

ANTI-BORDER CORRUPTION REAUTHORIZATION ACT OF
2017

MAY 16, 2017.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed

Mr. McCAUL, from the Committee on Homeland Security,
submitted the following

R E P O R T

[To accompany H.R. 2213]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security, to whom was referred the bill (H.R. 2213) to amend the Anti-Border Corruption Act of 2010 to authorize certain polygraph waiver authority, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends 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. SHORT TITLE.

This Act may be cited as the “Anti-Border Corruption Reauthorization Act of 2017”.

SEC. 2. HIRING FLEXIBILITY.

Section 3 of the Anti-Border Corruption Act of 2010 (Public Law 111–376; 6 U.S.C. 221) is amended by striking subsection (b) and inserting the following new subsections:

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

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

“(A) has served as a law enforcement officer for not fewer than three years with no break in service;

“(B) is authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law, and has statutory powers for arrest or apprehension;

“(C) is not currently under investigation, has not been found to have engaged in criminal activity or serious misconduct, has not resigned from a law enforcement officer position under investigation or in lieu of termination, and has not been dismissed from a law enforcement officer position; and

“(D) has, within the past ten years, successfully completed a polygraph examination as a condition of employment with such officer’s current law enforcement agency.

“(2) In the case of a current, full-time law enforcement officer employed by a Federal law enforcement agency, if such officer—

“(A) has served as a law enforcement officer for not fewer than three years with no break in service;

“(B) has authority to make arrests, conduct investigations, conduct searches, make seizures, carry firearms, and serve orders, warrants, and other processes;

“(C) is not currently under investigation, has not been found to have engaged in criminal activity or serious misconduct, has not resigned from a law enforcement officer position under investigation or in lieu of termination, and has not been dismissed from a law enforcement officer position; and

“(D) holds a current Tier 4 background investigation or current Tier 5 background investigation.

“(3) In the case of an individual who is a member of the Armed Forces (or a reserve component thereof) or a veteran, if such individual—

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

“(B) holds, or has held within the past five years, a Secret, Top Secret, or Top Secret / Sensitive Compartmented Information clearance;

“(C) holds, or has undergone within the past five years, a current Tier 4 background investigation or current Tier 5 background investigation;

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

“(E) was not granted any waivers to obtain the clearance referred to subparagraph (B).

“(c) **TERMINATION OF WAIVER AUTHORITY.**—The authority to issue a waiver under subsection (b) shall terminate on the date that is five years after the date of the enactment of the Anti-Border Corruption Reauthorization Act of 2017.”.

SEC. 3. SUPPLEMENTAL COMMISSIONER AUTHORITY AND DEFINITIONS.

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

“SEC. 4. SUPPLEMENTAL COMMISSIONER AUTHORITY.

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

“(b) **BACKGROUND INVESTIGATIONS.**—Any individual who receives a waiver under subsection (b) of section 3 who holds a current Tier 4 background investigation shall be subject to a Tier 5 background investigation.

“(c) **ADMINISTRATION OF POLYGRAPH EXAMINATION.**—The Commissioner of U.S. Customs and Border Protection is authorized to administer a polygraph examination

to an applicant or employee who is eligible for or receives a waiver under subsection (b) of section 3 if information is discovered prior to the completion of a background investigation that results in a determination that a polygraph examination is necessary to make a final determination regarding suitability for employment or continued employment, as the case may be.”

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

“SEC. 5. REPORTING.

“Not later than one year after the date of the enactment of this section and every year for the next four years thereafter, the Commissioner of U.S. Customs and Border Protection shall provide the Committee on Homeland Security of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate information on the number, disaggregated with respect to each of paragraphs (1), (2), and (3) of subsection (b) of section 3, of waivers requested, granted, and denied, and the reasons for any such denial, and the final outcome of the application for employment at issue. Such information shall also include the number of instances a polygraph examination was administered under the conditions described in subsection (c) of section 4, the result of such examination, and the final outcome of the application for employment at issue.”

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

“SEC. 6. DEFINITIONS.

“In this Act:

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

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

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

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

“(B) a punitive discharge is, or would be, authorized for the same or a closely related offense under the Manual for Court-Martial, as pursuant to Army Regulation 635-200 chapter 14-12.

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

PURPOSE AND SUMMARY

H.R. 2213, the Anti-Border Corruption Reauthorization Act of 2017, provides waiver authority to the Commissioner of U.S. Customs and Border Protection (CBP) as an additional method to reduce the current staffing shortage that currently exists for all of the law enforcement positions covered by the polygraph examination requirement.

Three, narrowly tailored exemptions provides discretion to the Commissioner of CBP to waive the polygraph for current State and local law enforcement officers who have already passed a polygraph examination, Federal law enforcement officers who have already passed a stringent background investigation and veterans with at least three consecutive years in the military who have held a clearance and passed a background check.

These exemptions are purely discretionary, not mandatory. If there is something in an applicant’s history, or background that causes CBP concern, then the Commissioner would be encouraged to use the polygraph exam to resolve those questions.

These small changes can provide CBP with immediate relief so that they are able to quickly, yet judiciously, hire officers and agents from a pool of applicants that already maintain the public’s

trust and put their lives on the line for our security and safety on a daily basis.

BACKGROUND AND NEED FOR LEGISLATION

U.S. Border Patrol agents and Office of Field Operations officers are, at the end of the day, the most important border security resource we have.

All of the technology and infrastructure deployed along the southern border is useless if we do not have a well-trained agent or officer present to make an arrest, interdict a drug load, screen cargo from a country of concern or speed legitimate transit through a port of entry.

However, CBP is critically understaffed and well below its congressionally mandated staffing levels by more than 1,000 Officers and 1,800 Border Patrol Agents. Even with a recent push to hire more officers and agents, the process is slow and arduous.

We are simply losing ground every single month, and there is no end in sight as we continue to lose agents and officers through attrition, without the ability to quickly hire new ones. At the current hiring rate, approximately 150–200 applicants go through the process in order to hire one agent or officer. This means CBP needs to have hundreds of thousands of people apply just to meet their current needs. Hiring more agents and officers will boost our national security and bring good jobs to our local economy.

The Anti-Border Corruption Act of 2010 requires that CBP law enforcement applicants undergo a pre-employment polygraph examination as part of a very long and laborious process. This is creating a substantial staffing bottleneck.

The Committee fully supports the Anti-Border Corruption Act of 2010 (Pub. L. 111–376) to make sure that everyone who applies to be a CBP Officer, a Border Patrol Agent, or an Air and Marine interdict officer is thoroughly vetted to ensure they are not at risk for corruption, or a cartel operative.

However, the Committee believes that these small changes will provide CBP with immediate, albeit temporary, relief so that they are able to quickly, yet judiciously, hire officers and agents from a pool of applicants that already maintain the public's trust and put their lives on the line for our security and safety on a daily basis.

HEARINGS

No hearings were held on H.R. 2213 in the 115th Congress.

COMMITTEE CONSIDERATION

The Committee met on May 3, 2017, to consider H.R. 2213, and ordered the measure to be reported to the House with a favorable recommendation, as amended, by voice vote. The Committee took the following actions:

The Committee agreed to H.R. 2213, as amended, by voice vote.

The following amendment was offered:

An amendment offered by MR. THOMPSON of Mississippi (#1); was **AGREED TO** by voice vote.

Page 6, line 4, redesignate subsection (b) as subsection (c).

Page 6, beginning line 4, insert a new subsection entitled "(b) Report."

Page 6, line 5, strike "is amended" and insert "as amended by subsection (b) of this section, is further amended".

Page 6, line 7, strike “5” and insert “6”.

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. 2213.

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. 2213, the Anti-Border Corruption Reauthorization Act of 2017, 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.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 12, 2017.

Hon. MICHAEL MCCAUL,
*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. 2213, the Anti-Border Corruption Reauthorization Act of 2017.

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

Sincerely,

KEITH HALL.

Enclosure.

H.R. 2213—Anti-Border Corruption Reauthorization Act of 2017

Current law requires U.S. Customs and Border Protection (CBP) to administer polygraph examinations to nearly all applicants for law enforcement positions. H.R. 2213 would broaden the criteria for waiving the polygraph requirement for certain applicants. Based on information from CBP, CBO estimates that implementing the bill would have no significant effect on the agency’s spending to vet applicants for law enforcement positions, because the expanded exemption would probably not affect very many people.

Enacting the legislation would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply. CBO esti-

mates that enacting H.R. 2213 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

H.R. 2213 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.

The CBO staff contact for this estimate is Mark Grabowicz. The estimate was approved by H. Samuel Papenfuss, 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. 2213 contains the following general performance goals and objectives, including outcome related goals and objectives authorized.

The general performance goal or objective of this bill is to expedite the hiring of Customs and Border Protection Officers and Agents to meet the economic and national security requirements of the Nation.

DUPLICATIVE FEDERAL PROGRAMS

Pursuant to clause 3(c) of Rule XIII, the Committee finds that H.R. 2213 does not contain any provision that establishes or reauthorizes a program known to be duplicative of another Federal program.

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.

PREEMPTION CLARIFICATION

In compliance with section 423 of the Congressional Budget Act of 1974, requiring the report of any Committee on a bill or joint resolution to include a statement on the extent to which the bill or joint resolution is intended to preempt State, local, or Tribal law, the Committee finds that H.R. 2213 does not preempt any State, local, or Tribal law.

DISCLOSURE OF DIRECTED RULE MAKINGS

The Committee estimates that H.R. 2213 would require no directed rule makings.

ADVISORY COMMITTEE STATEMENT

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

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. Short Title.

This section provides that this bill may be cited as the “Anti-Border Corruption Reauthorization Act of 2017”.

Sec. 2. Hiring Flexibility.

Section 2 amends the Anti-Border Corruption Act of 2010 to provide discretionary authority for the Commissioner of U.S. Customs and Border Protection (CBP) to waive the pre-employment polygraph requirement for Federal, State and local law enforcement officers who have served with their respective agencies for not fewer than 3 years, are in good standing, and have completed a polygraph within 10 years.

In the case of Federal law enforcement officers, a Tier 4 or Tier 5 Federal background check must have been completed within the last 5 years. This section also allows the Commissioner to waive the pre-employment polygraph for members of the armed forces who have served not fewer than 3 years, has received, or is eligible to receive an honorable discharge, and has held a security clearance within the last 5 years.

This waiver authority will end 5 years after the enactment of this Act.

The Committee is concerned with CBPs inability to reach its current authorized employment levels and the impact to the Nation’s security and economic growth caused by CBP officer and agent shortage. As a result, the Committee is providing this temporary waiver authority for these three, narrowly tailored exemptions to alleviate the immediate shortage of CBP officers and Border Patrol agents while changes are piloted to the polygraph examination. The Committee would encourage the Commissioner to require a polygraph examination for any applicant in the three waiver categories should any concerns be discovered in that applicant’s history or background. The explicit sunset in the bill is designed to provide Congress with the ability to weigh-in on the long-term necessity of this waiver authority.

Sec. 3. Supplemental Commissioner Authority and Definitions.

Section 3 amends the Anti-Border Corruption Act of 2010 to insert new sections 4, 5, and 6 as follows:

Sec. 4. Supplemental Commission Authority.

Section 4 amends the Anti-Border Corruption Act of 2010 to specify that while the Commissioner may waive the polygraph re-

quirement, no other aspects of the CBP hiring process shall be waived. The Commissioner is authorized to perform a polygraph examination on a waiver recipient if derogatory information on the applicant is discovered during the hiring process and a polygraph is needed to inform a hiring decision.

This section defines law enforcement officer, veteran, serious military or civil offense, and Tier 4 and Tier 5 background checks.

The Committee believes that while providing the Commissioner discretionary waiver authority for highly qualified, pre-vetted candidates, our intent is not to lower the standards for the hiring of a CBP agents and officers given the immense national security responsibilities of these law enforcement officers. Section 3 ensures that while a candidate may receive a polygraph waiver, the Commissioner continues to have the authority to require a candidate to complete a polygraph examination, and a higher-level background investigation to ensure that CBP applicants are appropriately and thoroughly vetted.

Though the Committee recognizes that this measure may improve, on a limited basis, CBP's ability to onboard new employees, there are larger challenges associated with the hiring process, most especially as relates to the polygraph program. The Committee intends to carry out oversight of the use of this waiver authority in addition to any reforms CBP may consider for the administration of its pre-employment polygraph examinations. The Committee is aware that CBP launched a pilot to test a revised version of its polygraph examination in late April 2017 with the intention of improving pass rates, shortening the overall time needed to administer the polygraph, and potentially address concerns about how these polygraphs are administered. The results of this pilot, any future pilots to test variations of the polygraph, as well as any subsequent changes to CBP's hiring process will be closely monitored by the Committee to ensure the integrity and intent of thoroughly vetting applicants for CBP law enforcement positions.

Sec. 5. Reporting.

Section 5 mandates that CBP submit to the appropriate congressional committees, an annual report for the 5-years of the waiver program is authorized under this Act. The report must include the number of waivers requested, granted and denied, the reason for the denial, and the final outcome of employment status. The report must also include the number of polygraph waiver applicants that had a polygraph waiver granted and were subsequently polygraphed due to derogatory information being discovered during the hiring process, as well as the final employment determination of those applicants.

The Committee believes that these reports will enable the Committee to assess the use and frequency of the waiver authority provided in the bill.

Sec. 6. Definitions.

Section 6, of the revised Anti-Border Corruption Act of 2010, defines terms used in this act including: "law enforcement officer", "veteran", "serious military or civil offense", "Tier 4", and "Tier 5".

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 (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, and existing law in which no change is proposed is shown in roman):

ANTI-BORDER CORRUPTION ACT OF 2010

* * * * *

SEC. 3. REQUIREMENTS WITH RESPECT TO ADMINISTERING POLYGRAPH EXAMINATIONS TO LAW ENFORCEMENT PERSONNEL OF U.S. CUSTOMS AND BORDER PROTECTION.

(a) **IN GENERAL.**—The Secretary of Homeland Security shall ensure that—

(1) by not later than 2 years after the date of the enactment of this Act, all applicants for law enforcement positions with U.S. Customs and Border Protection (except as provided in subsection (b)) receive polygraph examinations before being hired for such a position; and

(2) by not later than 180 days after the date of the enactment of this Act, U.S. Customs and Border Protection initiates all periodic background reinvestigations for all law enforcement personnel of U.S. Customs and Border Protection that should receive periodic background reinvestigations pursuant to relevant policies of U.S. Customs and Border Protection in effect on the day before the date of the enactment of this Act.

[(b) **WAIVER.**—The Commissioner of U.S. Customs and Border Protection may waive the polygraph examination requirement under subsection (a)(1) for any applicant who—

[(1) is deemed suitable for employment;

[(2) holds a current, active Top Secret/Sensitive Compartmented Information Clearance;

[(3) has a current Single Scope Background Investigation;

[(4) was not granted any waivers to obtain his or her clearance; and

[(5) is a veteran (as defined in section 2108 of title 5, United States Code).]

(b) **WAIVER AUTHORITY.**—*The Commissioner of U.S. Customs and Border Protection may waive the application of subsection (a)(1) in the following circumstances:*

(1) *In the case of a current, full-time law enforcement officer employed by a State or local law enforcement agency, if such officer—*

(A) *has served as a law enforcement officer for not fewer than three years with no break in service;*

(B) *is authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law, and has statutory powers for arrest or apprehension;*

(C) *is not currently under investigation, has not been found to have engaged in criminal activity or serious misconduct, has not resigned from a law enforcement officer position under investigation or in lieu of termination, and*

has not been dismissed from a law enforcement officer position; and

(D) has, within the past ten years, successfully completed a polygraph examination as a condition of employment with such officer's current law enforcement agency.

(2) In the case of a current, full-time law enforcement officer employed by a Federal law enforcement agency, if such officer—

(A) has served as a law enforcement officer for not fewer than three years with no break in service;

(B) has authority to make arrests, conduct investigations, conduct searches, make seizures, carry firearms, and serve orders, warrants, and other processes;

(C) is not currently under investigation, has not been found to have engaged in criminal activity or serious misconduct, has not resigned from a law enforcement officer position under investigation or in lieu of termination, and has not been dismissed from a law enforcement officer position; and

(D) holds a current Tier 4 background investigation or current Tier 5 background investigation.

(3) In the case of an individual who is a member of the Armed Forces (or a reserve component thereof) or a veteran, if such individual—

(A) has served in the Armed Forces for not fewer than three years;

(B) holds, or has held within the past five years, a Secret, Top Secret, or Top Secret / Sensitive Compartmented Information clearance;

(C) holds, or has undergone within the past five years, a current Tier 4 background investigation or current Tier 5 background investigation;

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

(E) was not granted any waivers to obtain the clearance referred to subparagraph (B).

(c) TERMINATION OF WAIVER AUTHORITY.—The authority to issue a waiver under subsection (b) shall terminate on the date that is five years after the date of the enactment of the Anti-Border Corruption Reauthorization Act of 2017.

[SEC. 4. PROGRESS REPORT.

[Not later than 180 days after the date of the enactment of this Act, and every 180 days thereafter through the date that is 2 years after such date of enactment, the Secretary of Homeland Security shall submit to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Homeland Security of the House of Representatives a report on the progress made by U.S. Customs and Border Protection toward complying with section 3.]

SEC. 4. SUPPLEMENTAL COMMISSIONER AUTHORITY.

(a) NON-EXEMPTION.—An individual who receives a waiver under subsection (b) of section 3 is not exempt from other hiring require-

ments relating to suitability for employment and eligibility to hold a national security designated position, as determined by the Commissioner of U.S. Customs and Border Protection.

(b) **BACKGROUND INVESTIGATIONS.**—Any individual who receives a waiver under subsection (b) of section 3 who holds a current Tier 4 background investigation shall be subject to a Tier 5 background investigation.

(c) **ADMINISTRATION OF POLYGRAPH EXAMINATION.**—The Commissioner of U.S. Customs and Border Protection is authorized to administer a polygraph examination to an applicant or employee who is eligible for or receives a waiver under subsection (b) of section 3 if information is discovered prior to the completion of a background investigation that results in a determination that a polygraph examination is necessary to make a final determination regarding suitability for employment or continued employment, as the case may be.

SEC. 5. REPORTING.

Not later than one year after the date of the enactment of this section and every year for the next four years thereafter, the Commissioner of U.S. Customs and Border Protection shall provide the Committee on Homeland Security of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate information on the number, disaggregated with respect to each of paragraphs (1), (2), and (3) of subsection (b) of section 3, of waivers requested, granted, and denied, and the reasons for any such denial, and the final outcome of the application for employment at issue. Such information shall also include the number of instances a polygraph examination was administered under the conditions described in subsection (c) of section 4, the result of such examination, and the final outcome of the application for employment at issue.

SEC. 6. DEFINITIONS.

In this Act:

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

(2) **VETERAN.**—The term “veteran” has the meaning given such term in section 101(2) of title 38, United States Code.

(3) **SERIOUS MILITARY OR CIVIL OFFENSE.**—The term “serious military or civil offense” means an offense for which—

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

(B) a punitive discharge is, or would be, authorized for the same or a closely related offense under the Manual for Court-Martial, as pursuant to Army Regulation 635-200 chapter 14-12.

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