

AUTHORITY TO CONVERT CERTAIN OVERSEAS LIMITED
APPOINTMENTS TO PERMANENT APPOINTMENTS

DECEMBER 14, 2009.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. THOMPSON of Mississippi, from the Committee on Homeland
Security, submitted the following

R E P O R T

[To accompany H.R. 1517]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security, to whom was referred the bill (H.R. 1517) 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, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:
Strike all after the enacting clause and insert the following:

SECTION 1. DEFINITIONS.

For purposes of this Act—

- (1) the term “Commissioner” means the Commissioner of U.S. Customs and Border Protection;
- (2) the term “U.S. Customs and Border Protection” means U.S. Customs and Border Protection of the Department of Homeland Security;
- (3) the term “competitive service” has the meaning given such term by section 2102 of title 5, United States Code; and
- (4) the term “overseas limited appointment” means an appointment under—
 - (A) subpart B of part 301 of title 5 of the Code of Federal Regulations, as in effect on January 1, 2008; or
 - (B) any similar antecedent or succeeding authority, as determined by the Commissioner.

SEC. 2. AUTHORITY TO CONVERT CERTAIN OVERSEAS LIMITED APPOINTMENTS TO PERMANENT APPOINTMENTS.

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

- (1) as of the time of conversion, the employee has completed at least 2 years of current continuous service under 1 or more overseas limited appointments; and
- (2) the employee’s performance has, throughout the period of continuous service referred to in paragraph (1), been rated at least fully successful or the equivalent.

An employee whose appointment is converted under the preceding sentence acquires competitive status upon conversion.

(b) **INDEMNIFICATION AND PRIVILEGES.**—

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

(A) that arises from the exercise of such individual’s official duties, including by reason of such individual’s residency status, in the foreign country in which such individual resides at the time of conversion,

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

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

(2) **SERVICES AND PAYMENTS.**—

(A) **IN GENERAL.**—In the case of any individual whose appointment is converted under subsection (a), the United States shall provide to such individual (including any dependents) services and monetary payments—

(i) equivalent to the services and monetary payments provided to other Customs and Border Protection employees in similar positions (and their dependents) in the same country of assignment by international agreement, an exchange of notes, or other diplomatic policy; and

(ii) for which such individual (including any dependents) was not eligible by reason of such individual’s overseas limited appointment.

(B) **APPLICABILITY.**—Services and payments under this paragraph shall be provided to an individual (including any dependents) to the same extent and in the same manner as if such individual had held a permanent appointment in the competitive service throughout the period described in subsection (a)(1). The preceding sentence shall, in the case of any individual, be effective as of the first day of the period described in subsection (a)(1) with respect to such individual.

(c) **GUIDANCE ON IMPLEMENTATION.**—The Commissioner shall implement the conversion of an employee serving under an overseas limited appointment to a permanent appointment in the competitive service in a manner that—

- (1) meets the operational needs of the U.S. Customs and Border Protection;
and
- (2) to the greatest extent practicable, is not disruptive to the employees affected under this Act.

PURPOSE AND SUMMARY

The purpose of H.R. 1517 is to allow certain U.S. Customs and Border Protection (CBP) employees who serve under an overseas limited appointment for at least 2 years, and whose service was rated fully successful or higher through that time, to be converted to a permanent appointment in the competitive service.

BACKGROUND AND NEED FOR LEGISLATION

H.R. 1517 addresses a small population of 35 employees at CBP currently in overseas limited positions in Aruba, Bahamas, Bermuda, Canada and Ireland who were hired under the legacy Immigration and Naturalization Service (INS) under different terms and conditions than those that are currently required. The appointments date as far back as 1987 with legacy INS. These employees were originally hired on overseas temporary part-time appointments to work in pre-clearance operations, but the requirements of the work evolved into full-time on a permanent basis.

This issue came to the attention of the Committee in 2007 when it was realized that due to an agreement between the United States and Ireland, all pre-clearance employees at CBP are required to be permanent employees. By definition, these select groups of CBP employees on overseas appointments are termed as limited employees. Therefore, CBP is in violation of the two countries' agreement.

An agency is prohibited from non-competitively promoting an individual from a limited overseas appointment to a permanent, civil service position under 5 CFR Part 301. Therefore, H.R. 1517 provides CBP the authority to convert this select group of employees. This situation is not new. In fact, Congress granted the Internal Revenue Service and the Library of Congress the authority to convert similarly-situated employees from limited positions to permanent, civil service positions.

In late 2007, the Department of State requested that CBP either convert the employees to Locally Engaged Staff, who are compensated by and receive benefits from the Irish Government, or to place the employees into competitive positions that would require CBP to return the employees to the United States. Since then, CBP and the Department of Homeland Security have been working with the Department of State and the Office of Personnel Management to develop a solution that would allow the employees to continue their work in their current positions and avoid adverse impacts to the employees.

In June 2009 an interim administration action was taken to bring the affected positions under the purview of the National Security Decision Directive (NSDD) 38 which gives the Chief of Mission the control of the size, composition, and mandate of overseas full-time mission staffing for all United States Government agencies. This interim action brought the positions under the umbrella of the U.S. Embassy in Ireland to allow CBP additional time to take official action to convert these positions to competitive status,

while allowing CBP to increase staffing at pre-clearance operations, per the United States Government's agreement with Ireland.

The legislation provides discrete authority to the CBP Commissioner to convert these legacy positions from limited overseas appointments to permanent civil service positions.

HEARINGS

No hearings were held on H.R. 1517. However, the Subcommittee on Border, Maritime and Global Counterterrorism held two oversight hearings that touched upon staffing and workforce issues at CBP.

On June 11, 2009, the Subcommittee on Border, Maritime, and Global Counterterrorism held a hearing entitled "The FY 2010 Budget for Immigration and Customs Enforcement, Customs and Border Protection, and the U.S. Coast Guard." The Subcommittee received testimony from Mr. John T. Morton, Assistant Secretary, U.S. Immigration and Customs Enforcement, Department of Homeland Security; Mr. Jayson P. Ahern, Acting Commissioner, U.S. Customs and Border Protection, Department of Homeland Security; and Adm. Thad W. Allen, Commandant, U.S. Coast Guard, Department of Homeland Security.

On October 22, 2009, the Subcommittee on Border, Maritime, and Global Counterterrorism held a hearing entitled "Cargo Security at Land Ports of Entry: Are We Meeting the Challenge?" The Subcommittee received testimony from Mr. Todd Owen, Executive Director, Cargo and Conveyance Security, Office of Field Operations, Customs and Border Protection, Department of Homeland Security; Ms. Janice Ayala, Deputy Assistant Director, Office of Investigations, Immigration and Customs Enforcement, Department of Homeland Security; Ms. Colleen M. Kelley, National President, National Treasury Employees Union; and Mr. Stephen Russell, Chairman and CEO, Celadon Group, Inc., testifying on behalf of the American Trucking Associations.

COMMITTEE CONSIDERATION

The Subcommittee on Border, Maritime, and Global Counterterrorism considered H.R. 1517 on July 23, 2009, and forwarded the measure to the Full Committee for consideration with the recommendation that it pass, without amendment, by voice vote. The Subcommittee adopted the H.R. 1517 by unanimous consent.

The Committee met on November 17, 2009, to consider H.R. 1517, and ordered the measure to be reported to the House with a favorable recommendation, amended, by voice vote. The Committee took the following actions:

The Committee adopted the measure, as amended, by unanimous consent.

The following amendments were offered:

An Amendment in the Nature of a Substitute offered by Mr. Thompson (#1); was AGREED TO by unanimous consent.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the recorded votes on the motion to report legislation and amendments thereto.

No recorded votes were requested during consideration of H.R. 1517.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee has held oversight hearings and made findings that are reflected in this report.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 1517, 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, would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

DECEMBER 3, 2009.

Hon. BENNIE G. THOMPSON,
Chairman, Committee on Homeland Security
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1517, a bill to allow certain U.S. Customs and Border Protection employees who serve under an overseas limited appointment for at least two years, and whose service is rated successful or higher throughout that time, to be converted to a permanent appointment in the competitive service.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Grabowicz.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

H.R. 1517—A bill to allow certain U.S. Customs and Border Protection employees who serve under an overseas limited appointment for at least two years, and whose service is rated successful or higher throughout that time, to be converted to a permanent appointment in the competitive service

CBO estimates that implementing H.R. 1517 would have no significant cost to the federal government. Enacting the bill would not affect revenues or direct spending. H.R. 1517 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

H.R. 1517 would authorize U.S. Customs and Border Protection (CBP) in the Department of Homeland Security to change the em-

ployment status of certain individuals stationed overseas. The bill would change those employees' status from "overseas limited appointment" to "permanent appointment in the competitive service" to comply with certain international agreements between the United States and other countries. The legislation would apply to 35 employees who began service with the former Immigration and Naturalization Service. H.R. 1517 would not change the salaries or significantly alter the benefits of those individuals. Thus, CBO estimates that implementing the bill would have no significant effect on spending by CBP.

The CBO staff contact for this estimate is Mark Grabowicz. This estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 1517, contains the following general performance goals, and objectives, including outcome related goals and objectives authorized: To authorize the Commission of Customs and Border Protection to non-competitively convert certain CBP employees from their overseas limited appointments to permanent civil service positions; provide the converted employees the same indemnity protections, services, and payments as they would have had if they were hired as permanent employees; and ensure that the implementation of the conversion meets the operational needs of CBP and is not disruptive to the affected employees.

CONGRESSIONAL EARMARKS, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

In compliance with rule XXI of the Rules of the House of Representatives, this bill, as reported, contains no congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) of the rule XXI.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional authority for this legislation is provided in Article I, section 8, clause 1, which grants Congress the power to provide for the common Defense of the United States.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or

accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Definitions

This section defines, for purposes of this Act, the terms “Commissioner”, “U.S. Customs and Border Protection”, “competitive service”, and “overseas limited appointment”.

Section 2. Authority to convert certain overseas customs and border protection employees

This section grants special authority to the Commissioner of CBP to adjust the appointment for certain CBP employees stationed overseas in order to correct their employment category and protect their Federal benefits and retirement.

Specifically, this section gives the authority to noncompetitively convert CBP employees hired under an overseas limited appointment to permanent status if the employee has two or more years of continuous service and the service has been rated successful or an equivalent.

The section also requires the United States to indemnify and hold harmless employees covered under the Act from claims arising from the exercise of their duties before, on, and after enactment of the Act, including, but not limited to, claims arising from their residency status.

Further, the section requires that employees covered under this Act and their dependents receive services and monetary payments equivalent to those provided to other CBP employees in similar positions in the same country of assignment and that such services and monetary payments be provided for the period dating from their initial overseas limited appointments.

Lastly, the section provides guidance to the Commissioner with regards to the implementation of the conversion of an employee under this Act and specifically states that the implementation should meet the operations needs of CBP while at the same time, and to the greatest extent practicable, is not disruptive to the affected employees.

The Committee believes that the legislation is necessary and will provide the needed authority for the Commissioner to convert these overseas limited appointments to permanent appointments. The Committee urges the Commissioner to affect such conversions immediately following enactment.

Further, the Committee notes that these employees were in a personnel “limbo” for the past fifteen to twenty years and were not covered by the protections and immunities afforded to permanent CBP employees engaged in similar work. The Committee believes that the legislation rightly provides the employees the proper protections and immunities afforded to permanent employees. It is the Committee’s intent that no employee will see a loss of pay or benefit in this conversion.

The Committee recognizes that there is a general rotation policy in place for CBP employees but believes that this small, distinct group is in a unique position that warrants special consideration. Therefore, the Committee encourages the Commissioner to ensure

that this conversion of these employees shall be implemented in a manner that does not negatively affect employees currently serving in these posts. In particular, it is the Committee's intent that the Commissioner should take the past histories and individual circumstances of each employee into consideration to the greatest extent practicable, especially with respect to CBP's personnel rotation policy. Further, it is the Committee's intent that employees covered by this Act should not be involuntarily relocated from their current posts of duty, unless the Commissioner demonstrates that doing so is necessary to meet CBP's operational requirements.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

H.R. 1517 does not make any changes to existing law.

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House of Representatives

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ADAM JOFFE, CALIFORNIA

December 2, 2009

Honorable Bennie Thompson
Chairman
Committee on Homeland Security
176 Ford House Office Building
Washington, DC 20515

Dear Chairman Thompson:

I am writing to confirm our mutual understanding with respect to the consideration of H.R. 1517, a bill to allow certain U.S. Customs and Border Protection employees to be converted to a permanent appointment in the competitive service.

I appreciate your effort to consult with the Committee on Oversight and Government Reform regarding those provisions of H.R. 1517 that fall within the Oversight Committee's jurisdiction.

Given the importance of moving this bill forward promptly, I do not intend to object to its consideration in the House. However, I do so only with the understanding that this procedure should not be construed to prejudice this Committee's jurisdictional interest or prerogatives in the subject matter of H.R. 1517, or any other similar legislation.

I would also request your support for the appointment of conferees from the Oversight Committee should H.R. 1517 or a similar Senate bill be considered in conference with the Senate.

BENNIE G. THOMPSON, MISSISSIPPI
CHAIRMAN



PETER T. KING, NEW YORK
RANKING MEMBER

**One Hundred Eleventh Congress
U.S. House of Representatives
Committee on Homeland Security
Washington, DC 20515**

December 2, 2009

The Honorable Edolphus Towns
Chairman
Committee on Oversight and Government Reform
U.S. House of Representatives
2157 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Towns:

Thank you for your letter regarding H.R. 1517, a bill to allow certain U.S. Customs and Border Protection employees to be converted to a permanent appointment in the competitive service, introduced by Congressman Eliot L. Engel on March 16, 2009.

I acknowledge that H.R. 1517 contains provisions within the jurisdictional interest of the Committee on Oversight and Government Reform. I appreciate your agreement to forgo further consideration or action on this legislation to ensure the timely consideration of this legislation, and acknowledge that your decision to do so does not affect the jurisdiction of the Committee on Oversight and Government Reform.

Further, I recognize that your Committee reserves the right to seek appointment of conferees on the bill for the portions of the bill that are within the jurisdiction of the Committee on Oversight and Government Reform, and I agree to support such a request.

I will ensure that this exchange of letters is included in the legislative report on H.R. 1517 and in the *Congressional Record* during floor consideration of the bill. I look forward to working with you on this legislation and other matters of great importance to this nation.

Sincerely,

A handwritten signature in black ink that reads "Bennie G. Thompson".

Bennie G. Thompson
Chairman

cc: The Honorable Nancy Pelosi, Speaker
The Honorable Peter T. King, Ranking Member
The Honorable John Sullivan, Parliamentarian

Honorable Bennie Thompson
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Finally, I request that you include our exchange of letters on this matter in the Congressional Record during consideration of this legislation on the House floor.

Sincerely,



Dolphus Towns
Chairman

cc: The Honorable Nancy Pelosi
Speaker

The Honorable Darrell Issa
Ranking Member

The Honorable John Sullivan
Parliamentarian