

115TH CONGRESS  
1ST SESSION

# H. R. 2213

---

## AN ACT

To amend the Anti-Border Corruption Act of 2010 to authorize certain polygraph waiver authority, 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Anti-Border Corrup-  
3 tion Reauthorization Act of 2017”.

4 **SEC. 2. HIRING FLEXIBILITY.**

5 Section 3 of the Anti-Border Corruption Act of 2010  
6 (Public Law 111–376; 6 U.S.C. 221) is amended by strik-  
7 ing subsection (b) and inserting the following new sub-  
8 sections:

9 “(b) **WAIVER AUTHORITY.**—The Commissioner of  
10 U.S. Customs and Border Protection may waive the appli-  
11 cation of subsection (a)(1) in the following circumstances:

12 “(1) In the case of a current, full-time law en-  
13 forcement officer employed by a State or local law  
14 enforcement agency, if such officer—

15 “(A) has served as a law enforcement offi-  
16 cer for not fewer than 3 years with no break in  
17 service;

18 “(B) is authorized by law to engage in or  
19 supervise the prevention, detection, investiga-  
20 tion, or prosecution of, or the incarceration of  
21 any person for, any violation of law, and has  
22 statutory powers for arrest or apprehension;

23 “(C) is not currently under investigation,  
24 has not been found to have engaged in criminal  
25 activity or serious misconduct, has not resigned  
26 from a law enforcement officer position under

1 investigation or in lieu of termination, and has  
2 not been dismissed from a law enforcement offi-  
3 cer position; and

4 “(D) has, within the past 10 years, suc-  
5 cessfully completed a polygraph examination as  
6 a condition of employment with such officer’s  
7 current law enforcement agency.

8 “(2) In the case of a current, full-time law en-  
9 forcement officer employed by a Federal law enforce-  
10 ment agency, if such officer—

11 “(A) has served as a law enforcement offi-  
12 cer for not fewer than 3 years with no break in  
13 service;

14 “(B) has authority to make arrests, con-  
15 duct investigations, conduct searches, make sei-  
16 zures, carry firearms, and serve orders, war-  
17 rants, and other processes;

18 “(C) is not currently under investigation,  
19 has not been found to have engaged in criminal  
20 activity or serious misconduct, has not resigned  
21 from a law enforcement officer position under  
22 investigation or in lieu of termination, and has  
23 not been dismissed from a law enforcement offi-  
24 cer position; and

1           “(D) holds a current Tier 4 background  
2           investigation or current Tier 5 background in-  
3           vestigation.

4           “(3) In the case of an individual who is a mem-  
5           ber of the Armed Forces (or a reserve component  
6           thereof) or a veteran, if such individual—

7           “(A) has served in the Armed Forces for  
8           not fewer than 3 years;

9           “(B) holds, or has held within the past 5  
10          years, a Secret, Top Secret, or Top Secret /  
11          Sensitive Compartmented Information clear-  
12          ance;

13          “(C) holds, or has undergone within the  
14          past 5 years, a current Tier 4 background in-  
15          vestigation or current Tier 5 background inves-  
16          tigation;

17          “(D) received, or is eligible to receive, an  
18          honorable discharge from service in the Armed  
19          Forces and has not engaged in criminal activity  
20          or committed a serious military or civil offense  
21          under the Uniform Code of Military Justice;  
22          and

23          “(E) was not granted any waivers to ob-  
24          tain the clearance referred to subparagraph  
25          (B).

1 “(c) TERMINATION OF WAIVER AUTHORITY.—The  
2 authority to issue a waiver under subsection (b) shall ter-  
3minate on the date that is 5 years after the date of the  
4 enactment of the Anti-Border Corruption Reauthorization  
5 Act of 2017.”.

6 **SEC. 3. SUPPLEMENTAL COMMISSIONER AUTHORITY AND**  
7 **DEFINITIONS.**

8 (a) SUPPLEMENTAL COMMISSIONER AUTHORITY.—  
9 Section 4 of the Anti-Border Corruption Act of 2010  
10 (Public Law 111–376) is amended to read as follows:

11 **“SEC. 4. SUPPLEMENTAL COMMISSIONER AUTHORITY.**

12 “(a) NON-EXEMPTION.—An individual who receives  
13 a waiver under subsection (b) of section 3 is not exempt  
14 from other hiring requirements relating to suitability for  
15 employment and eligibility to hold a national security des-  
16ignated position, as determined by the Commissioner of  
17 U.S. Customs and Border Protection.

18 “(b) BACKGROUND INVESTIGATIONS.—Any indi-  
19vidual who receives a waiver under subsection (b) of sec-  
20tion 3 who holds a current Tier 4 background investiga-  
21tion shall be subject to a Tier 5 background investigation.

22 “(c) ADMINISTRATION OF POLYGRAPH EXAMINA-  
23TION.—The Commissioner of U.S. Customs and Border  
24Protection is authorized to administer a polygraph exam-  
25ination to an applicant or employee who is eligible for or

1 receives a waiver under subsection (b) of section 3 if infor-  
2 mation is discovered prior to the completion of a back-  
3 ground investigation that results in a determination that  
4 a polygraph examination is necessary to make a final de-  
5 termination regarding suitability for employment or con-  
6 tinued employment, as the case may be.”.

7 (b) REPORT.—The Anti-Border Corruption Act of  
8 2010 is amended by adding at the end the following new  
9 section:

10 **“SEC. 5. REPORTING.**

11 “Not later than 1 year after the date of the enact-  
12 ment of this section and every year for the next 4 years  
13 thereafter, the Commissioner of U.S. Customs and Border  
14 Protection shall provide the Committee on Homeland Se-  
15 curity of the House of Representatives and the Committee  
16 on Homeland Security and Governmental Affairs of the  
17 Senate information on the number, disaggregated with re-  
18 spect to each of paragraphs (1), (2), and (3) of subsection  
19 (b) of section 3, of waivers requested, granted, and denied,  
20 and the reasons for any such denial, and the final outcome  
21 of the application for employment at issue. Such informa-  
22 tion shall also include the number of instances a polygraph  
23 examination was administered under the conditions de-  
24 scribed in subsection (c) of section 4, the result of such

1 examination, and the final outcome of the application for  
2 employment at issue.”.

3 (c) DEFINITIONS.—The Anti-Border Corruption Act  
4 of 2010, as amended by subsection (b) of this section, is  
5 further amended by adding at the end the following new  
6 section:

7 **“SEC. 6. DEFINITIONS.**

8 “In this Act:

9 “(1) LAW ENFORCEMENT OFFICER.—The term  
10 ‘law enforcement officer’ has the meaning given such  
11 term in sections 8331(20) and 8401(17) of title 5,  
12 United States Code.

13 “(2) VETERAN.—The term ‘veteran’ has the  
14 meaning given such term in section 101(2) of title  
15 38, United States Code.

16 “(3) SERIOUS MILITARY OR CIVIL OFFENSE.—  
17 The term ‘serious military or civil offense’ means an  
18 offense for which—

19 “(A) a member of the Armed Forces may  
20 be discharged or separated from service in the  
21 Armed Forces; and

22 “(B) a punitive discharge is, or would be,  
23 authorized for the same or a closely related of-  
24 fense under the Manual for Court-Martial, as

1           pursuant to Army Regulation 635–200 chapter  
2           14–12.

3           “(4) TIER 4; TIER 5.—The terms ‘Tier 4’ and  
4           ‘Tier 5’ with respect to background investigations  
5           have the meaning given such terms under the 2012  
6           Federal Investigative Standards.”.

Passed the House of Representatives June 7, 2017.

Attest:

*Clerk.*





115<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

**H. R. 2213**

---

**AN ACT**

To amend the Anti-Border Corruption Act of 2010  
to authorize certain polygraph waiver authority,  
and for other purposes.