

SECURING AMERICA'S BORDERS
ACT OF 2019

R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

S. 2162

TO REQUIRE THE COMMISSIONER OF U.S. CUSTOMS AND BORDER PROTECTION TO ANNUALLY HIRE AT LEAST 600 NEW BORDER PATROL AGENTS, TO REPORT QUARTERLY TO CONGRESS ON THE STATUS OF THE BORDER PATROL WORKFORCE, AND TO CONDUCT A COMPREHENSIVE STAFFING ANALYSIS



DECEMBER 14, 2020.—Ordered to be printed

U.S. GOVERNMENT PUBLISHING OFFICE

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116TH CONGRESS }
2d Session }

SENATE

{ REPORT
{ 116-312

SECURING AMERICA’S BORDERS ACT OF 2019

DECEMBER 14, 2020.—Ordered to be printed

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

R E P O R T

[To accompany S. 2162]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 2162) to require the Commissioner of U.S. Customs and Border Protection to annually hire at least 600 new Border Patrol agents, to report quarterly to Congress on the status of the Border Patrol workforce, and to conduct a comprehensive staffing analysis, having considered the same, reports favorably thereon with an amendment (in the nature of a substitute) and recommends that the bill, as amended, do pass.

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I. PURPOSE AND SUMMARY

This bill requires U.S. Customs and Border Protection (CBP) to hire at least 600 Border Patrol agents above attrition levels each year until the number of Border Patrol agents reaches and sustains 26,370 agents. This bill also allows CBP to hire additional support staff for Border Patrol and to utilize special hiring authorities and pay incentives for CBP officers in rural and remote locations, and requires CBP to provide Congress with quarterly reporting on Border Patrol workforce metrics. In addition, CBP must update and

submit the comprehensive staffing analysis for Border Patrol mandated in the Border Patrol Agent Pay Reform Act of 2014.

II. BACKGROUND AND NEED FOR THE LEGISLATION

The nation's borders remain unsecure. In fiscal year 2019, Border Patrol agents apprehended 851,508 migrants crossing between U.S. ports of entry along the southern border.¹ Of those migrants, 473,682 were family unit aliens and 76,020 were unaccompanied minors.² Despite the high levels of migration, the total number of criminal aliens encountered between ports of entry decreased significantly, from 19,117 in FY 2015 to 4,269 in FY 2019, marking the lowest number encountered since CBP began publishing data and making this wave of migration distinct from previous ones.³ During the same period, U.S. officials at southern border ports of entry—where CBP maintains facilities and staff to inspect incoming cargo and verify individuals' admissibility to the United States—apprehended 53,430 family unit aliens and 4,614 unaccompanied minors.⁴ Border Patrol also seized 266,882 pounds of marijuana, 14,434 pounds of methamphetamine, 11,682 pounds of cocaine, 808 pounds of heroin, and 226 pounds of fentanyl in fiscal year 2019.⁵ Through April of 2020, Border Patrol had already seized 288 pounds of fentanyl, more than the previous fiscal year's total.⁶

During the spring and summer of 2019, Border Patrol agents were diverted from their mission of securing the border to confront a humanitarian crisis on the southwest border, in conjunction with the U.S. National Guard, Army, and Coast Guard personnel, due to the sharp increase in illegal crossings.⁷ Hundreds of adults had to be held in units designed to hold 35 single adults, leading to unsanitary conditions.⁸ In May 2019, 66 percent of detainees at El Paso Del Norte Processing Center were being held for longer than 72 hours, with 4 percent held for more than two weeks, significantly surpassing the CBP 72-hour short-term detention standard.⁹ Even HHS facilities were operating at or above capacity, causing unaccompanied alien children to remain in CBP facilities under Border Patrol's care for longer periods of time than permitted

¹U.S. Customs and Border Prot., Southwest Migration FY2019 (last updated Nov. 14, 2019), available at <https://www.cbp.gov/newsroom/stats/sw-border-migration/fy-2019> [hereinafter *Southwest Migration*].

²*Id.*

³U.S. Customs and Border Prot., Criminal Alien Statistics Fiscal Year 2019 (last updated Nov. 14, 2019), available at <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics/criminal-alien-statistics-fy2019>; see also U.S. Customs and Border Prot., Criminal Alien Statistics FY2017 (last updated Dec. 14, 2017), available at <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics/criminal-alien-statistics-fy2017>.

⁴Southwest Migration, *supra* note 1.

⁵U.S. Customs and Border Prot., CBP Enforcement Statistics FY2020, available at <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics>.

⁶*Id.*

⁷Press Release, U.S. Dep't of Homeland Sec., *Texas Governor Deploys 1,000 National Guard Soldiers to Assist with Border Crisis* (June 21, 2019), available at <https://www.dhs.gov/news/2019/06/21/texas-governor-deploys-1000-national-guard-soldiers-assist-border-crisis>; see also Press Release, U.S. Customs and Border Prot., *CBP Commissioner Addresses Current Border Crisis* (March 27, 2019), available at <https://www.cbp.gov/newsroom/national-media-release/cbp-commissioner-addresses-current-border-crisis>.

⁸Dep't of Homeland Sec., Off. of Inspector Gen., Management Alert - DHS Needs to Address Dangerous Overcrowding Among Single Adults at El Paso Del Norte Processing Center 3, 6 (May 2019), available at <https://www.oig.dhs.gov/sites/default/files/assets/2019-05/OIG-19-46-May19.pdf>.

⁹*Id.*

under the Trafficking Victims Protection Reauthorization Act.¹⁰ According to Department of Homeland Security (DHS) Office of the Inspector General (OIG), CBP could not transfer detainees out of its facilities until U.S. Immigration and Customs Enforcement (ICE) had space for single adults and families.¹¹ However, since ICE residential centers detention space is reserved for family units placed in expedited removal, the vast majority of family units were released into the United States to await their immigration court proceedings.¹² According to the U.S. Government Accountability Office (GAO), during the first two quarters of FY 2019 CBP placed an increasing percentage of family units into full removal proceedings, giving Notices to Appear to around 88 percent of those encountered during that period, under which they may be paroled.¹³ All of these factors forced Border Patrol to release migrants without proper vetting.¹⁴

Fortunately, DHS policies and programs have helped slow the pace of migration this year.¹⁵ Yet illegal crossings at the southwest border still persist at crisis levels.¹⁶ On March 28, 2019, former DHS Secretary Jeh Johnson asserted in an interview that he considered more than 1,000 apprehensions per day at the southwest border crisis-level.¹⁷ At its high point in May 2019, the U.S. averaged 4,286 apprehensions per day between ports of entry; by September 2019, the daily flow reduced to approximately 1,350, still significantly higher than former Secretary Johnson's crisis level of 1,000 illegal migrants per day.¹⁸

Through this crisis, the Border Patrol has been significantly understaffed. In FY 2011, when southwest border apprehensions totaled just 327,577,¹⁹ Congress mandated that Border Patrol maintain a staffing level of at least 21,370 agents through FY

¹⁰ Dep't of Homeland Sec., Off. of Inspector Gen., Management Alert—DHS Needs to Address Dangerous Overcrowding and Prolonged Detention of Children and Adults in the Rio Grande Valley 3 (July 2019), available at <https://www.oig.dhs.gov/sites/default/files/assets/2019-07/OIG-19-51-Jul19-.pdf>; see also Dep't of Homeland Sec. Advisory Council, CBP Families and Children Care Panel Final Report 1 (Nov. 2019), available at <https://www.dhs.gov/sites/default/files/publications/fccp-final-report-1.pdf>.

¹¹ *Id.*

¹² U.S. Government Accountability Office, Southwest Border: Actions Needed to Improve DHS Processing of Families and Coordination between DHS and HHS (Feb. 2020), available at <https://www.gao.gov/assets/710/704683.pdf>.

¹³ *Id.*

¹⁴ Julie Small, Detention Beds for Immigrant Families Nearly Empty Amid Surge in Border Crossings, KQED News (Apr. 12, 2019), <https://www.kqed.org/news/11740058/detention-beds-for-immigrant-families-nearly-empty-amid-surge-in-border-crossings>.

¹⁵ CBP Oversight: Examining the Evolving Challenges Facing the Agency: Hearing before the S. Comm. on Homeland Sec. & Governmental Affairs 116th Cong. (June 25, 2020) (testimony of Mark A. Morgan), <https://www.hsgac.senate.gov/imo/media/doc/Testimony-Morgan-2020-06-25-REVISED.pdf>.

¹⁶ Tim Hains, *Obama DHS Secretary Jeh Johnson: "We Are Truly In A Crisis" On Southern Border*, Real Clear Politics (Mar. 29, 2019), available at <https://www.realclearpolitics.com/video/2019/03/29/obama-dhs-secretary-jeh-johnson-we-are-truly-in-a-crisis-on-southern-border.html>; see also CBP Enforcement Statistics FY2020, available at <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics>.

¹⁷ Tim Hains, *Obama DHS Secretary Jeh Johnson: "We Are Truly In A Crisis" On Southern Border*, Real Clear Politics (Mar. 29, 2019), available at <https://www.realclearpolitics.com/video/2019/03/29/obama-dhs-secretary-jeh-johnson-we-are-truly-in-a-crisis-on-southern-border.html>.

¹⁸ CBP Enforcement Statistics FY2020, available at <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics>.

¹⁹ U.S. Customs and Border Protection, Southwest Border Sectors—Total Illegal Alien Apprehensions by Fiscal Year (Mar. 2019), available at <https://www.cbp.gov/sites/default/files/assets/documents/2019-Mar/bp-southwest-border-sector-apps-fy1960-fy2018.pdf>

2017.²⁰ In 2017, President Trump issued an executive order calling for an additional 5,000 agents.²¹ As of November 2019, Border Patrol is significantly under both targets with just 19,661 agents.²²

Part of Border Patrol's staffing problem is due to challenges CBP faces in hiring and retaining agents to serve in remote locations.²³ To incentivize individuals to work in remote locations, CBP has sometimes used recruitment, relocation, and retention bonuses.²⁴ Under current law, the Office of Personnel Management (OPM) can permit an agency to offer certain recruitment or relocation bonuses if a position "is likely to be difficult to fill in the absence of such a bonus."²⁵

These bonuses are significantly limited in how they can be used, however,²⁶ and in practice, their utility in addressing Border Patrol's staffing shortfalls has been limited. Despite the use of these bonuses, CBP continues to have difficulty retaining employees in remote locations.²⁷ In a 2015 hearing before the Committee's Subcommittee on Regulatory Affairs and Federal Management, Linda Jacksta, Assistant Commissioner in the CBP Office of Human Resources Management, testified that many CBP areas of responsibility are in remote locations.²⁸ Ms. Jacksta explained:

CBP faces additional challenges in staffing hard-to-fill and remote locations. For the purposes of this testimony, I have characterized hard-to-fill and remote locations as being a significant distance from amenities and services such as medical care, child care and schools, and employment options for spouses. Geographically remote locations are often accompanied by challenging environmental factors, such as harsh weather conditions. Difficulty in staffing these locations may also be impacted by a lack of affordable housing choices, consumer goods and services, and local infrastructure. In addition, both hard-to-fill and geographically remote locations are sometimes associated with a higher cost of living. The challenges CBP faces regarding hard-to-fill and remote locations include a limited pool of qualified and suitable candidates interested in working and residing in these localities. This is compounded by funding and regulatory limitations, which limit our efforts to incentivize individuals to apply for, relocate to, or remain at these locations.²⁹

For example, one regulatory limitation for retention bonuses prohibits CBP from giving such a bonus to an employee who is likely

²⁰ Continuing Appropriations Act, 2017, Pub. L. No. 114-254, div. A, 130 Stat. 1005, 1005-22 (2016); *see also* Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, div. F, tit. II, 129 Stat. 2242, 2495 (2015).

²¹ Exec. Order No. 13767, 82 Fed. Reg. 8793, 8795 (2017).

²² E-mail from U.S. Customs and Border Prot. to Comm. majority staff (Nov. 26, 2019) (on file with Committee staff).

²³ Improving Pay Flexibilities in the Federal Workforce: Hearing Before the S. Subcomm. on Regulatory Affairs and Fed. Mgmt. of the S. Comm. on Homeland Sec. & Governmental Affairs, 114th Cong. 114-139 (2015) [hereinafter Senate Hearing] (statement of Linda Jacksta, Assistant Commissioner, Office of Human Resources Management, U.S. Customs and Border Protection) [hereinafter Improving Pay Flexibilities].

²⁴ *Id.*

²⁵ 5 U.S.C. § 5753(b)(1).

²⁶ 5 U.S.C. § 5753(d); *see also* 5 U.S.C. § 5754(e)(1)(A), (B); 5 C.F.R. § 575.305(d).

²⁷ Improving Pay Flexibilities, *supra* note 23.

²⁸ *Id.*

²⁹ *Id.*

to transfer to another location within CBP since the employee is not leaving Federal service.³⁰ The 25-percent cap may also not be meaningful enough to incentivize employees to work in its remote locations.³¹

To further address staffing challenges in remote locations, CBP can seek to offer special salary rates.³² OPM can authorize agencies to offer an increased minimum salary rate for a category of employees “whenever [OPM] finds that the Government’s recruitment or retention efforts with respect to [one] or more occupations in [one] or more areas or locations are, or are likely to become, significantly handicapped due to [certain] circumstances.”³³ However, according to CBP, the duration of the OPM approval process for special salary rates for polygraph examiners was over two years, and the process for CBP employees stationed in Pembina, North Dakota, took more than one year.³⁴

According to CBP, another challenge in onboarding CBP employees in a timely manner is the polygraph examination process.³⁵ In 2010, Congress passed the Anti-Border Corruption Act, which requires “all job applicants for law enforcement positions at [CBP] to receive a polygraph examination and a background investigation before being offered employment.”³⁶ According to Border Patrol Agent Jon Anfinson, “the Border Patrol is failing approximately two out of every three applicants, which is double the rate most law enforcement agencies see. There is clearly a problem with how we are administering the polygraph Ironically, many of these applicants later get hired by state, local, or other federal law enforcement agencies, sometimes passing another polygraph.”³⁷ It is unclear what is causing the unusually high failure rate among CBP applicants. However, the DHS OIG has concluded that CBP has administered polygraph examination to unsuitable applicants before, which has a direct impact on the high failure rate of the polygraph program.³⁸

While failing a polygraph examination as a CBP applicant does not prohibit an individual from applying for a position at different Federal law enforcement agencies, these agencies can learn of the

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ 5 U.S.C. § 5305(a)(1); *see also* 5 C.F.R. § 530.304(a).

³⁴ Telephone conversation between U.S. Customs and Border Prot. representative and Comm. majority staff (Sept. 25, 2017).

³⁵ Keeping Pace with Trade, Travel, and Security: How Does CBP Prioritize and Improve Staffing and Infrastructure: Hearing Before the Subcomm. on Border and Maritime Security of the H. Comm. on Homeland Sec., 114th Cong. (2016) (joint statement of Eugene Schied, Assistant Commissioner, Office of Admin., U.S. Customs and Border Protection, Linda Jacksta, Assistant Commissioner, Office of Human Resources Mgmt., U.S. Customs and Border Protection, and John Wagner, Deputy Assistant Commissioner, Office of Field Operations, U.S. Customs and Border Protection).

³⁶ Anti-Border Corruption Act of 2010, Pub. L. No. 111–376, § 2, 123 Stat. 4104 (Jan. 4, 2011).

³⁷ *On the Line: Border Security From an Agent and Officer Perspective: Hearing Before the Subcomm. on Border and Maritime Security of the H. Comm. on Homeland Sec.*, 115th Cong. (2018) (statement of Jon Anfinson, President of Local 2366, National Border Patrol Council.) *See also* Associated Press, *Two out of three Border Patrol job applicants fail polygraph test, making hiring difficult*, LOS ANGELES TIMES, Jan. 13, 2017, available at <http://www.latimes.com/local/lanow/la-me-border-patrol-lies-20170113-story.html>; Tim Steller, *New polygraph exam could be Border Patrol solution*, ARIZONA DAILY STAR, Apr. 15, 2017, available at http://tucson.com/news/local/columnists/steller/steller-new-polygraph-exam-could-be-border-patrol-solution/article_51a239cc-0ba2-5552-acbc-226aa51de346.html.

³⁸ Dep’t of Homeland Sec., Off. of Inspector Gen., Management Alert—CBP Spends Millions Conducting Polygraph Examinations on Unsuitable Applicants (August 2017), available at https://www.oig.dhs.gov/sites/default/files/assets/2017/OIG-17-99-MA-080417_0.pdf.

polygraph examination results by requesting the status of the individual's application process with CBP.³⁹

S. 2162 would help Border Patrol address personnel challenges, better preparing them to handle migrant crises at the U.S. southwest border by requiring CBP to hire at least 600 Border Patrol agents each fiscal year until the agency maintains 26,370 agents, as well as authorizing CBP to hire support staff and processing coordinators to assist Border Patrol agents.

The legislation would also help Border Patrol agents respond to the humanitarian challenges that result from increased migration flows by making available first responder and paramedic training for agents at no cost. Agents are confronted with unique challenges every day, including complex and non-apparent medical conditions in migrants that could be addressed and triaged, in part, with additional EMT- and paramedic-certified agents with the proper medical supplies. In addition, agents must be prepared to render aid amidst challenging and remote terrain where medical emergencies can emerge with little warning and often occur far from other medical facilities or first responders. Such training may serve as a needed stopgap to prevent loss of life in the field and among those in custody. Finally, as law enforcement officers, Border Patrol agents are acutely aware of the medical emergencies that can occur while confronting criminal suspects. Adequate medical training will enhance to both agent and suspect safety. Through a GAO review, these training provision are also structured as an experiment to determine the efficacy of the incentive structures, whether the current absence of cost or potential pay differentials to be considered by this Committee, to achieve the goal of having 10 percent of all agents with EMT or paramedic certifications.

Finally, the bill may improve CBP's ability to hire and retain Border Patrol agents and CBP officers in rural and remote locations by authorizing CBP to use direct hire authority, special pay authority, and recruitment, relocation, and retention incentives for critical staff in such locations without having to seek approval from OPM and with higher caps on pay incentives than what is authorized by OPM. Additionally, the bill creates a CBP Hiring and Retention Innovation Council to utilize private sector initiatives and strategies to improve CBP hiring and retention and develop pilot programs to test out ideas.

III. LEGISLATIVE HISTORY

Chairman Ron Johnson (R-WI) introduced S. 2162, the Securing America's Borders Act, on July 18, 2019. The bill was referred to the Committee on Homeland Security and Governmental Affairs.

The Committee considered S. 2162 at a business meeting on November 6, 2019. During the business meeting, Chairman Johnson and Ranking Member Peters offered a substitute amendment, which allows CBP to hire processing coordinators and to provide first responder and paramedic training to agents. The substitute amendment also authorizes CBP to use direct hire authority, special pay authority, and recruitment, relocation, and retention incentives to hire and retain staff in rural or remote locations. The sub-

³⁹U.S. Customs and Border Protection, Polygraph Exam FAQs, available at <https://www.cbp.gov/careers/car/poly>.

stitute amendment was adopted by unanimous consent, and the bill, as amended, was ordered reported favorably by voice vote *en bloc* with Senators Johnson, Portman, Paul, Lankford, Romney, Scott, Enzi, Hawley, Peters, Carper, Hassan, Sinema, and Rosen present. Senator Rosen was recorded as voting “No” for the record.

IV. SECTION-BY-SECTION ANALYSIS OF THE BILL, AS REPORTED

Section 1. Short title

Subsection (a) establishes the short title of the bill as the “Securing America’s Borders Act of 2019” and subsection (b) includes a table of contents for the bill.

Section 2. Hiring additional U.S. Customs and Border Protection personnel

This section requires the Border Patrol to hire additional agents and support staff.

Subsection (a) requires CBP to hire, train, and assign not fewer than 600 new Border Patrol agents above the current attrition level every fiscal year until the total number of agents equals 26,370 full-time equivalent agents.

Subsection (b) authorizes the Commissioner to hire, train, and assign support staff to perform non-law enforcement administrative functions to support the new Border Patrol agents.

Subsection (c) requires the Commissioner to submit a report to Congress every 90 days on the status of the total number of Border Patrol agents in the workforce; the total number of Border Patrol support staff including Border Patrol processing coordinators in the workforce; the number of Border Patrol agents and support staff hired or lost to attrition during the reporting period, broken down by duty location; any hiring authorities, incentive pay, or other special pay incentives utilized during the reporting period; and an analysis of the overall effectiveness of those hiring authorities, incentive pay, or other special pay incentives used.

Section 3. Border Patrol processing coordinators

This section authorizes Border Patrol to hire processing coordinators to assist Border Patrol agents with non-law enforcement responsibilities.

Subsection (a) authorizes and defines the duties of Border Patrol processing coordinators who will be stationed at Border Patrol facilities to assist agents with intake and processing apprehended persons and to perform necessary technical and clerical tasks, will be classified as non-law enforcement personnel, and will not be authorized to execute arrests or carry firearms.

Subsection (b) authorizes the Commissioner, in coordination the Chief of the Border Patrol and in consultation with the Director of the Federal Law Enforcement Training Centers, to develop training for Border Patrol processing coordinators.

Subsection (c) requires quarterly reporting to Congress for the next two years on the number of Border Patrol agents who returned to field operations in each sector as a result of increased hiring of Border Patrol processing coordinators.

Section 4. Medical training for Border Patrol agents

This section requires CBP to provide emergency medical technician (EMT) and paramedic training to Border Patrol agents.

Subsection (a) authorizes EMT and paramedic training for Border Patrol agents, at no cost to agents, which includes emergency pediatric care and training identifying and treating person in medical distress. Agents will be credited with work time for any such medical training and will be provided lodging and per diem if such training is not within commuting distance of the agent's residence or worksite. Any agent who completes a certification preparation program for EMT or paramedic training must either fulfill a service commitment—one-year for EMT and three-years for paramedic—or reimburse CBP the cost of providing such training multiplied by the percentage of the service required that the agent failed to complete. Prior to commencing EMT or paramedic training, an agent must select to satisfy any debt of obligated overtime hours by either completing the debt of overtime work or taking a reduction in pay commensurate to what the agent would have received for the performance of the overtime hours. This subsection also directs CBP to undertake an agency-wide effort to encourage, promote, and ensure EMT- or paramedic-certified agents are stationed at each Border Patrol sector and remote stations along the southern border. CBP must also undertake an effort to ensure that 10 percent of all agents have EMT certifications and comprise not fewer than 10 percent of all agents as assigned to each Border Patrol sector, prioritizing remote stations and forward operating bases.

The subsection also requires CBP to develop, in consultation with national medical care organizations, and provide minimum medical supplies to each Border Patrol agent with an EMT or paramedic certification and to each Border Patrol sector for use while on patrol. It also requires GAO to review the Border Patrol's efforts to reach the 10 percent goal of Border Patrol agents with EMT or paramedic certifications and to recommend whether CBP effectively and vigorously promoted such training, whether additional incentive modifications are needed to achieve or maintain the goal, whether the goal is properly scoped, and whether a benchmark should be established for agents with paramedic certifications.

Subsection (b) authorizes appropriations to carry out subsection (a).

Section 5. Workforce staffing model

This section mandates certain data collection requirements and reporting requirements regarding the Border Patrol comprehensive staffing analysis and workforce staffing model.

Subsection (a) requires Border Patrol to develop standard operating procedures for the Border Patrol Enforcement Tracking System (BPETS), train agents on the use, capabilities, and purposes of BPETS, and implement and monitor internal controls for BPETS to ensure timely and accurate scheduling and reporting on agents' actual and completed work hours and activities.

Subsection (b) requires CBP to amend the comprehensive staffing analysis within 60 days of enactment of this bill based on any changes to workload demands since enactment and, within 90 days,

to submit a report to GAO that includes the results of such an amended comprehensive staffing analysis.

Subsection (c) requires DHS, within 180 days of enactment of this bill, to submit a report to Congress describing how CBP has used the comprehensive staffing analysis in its development of a workforce staffing model and the process used by Border Patrol to create the model.

Subsection (d) requires CBP to update the comprehensive staffing analysis when required to better meet the needs of the Border Patrol and to include an assessment of force multiplier technologies in the analysis. This updated analysis must be submitted to Congress and GAO. GAO must submit a report to Congress to validate each update within 90 days of receiving them.

Subsection (e) requires CBP to conduct an assessment of the impact of force multiplier technologies on Border Patrol effectiveness and to consider this assessment when estimating projected staffing needs under the workforce staffing model.

Section 6. Promoting flexibility in employment authorities for rural or remote areas

This section provides DHS with hiring and pay authorities to recruit and maintain CBP staff in rural or remote locations experiencing hiring and retention challenges due to the nature of the locations. For these locations, DHS would be able to directly hire CBP applicants in order to expedite the onboarding process and offer a special salary rate for employment. DHS would also be authorized to issue recruitment, relocation, and retention bonuses to CBP applicants and employees serving in these rural or remote locations. CBP is required under this section to report to Congress and to OPM on the effectiveness of these authorities on hiring and retention in rural or remote locations. The DHS OIG is also required to review the use of the hiring and pay authorities provided in this section.

This section also requires DHS to implement a hiring strategy and educational outreach program to inform CBP human resources officials of the available hiring authorities, incentives, and other tools to improve hiring and retention in rural or remote locations. Finally, this section will require CBP to report on the number of requests from other Federal agencies for the polygraph examination results of CBP applicants.

Section 7. CBP Hiring and Retention Innovation Council

This section creates a CBP Hiring and Retention Innovation Council (“Council”) to develop strategies and initiatives to improve CBP hiring and retention. Subsection (a) requires DHS and the Chief Human Council Officer of DHS to create the Council.

Subsection (b) requires the following individuals or officials to be included in the Council: DHS Secretary; CBP Commissioner; CBP Assistant Commissioner of the Office of Human Resources Management, Enterprise Services; CBP Assistant Commissioner of the Office of Finance, Enterprise Services; appropriate bargaining unit representatives of CBP employees; and other individuals selected by the DHS Secretary with knowledge or expertise to help the Council fulfill its objective, including private sector or Federal agency human resource experts. The Council must also include at

least one agency official from each of the following: each Border Patrol sector; Office of Field Operations on the northern border; Office of Field Operations on the southwest border; Office of Field Operations at an interior port of entry; Air and Marine Operations along land borders; Air and Marine Operations along marine borders; and any CBP office with experience along southeastern region maritime borders.

Subsection (c) requires the Council to submit a report to Congress within 2 years that analyzes whether establishing a new pay and employee classification system for Border Patrol workforce would improve hiring and retention. This analysis should consider challenges presented by the current pay structure, staffing scheduled, staffing levels, geographic and socioeconomic factors of Border Patrol duty locations, and other barriers to recruitment and entry to the Border Patrol workforce.

Subsection (d) requires the Council to develop improved strategies for CBP hiring and retention capabilities. To develop these strategies, the Council must carry out pilot programs targeting ports of entry and Border Patrol duty locations experiencing severe workforce shortages, critical hiring needs, or retention challenges. The first pilot program must begin no later than 180 days after the formation of the Council, and at least one pilot program shall be initiated each fiscal year. When developing the pilot programs, the Council must consider the effectiveness or alternative or nontraditional work schedules, employer-provided transportation, existing pay authorities, workforce morale, additional workforce training, and consumer demand at each port of entry. The Council is authorized to carry out the pilot program in the same manner as a personnel demonstration project under OPM. The Council is required to report to Congress on the effectiveness of the pilot programs and how they can improve hiring and retention at CBP.

Subsection (e) terminates the Council five years after the date of enactment of this bill.

Section 8. Authorization of appropriations

This sections authorizes to be appropriated such sums as may be necessary to carry out this legislation.

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 ESTIMATE

CBO failed to provide the Committee with a cost estimate in time for the final reporting deadline of the 116th Congress.

VII. 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 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; AND APPENDIX

* * * * *

PART III—EMPLOYEES

* * * * *

Subpart I—Miscellaneous

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CHAPTER 97—DEPARTMENT OF HOMELAND SECURITY

* * * * *

Sec.

9701. Establishment of Human Resources Management System.

9702. *U.S. Customs and Border Protection employment authorities.*

* * * * *

9702. U.S. Customs and Border Protection employment authorities.

(a) *DEFINITIONS.—In this section—*

(1) *the term “CBP employee” means an employee of U.S. Customs and Border Protection;*

(2) *the term “Commissioner” means the Commissioner of U.S. Customs and Border Protection;*

(3) *the term “Director” means the Director of the Office of Personnel Management;*

(4) *the term “rural or remote area” means an area within the United States that is not within an area defined and designated as an urbanized area by the Bureau of the Census in the most recently completed decennial census; and*

(5) *the term “Secretary” means the Secretary of Homeland Security.*

(b) *DEMONSTRATION OF RECRUITMENT AND RETENTION DIFFICULTIES IN RURAL OR REMOTE AREAS.—*

(1) *IN GENERAL.—For purposes of subsections (c) and (d), the Secretary shall determine, for each rural or remote area, whether there is—*

(A) *a critical hiring need in the area; and*

(B) *a direct relationship between—*

(i) *the rural or remote nature of the area; and*

(ii) difficulty in the recruitment and retention of CBP employees in the area.

(2) **FACTORS.**—In determining whether there is a direct relationship described in paragraph (1)(B), the Secretary may consider evidence—

(A) that the Secretary—

(i) is unable to efficiently and effectively recruit individuals for positions as CBP employees, which may be demonstrated with various types of evidence, including—

(I) evidence that multiple positions have been continuously vacant for significantly longer than the national average period for which similar positions in U.S. Customs and Border Protection are vacant; and

(II) recruitment studies that demonstrate the inability of the Secretary to efficiently and effectively recruit CBP employees for positions in the area; or

(ii) experiences a consistent inability to retain CBP employees that negatively impacts agency operations at a local or regional level; or

(B) of any other inability, directly related to recruitment or retention difficulties, that the Secretary determines to be sufficient.

(c) **DIRECT HIRE AUTHORITY; RECRUITMENT AND RELOCATION BONUSES; RETENTION BONUSES.**—

(1) **DIRECT HIRE AUTHORITY.**—

(A) **IN GENERAL.**—The Secretary may appoint, without regard to the requirements under sections 3309 through 3319, candidates to positions in the competitive service as CBP employees, in a rural or remote area, if the Secretary—

(i) determines that—

(I) there is a critical hiring need; and

(II) there exists a severe shortage of qualified candidates because of the direct relationship identified by the Secretary under subsection (b)(1)(B); and

(ii) has given public notice for such positions.

(B) **PRIORITIZATION OF HIRING VETERANS.**—If the Secretary uses the direct hiring authority under subparagraph (A), the Secretary shall apply the principles of preference for the hiring of veterans established under subchapter I of chapter 33.

(2) **RECRUITMENT AND RELOCATION BONUSES.**—The Secretary may pay a bonus to an individual (other than an individual described in section 5753(a)(2)) if—

(A) the Secretary determines that—

(i) conditions consistent with those described in paragraphs (1) and (2) of section 5753(b) are satisfied with respect to the individual (without regard to any other provision of that section); and

(ii) the position to which the individual is appointed or to which the individual moves or must relocate—

(I) is that of a CBP employee; and

(II) is in a rural or remote area for which the Secretary has identified a direct relationship under subsection (b)(1)(B); and

(B) the individual enters into a written service agreement with the Secretary—

(i) under which the individual is required to complete a period of employment as a CBP employee of not less than 2 years; and

(ii) that includes—

(I) the commencement and termination dates of the required service period (or provisions for determining such dates);

(II) the amount of the bonus; and

(III) other terms and conditions under which the bonus is payable, including—

(aa) the requirements under this subsection;

(bb) the conditions under which the agreement may be terminated before the agreed-upon service period has been completed; and

(cc) the effect of a termination described in item (bb).

(3) **RETENTION BONUSES.**—The Secretary may pay a retention bonus to a CBP employee (other than an individual described in section 5754(a)(2)) if—

(A) the Secretary determines that—

(i) a condition consistent with that described in section 5754(b)(1) is satisfied with respect to the CBP employee without regard to any other provision under section 5754;

(ii) the CBP employee is employed in a rural or remote area for which the Secretary has identified a direct relationship under subsection (b)(1)(B); and

(iii) in the absence of a retention bonus, the CBP employee would be likely to leave—

(I) the Federal service; or

(II) for a different position in the Federal service, including a position in another agency or component of the Department of Homeland Security; and

(B) the individual enters into a written service agreement with the Secretary—

(i) under which the individual is required to complete a period of employment as a CBP employee of not less than 2 years; and

(ii) that includes—

(I) the commencement and termination dates of the required service period (or provisions for determining such dates);

(II) the amount of the bonus; and

(III) other terms and conditions under which the bonus is payable, including—

(aa) the requirements under this subsection;

(bb) the conditions under which the agreement may be terminated before the agreed-upon service period has been completed; and

(cc) the effect of a termination described in item (bb).

(4) RULES FOR BONUSES.—

(A) MAXIMUM BONUSES.—

(i) RECRUITMENT AND RELOCATION BONUSES.—A bonus paid to an employee under paragraph (2) may not exceed 100 percent of the annual rate of basic pay of the employee as of the commencement date of the applicable service period.

(ii) RETENTION BONUSES.—A bonus paid to an employee under paragraph (3) may not exceed 50 percent of the annual rate of basic pay of the employee as of the commencement date of the applicable service period.

(B) RELATION TO BASIC PAY.—A bonus paid to an employee under paragraph (2) or (3) shall not be considered part of the basic pay of the employee for any purpose.

(5) OFFICE OF PERSONNEL MANAGEMENT OVERSIGHT.—The Director, to the extent practicable, shall—

(A) set aside a determination of the Secretary under this subsection if the Director finds substantial evidence that the Secretary abused his or her discretion in making the determination; and

(B) oversee the compliance of the Secretary with this subsection.

(d) SPECIAL PAY AUTHORITY.—In addition to the circumstances described in section 5305(b), the Director may establish special rates of pay in accordance with that section if the Director finds that the recruitment or retention efforts of the Secretary with respect to positions for CBP employees in an area or location are, or are likely to become, significantly handicapped because the positions are located in a rural or remote area for which the Secretary has identified a direct relationship under subsection (b)(1)(B).

(e) REGULAR CBP REVIEW.—

(1) ENSURING FLEXIBILITIES MEET CBP NEEDS.—The Secretary shall annually review the use of hiring flexibilities under subsections (c) and (d) to fill positions at a location in a rural or remote area to determine—

(A) the impact of the use of such flexibilities on solving hiring and retention challenges at the location;

(B) whether hiring and retention challenges still exist at the location; and

(C) whether the Secretary needs to continue to use such flexibilities at the location.

(2) CONSIDERATION.—In conducting the review under paragraph (1), the Secretary shall consider—

(A) whether any CBP employee—

(i) accepted an employment incentive under subsection (c) or (d); and

(ii) later transferred to a new location or left the employment of U.S. Customs and Border Protection; and

(B) the period during which each employee identified under subparagraph (A) remained at the original location

before transferring to a new location or leaving the employment of U.S. Customs and Border Protection.

(3) DISTRIBUTION.—The Secretary shall submit a report to Congress describing each review required under paragraph (1).

(f) IMPROVING CBP HIRING AND RETENTION.—

(1) EDUCATION FF CBP HIRING OFFICIALS.—Not later than 180 days after the date of the enactment of the Securing America's Borders Act of 2019, the Secretary, in conjunction with the Chief Human Capital Officer of the Department of Homeland Security, shall develop and implement a strategy to improve education regarding hiring and human resources flexibilities (including hiring and human resources flexibilities for locations in rural or remote areas) for all employees serving in agency headquarters or field offices who are involved in the recruitment, hiring, assessment, or selection of candidates for locations in a rural or remote area and the retention of current employees.

(2) ELEMENTS.—The strategy required under paragraph (1) shall include—

(A) developing or updating training and educational materials on hiring and human resources flexibilities for employees who are involved in the recruitment, hiring, assessment, or selection of candidates and the retention of current employees;

(B) regular training sessions for personnel who are critical to filling open positions in rural or remote areas;

(C) developing pilot programs or other programs, as appropriate, to address identified hiring challenges in rural or remote areas;

(D) developing and enhancing strategic recruiting efforts through relationships with institutions of higher education (as defined in section 102 of the Higher Education Act of 1965 (20 U.S.C. 1002)), veterans transition and employment centers, and job placement program in regions that could assist in filling positions in rural or remote areas;

(E) examining existing programs for effectively aiding spouses and families of individuals who are candidates or new hires in a rural or remote area;

(F) soliciting feedback from individuals who are candidates or new hires at locations in a rural or remote area, including feedback on the quality of life in rural or remote areas for new hires and their families;

(G) soliciting feedback from CBP employees who are not new hires and are stationed at locations in a rural or remote area, including feedback on the quality of life in rural or remote areas for those CBP employees and their families; and

(H) evaluating Department of Homeland Security internship programs and the usefulness of such programs in improving hiring by the Secretary in rural or remote areas.

(3) EVALUATION.—

(A) IN GENERAL.—The Secretary shall annually—

(i) evaluate the extent to which the strategy developed and implemented under paragraph (1) has improved the hiring and retention ability of the Secretary; and

(ii) make any appropriate updates to the strategy under paragraph (1).

(B) INFORMATION.—The evaluation conducted under subparagraph (A) shall include—

(i) any reduction in the time taken by the Secretary to fill mission-critical positions in rural or remote areas;

(ii) a general assessment of the impact of the strategy developed and implemented under paragraph (1) on hiring challenges in rural or remote areas; and

(iii) other information the Secretary determines relevant.

(g) INSPECTOR GENERAL REVIEW.—Not later than 2 years after the date of the enactment of the Securing America’s Borders Act of 2019, the Inspector General of the Department of Homeland Security shall review the use of hiring flexibilities by the Secretary under subsections (c) and (d) to determine whether the use of such flexibilities is helping the Secretary meet hiring and retention needs in rural and remote areas.

(h) REPORT ON POLYGRAPH REQUESTS.—The Secretary shall report to Congress regarding the number of requests the Secretary receives from any other Federal agency for the file of an applicant for a position in U.S. Customs and Border Protection that includes the results of a polygraph examination.

(i) EXERCISE OF AUTHORITY.—

(1) SOLE DISCRETION.—Notwithstanding chapter 71, the exercise of authority under subsection (c) shall be subject to the sole and exclusive discretion of the Secretary (or of the Commissioner, if such authority is delegated pursuant to paragraph (2)).

(2) DELEGATION.—

(A) IN GENERAL.—Subject to subparagraph (B), the Secretary may delegate any authority under this section to the Commissioner.

(B) OVERSIGHT.—The Commissioner may not make a determination under subsection (b)(1) unless the Secretary approves the determination.

(j) RULE OF CONSTRUCTION.—Nothing in this section may be construed to exempt the Secretary or the Director from the applicability of the merit system principles under section 2301.

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TITLE VI—DOMESTIC SECURITY

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CHAPTER 1—HOMELAND SECURITY ORGANIZATION

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Subchapter IV—Border, Maritime, and Transportation Security

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PART B—U.S. CUSTOMS AND BORDER PROTECTION

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SEC. 211. ESTABLISHMENT OF U.S. CUSTOMS AND BORDER PROTECTION; COMMISSIONER, DEPUTY COMMISSIONER, AND OPERATIONAL OFFICES.

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- (4) *BORDER PATROL PROCESSING COORDINATORS.—*
 - (A) *AUTHORIZATION.—The Chief of the U.S. Border Patrol is authorized to hire Border Patrol processing coordinators, who shall be stationed at Border Patrol facilities.*
 - (B) *DUTIES.—Border Patrol processing coordinators—*
 - (i) *shall assist Border Patrol agents to efficiently and expeditiously intake and process apprehended persons;*
 - (ii) *shall perform necessary technical and clerical tasks related to the duties set forth in paragraph (3);*
 - (iii) *shall be classified as non-law enforcement personnel; and*
 - (iv) *may not be authorized or designated to exercise powers conferred under section 287(a) of the Immigration and Nationality Act (8 U.S.C. 1357(a)).*

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- (1) **TRAINING.—[The Commissioner]**
 - (1) *CONTINUING EDUCATION.—The Commissioner shall require all officers and agents of U.S. Customs and Border Protection to participate in a specified amount of continuing education (to be determined by the Commissioner) to maintain an understanding of Federal legal rulings, court decisions, and departmental policies, procedures, and guidelines.*
 - (2) **MEDICAL TRAINING FOR BORDER PATROL AGENTS.—**
 - (A) *IN GENERAL.—*
 - (i) *AVAILABILITY.—Beginning not later than 6 months after the date of the enactment of this paragraph, the Commissioner, in his or her sole and exclusive discretion, shall make available in each U.S. Border Patrol sector, at no cost to U.S. Border Patrol agents selected for such training, emergency medical technician (referred to in this paragraph as “EMT”) and paramedic training, including pediatric medical training, which shall utilize nationally recognized pediatric training curricula that includes emergency pediatric care, and training identifying and treating individuals experiencing medical distress.*
 - (ii) *USE OF OFFICIAL DUTY TIME.—A U.S. Border Patrol agent shall be credited with work time for any EMT or paramedic training provided to such agent under clause (i) in order to achieve or maintain an EMT or paramedic certification.*
 - (iii) *LODGING AND PER DIEM.—Lodging and per diem shall be made available to U.S. Border Patrol agents*

attending training described in clause (ii) if such training is not available at a location within commuting distance of the agent's residence or worksite.

(iv) *SERVICE COMMITMENT.*—Any U.S. Border Patrol agent who completes a certification preparation program pursuant to clause (i) shall—

(I) complete 1 year of service as a U.S. Border Patrol agent following the completion of EMT training;

(II) complete 3 years of service as a U.S. Border Patrol agent following the completion of paramedic training; or

(III) reimburse U.S. Customs and Border Protection in an amount equal to the product of—

(aa) the cost of providing such training to such agent; multiplied by

(bb) the percentage of the service required under subclauses (I) and

(II) that the agent failed to complete.

(v) *OBLIGATED OVERTIME.*—For any debt of obligated overtime hours that the agent may have incurred, pursuant to section 5550(b) of title 5, United States Code, in order to achieve or maintain an EMT or paramedic certification, the agent shall select, not later than 1 pay period before the commencement of the EMT or paramedic training

(I) to satisfy the debt of obligated overtime hours; or

(II) to receive a reduction of pay commensurate to what the agent would have received for performance of the overtime hours.

(B) *AVAILABILITY OF MEDICALLY TRAINED BORDER PATROL AGENTS.*—Not later than 6 months after the date of the enactment of this paragraph, the Commissioner of U.S. Customs and Border Protection shall undertake an agency-wide effort—

(i) to encourage, promote, and ensure, to the greatest extent possible, that—

(I) U.S. Border Patrol agents with current EMT or paramedic certifications are stationed at each U.S. Border Patrol sector and remote station along the southern border of the United States to the greatest extent possible; and

(II) 10 percent of all Border Patrol agents have EMT certifications and comprise not fewer than 10 percent of all Border Patrol agents assigned to each U.S. Border Patrol sector; and

(ii) in determining the assigned posts of Border Patrol agents who have received training under subparagraph (A)(i), to give priority to remote stations and forward operating bases.

(C) *MEDICAL SUPPLIES.*—

(i) *IN GENERAL.*—The Commissioner of U.S. Customs and Border Protection shall provide minimum medical supplies to each Border Patrol agent with an EMT or

paramedic certification and to each U.S. Border Patrol sector, including all remote stations and forward operating bases, for use while on patrol. Such supplies shall include—

- (I) supplies designed for children;
- (II) first aid kits; and
- (III) oral hydration, such as water.

(ii) CONSULTATION.—In developing the minimum list of medical supplies required under clause (i), the Commissioner shall consult national organizations with expertise in emergency medical care, including emergency medical care of children, at no cost to the Government.

(D) GAO REPORT.—Not later than 3 years after the date of the enactment of this paragraph, the Comptroller General of the United States shall—

(i) review the success of the U.S. Customs and Border Protection’s efforts to reach the goal of 10 percent of all U.S. Border Patrol agents having EMT or paramedic certifications; and

(ii) provide a recommendation to Congress as to whether—

(I) the Commissioner of U.S. Customs and Border Protection has effectively and vigorously undertaken an agency-wide effort to encourage and promote the mandate for medical training for Border Patrol agents under subparagraph (B);

(II) additional incentive modifications are needed to achieve or maintain the 10 percent goal, including pay differentials;

(III) the 10 percent goal is properly scoped to materially contribute to the preservation of life and the effectiveness and efficiency of U.S. Border Patrol operations, including whether the number is too high or too low; and

(IV) the addition of a distinct benchmark for Border Patrol agents holding paramedic certifications would materially contribute to the preservation of life and the effectiveness and efficiency of U.S. Border Patrol operations, and, if so, what a proper benchmark would be.

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Border Patrol Agent Pay Reform Act of 2014

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SEC. 2. BORDER PATROL RATE OF PAY.

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(3) UPDATES.—

(A) *IN GENERAL.*—The Commissioner of U.S. Customs and Border Protection shall—

(i) update the comprehensive staffing analysis required under paragraph (1) whenever the Commissioner determines that an update is required to better meet the needs of U.S. Border Patrol; and

(ii) include, as part of the updated comprehensive staffing analysis, an update to the assessment of force multiplier technologies required under section 5(e) of the Securing America's Borders Act of 2019.

(B) *SUBMISSION OF UPDATED ANALYSIS.*—The Commissioner shall submit each update to the comprehensive staffing analysis to the appropriate committees of Congress and to the Comptroller General of the United States.

(C) *INDEPENDENT VALIDATOR.*—Not later than 90 days after receiving each update under subparagraph (B), the Comptroller General shall submit a report to the appropriate committees of Congress that contains the information required in the report required under paragraph (2).

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