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HOUSE OF REPRESENTATIVES

REPORT
114–764

DISTRICT OF COLUMBIA COURTS AND PUBLIC DEFENDER SERVICE VOLUNTARY SEPARATION INCENTIVE PAYMENTS ACT

SEPTEMBER 20, 2016.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. CHAFFETZ, from the Committee on Oversight and Government Reform, submitted the following

R E P O R T

[To accompany H.R. 5037]

The Committee on Oversight and Government Reform, to whom was referred the bill (H.R. 5037) to authorize the establishment of a program of voluntary separation incentive payments for non-judicial employees of the District of Columbia courts and employees of the District of Columbia Public Defender Service, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

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The amendments (stated in terms of the page and line numbers of the introduced bill) are as follows:

Page 2, line 13, strike "courts" and insert the following: "courts, except that the maximum amount of the payment made under the

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program to any individual may not exceed the amount referred to in section 3523(b)(3)(B) of title 5, United States Code".

Page 3, line 4, strike "Service" and insert the following: "Service, except that the maximum amount of the payment made under the program to any individual may not exceed the amount referred to in section 3523(b)(3)(B) of title 5, United States Code".

COMMITTEE STATEMENT AND VIEWS

PURPOSE AND SUMMARY

H.R. 5037, the District of Columbia Courts and Public Defender Service Voluntary Separation Incentive Payments Act, authorizes the District of Columbia Joint Committee on Judicial Administration and the director of the Public Defender Service for the District of Columbia to establish a program to provide for voluntary separation incentive payments. These payments would be provided to individuals in exchange for their voluntarily separation from the agency.

BACKGROUND AND NEED FOR LEGISLATION

The use of voluntary separation incentive payments (VSIPs) by federal agencies was established in 2002 and is currently codified in title 5, United States Code sections 3521–3525. The program established under statute provides authority for the Office of Personnel Management (OPM) to authorize agencies to provide buyouts to employees in surplus positions or employees whose skill sets are no longer needed. These payments are used to encourage these employees to voluntarily resign or retire. The payments are calculated as the lesser of either the amount of severance pay the individual would receive under a reduction in force per section 5595 of title 5, United States Code, or an amount determined by the agency head that does not exceed $25,000 per individual.[1]

In 1996, the United States Government Accountability Office (GAO) preformed a review of cost savings that could be realized through the use of VSIPs.[2] The review compared the savings that result from a VSIP program, termed buyouts in the study, to that of a reduction in force effort. GAO found that buyouts could result in up to 50 percent greater savings than reduction in force efforts due to a number of factors. The most significant of these factors is that while reductions in force generally impact junior employees, VSIP offers attract more senior employees, particularly those eligible for retirement. As a result of this disparate impact, GAO found that the average salary for individuals receiving buyouts was $34,745 for resigning employees and $48,000 for retiring employees, compared to an average salary of $29,495 for employees separated through a reduction in force. In addition to the greater cost savings of VSIPs, OPM also notes that VSIPs are far less disruptive than reductions in force on impacted agencies.[3]

[1] Workforce Restructuring, OPM, *https://www.opm.gov/policy-data-oversight/workforce-restructuring/voluntary-separation-incentive-payments/* (Last Accessed July 27, 2016).

[2] United States General Accounting Office, Federal Downsizing: The Costs and Savings of Buyouts Versus Reductions-in-Force, GA)-96–63 (May 14, 1996).

[3] United States Office of Personnel Management, Guide to Voluntary Separation Incentive Payments (2006).

Although VSIP authority is available to federal agencies, the D.C. Court system and Public Defender Service do not have this authority. To remedy this situation, H.R. 5037 will provide the necessary authority for the District Court system and the Public Defender Service to implement a VSIP program. As a result of this legislation, the agencies will have a much needed tool to enable them to eliminate unnecessary positions and realize associated cost savings.

LEGISLATIVE HISTORY

H.R. 5037, the District of Columbia Courts and Public Defender Service Voluntary Separation Incentive Payments Act, was introduced on April 21, 2016 by Delegate Eleanor Holmes Norton (D–DC) and referred to the Committee on Oversight and Government Reform. On July 12, 2016, the Committee on Oversight and Government Reform ordered H.R. 5037 favorably reported, as amended, by voice vote.

A version of H.R. 5037 was introduced in past Congresses, including the 113th and 109th. In the 113th Congress, H.R. 5006 was introduced by Delegate Norton and referred to the House Committee on Oversight and Government Reform. The Committee did not ultimately consider the legislation. During the 109th Congress, H.R. 5711, also introduced by Del. Norton, was referred to the House Committee on Government Reform and ordered reported on June 29, 2006. While the Committee ultimately declined to file a report on H.R. 5711, the bill did receive a score from the Congressional Budget Office (CBO). The score found the bill would result in overall cost savings to the federal government.[4]

SECTION-BY-SECTION

Section 1. Short title

Designates the short title of the bill as the "District of Columbia Courts and Public Defender Service Voluntary Separation Incentive Payments Act."

Section 2. Authorization for program of voluntary separation incentive payments for District of Columbia Courts

Amends Chapter 17 of title 11 of the D.C. Official Code by inserting a new section 11–1726A to grant authority to the Joint Committee on Judicial Administration to establish a program for voluntary separation payments for non-judicial employees of the District of Columbia Courts. The program is required to be substantially similar to the program established under subchapter II of chapter 35 of title 5, United States Code.

Amends the table of contents of chapter 17 to reflect the additional section.

Section 3. Authorization for program of voluntary separation incentive payments for District of Columbia Public Defender Service

Amends section 305 of the D.C. Court Reform and Criminal Procedure Act of 1970 by adding a new subsection (d), which would provide that the Director may establish a program similar to that

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[4] Congressional Budget Office Estimate, H.R. 5711 (Sept. 21, 2006).

established under subchapter II of chapter 35 of title 5, United States Code.

EXPLANATION OF AMENDMENTS

During Full Committee consideration of the bill, Delegate Eleanor Holmes Norton (D–DC) offered an amendment that provides that the voluntary separation incentive payment program to be set up by the District of Columbia Courts system and the Public Defender service is subject to the $25,000 per employee cap. The $25,000 cap is the same limit applied to the federal agency voluntary separation incentive payment program administered through OPM. The Norton amendment was adopted by voice vote.

COMMITTEE CONSIDERATION

On July 12, 2016, the Committee met in open session and ordered reported favorably the bill, H.R. 5037, as amended, by voice vote, a quorum being present.

ROLL CALL VOTES

No roll call votes were requested or conducted during Full Committee consideration of H.R. 5037.

APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104–1 requires a description of the application of this bill to the legislative branch where the bill relates to the terms and conditions of employment or access to public services and accommodations. This bill authorizes the establishment of a program of voluntary separation incentive payments for nonjudicial employees of the District of Columbia courts and employees of the District of Columbia Public Defender Service. As such this bill does not relate to employment or access to public services and accommodations.

STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE

In compliance with clause 3(c)(1) of rule XIII and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the descriptive portions of this report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee's performance goal or objective of this bill is to authorize the establishment of a program of voluntary separation incentive payments for nonjudicial employees of the District of Columbia courts and employees of the District of Columbia Public Defender Service.

DUPLICATION OF FEDERAL PROGRAMS

No provision of this bill establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the

Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

Disclosure of Directed Rule Makings

The Committee estimates that enacting this bill does not direct the completion of any specific rule makings within the meaning of 5 U.S.C. 551.

Federal Advisory Committee Act

The Committee finds that the legislation does not establish or authorize the establishment of an advisory committee within the definition of 5 U.S.C. App., Section 5(b).

Unfunded Mandate Statement

Section 423 of the Congressional Budget and Impoundment Control Act (as amended by Section 101(a)(2) of the Unfunded Mandate Reform Act, P.L. 104–4) requires a statement as to whether the provisions of the reported include unfunded mandates. In compliance with this requirement the Committee has received a letter from the Congressional Budget Office included herein.

Earmark Identification

This bill does not include any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

Committee Estimate

At the time of this writing, the Committee had yet to receive a formal cost estimate from the Congressional Budget Office for H.R. 5037. However, the Committee considered substantially similar legislation during the 109th Congress, H.R. 5711, from which it bases its committee estimate for H.R. 5037. Based on that earlier score, the Committee expects slight discretionary savings over the 10-year period.

Budget Authority and Congressional Budget Office Cost Estimate

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has not received a cost estimate for this bill from the Director of Congressional Budget Office, and instead has included a committee estimate in the section prior to this one.

Changes in Existing Law Made by the Bill, as Reported

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic and existing law in which no change is proposed is shown in roman):

DISTRICT OF COLUMBIA OFFICIAL CODE

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TITLE 2—GOVERNMENT ADMINISTRATION

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CHAPTER 16—PUBLIC DEFENDER SERVICE

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§ 2–1605. Employment of attorneys and other personnel; compensation; private practice by attorneys not permitted

(a) The Director shall employ a staff of attorneys and clerical and other personnel necessary to provide adequate and effective services. The Director shall make assignments of the personnel of the Service. The compensation of all employees of the Service, other than the Director and the Deputy Director, shall be fixed by the Director, but shall not exceed the compensation which may be paid to persons of similar qualifications and experience in the office of the United States Attorney for the District of Columbia. All attorneys employed by the Service to represent persons shall be members of the bar of the District of Columbia.

(b) No attorney employed by the Service shall engage in the private practice of law or receive a fee for representing any person.

(c)(1) Employees of the Service shall be treated as employees of the Federal Government solely for purposes of any of the following provisions of Title 5, United States Code: subchapter 1 of Chapter 81 (relating to compensation for work injuries), Chapter 83 (relating to retirement), Chapter 84 (relating to Federal Employees' Retirement System), Chapter 87 (relating to life insurance), and Chapter 89 (relating to health insurance).

(2) The Service shall make contributions under the provisions referred to in paragraph (1) of this subsection at the same rates applicable to agencies of the Federal Government.

(3) An individual who is an employee of the Service on the date of the enactment of this subsection may make, within 60 days after the issuance of regulations under paragraph (4) of this subsection, an election under § 8351 or 8432 of Title 5, United States Code, to participate in the Thrift Savings Plan for Federal employees.

(4) This subsection shall apply with respect to all months beginning after the date on which the Director of the Office of Personnel Management issues regulations to carry out this subsection.

(5) For purposes of vesting pursuant to § 1–626.10(b), creditable service with the District for employees whose participation in the District Defined Contribution Plan ceases as a result of implementation of this subsection shall include service performed thereafter for the Service.

(d) The Director may establish a program substantially similar to the program established under subchapter II of chapter 35 of title 5, United States Code, for employees of the Service, except that the maximum amount of the payment made under the program to any individual may not exceed the amount referred to in section 3523(b)(3)(B) of title 5, United States Code.

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TITLE 11—ORGANIZATION AND JURISDICTION OF THE COURTS

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CHAPTER 17—ADMINISTRATION OF DISTRICT OF COLUMBIA COURTS

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§ 11–1726A. Voluntary Separation Incentive Payments

The Joint Committee on Judicial Administration may, by regulation, establish a program substantially similar to the program established under subchapter II of chapter 35 of title 5, United States Code, for nonjudicial employees of the District of Columbia courts, except that the maximum amount of the payment made under the program to any individual may not exceed the amount referred to in section 3523(b)(3)(B) of title 5, United States Code.

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