes of subsections
23 (c) and (d), the Secretary shall determine, for a rural
24 or remote area, whether there is—

25 “(A) a critical hiring need in the area; and

26 “(B) a direct relationship between—

1 “(i) the rural or remote nature of the
2 area; and

3 “(ii) difficulty in the recruitment and
4 retention of CBP employees in the area.

5 “(2) *FACTORS*.—To inform the determination of
6 a direct relationship under paragraph (1)(B), the
7 Secretary may consider evidence—

8 “(A) that the Secretary—

9 “(i) is unable to efficiently and effec-
10 tively recruit individuals for positions as
11 CBP employees, which may be demonstrated
12 with various types of evidence, including—

13 “(I) evidence that multiple posi-
14 tions have been continuously vacant for
15 significantly longer than the national
16 average period for which similar posi-
17 tions in U.S. Customs and Border Pro-
18 tection are vacant; and

19 “(II) recruitment studies that
20 demonstrate the inability of the Sec-
21 retary to efficiently and effectively re-
22 cruit CBP employees for positions in
23 the area; or

24 “(ii) experiences a consistent inability
25 to retain CBP employees that negatively

1 *impacts agency operations at a local or re-*
 2 *gional level; or*

3 “(B) of any other inability, directly related
 4 *to recruitment or retention difficulties, that the*
 5 *Secretary determines sufficient.*

6 “(c) *DIRECT HIRE AUTHORITY; RECRUITMENT AND*
 7 *RELOCATION BONUSES; RETENTION BONUSES.—*

8 “(1) *DIRECT HIRE AUTHORITY.—*

9 “(A) *IN GENERAL.—The Secretary may ap-*
 10 *point, without regard to any provision of sec-*
 11 *tions 3309 through 3319, candidates to positions*
 12 *in the competitive service as CBP employees, in*
 13 *a rural or remote area, if the Secretary—*

14 “(i) *determines that—*

15 “(I) *there is a critical hiring*
 16 *need; and*

17 “(II) *there exists a severe shortage*
 18 *of qualified candidates because of the*
 19 *direct relationship identified by the*
 20 *Secretary under subsection (b)(1)(B) of*
 21 *this section between—*

22 “(aa) *the rural or remote na-*
 23 *ture of the area; and*

1 “(bb) difficulty in the re-
2 cruitment and retention of CBP
3 employees in the area; and

4 “(ii) has given public notice for the po-
5 sitions.

6 “(B) *PRIORITIZATION OF HIRING VET-*
7 *ERANS.—If the Secretary uses the direct hiring*
8 *authority under subparagraph (A), the Secretary*
9 *shall apply the principles of preference for the*
10 *hiring of veterans established under subchapter I*
11 *of chapter 33.*

12 “(2) *RECRUITMENT AND RELOCATION BO-*
13 *NUSES.—The Secretary may pay a bonus to an indi-*
14 *vidual (other than an individual described in sub-*
15 *section (a)(2) of section 5753) if—*

16 “(A) *the Secretary determines that—*

17 “(i) *conditions consistent with the con-*
18 *ditions described in paragraphs (1) and (2)*
19 *of subsection (b) of such section 5753 are*
20 *satisfied with respect to the individual*
21 *(without regard to any other provision of*
22 *that section); and*

23 “(ii) *the position to which the indi-*
24 *vidual is appointed or to which the indi-*
25 *vidual moves or must relocate—*

1 “(I) is a position as a CBP em-
2 ployee; and

3 “(II) is in a rural or remote area
4 for which the Secretary has identified
5 a direct relationship under subsection
6 (b)(1)(B) of this section between—

7 “(aa) the rural or remote na-
8 ture of the area; and

9 “(bb) difficulty in the re-
10 cruitment and retention of CBP
11 employees in the area; and

12 “(B) the individual enters into a written
13 service agreement with the Secretary—

14 “(i) under which the individual is re-
15 quired to complete a period of employment
16 as a CBP employee of not less than 2 years;
17 and

18 “(ii) that includes—

19 “(I) the commencement and ter-
20 mination dates of the required service
21 period (or provisions for the deter-
22 mination thereof);

23 “(II) the amount of the bonus;
24 and

1 “(III) other terms and conditions
2 under which the bonus is payable, sub-
3 ject to the requirements of this sub-
4 section, including—

5 “(aa) the conditions under
6 which the agreement may be ter-
7 minated before the agreed-upon
8 service period has been completed;
9 and

10 “(bb) the effect of a termi-
11 nation described in item (aa).

12 “(3) RETENTION BONUSES.—The Secretary may
13 pay a retention bonus to a CBP employee (other than
14 an individual described in subsection (a)(2) of section
15 5754) if—

16 “(A) the Secretary determines that—

17 “(i) a condition consistent with the
18 condition described in subsection (b)(1) of
19 such section 5754 is satisfied with respect to
20 the CBP employee (without regard to any
21 other provision of that section);

22 “(ii) the CBP employee is employed in
23 a rural or remote area for which the Sec-
24 retary has identified a direct relationship

1 under subsection (b)(1)(B) of this section be-
2 tween—

3 “(I) the rural or remote nature of
4 the area; and

5 “(II) difficulty in the recruitment
6 and retention of CBP employees in the
7 area; and

8 “(iii) in the absence of a retention
9 bonus, the CBP employee would be likely to
10 leave—

11 “(I) the Federal service; or

12 “(II) for a different position in
13 the Federal service, including a posi-
14 tion in another agency or component of
15 the Department of Homeland Security;
16 and

17 “(B) the individual enters into a written
18 service agreement with the Secretary—

19 “(i) under which the individual is re-
20 quired to complete a period of employment
21 as a CBP employee of not less than 2 years;
22 and

23 “(ii) that includes—

24 “(I) the commencement and ter-
25 mination dates of the required service

1 *period (or provisions for the deter-*
 2 *mination thereof);*

3 *“(II) the amount of the bonus;*
 4 *and*

5 *“(III) other terms and conditions*
 6 *under which the bonus is payable, sub-*
 7 *ject to the requirements of this sub-*
 8 *section, including—*

9 *“(aa) the conditions under*
 10 *which the agreement may be ter-*
 11 *minated before the agreed-upon*
 12 *service period has been completed;*
 13 *and*

14 *“(bb) the effect of a termi-*
 15 *nation described in item (aa).*

16 *“(4) RULES FOR BONUSES.—*

17 *“(A) MAXIMUM BONUS.—A bonus paid to*
 18 *an employee under—*

19 *“(i) paragraph (2) may not exceed 100*
 20 *percent of the annual rate of basic pay of*
 21 *the employee as of the commencement date*
 22 *of the applicable service period; and*

23 *“(ii) paragraph (3) may not exceed 50*
 24 *percent of the annual rate of basic pay of*

1 *the employee as of the commencement date*
 2 *of the applicable service period.*

3 “(B) *RELATION TO BASIC PAY.*—*A bonus*
 4 *paid to an employee under paragraph (2) or (3)*
 5 *shall not be considered part of the basic pay of*
 6 *the employee for any purpose.*

7 “(5) *OPM OVERSIGHT.*—*The Director shall, to*
 8 *the extent practicable—*

9 “(A) *set aside a determination of the Sec-*
 10 *retary under this subsection if the Director finds*
 11 *substantial evidence that the Secretary abused*
 12 *the discretion of the Secretary in making the de-*
 13 *termination; and*

14 “(B) *oversee the compliance of the Secretary*
 15 *with this subsection.*

16 “(d) *SPECIAL PAY AUTHORITY.*—*In addition to the*
 17 *circumstances described in subsection (b) of section 5305,*
 18 *the Director may establish special rates of pay in accord-*
 19 *ance with that section if the Director finds that the recruit-*
 20 *ment or retention efforts of the Secretary with respect to*
 21 *positions for CBP employees in an area or location are,*
 22 *or are likely to become, significantly handicapped because*
 23 *the positions are located in a rural or remote area for which*
 24 *the Secretary has identified a direct relationship under sub-*
 25 *section (b)(1)(B) of this section between—*

1 “(1) *the rural or remote nature of the area; and*

2 “(2) *difficulty in the recruitment and retention*

3 *of CBP employees in the area.*

4 “(e) *REGULAR CBP REVIEW.—*

5 “(1) *ENSURING FLEXIBILITIES MEET CBP*

6 *NEEDS.—Each year, the Secretary shall review the*

7 *use of hiring flexibilities under subsections (c) and (d)*

8 *to fill positions at a location in a rural or remote*

9 *area to determine—*

10 “(A) *the impact of the use of those flexibili-*

11 *ties on solving hiring and retention challenges at*

12 *the location;*

13 “(B) *whether hiring and retention chal-*

14 *lenges still exist at the location; and*

15 “(C) *whether the Secretary needs to con-*

16 *tinue to use those flexibilities at the location.*

17 “(2) *CONSIDERATION.—In conducting the review*

18 *under paragraph (1), the Secretary shall consider—*

19 “(A) *whether any CBP employee accepted*

20 *an employment incentive under subsection (c) or*

21 *(d) and then transferred to a new location or left*

22 *U.S. Customs and Border Protection; and*

23 “(B) *the length of time that each employee*

24 *identified under subparagraph (A) stayed at the*

25 *original location before transferring to a new lo-*

1 *cation or leaving U.S. Customs and Border Pro-*
 2 *tection.*

3 “(3) *DISTRIBUTION.*—*The Secretary shall submit*
 4 *to Congress a report on each review required under*
 5 *paragraph (1).*

6 “(f) *IMPROVING CBP HIRING AND RETENTION.*—

7 “(1) *EDUCATION OF CBP HIRING OFFICIALS.*—
 8 *Not later than 180 days after the date of enactment*
 9 *of the U.S. Customs and Border Protection Hiring*
 10 *and Retention Act of 2017, and in conjunction with*
 11 *the Chief Human Capital Officer of the Department*
 12 *of Homeland Security, the Secretary shall develop*
 13 *and implement a strategy to improve education re-*
 14 *garding hiring and human resources flexibilities (in-*
 15 *cluding hiring and human resources flexibilities for*
 16 *locations in rural or remote areas) for all employees,*
 17 *serving in agency headquarters or field offices, who*
 18 *are involved in the recruitment, hiring, assessment, or*
 19 *selection of candidates for locations in a rural or re-*
 20 *mote area, as well as the retention of current employ-*
 21 *ees.*

22 “(2) *ELEMENTS.*—*Elements of the strategy under*
 23 *paragraph (1) shall include the following:*

24 “(A) *Developing or updating training and*
 25 *educational materials on hiring and human re-*

1 *sources flexibilities for employees who are in-*
2 *involved in the recruitment, hiring, assessment, or*
3 *selection of candidates, as well as the retention*
4 *of current employees.*

5 *“(B) Regular training sessions for personnel*
6 *who are critical to filling open positions in rural*
7 *or remote areas.*

8 *“(C) The development of pilot programs or*
9 *other programs, as appropriate, to address iden-*
10 *tified hiring challenges in rural or remote areas.*

11 *“(D) Developing and enhancing strategic*
12 *recruiting efforts through relationships with in-*
13 *stitutions of higher education, as defined in sec-*
14 *tion 102 of the Higher Education Act of 1965*
15 *(20 U.S.C. 1002), veterans transition and em-*
16 *ployment centers, and job placement program in*
17 *regions that could assist in filling positions in*
18 *rural or remote areas.*

19 *“(E) Examination of existing agency pro-*
20 *grams on how to most effectively aid spouses and*
21 *families of individuals who are candidates or*
22 *new hires in a rural or remote area.*

23 *“(F) Feedback from individuals who are*
24 *candidates or new hires at locations in a rural*
25 *or remote area, including feedback on the quality*

1 *of life in rural or remote areas for new hires and*
 2 *their families.*

3 “(G) *Feedback from CBP employees, other*
 4 *than new hires, who are stationed at locations in*
 5 *a rural or remote area, including feedback on the*
 6 *quality of life in rural or remote areas for those*
 7 *CBP employees and their families.*

8 “(H) *Evaluation of Department of Home-*
 9 *land Security internship programs and the use-*
 10 *fulness of those programs in improving hiring by*
 11 *the Secretary in rural or remote areas.*

12 “(3) *EVALUATION.—*

13 “(A) *IN GENERAL.—Each year, the Sec-*
 14 *retary shall —*

15 “(i) *evaluate the extent to which the*
 16 *strategy developed and implemented under*
 17 *paragraph (1) has improved the hiring and*
 18 *retention ability of the Secretary; and*

19 “(ii) *make any appropriate updates to*
 20 *the strategy under paragraph (1).*

21 “(B) *INFORMATION.—The evaluation con-*
 22 *ducted under subparagraph (A) shall include—*

23 “(i) *any reduction in the time taken*
 24 *by the Secretary to fill mission-critical posi-*
 25 *tions in rural or remote areas;*

1 “(ii) a general assessment of the im-
 2 pact of the strategy developed and imple-
 3 mented under paragraph (1) on hiring chal-
 4 lenges in rural or remote areas; and

5 “(iii) other information the Secretary
 6 determines relevant.

7 “(g) *INSPECTOR GENERAL REVIEW*.—Not later than 2
 8 years after the date of enactment of the U.S. Customs and
 9 Border Protection Hiring and Retention Act of 2017, the
 10 Inspector General of the Department of Homeland Security
 11 shall review the use of hiring flexibilities by the Secretary
 12 under subsections (c) and (d) to determine whether the use
 13 of those flexibilities is helping the Secretary meet hiring and
 14 retention needs in rural and remote areas.

15 “(h) *REPORT ON POLYGRAPH REQUESTS*.—The Sec-
 16 retary shall report to Congress on the number of requests
 17 the Secretary receives from any other Federal agency for
 18 the file of an applicant for a position in U.S. Customs and
 19 Border Protection that includes the results of a polygraph
 20 examination.

21 “(i) *EXERCISE OF AUTHORITY*.—

22 “(1) *SOLE DISCRETION*.—The exercise of author-
 23 ity under subsection (c) shall be subject to the sole
 24 and exclusive discretion of the Secretary (or the Com-

1 *missioner, as applicable under paragraph (2) of this*
 2 *subsection), notwithstanding chapter 71.*

3 “(2) *DELEGATION.*—

4 “(A) *IN GENERAL.*—Subject to subpara-
 5 *graph (B), the Secretary may delegate any au-*
 6 *thority under this section to the Commissioner.*

7 “(B) *OVERSIGHT.*—The Commissioner may
 8 *not make a determination under subsection*
 9 *(b)(1) unless the Secretary approves the deter-*
 10 *mination.*

11 “(j) *RULE OF CONSTRUCTION.*—Nothing in this sec-
 12 *tion shall be construed to exempt the Secretary or the Direc-*
 13 *tor from the applicability of the merit system principles*
 14 *under section 2301.*

15 “(k) *SUNSET.*—The authorities under subsections (c)
 16 *and (d) shall terminate on the date that is 5 years after*
 17 *the date of enactment of the U.S. Customs and Border Pro-*
 18 *tection Hiring and Retention Act of 2017.”.*

19 (b) *TECHNICAL AND CONFORMING AMENDMENT.*—The
 20 *table of sections for chapter 97 of title 5, United States*
 21 *Code, is amended by adding at the end the following:*

 “9702. U.S. Customs and Border Protection employment authorities.”.

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115TH CONGRESS
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S. 1305

[Report No. 115-270]

A BILL

To provide U.S. Customs and Border Protection with adequate flexibility in its employment authorities.

JUNE 7, 2018

Reported with an amendment