

114TH CONGRESS
2D SESSION

S. 3180

To improve hiring and human resources flexibilities for Federal agencies in geographic areas affected by unique situations or circumstances, including remoteness, that cause recruitment and retention challenges, and to provide agencies experiencing such challenges with a toolkit of resources to overcome those challenges.

IN THE SENATE OF THE UNITED STATES

JULY 13, 2016

Ms. HEITKAMP introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

A BILL

To improve hiring and human resources flexibilities for Federal agencies in geographic areas affected by unique situations or circumstances, including remoteness, that cause recruitment and retention challenges, and to provide agencies experiencing such challenges with a toolkit of resources to overcome those challenges.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Flexible Hiring and
5 Improving Recruitment, Retention, and Education Act of
6 2016” or the “Flexible HIRE Act”.

1 **SEC. 2. SENSE OF CONGRESS.**

2 It is the sense of Congress that—

3 (1) Federal agencies should take aggressive ac-
4 tion to respond to hiring and retention challenges in
5 geographic areas affected by a unique situation or
6 circumstance, including when such challenges de-
7 velop from a need to fill positions or retain employ-
8 ees due to the remoteness of the geographic area in
9 question;

10 (2) to respond to such challenges, Federal agen-
11 cies should take advantage of all appropriate hiring
12 and human resources flexibilities, including special
13 pay rates and recruitment, relocation, and retention
14 bonuses; and

15 (3) both the Office of Personnel Management
16 and all Federal agencies have a significant responsi-
17 bility to ensure that hiring and human resources
18 flexibilities are as accessible as possible to Federal
19 employees in geographic areas affected by a unique
20 situation or circumstance.

21 **SEC. 3. COMPETITIVE SERVICE; EXAMINATIONS.**

22 Section 3304 of title 5, United States Code, is
23 amended—

24 (1) in subsection (a)(3)(B), by striking “deter-
25 mined that” and all that follows through the period
26 and inserting the following: “determined that—

1 “(i) there exists a severe shortage of
2 highly qualified candidates;

3 “(ii) there is a critical hiring need; or

4 “(iii) the positions are in a geographic
5 area affected by a unique situation or cir-
6 cumstance that has directly and signifi-
7 cantly affected recruitment and retention
8 of employees in the area, in accordance
9 with subsection (g).”; and

10 (2) by adding at the end the following:

11 “(g) RECRUITMENT AND RETENTION DIFFICULTIES
12 IN GEOGRAPHIC AREAS AFFECTED BY UNIQUE SITUA-
13 TIONS OR CIRCUMSTANCES.—

14 “(1) DEFINITION.—In this subsection, the term
15 ‘geographic area affected by a unique situation or
16 circumstance’ means an area within the continental
17 United States in which the recruitment and reten-
18 tion of Federal employees has become a severe chal-
19 lenge for an agency as the direct result of a dra-
20 matic economic development, hardship, or other rel-
21 evant situation, including remoteness, that has a
22 substantial impact on the area.

23 “(2) DEMONSTRATION OF RECRUITMENT AND
24 RETENTION DIFFICULTIES.—An agency may dem-
25 onstrate that a geographic area is affected by a

1 unique situation or circumstance that has directly
2 and significantly affected recruitment and retention
3 of employees in the area by—

4 “(A) providing evidence—

5 “(i) that the agency is unable to effi-
6 ciently and effectively recruit employees for
7 positions, which may be demonstrated by
8 various types of evidence, including evi-
9 dence that multiple positions have been
10 continuously vacant for significantly longer
11 than the national average period for which
12 similar positions in the Federal Govern-
13 ment are vacant;

14 “(ii) that the agency experiences a
15 consistent inability to retain employees
16 that negatively impacts agency operations
17 at a local or regional level;

18 “(iii) that the agency is unable to re-
19 cruit and retain qualified candidates due to
20 the remoteness of the geographic area,
21 which remoteness may be demonstrated in
22 the same manner as remoteness from the
23 nearest local infrastructure is dem-
24 onstrated under section 5942(b); or

1 “(iv) of any other inability that the
2 Office determines sufficient; and
3 “(B) meeting any other criteria established
4 by the Office.

5 “(3) PRIORITIZATION OF HIRING VETERANS.—
6 If an agency uses the direct hiring authority under
7 subsection (a)(3)(B)(iii), the agency shall work to
8 prioritize the hiring of veterans by following the
9 principles contained in part 307 of title 5, Code of
10 Federal Regulations, or any successor regulation, re-
11 garding the appointment of qualified veterans to the
12 competitive service.”.

13 **SEC. 4. SPECIAL PAY AUTHORITY.**

14 Section 5305(b)(4) of title 5, United States Code, is
15 amended by striking “any other circumstances which” and
16 inserting “any other circumstances, including the location
17 of a position in a geographic area affected by a unique
18 situation or circumstance that has directly and signifi-
19 cantly affected recruitment and retention of employees in
20 the area (as described in section 3304(a)(3)(B)(iii)),
21 that”.

22 **SEC. 5. RECRUITMENT AND RELOCATION BONUSES.**

23 Section 5753(b)(1) of title 5, United States Code, is
24 amended by striking “bonus” and inserting the following:
25 “bonus, including a position in a geographic area affected

1 by a unique situation or circumstance that has directly
 2 and significantly affected recruitment and retention of em-
 3 ployees in the area (as described in section
 4 3304(a)(3)(B)(iii))”.

5 **SEC. 6. RETENTION BONUSES.**

6 Section 5754(b)(2) of title 5, United States Code, is
 7 amended—

8 (1) in subparagraph (A), by striking “or” at
 9 the end;

10 (2) in subparagraph (B), by striking the period
 11 at the end and inserting the following: “, including
 12 if the employee would be likely to leave for a similar
 13 position in the Federal service in a different duty lo-
 14 cation, or request and be granted a reassignment to
 15 a different duty location within the agency, because
 16 of the challenging circumstances of remaining in a
 17 position in a geographic area affected by a unique
 18 situation or circumstance that has directly and sig-
 19 nificantly affected recruitment and retention of em-
 20 ployees in the area (as described in section
 21 3304(a)(3)(B)(iii)); or”; and

22 (3) by adding at the end the following:

23 “(C) the Federal service or for a different
 24 position in the Federal Service because of the
 25 challenging circumstances of remaining in a po-

sition in a geographic area affected by a unique situation or circumstance that has directly and significantly affected recruitment and retention of employees in the area (as described in section 3304(a)(3)(B)(iii)).”.

SEC. 7. ALLOWANCE BASED ON DUTY AT REMOTE WORK-SITES.

Section 5942 of title 5, United States Code, is amended—

(1) in subsection (a)—

(A) by striking “Notwithstanding” and inserting the following: “COMMUTING FACTORS.—

“(1) IN GENERAL.—Notwithstanding”;

(B) in paragraph (1), as so designated, by striking “of not to exceed \$10 a day” and all that follows and inserting the following: “for the cost of the commute at a mileage reimbursement rate prescribed by the Director of the Office of Personnel Management under paragraph (2)”;

(C) by adding at the end the following:

“(2) OPM REGULATIONS.—For purposes of paragraph (1), the Director of the Office of Personnel Management shall prescribe by regulation a

1 mileage reimbursement rate that is equivalent, to
 2 the maximum extent practicable, to the mileage re-
 3 imbursement rate for privately owned automobiles
 4 prescribed by the Administrator of General Services
 5 under section 5707(b)(2).”; and

6 (2) by striking subsection (b) and inserting the
 7 following:

8 “(b) NON-COMMUTING FACTORS.—

9 “(1) IN GENERAL.—Notwithstanding section
 10 5536 of this title, an employee of an Executive de-
 11 partment or an independent establishment who is as-
 12 signed to duty, except temporary duty, at a site so
 13 remote from the nearest local infrastructure as to
 14 require an appreciable degree of expense, hardship,
 15 and inconvenience, beyond that normally encoun-
 16 tered in metropolitan life, on the part of the em-
 17 ployee, is entitled, in addition to pay otherwise due
 18 the employee, to an allowance in an amount not to
 19 exceed the necessary amount per day, as determined
 20 by the agency that employs the employee in accord-
 21 ance with paragraph (2) of this subsection.

22 “(2) DETERMINATION OF NECESSARY AMOUNT;
 23 OPM APPROVAL.—

24 “(A) DETERMINATION OF NECESSARY
 25 AMOUNT.—In determining the necessary

1 amount of an allowance under paragraph (1),
2 an agency shall consider the factors considered
3 by the Director of the Office of Personnel Man-
4 agement under subpart B of part 591 of title
5 5, Code of Federal Regulations.

6 “(B) OPM APPROVAL.—An agency may
7 not pay an allowance under paragraph (1) un-
8 less the Director of the Office of Personnel
9 Management approves the amount of the allow-
10 ance.

11 “(3) DEFINITION OF LOCAL INFRASTRUC-
12 TURE.—For purposes of this subsection, the term
13 ‘local infrastructure’ means—

14 “(A) established communities;

15 “(B) suitable places of residence, including
16 sufficient affordable housing choices;

17 “(C) amenities and services, including
18 medical care, child care and schools, and em-
19 ployment options for spouses;

20 “(D) consumer goods and services; or

21 “(E) other local infrastructure as deter-
22 mined by the Director of the Office of Per-
23 sonnel Management.”.

1 **SEC. 8. OFFICE OF PERSONNEL MANAGEMENT AND OTHER**
 2 **AGENCY MANDATES.**

3 (a) IN GENERAL.—Subpart I of part III of title 5,
 4 United States Code, is amended by adding at the end the
 5 following:

6 **“CHAPTER 103—HIRING AND HUMAN**
 7 **RESOURCES FLEXIBILITIES**

“Sec.

“10301. Definitions.

“10302. Office of Personnel Management mandates.

“10302. Agency mandates.

8 **“§ 10301. Definitions**

9 “In this chapter—

10 “(1) the term ‘Chief Human Capital Officer’
 11 means—

12 “(A) the Chief Human Capital Officer of
 13 an agency designated or appointed under sec-
 14 tion 1401; or

15 “(B) the equivalent;

16 “(2) the term ‘Director’ means the Director of
 17 the Office;

18 “(3) the term ‘geographically related hiring and
 19 human resources flexibilities’ means hiring and
 20 human resources flexibilities that an agency is au-
 21 thorized to exercise with respect to a position in a
 22 geographic area affected by a unique situation or
 23 circumstance that directly and significantly affects

1 the ability of the agency to recruit and retain em-
 2 ployees, including under—

3 “(A) section 3304(a)(3)(B)(iii);

4 “(B) section 5305;

5 “(C) section 5753;

6 “(D) section 5754;

7 “(E) section 5942(b); and

8 “(F) any other provision of law that the
 9 Director determines appropriate;

10 “(4) the term ‘hiring and human resources
 11 flexibilities’ means authority, relating to appoint-
 12 ments, compensation (including bonuses, allowances,
 13 and other types of compensation), leave, telework, or
 14 other incentives, that an agency is authorized to ex-
 15 ercise for a position with respect to which the agency
 16 has had difficulty recruiting and retaining employ-
 17 ees; and

18 “(5) the term ‘Office’ means the Office of Per-
 19 sonnel Management.

20 **“§ 10302. Office of Personnel Management mandates**

21 “(a) PERMANENT WORKING GROUP.—

22 “(1) ESTABLISHMENT.—The Director shall es-
 23 tablish a permanent hiring working group (referred
 24 to in this section as the ‘working group’) in the Of-
 25 fice to help agencies prepare and deal with geo-

1 graphic areas that are affected by a unique situation
2 or circumstance, including remoteness, that directly
3 and significantly affects the ability of the agencies to
4 recruit and retain employees.

5 “(2) DUTY.—The working group shall continu-
6 ously examine—

7 “(A) hiring flexibilities;

8 “(B) worksite designations;

9 “(C) the application process;

10 “(D) specific pay flexibilities for hiring and
11 retention;

12 “(E) workforce and succession planning;

13 and

14 “(F) other issues related to recruitment
15 and retention.

16 “(3) CONSULTATION.—In carrying out its du-
17 ties under this section, the working group shall con-
18 sult with outsider stakeholder and Federal employee
19 groups, as necessary.

20 “(b) EXERCISE OF GEOGRAPHICALLY RELATED HIR-
21 ING AND HUMAN RESOURCES FLEXIBILITIES.—If the Di-
22 rector determines that an agency is eligible to exercise geo-
23 graphically related hiring and human resources flexibili-
24 ties, the Director shall—

1 “(1) designate not less than 1 person from the
2 working group to be the point person in the Office
3 for each unique situation or circumstance to—

4 “(A) directly manage the challenges that
5 the agency faces as a result of the unique situa-
6 tion or circumstance in the applicable geo-
7 graphic area;

8 “(B) develop strategies through which so-
9 lutions developed for the agency can be shared
10 with and utilized by other agencies that face po-
11 tentially similar situations or circumstances;

12 “(C) guide the working group in address-
13 ing the challenges in the applicable geographic
14 area; and

15 “(D) provide leadership regarding indi-
16 vidual roles for members of the working group;

17 “(2) provide guidance and recommendations to
18 the agency regarding how to improve the hiring
19 process, including through the USA Jobs Internet
20 website, so that applicants for positions can be
21 moved through the process as expeditiously as pos-
22 sible to alleviate recruitment and retention problems
23 as soon as possible; and

24 “(3) streamline the implementation of geo-
25 graphically related human resources flexibilities so

1 that the recruitment, retention, and relocation ef-
2 forts of the agency are as expeditious and effective
3 as possible.

4 “(c) STRATEGY FOR IMPROVING APPLICATION PROC-
5 ESS FOR HIRING FLEXIBILITIES.—

6 “(1) IN GENERAL.—Not later than 180 days
7 after the date on which the Director establishes the
8 working group, the working group shall submit to
9 the Director a strategy that contains recommenda-
10 tions on how to improve the application process for
11 agency use of hiring and human resources flexibili-
12 ties, including—

13 “(A) special pay rates;

14 “(B) recruitment, retention, and relocation
15 bonuses; and

16 “(C) recruitment and hiring strategies.

17 “(2) STUDY.—In preparing the strategy under
18 paragraph (1), the working group shall examine how
19 to improve the ability of agencies to access the flexi-
20 bilities described in that paragraph in a timely fash-
21 ion to meet critical human resource challenges, in-
22 cluding when a geographic area is affected by a situ-
23 ation or circumstance that directly and significantly
24 affects the ability of an agency to recruit and retain
25 employees.

1 “(3) RECOMMENDATIONS.—The working group
2 may, as needed, develop recommendations for Con-
3 gress regarding appropriate legislative changes, in-
4 cluding changes to existing hiring and human re-
5 sources flexibilities (including geographically related
6 hiring and human resources flexibilities), needed to
7 improve the ability of agencies to meet their hiring
8 and retention needs.

9 “(4) UPDATES TO STRATEGY.—

10 “(A) IN GENERAL.—The working group
11 shall update the strategy required under para-
12 graph (1) and develop new recommendations if
13 the Director determines that the strategy needs
14 to be updated.

15 “(B) CONSULTATION.—In determining
16 whether the strategy required under paragraph
17 (1) needs to be updated, the Director may con-
18 sult with the heads of other agencies.

19 “(d) EDUCATION.—The Director shall improve edu-
20 cation regarding hiring and human resources flexibilities
21 (including geographically related hiring and human re-
22 sources flexibilities) for all agencies by—

23 “(1) conducting not less than 1 annual training
24 session for the Chief Human Capital Officer of each
25 agency and employees of that officer; and

1 “(2) in coordination with the Chief Human
2 Capital Officers Council, developing training and
3 educational materials on Government-wide hiring
4 and human resources flexibilities for employees of
5 each agency who are involved in recruitment, hiring,
6 assessment, or selection of candidates.

7 “(e) EVALUATION.—

8 “(1) IN GENERAL.—The Director shall evalu-
9 ate, on an annual basis, the extent to which training
10 conducted directly by the Office and by agencies has
11 improved the hiring and retention ability of agencies
12 that face unique situations or circumstances that im-
13 pact hiring and retention.

14 “(2) INFORMATION.—The evaluation conducted
15 under paragraph (1) shall include—

16 “(A) any reduction in the time taken by
17 agencies to fill mission-critical positions in geo-
18 graphic areas facing unique situations or cir-
19 cumstances;

20 “(B) the quality of new hires, including the
21 satisfaction of hiring managers with new hires,
22 within 1 year of filling a position; and

23 “(C) other information the Director deter-
24 mines relevant.

1 **“§ 10303. Agency mandates**

2 “(a) IN GENERAL.—If a geographic area is affected
3 by a unique situation or circumstance that directly affects
4 the ability of an agency to recruit and retain employees,
5 including situations or circumstances where the remote lo-
6 cation of a position significantly impacts the ability of an
7 agency to recruit or retain employees, the agency shall—

8 “(1) take action to mitigate the challenge in a
9 timely fashion, including by creating pilot programs
10 or other programs, if appropriate, to increase the
11 number of new employees who are placed in that ge-
12 ographic area;

13 “(2) not later than 180 days after the date on
14 which the Director determines that the agency is eli-
15 gible to exercise geographically related human re-
16 sources flexibilities, implement any pilot program
17 created under paragraph (1);

18 “(3) examine existing agency programs to de-
19 termine how to—

20 “(A) most effectively aide spouses and
21 families of affected agency employees; and

22 “(B) develop a strategy to aide those
23 spouses and families; and

24 “(4) enhance targeted recruiting efforts by
25 building relationships with local colleges and univer-

1 sities, veterans transition and employment centers,
2 and job placement programs in the area.

3 “(b) EDUCATION.—An agency shall conduct annual
4 training sessions for employees of the agency on hiring
5 and human resources flexibilities (including geographically
6 related hiring and human resources flexibilities), of which
7 the Chief Human Capital Officer of the agency or a des-
8 ignee shall conduct not less than 2 training sessions for
9 each employee of the agency serving in agency head-
10 quarters or field offices involved in the recruitment, hiring,
11 assessment, or selection of candidates.”.

12 (b) TECHNICAL AND CONFORMING AMENDMENT.—
13 The table of chapters for part III of title 5, United States
14 Code, is amended by inserting after the item relating to
15 chapter 102 the following:

“103. Human resources flexibilities10301”.

16 **SEC. 9. CENTRALIZED INTERNSHIP DATABASE.**

17 Section 3111a of title 5, United States Code, is
18 amended—

19 (1) by redesignating subsection (c) as sub-
20 section (d); and

21 (2) by inserting after subsection (b) the fol-
22 lowing:

23 “(c) CENTRALIZED DATABASE.—The Office of Per-
24 sonnel Management shall establish and maintain a cen-

1 tralized electronic database that contains the names, con-
2 tact information, and relevant skills of individuals who—
3 “(1) have completed or are nearing completion
4 of an internship program; and
5 “(2) are seeking full-time Federal employ-
6 ment.”.

○