

Calendar No. 614

115TH CONGRESS
2D SESSION**S. 1896**

To amend section 8331 of title 5, United States Code, and the Fair Labor Standards Act of 1938 to clarify the treatment of availability pay for Federal air marshals and criminal investigators of the Transportation Security Administration, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 28, 2017

Mr. JOHNSON introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

OCTOBER 2 (legislative day, SEPTEMBER 28), 2018

Reported by Mr. THUNE, with an amendment and an amendment to the title
[Strike out all after the enacting clause and insert the part printed in *italic*]

A BILL

To amend section 8331 of title 5, United States Code, and the Fair Labor Standards Act of 1938 to clarify the treatment of availability pay for Federal air marshals and criminal investigators of the Transportation Security Administration, and for other purposes.

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 “TSA LEAP Pay Re-
3 form Act of 2017”.

4 **SEC. 2. RETIREMENT-CREDITABLE BASIC PAY.**

5 (a) **DEFINITION OF BASIC PAY.**—Clause (ii) of sec-
6 tion 8331(3)(E) of title 5, United States Code, is amended
7 to read as follows:

8 “(ii) received after September 11,
9 2001, by a Federal air marshal or criminal
10 investigator (as defined in section
11 5545a(a)(2)) of the Transportation Secu-
12 rity Administration, subject to all restric-
13 tions and earning limitations imposed on
14 criminal investigators receiving such pay
15 under section 5545a, including the pre-
16 mium pay limitations under section
17 5547;”.

18 (b) **FAIR LABOR STANDARDS ACT EXEMPTION.**—
19 Section 13 of the Fair Labor Standards Act of 1938 (29
20 U.S.C. 213) is amended—

21 (1) in subsection (a)(16)—

22 (A) by striking “is paid” and inserting “is
23 entitled to”; and

24 (B) by inserting “, or a Federal air mar-
25 shal or criminal investigator employed by the
26 Administrator of the Transportation Security

Administration who is entitled to such availability pay, as described in section 8331(3)(E)(ii) of such title (where entitlement is determined before the application of any premium pay limitation)” before the semicolon; and

(2) in subsection (b)(30)—

(A) by striking “is paid” and inserting “is entitled to”; and

(B) by inserting “, or a Federal air marshal or criminal investigator employed by the Administrator of the Transportation Security Administration who is entitled to such availability pay, as described in section 8331(3)(E)(ii) of such title (where entitlement is determined before the application of any premium pay limitation)” before the period.

(c) ~~EFFECTIVE DATE; APPLICABILITY.—~~

(1) ~~IN GENERAL.—~~Subject to paragraph (2), this Act, and the amendments made by this Act, shall take effect on the first day of the first pay period commencing on or after the date of enactment of this Act.

(2) ~~RETROACTIVE APPLICATION.—~~

(A) IN GENERAL.—Any availability pay received for any pay period commencing before the date of enactment of this Act by a Federal air marshal or criminal investigator employed by the Transportation Security Administration shall be deemed basic pay under section 8331(3) of title 5, United States Code, if the Transportation Security Administration treated such pay as retirement-creditable basic pay, but the Office of Personnel Management, based on an interpretation of section 8331(3) of title 5, United States Code, did not accept such pay as retirement-creditable basic pay.

(B) IMPLEMENTATION.—Not later than 3 months after the date of enactment of this Act, the Director of the Office of Personnel Management shall commence taking such actions as are necessary to implement the amendments made by this section with respect to availability pay deemed to be basic pay under subparagraph (A).

SECTION 1. SHORT TITLE.

This Act may be cited as the “TSA LEAP Pay Reform Act of 2018”.

1 **SEC. 2. RETIREMENT-CREDITABLE BASIC PAY.**

2 (a) *DEFINITION OF BASIC PAY.*—Clause (ii) of section
3 8331(3)(E) of title 5, United States Code, is amended to
4 read as follows:

5 “(ii) received after September 11, 2001,
6 by a Federal air marshal or criminal inves-
7 tigator (as defined in section 5545a(a)(2))
8 of the Transportation Security Administra-
9 tion, subject to all restrictions and earning
10 limitations imposed on criminal investiga-
11 tors receiving such pay under section 5545a,
12 including the premium pay limitations
13 under section 5547;”.

14 (b) *EFFECTIVE DATE; APPLICABILITY.*—

15 (1) *IN GENERAL.*—Subject to paragraph (2), this
16 Act, and the amendments made by this Act, shall take
17 effect on the first day of the first pay period com-
18 mencing on or after the date of enactment of this Act.

19 (2) *RETROACTIVE APPLICATION.*—

20 (A) *IN GENERAL.*—Any availability pay re-
21 ceived for any pay period commencing before the
22 date of enactment of this Act by a Federal air
23 marshal or criminal investigator employed by
24 the Transportation Security Administration
25 shall be deemed basic pay under section 8331(3)
26 of title 5, United States Code, if the Transpor-

1 *tation Security Administration treated such pay*
2 *as retirement-creditable basic pay, but the Office*
3 *of Personnel Management, based on an interpre-*
4 *tation of section 8331(3) of title 5, United States*
5 *Code, did not accept such pay as retirement-*
6 *creditable basic pay.*

7 *(B) IMPLEMENTATION.—Not later than 3*
8 *months after the date of enactment of this Act,*
9 *the Director of the Office of Personnel Manage-*
10 *ment shall commence taking such actions as are*
11 *necessary to implement the amendments made by*
12 *this section with respect to availability pay*
13 *deemed to be basic pay under subparagraph (A).*

Amend the title so as to read: “A bill to amend section 8331 of title 5, United States Code, to clarify the treatment of availability pay for Federal air marshals and criminal investigators of the Transportation Security Administration, and for other purposes.”.

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