

DISTRICT OF COLUMBIA COURTS AND PUBLIC DEFENDER SERVICE VOL-  
 UNTARY SEPARATION INCENTIVE PAYMENTS ACT

APRIL 6, 2017.—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. 1003]

[Including cost estimate of the Congressional Budget Office]

The Committee on Oversight and Government Reform, to whom  
 was referred the bill (H.R. 1003) 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 consid-  
 ered the same, report favorably thereon without amendment and  
 recommend that the bill do pass.

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## COMMITTEE STATEMENT AND VIEWS

## PURPOSE AND SUMMARY

H.R. 1003, the District of Columbia Courts and Public Defender Service Voluntary Separation Incentive Payments Act, provides the District of Columbia Courts System and the District of Columbia Public Defender Service with authority to create a voluntary separation incentive payments program. The program is substantially similar to the existing federal program. Payments made under the program allow the District Courts System and Public Defender Service to right size their workforces and reduce unnecessary overhead costs.

## BACKGROUND AND NEED FOR LEGISLATION

The use of voluntary separation incentive payments (VSIPs) by federal agencies and the federal judicial branch was made permanent in 2002.<sup>1</sup> The program established under this statute provides authority for the Office of Personnel Management (OPM) to authorize agencies to provide buyouts to employees in surplus positions or employees with unnecessary skill sets. Employees receive a VSIP in exchange for voluntarily resigning or retiring. VSIP payment amounts are determined 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.<sup>2</sup> The amount an agency may pay to an employee under a VSIP is capped at \$25,000.<sup>3</sup> This same cap would apply to the District of Columbia VSIP authorization.

In 1996, the Government Accountability Office (GAO) reviewed cost savings that could be realized by using VSIPs.<sup>4</sup> The review compared the savings that result from a VSIP program, termed “buyouts” in the study, to that of a reduction in force effort.<sup>5</sup> GAO found that buyouts could result in up to 50 percent greater savings than reduction in force efforts due to a number of factors.<sup>6</sup> 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.<sup>7</sup> 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.<sup>8</sup> In addition to the greater cost savings of VSIPs, OPM also noted that VSIPs are far less disruptive than reductions in force on impacted agencies.<sup>9</sup>

<sup>1</sup> 5 USC §§ 3521–3525

<sup>2</sup> Workforce Restructuring, Office of Personnel Mgmt., available at <https://www.opm.gov/policy-data-oversight/workforce-restructuring/voluntary-separation-incentive-payments/> (last accessed Mar. 14, 2017).

<sup>3</sup> *Id.* The National Defense Authorization Act for Fiscal Year 2017 (P.L. 114–328) authorized a one-year increase in the VSIP cap for Department of Defense civilian employees from \$25,000 to \$40,000.

<sup>4</sup> U.S. General Accounting Office, *Federal Downsizing: The Costs and Savings of Buyouts Versus Reductions-in-Force*, GAO–96–63 (May 14, 1996). The name of the General Accounting Office has since changed to the Government Accountability Office.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> Office of Personnel Mgmt., *Guide to Voluntary Separation Incentive Payments* (2006).

Although VSIP authority is available to federal agencies and the federal judicial branch, neither the District Courts System nor the Public Defender Service has such authority.

H.R. 1003 provides the necessary authority for the District Courts System and the Public Defender Service to create and implement VSIP programs. This authority allows these agencies access to a much-needed human resources tool, enabling them to eliminate unnecessary positions and the federal government to realize associated cost savings.

#### LEGISLATIVE HISTORY

On February 13, 2017, Delegate Eleanor Holmes Norton (D–DC) introduced H.R. 1003, the District of Columbia Courts and Public Defender Service Voluntary Separation Incentive Payments Act. H.R. 1003 was referred to the Committee on Oversight and Government Reform. The Committee considered H.R. 1003 at a business meeting on February 14, 2017 and ordered the bill favorably reported, without amendment, by voice vote.

In the 114th Congress, Delegate Norton introduced similar legislation, H.R. 5037. The Committee on Oversight and Government Reform ordered H.R. 5037 favorably reported, and H.R. 5037 passed the House with overwhelming bipartisan support, with a vote total of 413–1.

In addition, Delegate Norton introduced earlier iterations of the bill in the 113th and 109th Congresses. In the 113th Congress, Delegate Norton introduced H.R. 5006. During the 109th Congress, Delegate Norton introduced H.R. 5711.

#### SECTION-BY-SECTION

##### *Section 1. Short title*

Section 1 establishes the bill’s short title 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*

Section 2 amends Chapter 17 of title 11 of the D.C. Code by inserting a new section, 1726A, which authorizes the Joint Committee on Judicial Administration to establish a voluntary separation incentive payment program for nonjudicial employees. The program is substantially similar to the program for federal judicial branch employees authorized under subchapter II of chapter 35 of title 5, United States Code.

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

Section 3 amends section 305 of the District of Columbia Court Reform and Criminal Procedure Act of 1970 by adding a new subsection (d), which would provide that the Director of the District of Columbia Public Defender Service may establish a program substantially similar to that established under subchapter II of chapter 35 of title 5, United States Code.

## EXPLANATION OF AMENDMENTS

No amendments were offered on H.R. 1003.

## COMMITTEE CONSIDERATION

On February 14, 2017, the Committee met in open session and ordered reported favorably the bill, H.R. 1003, by voice vote, a quorum being present.

## ROLL CALL VOTES

There were no recorded votes during consideration of H.R. 1003.

## 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 provides the District of Columbia Courts System and Public Defender Service with authority to create a voluntary separation incentive payments program. 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 Courts System 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 section 551 or title 5, United States Code.

## 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 Section 5(b) of the appendix to title 5, United States Code.

## UNFUNDED MANDATE STATEMENT

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

## 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

Clause 3(d)(1) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs that would be incurred in carrying out this bill. However, clause 3(d)(2)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974, which the Committee has included below.

## 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 received the following cost estimate for this bill from the Director of Congressional Budget Office:

MARCH 16, 2017.

Hon. JASON CHAFFETZ,  
*Chairman, Committee on Oversight and Government Reform,  
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1003, the District of Columbia Courts and Public Defender Service Voluntary Separation Incentive Payments Act.

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

Sincerely,

KEITH HALL.

Enclosure.

*H.R. 1003—District of Columbia Courts and Public Defender Service Voluntary Separation Incentive Payments Act*

Summary: H.R. 1003 would amend the District of Columbia (D.C.) Code to permit the relevant authorities to establish a program to offer incentive payments to certain nonjudicial employees of the D.C. courts and the D.C. Public Defender Service for voluntarily separating from their positions. CBO estimates that enacting H.R. 1003 would increase direct spending for retirement annuities and related health benefits by \$1 million in fiscal year 2018 and \$7 million over the 2018–2027 period. In addition, because those agencies are funded by federal appropriations, CBO estimates that the separation payments would increase discretionary outlays by \$3 million over that same period, assuming availability of the necessary funds.

Pay-as-you-go procedures apply because enacting the legislation would affect direct spending.

CBO estimates that enacting the legislation would not increase net direct spending or on-budget deficits by more than \$5 billion in any of the four consecutive 10-year periods beginning in 2028.

H.R. 1003 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary effect of H.R. 1003 is shown in the following table. The costs of this legislation fall within budget functions 550 (health), 600 (income security), 750 (administration of justice) and 800 (general government).

	By fiscal year, in millions of dollars—												
	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2017–2022	2017–2027
INCREASES OR DECREASES (–) IN DIRECT SPENDING													
Estimated Budget Authority .....	0	1	2	2	2	1	*	*	*	*	*	8	7
Estimated Outlays .....	0	1	2	2	2	1	*	*	*	*	*	8	7
INCREASES IN SPENDING SUBJECT TO APPROPRIATION													
Estimated Authorization Level .....	0	1	1	1	*	*	*	*	*	*	*	3	3
Estimated Outlays .....	0	1	1	1	*	*	*	*	*	*	*	3	3

Note: \* = between –\$500,000 and \$500,000. Components may not sum to totals because of rounding.

Basis of estimate: This estimate assumes that H.R. 1003 will be enacted late in 2017 and that the necessary funds will be available each year.

*Direct spending*

H.R. 1003 would authorize both the D.C. courts and the Public Defender Service to establish a program to provide voluntary separation payments for nonjudicial employees. This program would be similar to one used by most federal agencies to provide cash payments (often called “buyouts”) of up to \$25,000 to employees who voluntarily leave federal service. H.R. 1003 would not limit the number of employees who could receive such payments or the period of time during which buyouts could be offered.

The two affected agencies have indicated that they would use the authority under H.R. 1003 to restructure their workforce to better match their needs. To achieve that end, the agencies would target

separation payments to employees who are near retirement. Based on an analysis of data provided by the agencies, CBO estimates that over the next 10 years the incentive payments would induce about 120 employees of the D.C. courts and Public Defender Services to retire one or two years earlier than they otherwise would have.

Employees of the D.C. courts and Public Defender Service participate in the federal government's retirement programs. Because H.R. 1003 would induce employees to enter the retirement rolls sooner than they otherwise would have, the government would be required to pay additional benefits initially.

However, in subsequent years, benefit payments for individuals who accept the buyout would be smaller because retirement benefits are based on the number of years of service that the annuitant worked; that number would be somewhat lower as a result of the decision to accept early retirement. Thus, while the total amount of benefits paid would be higher in the near term, reduced annuities would lead to a small savings in later years. On net, CBO estimates that enacting the legislation would increase spending for retirement benefits by \$5 million over 2018–2027 period.

The agencies' employees also participate in the Federal Employees Health Benefits program (FEHB). When those employees retire, the federal government pays a portion of the premium; those payments are classified as direct spending. Thus, because of the increase in early retirements resulting from H.R. 1003, the legislation also would increase the federal government's contributions for annuitants under the FEHB program. CBO estimates that those contributions would increase direct spending by \$2 million over the 2018–2027 period.

#### *Spending subject to appropriation*

CBO estimates that implementing H.R. 1003 would increase spending to make buyout payments by about \$1 million in fiscal year 2018 and \$3 million over the 2018–2027 period, assuming the availability of appropriated funds. That cost stems from CBO's expectation that the buyout authority would be used for about 120 employees at a cost of \$25,000 per employee.

Providing such buyout authority could also have other effects on personnel costs at the two agencies (spending for the agencies is part of the federal budget). For example, if the agencies hired less expensive employees to replace retiring employees, they could save on personnel costs. However, those potential savings could be offset by other personnel decisions, such as promoting current employees into vacated, higher-paying positions; hiring additional people to fill agency needs; or rewarding high-performing employees with bonuses. CBO has no basis for predicting which of those actions, if any, the agencies might take. Therefore, CBO does not estimate any changes in spending resulting from other personnel decisions related to employee buyouts.

Pay-As-You-Go considerations: The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. The net changes in outlays that are subject to those pay-as-you-go procedures are shown in the following table.

CBO ESTIMATE OF PAY-AS-YOU-GO EFFECTS FOR H.R. 1003, AS ORDERED REPORTED BY THE  
HOUSE COMMITTEE ON GOVERNMENT REFORM ON FEBRUARY 14, 2017

	By fiscal year, in millions of dollars—												
	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2017– 2022	2017– 2027
NET INCREASE IN THE ON-BUDGET DEFICIT													
Statutory Pay-As-You-Go Impact ....	0	1	2	2	2	1	0	0	0	0	0	8	7

Note: Components may not sum to totals because of rounding.

Increase in long-term direct spending and deficits: CBO estimates that enacting the legislation would not increase net direct spending or on-budget deficits by more than \$5 billion in any of the four consecutive 10-year periods beginning in 2028.

Intergovernmental and private-sector impact: H.R. 1003 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

Estimate prepared by: Federal costs: Dan Ready; Impact on state, local, and tribal governments: Zach Byrum; Impact on the private sector: Paige Piper/Bach.

Estimate approved by: H. Samuel Papenfuss; Deputy Assistant Director for Budget Analysis.

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**

\* \* \* \* \*

**TITLE 2—GOVERNMENT  
ADMINISTRATION**

\* \* \* \* \*

**CHAPTER 16—PUBLIC DEFENDER SERVICE**

\* \* \* \* \*

**§ 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 attor-



neys 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.*

\* \* \* \* \*

## TITLE 11—ORGANIZATION AND JURISDICTION OF THE COURTS

\* \* \* \* \*

### CHAPTER 17—ADMINISTRATION OF DISTRICT OF COLUMBIA COURTS

Sec.

#### SUBCHAPTER I—COURT ADMINISTRATION

11-1701. Administration of District of Columbia court system.

\* \* \* \* \*

#### SUBCHAPTER II—COURT PERSONNEL.

11-1726A. *Voluntary separation incentive payments.*

\* \* \* \* \*

SUBCHAPTER II—COURT PERSONNEL

\* \* \* \* \*

**§ 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.*

\* \* \* \* \*

