

## Calendar No. 516

111<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION**H. R. 1517****[Report No. 111-248]**


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 IN THE SENATE OF THE UNITED STATES

DECEMBER 16, 2009

Received; read twice and referred to the Committee on Homeland Security and  
Governmental Affairs

AUGUST 5, 2010

Reported by Mr. LIEBERMAN, with an amendment

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

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**AN ACT**

To allow certain U.S. Customs and Border Protection employees who serve under an overseas limited appointment for at least 2 years, and whose service is rated fully successful or higher throughout that time, to be converted to a permanent appointment in the competitive service.

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. DEFINITIONS.**

4 ~~For purposes of this Act—~~

1           (1) the term “Commissioner” means the Com-  
2           missioner of U.S. Customs and Border Protection;

3           (2) the term “U.S. Customs and Border Pro-  
4           tection” means U.S. Customs and Border Protection  
5           of the Department of Homeland Security;

6           (3) the term “competitive service” has the  
7           meaning given such term by section 2102 of title 5,  
8           United States Code; and

9           (4) the term “overseas limited appointment”  
10          means an appointment under—

11                   (A) subpart B of part 301 of title 5 of the  
12                   Code of Federal Regulations, as in effect on  
13                   January 1, 2008; or

14                   (B) any similar antecedent or succeeding  
15                   authority, as determined by the Commissioner.

16 **SEC. 2. AUTHORITY TO CONVERT CERTAIN OVERSEAS LIM-**  
17 **ITED APPOINTMENTS TO PERMANENT AP-**  
18 **POINTMENTS.**

19           (a) **IN GENERAL.**—Notwithstanding chapter 33 of  
20 title 5, United States Code, or any other provision of law  
21 relating to the examination, certification, and appointment  
22 of individuals in the competitive service, the Commissioner  
23 may convert an employee serving under an overseas lim-  
24 ited appointment within U.S. Customs and Border Protec-

1 tion to a permanent appointment in the competitive serv-  
2 ice within U.S. Customs and Border Protection, if—

3           (1) as of the time of conversion, the employee  
4 has completed at least 2 years of current continuous  
5 service under 1 or more overseas limited appoint-  
6 ments; and

7           (2) the employee's performance has, throughout  
8 the period of continuous service referred to in para-  
9 graph (1), been rated at least fully successful or the  
10 equivalent.

11 An employee whose appointment is converted under the  
12 preceding sentence acquires competitive status upon con-  
13 version.

14       (b) INDEMNIFICATION AND PRIVILEGES.—

15           (1) INDEMNIFICATION.—The United States  
16 shall, in the case of any individual whose appoint-  
17 ment is converted under subsection (a), indemnify  
18 and hold such individual harmless from any claim  
19 arising from any event, act, or omission—

20                   (A) that arises from the exercise of such  
21 individual's official duties, including by reason  
22 of such individual's residency status, in the for-  
23 eign country in which such individual resides at  
24 the time of conversion;

1           (B) for which the individual would not  
2           have been liable had the individual enjoyed the  
3           same privileges and immunities in the foreign  
4           country as an individual who either was a per-  
5           manent employee, or was not a permanent resi-  
6           dent, in the foreign country at the time of the  
7           event, act, or omission involved; and

8           (C) that occurs before, on, or after the  
9           date of the enactment of this Act,

10          including any claim for taxes owed to the foreign  
11          country or a subdivision thereof.

12          (2) SERVICES AND PAYMENTS.—

13           (A) IN GENERAL.—In the case of any indi-  
14           vidual whose appointment is converted under  
15           subsection (a), the United States shall provide  
16           to such individual (including any dependents)  
17           services and monetary payments—

18           (i) equivalent to the services and mon-  
19           etary payments provided to other Customs  
20           and Border Protection employees in similar  
21           positions (and their dependents) in the  
22           same country of assignment by inter-  
23           national agreement, an exchange of notes,  
24           or other diplomatic policy; and

1                   (ii) for which such individual (includ-  
2                   ing any dependents) was not eligible by  
3                   reason of such individual's overseas limited  
4                   appointment.

5                   (B) APPLICABILITY.—Services and pay-  
6                   ments under this paragraph shall be provided to  
7                   an individual (including any dependents) to the  
8                   same extent and in the same manner as if such  
9                   individual had held a permanent appointment in  
10                  the competitive service throughout the period  
11                  described in subsection (a)(1). The preceding  
12                  sentence shall, in the case of any individual, be  
13                  effective as of the first day of the period de-  
14                  scribed in subsection (a)(1) with respect to such  
15                  individual.

16                (c) GUIDANCE ON IMPLEMENTATION.—The Commis-  
17                sioner shall implement the conversion of an employee serv-  
18                ing under an overseas limited appointment to a permanent  
19                appointment in the competitive service in a manner that—

20                   (1) meets the operational needs of the U.S.  
21                   Customs and Border Protection; and

22                   (2) to the greatest extent practicable, is not dis-  
23                   ruptive to the employees affected under this Act.

24 **SECTION 1. DEFINITIONS.**

25                *For purposes of this Act—*

1           (1) *the term “Commissioner” means the Com-*  
2           *missioner of U.S. Customs and Border Protection;*

3           (2) *the term “U.S. Customs and Border Protec-*  
4           *tion” means U.S. Customs and Border Protection of*  
5           *the Department of Homeland Security;*

6           (3) *the term “competitive service” has the mean-*  
7           *ing given such term by section 2102 of title 5, United*  
8           *States Code; and*

9           (4) *the term “overseas limited appointment”*  
10          *means an appointment under—*

11                   (A) *subpart B of part 301 of title 5 of the*  
12                   *Code of Federal Regulations, as in effect on Jan-*  
13                   *uary 1, 2008; or*

14                   (B) *any similar antecedent or succeeding*  
15                   *authority, as determined by the Commissioner.*

16 **SEC. 2. AUTHORITY TO CONVERT CERTAIN OVERSEAS LIM-**  
17                   **ITED APPOINTMENTS TO PERMANENT AP-**  
18                   **POINTMENTS.**

19           (a) *IN GENERAL.—Notwithstanding chapter 33 of title*  
20           *5, United States Code, or any other provision of law relat-*  
21           *ing to the examination, certification, and appointment of*  
22           *individuals in the competitive service, the Commissioner*  
23           *may convert an employee serving under an overseas limited*  
24           *appointment within U.S. Customs and Border Protection*

1 *to a permanent appointment in the competitive service*  
2 *within U.S. Customs and Border Protection, if—*

3 *(1) as of the time of conversion, the employee has*  
4 *completed at least 2 years of current continuous serv-*  
5 *ice under 1 or more overseas limited appointments;*  
6 *and*

7 *(2) the employee's performance has, throughout*  
8 *the period of continuous service referred to in para-*  
9 *graph (1), been rated at least fully successful or the*  
10 *equivalent.*

11 *An employee whose appointment is converted under the pre-*  
12 *ceding sentence acquires competitive status upon conver-*  
13 *sion.*

14 *(b) INDEMNIFICATION AND PRIVILEGES.—*

15 *(1) INDEMNIFICATION.—The United States shall,*  
16 *in the case of any individual whose appointment is*  
17 *converted under subsection (a), indemnify and hold*  
18 *such individual harmless from any claim arising*  
19 *from any event, act, or omission—*

20 *(A) that arises from the exercise of such in-*  
21 *dividual's official duties, including by reason of*  
22 *such individual's residency status, in the foreign*  
23 *country in which such individual resides at the*  
24 *time of conversion;*

1           (B) for which the individual would not have  
2           been liable had the individual enjoyed the same  
3           privileges and immunities in the foreign country  
4           as an individual who either was a permanent  
5           employee, or was not a permanent resident, in  
6           the foreign country at the time of the event, act,  
7           or omission involved; and

8           (C) that occurs before, on, or after the date  
9           of the enactment of this Act,  
10          including any claim for taxes owed to the foreign  
11          country or a subdivision thereof.

12          (2) *SERVICES AND PAYMENTS.*—

13           (A) *IN GENERAL.*—In the case of any indi-  
14           vidual whose appointment is converted under  
15           subsection (a), the United States shall provide to  
16           such individual (including any dependents) serv-  
17           ices and monetary payments—

18           (i) equivalent to the services and mone-  
19           tary payments provided to other U.S. Cus-  
20           toms and Border Protection employees in  
21           similar positions (and their dependents) in  
22           the same country of assignment by inter-  
23           national agreement, an exchange of notes, or  
24           other diplomatic policy; and



1                   (ii) for which such individual (includ-  
2                   ing any dependents) was not eligible by rea-  
3                   son of such individual's overseas limited ap-  
4                   pointment.

5                   (B) *APPLICABILITY.*—Services and pay-  
6                   ments under this paragraph shall be provided to  
7                   an individual (including any dependents) to the  
8                   same extent and in the same manner as if such  
9                   individual had held a permanent appointment  
10                  in the competitive service throughout the period  
11                  described in subsection (a)(1).

12               (c) *GUIDANCE ON IMPLEMENTATION.*—The Commis-  
13               sioner shall implement the conversion of an employee serv-  
14               ing under an overseas limited appointment to a permanent  
15               appointment in the competitive service in a manner that—

16                   (1) meets the operational needs of the U.S. Cus-  
17                   toms and Border Protection; and

18                   (2) to the greatest extent practicable, is not dis-  
19                   ruptive to the employees affected under this Act.

20 **SEC. 3. RULE OF CONSTRUCTION.**

21               Nothing in this Act shall be construed to affect the pay  
22               of any individual for services performed by such individual  
23               before the date of the conversion of such individual.

1 **SEC. 4. TERMINATION.**

2       *The authority of the Commissioner to convert an em-*  
3 *ployee serving under an overseas limited appointment with-*  
4 *in U.S. Customs and Border Protection to a permanent ap-*  
5 *pointment in the competitive service within U.S. Customs*  
6 *and Border Protection shall terminate on the date that is*  
7 *2 years after the date of the enactment of this Act.*



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