

**Calendar No. 447**115<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION**S. 1305****[Report No. 115–270]**

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

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## 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           “(e) 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           cruitment 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



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

3 “(B) EXCEPTION.—The Commissioner  
4 shall not be required to pay the allowance under  
5 subparagraph (A) if the covered CBP employee  
6 does not routinely operate the personal vehicle  
7 of the employee for transportation between the  
8 duty station and place of residence of the em-  
9 ployee.

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

12 “(i) DETERMINATION OF NECESSARY  
13 AMOUNT.—In determining the necessary  
14 amount of an allowance under subpara-  
15 graph (A), the Commissioner shall consider  
16 the factors considered by the Director  
17 under regulations implementing section  
18 5942.

19 “(ii) OPM APPROVAL.—The Commis-  
20 sioner may not pay an allowance under  
21 subparagraph (A) unless the Director ap-  
22 proves the amount of the allowance.

23 “(f) IMPROVING CBP HIRING AND RETENTION.—

24 “(1) EDUCATION OF CBP HIRING OFFICIALS.—

25 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                   recruitment 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 BONUS.—*

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           *remote 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.”.*



Calendar No. 447

115<sup>TH</sup> CONGRESS  
2D SESSION

**S. 1305**

[Report No. 115-270]

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## **A BILL**

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

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JUNE 7, 2018

Reported with an amendment