Calendar No. 478

116TH CONGRESS
2d Session

SENATE

REPORT
116–231

BONUSES FOR COST-CUTTERS ACT OF 2019

R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS UNITED STATES SENATE

TO ACCOMPANY

S. 2618

TOGETHER WITH

MINORITY VIEWS

TO STRENGTHEN EMPLOYEE COST SAVINGS SUGGESTIONS PROGRAMS WITHIN THE FEDERAL GOVERNMENT

JUNE 9, 2020.—Ordered to be printed

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JUNE 9, 2020.—Ordered to be printed

Mr. JOHNSON, from the Committee on Homeland Security and Governmental Affairs, submitted the following

REPORT

together with

MINORITY VIEWS

[To accompany S. 2618]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 2618) to strengthen employee cost savings suggestions programs within the Federal Government, having considered the same, reports favorably thereon with amendments and recommends that the bill, as amended, do pass.

CONTENTS

I. PURPOSE AND SUMMARY

S. 2618, the Bonuses for Cost-Cutters Act of 2019, provides incentives for Federal employees to identify unnecessary spending that can be returned to the United States Treasury for deficit reduction. The agency may retain up to ten percent of the amount returned for the purpose of reprogramming, or to provide a monetary reward to the employee(s) who identified the unnecessary spending. Although the bill is primarily to combat "use it or lose it" end-of-year spending, it is applicable to expenditures throughout the fiscal year.[1]

II. Background and the Need for Legislation

In 1980, the Committee issued a report titled "Hurry-Up Spending," which concluded that the urgency to expend any funds remaining at the end of the fiscal year resulted in products being purchased at unnecessarily high prices, a lack of a competitive market, and generally poor compliance to contracting regulations.[2]

Forty years later and the Committee is still concerned about Federal agencies continued practices of increasing the expenditure of funds at the end of the fiscal year. The transaction of funds in the final month of the fiscal year is not only a constant problem, but a growing one as well. An oversight company's report claims spending in the last month of a fiscal year has gone up each year since 2015.[3] In the final week of fiscal year 2018, Federal agencies signed nearly 10 percent of all fiscal year contracts resulting in $53.3 billion—more than was spent during the entire month of August ($47 billion).[4]

Federal agencies spent $96 billion in September 2018 alone.[5] The biggest culprit of wasteful spending in the final month of fiscal year 2018 was the Department of Defense, spending $61 billion in September 2018.[6] It is reported that the Department of Defense spent over $4 million on crab and lobster in the closing weeks of the fiscal year.[7] The increase in agency spending at the end of the year, due to "use it or lose it" budget rules, is so prevalent that articles are published at the end of fiscal years to highlight ways contractors can take advantage of the influx of funds being spent.[8]

The Bonuses for Cost-Cutters Act of 2019 directly addresses this problem by expanding the existing awards program for Federal employees to disclose waste, fraud, or mismanagement that result in cost savings. Under the provisions of the bill, an employee can identify unnecessary surplus salary and expenses and refer them to the inspector general of the agency or other agency employees designated to undertake such reviews, as well as the Chief Financial Officer of the agency for review. If the Chief Financial Officer

[1] On May 25, 2016, the Committee approved S. 1378, the Bonuses for Cost-Cutters Act of 2015. That bill is substantially similar in purpose to S. 2618. Accordingly, this committee report is in large part a reproduction of Chairman Johnson's committee report for S. 1378, S. Rep. No. 114–406.

[2] Subcomm. on Oversight of Gov't Mgmt. of the S. Comm. on Governmental Affairs, *"HurryUp" Spending (1980)*, U.S. Gov't Printing Office, *available at* https://catalog.hathitrust.org/Record/002951199.

[3] Adam Andrzejewski & Thomas W. Smith, American Transparency Openthebooks.com, *The Federal Government's Use-It-Or-Lose-It Spending Spree,* 2, Mar. 2019, *available at* https://www.openthebooks.com/assets/1/7/UseItOrLoseIt_Final1.PDF.

[4] *Id.* at 4.

[5] *Id.* at 2.

[6] *Id.* at prologue.

[7] Kyle Rempfer, Military Times, *Use-it or lose-it: DoD dropped $4.6 million on crab and lobster, and $9,000 on a chair in last-minute spending spree,* Mar. 12, 2019, *available at* https://www.militarytimes.com/news/your-military/2019/03/12/use-it-or-lose-it-dod-dropped-46-million-on-crab-and-lobster-and-9000-on-a-chair-in-last-minute-spending-spree/?utm_source=Sailthru&utm_medium=email&utm_campaign=New%20Campaign&utm_term=Editorial%20-%20Marine%20Corps%20-%20Daily%20News%20Roundup.

[8] Tom Temin, DLT—A Tech Data Company, *How to Take Advantage of Federal Fiscal Year-End as a Solutions Provider,* Aug. 15, 2018, *available at* https://www.dlt.com/blog/2018/08/15/federal-fiscal-year-end-vendor.

concurs that the funds are not necessary for their intended purpose, and the rescission of the funds would not be detrimental to the execution of that purpose, then the head of the agency shall transfer the surplus or unnecessary funds to the general fund of the Treasury Department. However, the head may retain up to ten percent of any funds for reprogramming, or also for the purpose of paying a cash award to the employee who identified the surplus. The remainder of the funds are to be used by the Treasury Department for the purpose of deficit reduction.

III. Legislative History

S. 2618 was introduced on October 17, 2019, by Senators Rand Paul (R–KY), Michael Bennet (D–CO), John Cornyn (R–TX), Joni Ernst (R–IA), Mike Lee (R–UT), and Rob Portman (R–OH). Senators Michael Enzi (R–WY), Cory Gardner (R–CO), and Pat Toomey (R–PA) later joined as co-sponsors.

The bill was referred to the Committee on Homeland Security and Governmental Affairs on October 17, 2019. The Committee considered S. 2618 at a business meeting on November 6, 2019. S. 2618 passed by voice vote *en bloc* with Senators Johnson, Portman, Paul, Lankford, Romney, Scott, Enzi, Hawley, Peters, Carper, Hassan, Sinema, and Rosen present. For the record only, Senators Peters, Carper, Hassan, and Rosen voted in the negative.

IV. Section-by-Section Analysis of the Bill, as Reported

Section 1. Short title

This section establishes the short title of the bill as the “Bonuses for Cost-Cutters Act of 2019.”

Section 2. Cost savings enhancements

Section 2 amends the sections in U.S. Code that establishes awards for cost savings disclosures by including surplus salaries, and expense funds that are determined to be unnecessary or wasteful.

Subsection (a)(1) updates the definitions section by adding and defining “surplus salaries and expenses funds.”

Subsection (a)(2) creates the process in which an employee may identify surplus salaries and expenses that are unnecessary. The agency’s inspector general and chief financial officer are then required to review the claim to decide if funds are essential to the operation. If the funds are not necessary, they are to be transferred to the Treasury for deficit reduction, with the agency having the option to retain up to ten percent of the non-essential funding to provide as an award to the employee(s) who identified the surplus capital. This subsection also requires each agency to submit a report to Treasury detailing the number and amount of cash awards given to employees, as well as a description of each submission for potential surplus funds reported. The report submitted by the agencies is also to be included in the agency’s budget request to the Office of Management and Budget. Treasury is required to compile all the information provided by the agencies, and submit an annual report to Congress and the Government Accountability Office on the Federal cost savings and awards given through this legislation.

Subsection (a)(3) updates the table of sections to reflect the changes made by this legislation.

Subsection (a)(4) creates a six-year sunset on the authorities established by this bill.

Subsection (b)(1) identifies the types of employees that are not allowed to collect a cash award through this legislation. The following employees are barred from receiving an award: the head of an agency; employees that serve at the level I of the Executive Schedule; or a commissioner, board member, or other voting member of an independent establishment.

Subsection (b)(2) is a technical edit that strikes "Prohibition of cash award to Executive Schedule officers" in Section 4509 and replaces it with "Prohibition of cash award to certain officers" to match the rest of the bill language.

V. Evaluation of Regulatory Impact

Pursuant to the requirements of paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee has considered the regulatory impact of this bill and determined that the bill will have no regulatory impact within the meaning of the rules. The Committee agrees with the Congressional Budget Office's statement that the bill 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.

VI. Congressional Budget Office Cost Estimates

U.S. Congress,
Congressional Budget Office,
Washington, DC, November 21, 2019.

Hon. Ron Johnson,
Chairman, Committee on Homeland Security and Governmental Affairs, U.S. Senate, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the enclosed cost estimate for S. 2618, the Bonuses for Cost-Cutters Act of 2019.

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

Sincerely,

Phillip L. Swagel,
Director.

Enclosure.

S. 2618, Bonuses for Cost-Cutters Act of 2019
As ordered reported by the Senate Committee on Homeland Security and Governmental Affairs on November 6, 2019

By Fiscal Year, Millions of Dollars	2020	2020-2024	2020-2029
Direct Spending (Outlays)	0	*	*
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	0	0	0
Spending Subject to Appropriation (Outlays)	0	*	not estimated

		Mandate Effects	
Statutory pay-as-you-go procedures apply?	Yes	Contains intergovernmental mandate?	No
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2030?	No	Contains private-sector mandate?	No

* = between -$500,000 and zero.

Under current law, an inspector general (IG) of a federal agency can pay bonuses to employees who identify waste, fraud, or mismanagement of funds. S. 2618 would authorize agencies to pay bonuses to employees who identify unnecessary expenditures from amounts provided for agencies' salaries and expenses. Under the bill, if an agency's IG and Chief Financial Officer agree that funds appropriated to the agency are no longer required, then 90 percent of those surplus amounts would be transferred to the Treasury. The agency would retain 10 percent of the surplus funds and could use them to pay a bonus to employees who identified those surplus amounts, or for other authorized purposes.

If appropriated amounts returned to the Treasury are from appropriations enacted before the enactment of S. 2618, the bill would reduce direct spending. If the process envisioned under S. 2618 results in fewer expenditures from funds appropriated in the future, implementing the bill would reduce spending subject to appropriation. However, CBO has no basis for estimating the size of any such reductions under the bill.

The CBO staff contact for this estimate is Matthew Pickford. The estimate was reviewed by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

VII. Minority Views

Ranking Member Peters, Senator Carper, and Senator Rosen oppose S. 2618, the Bonuses for Cost-Cutters Act of 2019. While the intention of encouraging federal employees to identify savings opportunities in the federal government is worthwhile, there are several aspects of this bill that are problematic.

First, this legislation raises potential constitutional concerns by empowering the executive branch to rescind congressional action. This bill would authorize Inspectors General (IGs) and Chief Financial Officers (CFOs) to determine whether funds already appropriated by Congress to government programs are necessary, and to rescind or redirect funds without approval by or consultation with Congress. Congressional oversight of these decisions is further limited since not all IGs and CFOs are Senate-confirmed positions.[1] Recent vacancies among IGs further raise the question of whether an Acting IG should have this authority.

Moreover, S. 2618 requires IGs to participate in the management and operations of the agencies they oversee, which would undermine IG independence. The Council of Inspectors General on Integrity and Efficiency's (CIGIE) current standards of conduct require IGs to "avoid assuming management responsibilities, such as setting policies, designing, implementing, or maintaining internal controls."[2] These guidelines were developed to allow IGs and their offices to conduct audits and investigations impartially. By requiring that IGs be involved in decisions on agency operations and funding, this legislation would place them at odds with these standards and could create conflicts of interest.

Finally, although this legislation purports to offer a solution to wasteful end-of-year government spending, the mechanisms in this bill are not specifically targeted to the problem. The mechanisms are instead broadly applicable to address spending throughout the year. While there are legitimate examples of wasteful end-of-year spending, end-of-year spending is not inherently wasteful. This bill would not address a key cause of many of those decisions, which is Congress' failure to adhere to the regular budget and appropriations process. To effectively tackle the issue of unnecessary end-of-year spending, this legislation should be more tailored to address the particular problem.

Therefore, for all of the above reasons, we oppose this measure.

VIII. Changes in Existing Law Made by the Bill, as Reported

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as

[1] 5a U.S.C. §8G; 31 U.S.C. §901.

[2] Council of the Inspectors General on Integrity and Efficiency, *Quality Standards for Federal Offices of Inspector General* (August 2012) (www.ignet.gov/sites/default/files/files/Silver%20Book%20Revision%20-%208-20-12r.pdf#page=19)

reported, are shown as follows: (existing law proposed to be omitted is enclosed in brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

UNITED STATES CODE

* * * * * * *

TITLE 5—GOVERNMENT ORGANIZATION AND EMPLOYEES

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PART III—EMPLOYEES

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Subpart C—Employee Performance

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CHAPTER 45—INCENTIVE AWARDS

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Subchapter II—Awards for Cost Savings Disclosures

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SEC. 4511. [DEFINITION] *DEFINITIONS* AND GENERAL PROVISIONS.

(a) For purposes of [this subchapter, the term] *this subchapter—*

(1) the term "agency" means any Executive agency[.] *;and*

(2) the term 'surplus salaries and expenses funds' means amount made available for the salaries and expenses account, or equivalent account, of an agency—

(A) that are identified by an employee of the agency under section 4512(a) as unnecessary;

(B) that the Inspector General of the agency or other agency employee designated under section 4512(b) determines are not required for the purpose for which the amounts were made available;

(C) that the Chief Financial Officer of the agency determines are not required for the purpose for which the amounts were made available; and

(D) the rescission of which would not be detrimental to the full execution of the purposes for which the amounts were made available.

* * * * * * *

SEC. 4512. AGENCY AWARDS FOR COST SAVINGS DISCLOSURES

(a) The Inspector General of an agency, or any other agency employee designated under subsection (b), may pay a cash award to any employee of such agency whose disclosure of fraud, waste, or mismanagement *or identification of surplus salaries and expenses funds* to the Inspector General of the agency, or to such other designated agency employee, has resulted in cost savings for the agency. The amount of an award under this section may not exceed the lesser of—

(1) $10,000; or

(2) an amount equal to 1 percent of the agency's cost savings which the Inspector General, or other employee designated under subsection (b), determines to be the total savings attributable to the employee's disclosure *or identification.*

For purposes of paragraph (2), the Inspector General or other designated employee may take into account agency cost savings projected for subsequent fiscal years which will be attributable to such disclosure *or identification.*

(b) * * *

(c)(1) The Inspector General of an agency or other agency employee designated under subsection (b) shall refer to the Chief Financial Officer of the agency any potential surplus salaries and expenses funds identified by an employee that the Inspector General or other agency employee determines meets the requirements under subparagraphs (B) and (D) of section 4511(a)(2), along with any recommendations of the Inspector General or other agency employee.

(2)(A) If the Chief Financial Officer of the agency determines that potential surplus salaries and expenses funds referred under paragraph (1) meet the requirements under section 4511(a)(2), except as provided in subsection (d), the head of the agency shall transfer the amount of surplus salaries and expenses funds from the applicable appropriations account to the general fund of the Treasury.

(B) Any amounts referred under subparagraph (A) shall be deposited in the Treasury and used for deficit reduction, except that in the case of a fiscal year for which there is no Federal debt (in such a manger as the Secretary of the Treasury considers appropriate).

(3) The Inspector General or other agency employee designated under subsection (b) for each agency and the Chief Financial Officer for each agency shall issue standards and definitions for purposes of making determinations relating to potential surplus salaries and expenses funds identified by an employee under this subsection.

(d)(1) The head of an agency may retain not more than 10 percent of amounts to be transferred to the general fund of the Treasury under subsection (c)(2).

(2) Amounts retained by the head of an agency under paragraph (1) maybe—

(A) used for the purpose of paying a cash award under subsection (a) to one or more employees who identified the surplus salaries and expenses funds; and

(B) to the extent amounts remain after paying cash awards under subsection (a), transferred or reprogrammed for use by the agency, in accordance with any limitation on such a transfer or reprogramming under any other provision of law.

(e)(1) Not later than October 1 of each fiscal year, the head of each agency shall submit to the Secretary of the Treasury a report identifying the total savings achieved during the previous fiscal year through disclosures of possible fraud, waste, or mismanagement and identifications of surplus salaries and expenses funds by an employee.

(2) Not later than September 30 of each fiscal year, the head of each agency shall submit to the Secretary of the Treasury a report that, for the previous fiscal year—

(A) describes each disclosure of possible fraud, waste, or mismanagement or identification of potentially surplus salaries and expenses funds by an employee of the agency determined by the agency to have merit; and

(B) provides the number and amount of cash awards by the agency under section (a).

(3) The head of each agency shall include the information described in paragraphs (1) and (2) in each budget request of the agency submitted to the Office of Management and Budget as part of the preparation of the budget of the President submitted to Congress under section 1105(a) of title 31.

(4) The Secretary of the Treasury shall submit to the Committee on Appropriations of the Senate, the Committee on Appropriations of the House of Representatives, and the Government Accountability Office an annual report on Federal cost saving and awards based on the reports submitted under paragraphs (1) and (2).

(f) The Director of the Office of Personnel Management shall—

(1) ensure that the cash award program of each agency complies with this section; and

(2) submit to Congress an annual certification indicating whether the cash award program of each agency complies with this section.

(g) Not later than 3 years after the date of enactment of this subsection, and every 3 years thereafter, the Comptroller General of the United States shall submit to Congress a report on the operation of the cost savings and awards program under this section, including any recommendations for legislative changes.

* * * * * * *