

115TH CONGRESS
2D SESSION

S. 1305

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 12, 2018

Referred to the Committee on Oversight and Government Reform

AN ACT

To provide U.S. Customs and Border Protection with
adequate flexibility in its employment authorities.

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

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “U.S. Customs and Bor-
3 der Protection Hiring and Retention Act of 2017” or the
4 “CBP HiRe Act”.

5 **SEC. 2. FLEXIBILITY IN EMPLOYMENT AUTHORITIES.**

6 (a) IN GENERAL.—Chapter 97 of title 5, United
7 States Code, is amended by adding at the end the fol-
8 lowing:

9 **“§ 9702. U.S. Customs and Border Protection employ-
10 ment authorities**

11 “(a) DEFINITIONS.—In this section—

12 “(1) the term ‘CBP employee’ means an em-
13 ployee of U.S. Customs and Border Protection;

14 “(2) the term ‘Commissioner’ means the Com-
15 missioner of U.S. Customs and Border Protection;

16 “(3) the term ‘Director’ means the Director of
17 the Office of Personnel Management;

18 “(4) the term ‘rural or remote area’ means an
19 area within the United States that is not within an
20 area defined and designated as an urbanized area by
21 the Bureau of the Census in the most recently com-
22 pleted decennial census; and

23 “(5) the term ‘Secretary’ means the Secretary
24 of Homeland Security.

25 “(b) DEMONSTRATION OF RECRUITMENT AND RE-
26 TENTION DIFFICULTIES IN RURAL OR REMOTE AREAS.—

1 “(1) IN GENERAL.—For purposes of sub-
2 sections (c) and (d), the Secretary shall determine,
3 for a rural or remote area, whether there is—

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

5 “(B) a direct relationship between—

6 “(i) the rural or remote nature of the
7 area; and

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

10 “(2) FACTORS.—To inform the determination
11 of a direct relationship under paragraph (1)(B), the
12 Secretary may consider evidence—

13 “(A) that the Secretary—

14 “(i) is unable to efficiently and effec-
15 tively recruit individuals for positions as
16 CBP employees, which may be dem-
17 onstrated with various types of evidence,
18 including—

19 “(I) evidence that multiple posi-
20 tions have been continuously vacant
21 for significantly longer than the na-
22 tional average period for which similar
23 positions in U.S. Customs and Border
24 Protection are vacant; and

1 “(II) recruitment studies that
2 demonstrate the inability of the Sec-
3 retary to efficiently and effectively re-
4 cruit CBP employees for positions in
5 the area; or

6 “(ii) experiences a consistent inability
7 to retain CBP employees that negatively
8 impacts agency operations at a local or re-
9 gional level; or

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

13 “(c) DIRECT HIRE AUTHORITY; RECRUITMENT AND
14 RELOCATION BONUSES; RETENTION BONUSES.—

15 “(1) DIRECT HIRE AUTHORITY.—

16 “(A) IN GENERAL.—The Secretary may
17 appoint, without regard to any provision of sec-
18 tions 3309 through 3319, candidates to posi-
19 tions in the competitive service as CBP employ-
20 ees, in a rural or remote area, if the Sec-
21 retary—

22 “(i) determines that—

23 “(I) there is a critical hiring
24 need; and

1 “(II) there exists a severe short-
 2 age of qualified candidates because of
 3 the direct relationship identified by
 4 the Secretary under subsection
 5 (b)(1)(B) of this section between—

6 “(aa) the rural or remote
 7 nature of the area; and

8 “(bb) difficulty in the re-
 9 cruitment and retention of CBP
 10 employees in the area; and

11 “(ii) has given public notice for the
 12 positions.

13 “(B) PRIORITIZATION OF HIRING VET-
 14 ERANS.—If the Secretary uses the direct hiring
 15 authority under subparagraph (A), the Sec-
 16 retary shall apply the principles of preference
 17 for the hiring of veterans established under sub-
 18 chapter I of chapter 33.

19 “(2) RECRUITMENT AND RELOCATION BO-
 20 NUSES.—The Secretary may pay a bonus to an indi-
 21 vidual (other than an individual described in sub-
 22 section (a)(2) of section 5753) if—

23 “(A) the Secretary determines that—

24 “(i) conditions consistent with the
 25 conditions described in paragraphs (1) and

1 (2) of subsection (b) of such section 5753
2 are satisfied with respect to the individual
3 (without regard to any other provision of
4 that section); and

5 “(ii) the position to which the indi-
6 vidual is appointed or to which the indi-
7 vidual moves or must relocate—

8 “(I) is a position as a CBP em-
9 ployee; and

10 “(II) is in a rural or remote area
11 for which the Secretary has identified
12 a direct relationship under subsection
13 (b)(1)(B) of this section between—

14 “(aa) the rural or remote
15 nature of the area; and

16 “(bb) difficulty in the re-
17 cruitment and retention of CBP
18 employees in the area; and

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

21 “(i) under which the individual is re-
22 quired to complete a period of employment
23 as a CBP employee of not less than 2
24 years; and

25 “(ii) that includes—

1 “(I) the commencement and ter-
 2 mination dates of the required service
 3 period (or provisions for the deter-
 4 mination thereof);

5 “(II) the amount of the bonus;
 6 and

7 “(III) other terms and conditions
 8 under which the bonus is payable,
 9 subject to the requirements of this
 10 subsection, including—

11 “(aa) the conditions under
 12 which the agreement may be ter-
 13 minated before the agreed-upon
 14 service period has been com-
 15 pleted; and

16 “(bb) the effect of a termi-
 17 nation described in item (aa).

18 “(3) RETENTION BONUSES.—The Secretary
 19 may pay a retention bonus to a CBP employee
 20 (other than an individual described in subsection
 21 (a)(2) of section 5754) if—

22 “(A) the Secretary determines that—

23 “(i) a condition consistent with the
 24 condition described in subsection (b)(1) of
 25 such section 5754 is satisfied with respect

1 to the CBP employee (without regard to
2 any other provision of that section);

3 “(ii) the CBP employee is employed in
4 a rural or remote area for which the Sec-
5 retary has identified a direct relationship
6 under subsection (b)(1)(B) of this section
7 between—

8 “(I) the rural or remote nature
9 of the area; and

10 “(II) difficulty in the recruitment
11 and retention of CBP employees in
12 the area; and

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

16 “(I) the Federal service; or

17 “(II) for a different position in
18 the Federal service, including a posi-
19 tion in another agency or component
20 of the Department of Homeland Secu-
21 rity; and

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

24 “(i) under which the individual is re-
25 quired 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 the determination thereof);

“(II) the amount of the bonus;
and

“(III) other terms and conditions under which the bonus is payable, subject to the requirements of this subsection, including—

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

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

“(4) RULES FOR BONUSES.—

“(A) MAXIMUM BONUS.—A bonus paid to an employee under—

“(i) paragraph (2) may not exceed
100 percent of the annual rate of basic pay

1 of the employee as of the commencement
2 date of the applicable service period; and

3 “(ii) paragraph (3) may not exceed 50
4 percent of the annual rate of basic pay of
5 the employee as of the commencement date
6 of the applicable service period.

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

11 “(5) OPM OVERSIGHT.—The Director shall, to
12 the extent practicable—

13 “(A) set aside a determination of the Sec-
14 retary under this subsection if the Director
15 finds substantial evidence that the Secretary
16 abused the discretion of the Secretary in mak-
17 ing the determination; and

18 “(B) oversee the compliance of the Sec-
19 retary with this subsection.

20 “(d) SPECIAL PAY AUTHORITY.—In addition to the
21 circumstances described in subsection (b) of section 5305,
22 the Director may establish special rates of pay in accord-
23 ance with that section if the Director finds that the re-
24 cruitment or retention efforts of the Secretary with respect
25 to positions for CBP employees in an area or location are,

1 or are likely to become, significantly handicapped because
 2 the positions are located in a rural or remote area for
 3 which the Secretary has identified a direct relationship
 4 under subsection (b)(1)(B) of this section between—

5 “(1) the rural or remote nature of the area; and

6 “(2) difficulty in the recruitment and retention
 7 of CBP employees in the area.

8 “(e) REGULAR CBP REVIEW.—

9 “(1) ENSURING FLEXIBILITIES MEET CBP
 10 NEEDS.—Each year, the Secretary shall review the
 11 use of hiring flexibilities under subsections (c) and
 12 (d) to fill positions at a location in a rural or remote
 13 area to determine—

14 “(A) the impact of the use of those flexi-
 15 bilities on solving hiring and retention chal-
 16 lenges at the location;

17 “(B) whether hiring and retention chal-
 18 lenges still exist at the location; and

19 “(C) whether the Secretary needs to con-
 20 tinue to use those flexibilities at the location.

21 “(2) CONSIDERATION.—In conducting the re-
 22 view under paragraph (1), the Secretary shall con-
 23 sider—

24 “(A) whether any CBP employee accepted
 25 an employment incentive under subsection (c)

1 or (d) and then transferred to a new location or
2 left U.S. Customs and Border Protection; and

3 “(B) the length of time that each employee
4 identified under subparagraph (A) stayed at the
5 original location before transferring to a new lo-
6 cation or leaving U.S. Customs and Border
7 Protection.

8 “(3) DISTRIBUTION.—The Secretary shall sub-
9 mit to Congress a report on each review required
10 under paragraph (1).

11 “(f) IMPROVING CBP HIRING AND RETENTION.—

12 “(1) EDUCATION OF CBP HIRING OFFICIALS.—
13 Not later than 180 days after the date of enactment
14 of the U.S. Customs and Border Protection Hiring
15 and Retention Act of 2017, and in conjunction with
16 the Chief Human Capital Officer of the Department
17 of Homeland Security, the Secretary shall develop
18 and implement a strategy to improve education re-
19 garding hiring and human resources flexibilities (in-
20 cluding hiring and human resources flexibilities for
21 locations in rural or remote areas) for all employees,
22 serving in agency headquarters or field offices, who
23 are involved in the recruitment, hiring, assessment,
24 or selection of candidates for locations in a rural or

1 remote area, as well as the retention of current em-
2 ployees.

3 “(2) ELEMENTS.—Elements of the strategy
4 under paragraph (1) shall include the following:

5 “(A) Developing or updating training and
6 educational materials on hiring and human re-
7 sources flexibilities for employees who are in-
8 volved in the recruitment, hiring, assessment, or
9 selection of candidates, as well as the retention
10 of current employees.

11 “(B) Regular training sessions for per-
12 sonnel who are critical to filling open positions
13 in rural or remote areas.

14 “(C) The development of pilot programs or
15 other programs, as appropriate, to address
16 identified hiring challenges in rural or remote
17 areas.

18 “(D) Developing and enhancing strategic
19 recruiting efforts through relationships with in-
20 stitutions of higher education, as defined in sec-
21 tion 102 of the Higher Education Act of 1965
22 (20 U.S.C. 1002), veterans transition and em-
23 ployment centers, and job placement program
24 in regions that could assist in filling positions
25 in rural or remote areas.

1 “(E) Examination of existing agency pro-
2 grams on how to most effectively aid spouses
3 and families of individuals who are candidates
4 or new hires in a rural or remote area.

5 “(F) Feedback from individuals who are
6 candidates or new hires at locations in a rural
7 or remote area, including feedback on the qual-
8 ity of life in rural or remote areas for new hires
9 and their families.

10 “(G) Feedback from CBP employees, other
11 than new hires, who are stationed at locations
12 in a rural or remote area, including feedback on
13 the quality of life in rural or remote areas for
14 those CBP employees and their families.

15 “(H) Evaluation of Department of Home-
16 land Security internship programs and the use-
17 fulness of those programs in improving hiring
18 by the Secretary in rural or remote areas.

19 “(3) EVALUATION.—

20 “(A) IN GENERAL.—Each year, the Sec-
21 retary shall—

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

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

3 “(B) INFORMATION.—The evaluation con-
4 ducted under subparagraph (A) shall include—

5 “(i) any reduction in the time taken
6 by the Secretary to fill mission-critical po-
7 sitions in rural or remote areas;

8 “(ii) a general assessment of the im-
9 pact of the strategy developed and imple-
10 mented under paragraph (1) on hiring
11 challenges in rural or remote areas; and

12 “(iii) other information the Secretary
13 determines relevant.

14 “(g) INSPECTOR GENERAL REVIEW.—Not later than
15 2 years after the date of enactment of the U.S. Customs
16 and Border Protection Hiring and Retention Act of 2017,
17 the Inspector General of the Department of Homeland Se-
18 curity shall review the use of hiring flexibilities by the Sec-
19 retary under subsections (c) and (d) to determine whether
20 the use of those flexibilities is helping the Secretary meet
21 hiring and retention needs in rural and remote areas.

22 “(h) REPORT ON POLYGRAPH REQUESTS.—The Sec-
23 retary shall report to Congress on the number of requests
24 the Secretary receives from any other Federal agency for
25 the file of an applicant for a position in U.S. Customs

1 and Border Protection that includes the results of a poly-
2 graph examination.

3 “(i) EXERCISE OF AUTHORITY.—

4 “(1) SOLE DISCRETION.—The exercise of au-
5 thority under subsection (c) shall be subject to the
6 sole and exclusive discretion of the Secretary (or the
7 Commissioner, as applicable under paragraph (2) of
8 this subsection), notwithstanding chapter 71.

9 “(2) DELEGATION.—

10 “(A) IN GENERAL.—Subject to subpara-
11 graph (B), the Secretary may delegate any au-
12 thority under this section to the Commissioner.

13 “(B) OVERSIGHT.—The Commissioner
14 may not make a determination under subsection
15 (b)(1) unless the Secretary approves the deter-
16 mination.

17 “(j) RULE OF CONSTRUCTION.—Nothing in this sec-
18 tion shall be construed to exempt the Secretary or the Di-
19 rector from the applicability of the merit system principles
20 under section 2301.

21 “(k) SUNSET.—The authorities under subsections (c)
22 and (d) shall terminate on the date that is 5 years after
23 the date of enactment of the U.S. Customs and Border
24 Protection Hiring and Retention Act of 2017.”.

1 (b) TECHNICAL AND CONFORMING AMENDMENT.—
2 The table of sections for chapter 97 of title 5, United
3 States Code, is amended by adding at the end the fol-
4 lowing:

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

Passed the Senate October 10, 2018.

Attest:

JULIE E. ADAMS,
Secretary.