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Public Law 113–277
113th Congress

An Act

To amend title 5, United States Code, to improve the security of the United States border and to provide for reforms and rates of pay for border patrol agents.

Dec. 18, 2014
[S. 1691]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

Border Patrol Agent Pay Reform Act of 2014.
5 USC 101 note.

This Act may be cited as the "Border Patrol Agent Pay Reform Act of 2014".

SEC. 2. BORDER PATROL RATE OF PAY.

5 USC 5542 note.

(a) PURPOSE.—The purposes of this Act are—

(1) to strengthen U.S. Customs and Border Protection and ensure that border patrol agents are sufficiently ready to conduct necessary work and will perform overtime hours in excess of a 40-hour workweek based on the needs of U.S. Customs and Border Protection; and

(2) to ensure U.S. Customs and Border Protection has the flexibility to cover shift changes and retains the right to assign scheduled and unscheduled work for mission requirements and planning based on operational need.

(b) RATES OF PAY.—Subchapter V of chapter 55 of title 5, United States Code, is amended by inserting after section 5549 the following:

"§ 5550. Border patrol rate of pay

5 USC 5550.

"(a) DEFINITIONS.—In this section—

"(1) the term 'basic border patrol rate of pay' means the hourly rate of basic pay of the applicable border patrol, as determined without regard to this section;

"(2) the term 'border patrol agent' means an individual who is appointed to a position assigned to the Border Patrol Enforcement classification series 1896 or any successor series, consistent with classification standards established by the Office of Personnel Management;

"(3) the term 'level 1 border patrol rate of pay' means the hourly rate of pay equal to 1.25 times the otherwise applicable hourly rate of basic pay of the applicable border patrol agent;

"(4) the term 'level 2 border patrol rate of pay' means the hourly rate of pay equal to 1.125 times the otherwise applicable hourly rate of basic pay of the applicable border patrol agent; and

"(5) the term 'work period' means a 14-day biweekly pay period.

"(b) RECEIPT OF BORDER PATROL RATE OF PAY.—

"(1) VOLUNTARY ELECTION.—

Deadline.
Effective date.

"(A) IN GENERAL.—Not later than 30 days before the first day of each year beginning after the date of enactment of this section, a border patrol agent shall make an election whether the border patrol agent shall, for that year, be assigned to—

"(i) the level 1 border patrol rate of pay;

"(ii) the level 2 border patrol rate of pay; or

"(iii) the basic border patrol rate of pay, with additional overtime assigned as needed by U.S. Customs and Border Protection.

Procedures.

"(B) REGULATIONS.—The Director of the Office of Personnel Management shall promulgate regulations establishing procedures for elections under subparagraph (A).

Deadline.
Effective date.

"(C) INFORMATION REGARDING ELECTION.—Not later than 60 days before the first day of each year beginning after the date of enactment of this section, U.S. Customs and Border Protection shall provide each border patrol agent with information regarding each type of election available under subparagraph (A) and how to make such an election.

"(D) ASSIGNMENT IN LIEU OF ELECTION.—Notwithstanding subparagraph (A)—

"(i) a border patrol agent who fails to make a timely election under subparagraph (A) shall be assigned to the level 1 border patrol rate of pay;

"(ii) a border patrol agent who is assigned a canine shall be assigned to the level 1 border patrol rate of pay;

"(iii) if at any time U.S. Customs and Border Protection concludes that a border patrol agent is unable to perform overtime on a daily basis in accordance with this section, U.S. Customs and Border Protection shall assign the border patrol agent to the basic border patrol rate of pay until such time as U.S. Customs and Border Protection determines that the border patrol agent is able to perform scheduled overtime on a daily basis;

"(iv) unless the analysis conducted under section 2(e) of the Border Patrol Agent Pay Reform Act of 2014 indicates that, in order to more adequately fulfill the operational requirements of U.S. Customs and Border Protection, such border patrol agents should be allowed to elect or be assigned to the level 1 border patrol rate of pay or the level 2 border patrol rate of pay, a border patrol agent shall be assigned to the basic border patrol rate of pay if the agent works—

"(I) at U.S. Customs and Border Protection headquarters;

"(II) as a training instructor at a U.S. Customs and Border Protection training facility;

"(III) in an administrative position; or

"(IV) as a fitness instructor; and

"(v) a border patrol agent may be assigned to the level 1 border patrol rate of pay or the level 2 border

patrol rate of pay in accordance with subparagraph (E).

"(E) FLEXIBILITY.—

"(i) IN GENERAL.—Except as provided in clauses (ii) and (iii), and notwithstanding any other provision of law, U.S. Customs and Border Protection shall take such action as is necessary, including the unilateral assignment of border patrol agents to the level 1 border patrol rate of pay or the level 2 border patrol rate of pay, to ensure that not more than 10 percent of the border patrol agents stationed at a location are assigned to the level 2 border patrol rate of pay or the basic border patrol rate of pay.

"(ii) WAIVER.—U.S. Customs and Border Protection may waive the limitation under clause (i) on the percent of border patrol agents stationed at a location who are assigned to the level 2 border patrol rate of pay or the basic border patrol rate of pay if, based on the analysis conducted under section 2(e) of the Border Patrol Agent Pay Reform Act of 2014, U.S. Customs and Border Protection determines it may do so and adequately fulfill its operational requirements.

"(iii) CERTAIN LOCATIONS.—Clause (i) shall not apply to border patrol agents working at the headquarters of U.S. Customs and Border Protection or a training location of U.S. Customs and Border Protection.

"(F) CANINE CARE.—For a border patrol agent assigned to provide care for a canine and assigned to the level 1 border patrol rate of pay in accordance with subparagraph (D)(ii)—

"(i) that rate of pay covers all such care;

"(ii) for the purposes of scheduled overtime under paragraph (2)(A)(ii), such care shall be counted as 1 hour of scheduled overtime on each regular workday without regard to the actual duration of such care or whether such care occurs on the regular workday; and

"(iii) no other pay shall be paid to the border patrol agent for such care.

"(G) PAY ASSIGNMENT CONTINUITY.—

"(i) IN GENERAL.—Not later than 1 year after the date of enactment of the Border Patrol Agent Pay Reform Act of 2014, and in consultation with the Office of Personnel Management, U.S. Customs and Border Protection shall develop and implement a plan to ensure, to the greatest extent practicable, that the assignment of a border patrol agent under this section during the 3 years of service before the border patrol agent becomes eligible for immediate retirement are consistent with the average border patrol rate of pay level to which the border patrol agent has been assigned during the course of the career of the border patrol agent.

Deadline. Consultation. Plan.

"(ii) IMPLEMENTATION.—Notwithstanding any other provision of law, U.S. Customs and Border Protection may take such action as is necessary,

including the unilateral assignment of border patrol agents to the level 1 border patrol rate of pay, the level 2 border patrol rate of pay, or the basic border patrol rate of pay, to implement the plan developed under this subparagraph.

"(iii) REPORTING.—U.S. Customs and Border Protection shall submit the plan developed under clause (i) to the appropriate committees of Congress.

Deadline. Reports.

"(iv) GAO REVIEW.—Not later than 6 months after U.S. Customs and Border Protection issues the plan required under clause (i), the Comptroller General of the United States shall submit to the appropriate committees of Congress a report on the effectiveness of the plan in ensuring that border patrol agents are not able to artificially enhance their retirement annuities.

"(v) DEFINITION.—In this subparagraph, the term 'appropriate committees of Congress' means—

"(I) the Committee on Homeland Security and Governmental Affairs and the Committee on Appropriations of the Senate; and

"(II) the Committee on Homeland Security, the Committee on Oversight and Government Reform, and the Committee on Appropriations of the House of Representatives.

"(vi) RULE OF CONSTRUCTION.—Nothing in this subparagraph shall be construed to limit the ability of U.S. Customs and Border Protection to assign border patrol agents to border patrol rates of pay as necessary to meet operational requirements.

"(2) LEVEL 1 BORDER PATROL RATE OF PAY.—For a border patrol agent who is assigned to the level 1 border patrol rate of pay—

"(A) the border patrol agent shall have a regular tour of duty consisting of 5 workdays per week with—

"(i) 8 hours of regular time per workday, which may be interrupted by an unpaid off-duty meal break; and

"(ii) 2 additional hours of scheduled overtime during each day the agent performs work under clause (i);

"(B) for paid hours of regular time described in subparagraph (A)(i), the border patrol agent shall receive pay at the level 1 border patrol rate of pay;

"(C) compensation for the hours of regularly scheduled overtime work described in subparagraph (A)(ii) is provided indirectly through the 25 percent supplement within the level 1 border patrol rate of pay, and the border patrol agent may not receive for such hours—

"(i) any compensation in addition to the compensation under subparagraph (B) under this section or any other provision of law; or

"(ii) any compensatory time off;

"(D) the border patrol agent shall receive compensatory time off or pay at the overtime hourly rate of pay for hours of work in excess of 100 hours during a work period, as determined in accordance with section 5542(g);

"(E) the border patrol agent shall be charged corresponding amounts of paid leave, compensatory time off, or other paid time off for each hour (or part thereof) the agent is absent from work during regular time (except that full days off for military leave shall be charged when required);

"(F) if the border patrol agent is absent during scheduled overtime described in subparagraph (A)(ii)—

"(i) the border patrol agent shall accrue an obligation to perform other overtime work for each hour (or part thereof) the border patrol agent is absent; and

"(ii) any overtime work applied toward the obligation under clause (i) shall not be credited as overtime work under any other provision of law; and

"(G) for the purposes of advanced training, the border patrol agent—

"(i) shall be paid at the level 1 border patrol rate of pay for the first 60 days of advanced training in a calendar year; and Time period.

"(ii) for any advanced training in addition to the advanced training described in clause (i), shall be paid at the basic border patrol rate of pay.

"(3) LEVEL 2 BORDER PATROL RATE OF PAY.—For a border patrol agent who is assigned to the level 2 border patrol rate of pay—

"(A) the border patrol agent shall have a regular tour of duty consisting of 5 workdays per week with—

"(i) 8 hours of regular time per workday, which may be interrupted by an unpaid off-duty meal break; and

"(ii) 1 additional hour of scheduled overtime during each day the agent performs work under clause (i);

"(B) for paid hours of regular time described in subparagraph (A)(i), the border patrol agent shall receive pay at the level 2 border patrol rate of pay;

"(C) compensation for the hours of regularly scheduled overtime work described in subparagraph (A)(ii) is provided indirectly through the 12.5 percent supplement within the level 2 border patrol rate of pay, and the border patrol agent may not receive for such hours—

"(i) any compensation in addition to the compensation under subparagraph (B) under this section or any other provision of law; or

"(ii) any compensatory time off;

"(D) the border patrol agent shall receive compensatory time off or pay at the overtime hourly rate of pay for hours of work in excess of 90 hours during a work period, as determined in accordance with section 5542(g);

"(E) the border patrol agent shall be charged corresponding amounts of paid leave, compensatory time off, or other paid time off for each hour (or part thereof) the agent is excused from work during regular time (except that full days off for military leave shall be charged when required);

"(F) if the border patrol agent is absent during scheduled overtime described in subparagraph (A)(ii)—

"(i) the border patrol agent shall accrue an obligation to perform other overtime work for each hour (or part thereof) the border patrol agent is absent; and

"(ii) any overtime work applied toward the obligation under clause (i) shall not be credited as overtime work under any other provision of law; and

"(G) for the purposes of advanced training, the border patrol agent—

Time period.

"(i) shall be paid at the level 2 border patrol rate of pay for the first 60 days of advanced training in a calendar year; and

"(ii) for any advanced training in addition to the advanced training described in clause (i), shall be paid at the basic border patrol rate of pay.

"(4) BASIC BORDER PATROL RATE OF PAY.—For a border patrol agent who is assigned to the basic border patrol rate of pay—

"(A) the border patrol agent shall have a regular tour of duty consisting of 5 workdays per week with 8 hours of regular time per workday; and

"(B) the border patrol agent shall receive compensatory time off or pay at the overtime hourly rate of pay for hours of work in excess of 80 hours during a work period, as determined in accordance with section 5542(g).

"(c) ELIGIBILITY FOR OTHER PREMIUM PAY.—A border patrol agent—

"(1) shall receive premium pay for nightwork in accordance with subsections (a) and (b) of section 5545 and Sunday and holiday pay in accordance with section 5546, without regard to the rate of pay to which the border patrol agent is assigned under this section, except that—

"(A) no premium pay for night, Sunday, or holiday work shall be provided for hours of regularly scheduled overtime work described in paragraph (2)(A)(ii) or (3)(A)(ii) of subsection (b), consistent with the requirements of paragraph (2)(C) or (3)(C) of subsection (b); and

"(B) section 5546(d) shall not apply and instead eligibility for pay for, and the rate of pay for, any overtime work on a Sunday or a designated holiday shall be determined in accordance with this section and section 5542(g);

"(2) except as provided in paragraph (3) or section 5542(g), shall not be eligible for any other form of premium pay under this title; and

"(3) shall be eligible for hazardous duty pay in accordance with section 5545(d).

"(d) TREATMENT AS BASIC PAY.—Any pay in addition to the basic border patrol rate of pay for a border patrol agent resulting from application of the level 1 border patrol rate of pay or the level 2 border patrol rate of pay—

"(1) subject to paragraph (2), shall be treated as part of basic pay solely for—

"(A) purposes of sections 5595(c), 8114(e), 8331(3)(I), and 8704(c);

"(B) any other purpose that the Director of the Office of Personnel Management may by regulation prescribe; and

"(C) any other purpose expressly provided for by law; and

"(2) shall not be treated as part of basic pay for the purposes of calculating overtime pay, night pay, Sunday pay, or holiday pay under section 5542, 5545, or 5546.

"(e) TRAVEL TIME.—Travel time to and from home and duty station by a border patrol agent shall not be considered hours of work under any provision of law.

"(f) LEAVE WITHOUT PAY AND SUBSTITUTION OF HOURS.—

"(1) REGULAR TIME.—

"(A) IN GENERAL.—For a period of leave without pay during the regular time of a border patrol agent (as described in paragraph (2)(A)(i), (3)(A)(i), or (4)(A) of subsection (b)) within a work period, an equal period of work outside the regular time of the border patrol agent, but in the same work period—

"(i) shall be substituted and paid for at the rate applicable for the regular time; and

"(ii) shall not be credited as overtime hours for any purpose.

"(B) PRIORITY FOR SAME DAY WORK.—In substituting hours of work under subparagraph (A), work performed on the same day as the period of leave without pay shall be substituted first.

"(C) PRIORITY FOR REGULAR TIME SUBSTITUTION.—Hours of work shall be substituted for regular time work under this paragraph before being substituted for scheduled overtime under paragraphs (2), (3), and (4).

"(2) OVERTIME WORK.—

"(A) IN GENERAL.—For a period of absence during scheduled overtime (as described in paragraph (2)(F) or (3)(F) of subsection (b)) within a work period, an equal period of additional work in the same work period—

"(i) shall be substituted and credited as scheduled overtime; and

"(ii) shall not be credited as overtime hours under any other provision of law.

"(B) PRIORITY FOR SAME DAY WORK.—In substituting hours of work under subparagraph (A), work performed on the same day as the period of absence shall be substituted first.

"(3) APPLICATION OF COMPENSATORY TIME.—If a border patrol agent does not have sufficient additional work in a work period to substitute for all periods of absence during scheduled overtime (as described in paragraph (2)(F) or (3)(F) of subsection (b)) within that work period, any accrued compensatory time off under section 5542(g) shall be applied to satisfy the hours obligation.

"(4) INSUFFICIENT HOURS.—If a border patrol agent has a remaining hours obligation of scheduled overtime after applying paragraphs (2) and (3), any additional work in subsequent work periods that would otherwise be credited under section 5542(g) shall be applied towards the hours obligation until that obligation is satisfied.

"(g) AUTHORITY TO REQUIRE OVERTIME WORK.—Nothing in this section shall be construed to limit the authority of U.S. Customs and Border Protection to require a border patrol agent to perform

hours of overtime work in accordance with the needs of U.S. Customs and Border Protection, including if needed in the event of a local or national emergency.".

(c) OVERTIME WORK.—

(1) IN GENERAL.—Section 5542 of title 5, United States Code, is amended by adding at the end the following:

Applicability. Regulations.

"(g) In applying subsection (a) with respect to a border patrol agent covered by section 5550, the following rules apply:

"(1) Notwithstanding the matter preceding paragraph (1) in subsection (a), for a border patrol agent who is assigned to the level 1 border patrol rate of pay under section 5550—

"(A) hours of work in excess of 100 hours during a 14-day biweekly pay period shall be overtime work; and

"(B) the border patrol agent—

"(i) shall receive pay at the overtime hourly rate of pay (as determined in accordance with paragraphs (1) and (2) of subsection (a)) for hours of overtime work that are officially ordered or approved in advance of the workweek; and

"(ii) except as provided in paragraphs (4) and (5), shall receive compensatory time off for an equal amount of time spent performing overtime work that is not overtime work described in clause (i).

"(2) Notwithstanding the matter preceding paragraph (1) in subsection (a), for a border patrol agent who is assigned to the level 2 border patrol rate of pay under section 5550—

"(A) hours of work in excess of 90 hours during a 14-day biweekly pay period shall be overtime work; and

"(B) the border patrol agent—

"(i) shall receive pay at the overtime hourly rate of pay (as determined in accordance with paragraphs (1) and (2) of subsection (a)) for hours of overtime work that are officially ordered or approved in advance of the workweek; and

"(ii) except as provided in paragraphs (4) and (5), shall receive compensatory time off for an equal amount of time spent performing overtime work that is not overtime work described in clause (i).

"(3) Notwithstanding the matter preceding paragraph (1) in subsection (a), for a border patrol agent who is assigned to the basic border patrol rate of pay under section 5550—

"(A) hours of work in excess of 80 hours during a 14-day biweekly pay period shall be overtime work; and

"(B) the border patrol agent—

"(i) shall receive pay at the overtime hourly rate of pay (as determined in accordance with paragraphs (1) and (2) of subsection (a)) for hours of overtime work that are officially ordered or approved in advance of the workweek; and

"(ii) except as provided in paragraphs (4) and (5), shall receive compensatory time off for an equal amount of time spent performing overtime work that is not overtime work described in clause (i).

"(4)(A) Except as provided in subparagraph (B), during a 14-day biweekly pay period, a border patrol agent may not earn compensatory time off for more than 10 hours of overtime work.

"(B) U.S. Customs and Border Protection may, as it determines appropriate, waive the limitation under subparagraph (A) for an individual border patrol agent for hours of irregular or occasional overtime work, but such waiver must be approved in writing in advance of the performance of any such work for which compensatory time off is earned under paragraph (1)(B)(ii), (2)(B)(ii), or (3)(B)(ii). If a waiver request by a border patrol agent is denied, the border patrol agent may not be ordered to perform the associated overtime work. Waiver authority.

"(5) A border patrol agent—

"(A) may not earn more than 240 hours of compensatory time off during a leave year;

"(B) shall use any hours of compensatory time off not later than the end of the 26th pay period after the pay period during which the compensatory time off was earned;

"(C) shall be required to use 1 hour of compensatory time off for each hour of regular time not worked for which the border patrol agent is not on paid leave or other paid time off or does not substitute time in accordance with section 5550(f);

"(D) shall forfeit any compensatory time off not used in accordance with this paragraph and, regardless of circumstances, shall not be entitled to any cash value for compensatory time earned under section 5550;

"(E) shall not receive credit towards the computation of the annuity of the border patrol agent for compensatory time, whether used or not; and

"(F) shall not be credited with compensatory time off if the value of such time off would cause the aggregate premium pay of the border patrol agent to exceed the limitation established under section 5547 in the period in which it was earned.".

(2) MINIMIZATION OF OVERTIME.—U.S. Customs and Border Protection shall, to the maximum extent practicable, avoid the use of scheduled overtime work by border patrol agents. 5 USC 5550 note.

(d) RETIREMENT.—Section 8331(3) of title 5, United States Code, is amended—

(1) in subparagraph (G), by striking "and";

(2) in subparagraph (H), by inserting "and" after the semicolon;

(3) by inserting a new subparagraph after subparagraph (H) as follows:

"(I) with respect to a border patrol agent, the amount of supplemental pay received through application of the level 1 border patrol rate of pay or the level 2 border patrol rate of pay for scheduled overtime within the regular tour of duty of the border patrol agent as provided in section 5550;"; and

(4) in the undesignated matter following subparagraph (H), by striking "subparagraphs (B) through (H)" and inserting "subparagraphs (B) through (I)".

(e) COMPREHENSIVE STAFFING ANALYSIS.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, U.S. Customs and Border Protection shall conduct a comprehensive analysis, and submit to the Comptroller General of the United States a report, that— Deadline. Reports.

(A) examines the staffing requirements for U.S. Border Patrol to most effectively meet its operational requirements at each Border Patrol duty station;

(B) estimates the cost of the staffing requirements at each Border Patrol duty station; and

(C) includes—

(i) a position-by-position review at each Border Patrol station to determine—

(I) the duties assigned to each position;

(II) how the duties relate to the operational requirements of U.S. Border Patrol; and

(III) the number of hours border patrol agents in that position would need to work each pay period to meet the operational requirements of U.S. Border Patrol;

(ii) the metrics used to determine the number of hours of work performed at each Border Patrol station, broken down by the type of hours worked;

(iii) a cost analysis of the most recent full fiscal year by the type of full-time equivalent hours worked;

(iv) a cost estimate by the type of full-time equivalent hours expected to be worked during the first full fiscal year after the date of enactment of this Act; and

(v) an analysis that compares the cost of assigning the full-time equivalent hours needed to meet the operational requirements of U.S. Border Patrol to existing border patrol agents through higher rates of pay versus recruiting, hiring, training, and deploying additional border patrol agents.

Deadline. Reports.

(2) INDEPENDENT VALIDATOR.—Not later than 90 days after the date on which the Comptroller General receives the report under paragraph (1), the Comptroller General shall submit to the appropriate committees of Congress a report that—

(A) examines the methodology used by U.S. Customs and Border Protection to carry out the analysis; and

(B) indicates whether the Comptroller General concurs with the findings in the report under paragraph (1).

(3) DEFINITION.—In this subsection, the term "appropriate committees of Congress" means—

(A) the Committee on Homeland Security and Governmental Affairs and the Committee on Appropriations of the Senate; and

(B) the Committee on Oversight and Government Reform and the Committee on Appropriations of the House of Representatives.

5 USC 5542 note.

(f) RULES OF CONSTRUCTION.—Nothing in this section or the amendments made by this section shall be construed to—

(1) limit the right of U.S. Customs and Border Protection to assign both scheduled and unscheduled work to a border patrol agent based on the needs of U.S. Customs and Border Protection in excess of the hours of work normally applicable under the election of the border patrol agent, regardless of what the border patrol agent might otherwise have elected;

(2) require compensation of a border patrol agent other than for hours during which the border patrol agent is actually

performing work or using approved paid leave or other paid time off; or

(3) exempt a border patrol agent from any limitations on pay, earnings, or compensation, including the limitations under section 5547 of title 5, United States Code.

(g) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Section 5547 of title 5, United States Code is amended by—

(A) in subsection (a), in the matter preceding paragraph (1)—

(i) by striking, "and" before "5546"; and

(ii) by inserting ", and 5550" after "5546 (a) and (b)"; and

(B) by adding at the end the following:

"(e) Any supplemental pay resulting from receipt of the level 1 border patrol rate of pay or the level 2 border patrol rate of pay under section 5550 shall be considered premium pay in applying this section.". Applicability.

(2) Section 13(a) of the Fair Labor Standards Act of 1938 (29 U.S.C. 213(a)) is amended—

(A) in paragraph (16), by striking "or" after the semicolon;

(B) in paragraph (17), by striking the period at the end and inserting "; or"; and

(C) by adding at the end the following:

"(18) any employee who is a border patrol agent, as defined in section 5550(a) of title 5, United States Code.".

(3) The table of sections for chapter 55 of title 5, United States Code, is amended by inserting after the item relating to section 5549 the following: 5 USC prec. 5501.

"5550. Border patrol rate of pay.".

(h) REGULATIONS.—The Director of the Office of Personnel Management shall promulgate regulations to carry out this Act and the amendments made by this Act. 5 USC 5542 note.

SEC. 3. CYBERSECURITY RECRUITMENT AND RETENTION.

(a) IN GENERAL.—At the end of subtitle C of title II of the Homeland Security Act of 2002 (6 U.S.C. 141 et seq.), add the following:

"SEC. 226. CYBERSECURITY RECRUITMENT AND RETENTION. 6 USC 147.

"(a) DEFINITIONS.—In this section:

"(1) APPROPRIATE COMMITTEES OF CONGRESS.—The term 'appropriate committees of Congress' means the Committee on Homeland Security and Governmental Affairs and the Committee on Appropriations of the Senate and the Committee on Homeland Security and the Committee on Appropriations of the House of Representatives.

"(2) COLLECTIVE BARGAINING AGREEMENT.—The term 'collective bargaining agreement' has the meaning given that term in section 7103(a)(8) of title 5, United States Code.

"(3) EXCEPTED SERVICE.—The term 'excepted service' has the meaning given that term in section 2103 of title 5, United States Code.

"(4) PREFERENCE ELIGIBLE.—The term 'preference eligible' has the meaning given that term in section 2108 of title 5, United States Code.

"(5) QUALIFIED POSITION.—The term 'qualified position' means a position, designated by the Secretary for the purpose of this section, in which the incumbent performs, manages, or supervises functions that execute the responsibilities of the Department relating to cybersecurity.

"(6) SENIOR EXECUTIVE SERVICE.—The term 'Senior Executive Service' has the meaning given that term in section 2101a of title 5, United States Code.

"(b) GENERAL AUTHORITY.—

"(1) ESTABLISH POSITIONS, APPOINT PERSONNEL, AND FIX RATES OF PAY.—

"(A) GENERAL AUTHORITY.—The Secretary may—

"(i) establish, as positions in the excepted service, such qualified positions in the Department as the Secretary determines necessary to carry out the responsibilities of the Department relating to cybersecurity, including positions formerly identified as—

"(I) senior level positions designated under section 5376 of title 5, United States Code; and

"(II) positions in the Senior Executive Service;

"(ii) appoint an individual to a qualified position (after taking into consideration the availability of preference eligibles for appointment to the position); and

"(iii) subject to the requirements of paragraphs (2) and (3), fix the compensation of an individual for service in a qualified position.

"(B) CONSTRUCTION WITH OTHER LAWS.—The authority of the Secretary under this subsection applies without regard to the provisions of any other law relating to the appointment, number, classification, or compensation of employees.

"(2) BASIC PAY.—

"(A) AUTHORITY TO FIX RATES OF BASIC PAY.—In accordance with this section, the Secretary shall fix the rates of basic pay for any qualified position established under paragraph (1) in relation to the rates of pay provided for employees in comparable positions in the Department of Defense and subject to the same limitations on maximum rates of pay established for such employees by law or regulation.

"(B) PREVAILING RATE SYSTEMS.—The Secretary may, consistent with section 5341 of title 5, United States Code, adopt such provisions of that title as provide for prevailing rate systems of basic pay and may apply those provisions to qualified positions for employees in or under which the Department may employ individuals described by section 5342(a)(2)(A) of that title.

"(3) ADDITIONAL COMPENSATION, INCENTIVES, AND ALLOWANCES.—

"(A) ADDITIONAL COMPENSATION BASED ON TITLE 5 AUTHORITIES.—The Secretary may provide employees in qualified positions compensation (in addition to basic pay), including benefits, incentives, and allowances, consistent with, and not in excess of the level authorized for, comparable positions authorized by title 5, United States Code.

"(B) ALLOWANCES IN NONFOREIGN AREAS.—An employee in a qualified position whose rate of basic pay

is fixed under paragraph (2)(A) shall be eligible for an allowance under section 5941 of title 5, United States Code, on the same basis and to the same extent as if the employee was an employee covered by such section 5941, including eligibility conditions, allowance rates, and all other terms and conditions in law or regulation.

"(4) PLAN FOR EXECUTION OF AUTHORITIES.—Not later than 120 days after the date of enactment of this section, the Secretary shall submit a report to the appropriate committees of Congress with a plan for the use of the authorities provided under this subsection. Deadline. Reports.

"(5) COLLECTIVE BARGAINING AGREEMENTS.—Nothing in paragraph (1) may be construed to impair the continued effectiveness of a collective bargaining agreement with respect to an office, component, subcomponent, or equivalent of the Department that is a successor to an office, component, subcomponent, or equivalent of the Department covered by the agreement before the succession.

"(6) REQUIRED REGULATIONS.—The Secretary, in coordination with the Director of the Office of Personnel Management, shall prescribe regulations for the administration of this section. Coordination.

"(c) ANNUAL REPORT.—Not later than 1 year after the date of enactment of this section, and every year thereafter for 4 years, the Secretary shall submit to the appropriate committees of Congress a detailed report that—

"(1) discusses the process used by the Secretary in accepting applications, assessing candidates, ensuring adherence to veterans' preference, and selecting applicants for vacancies to be filled by an individual for a qualified position;

"(2) describes—

"(A) how the Secretary plans to fulfill the critical need of the Department to recruit and retain employees in qualified positions;

"(B) the measures that will be used to measure progress; and

"(C) any actions taken during the reporting period to fulfill such critical need;

"(3) discusses how the planning and actions taken under paragraph (2) are integrated into the strategic workforce planning of the Department;

"(4) provides metrics on actions occurring during the reporting period, including—

"(A) the number of employees in qualified positions hired by occupation and grade and level or pay band;

"(B) the placement of employees in qualified positions by directorate and office within the Department;

"(C) the total number of veterans hired;

"(D) the number of separations of employees in qualified positions by occupation and grade and level or pay band;

"(E) the number of retirements of employees in qualified positions by occupation and grade and level or pay band; and

"(F) the number and amounts of recruitment, relocation, and retention incentives paid to employees in qualified positions by occupation and grade and level or pay band; and

"(5) describes the training provided to supervisors of employees in qualified positions at the Department on the use of the new authorities.

"(d) THREE-YEAR PROBATIONARY PERIOD.—The probationary period for all employees hired under the authority established in this section shall be 3 years.

"(e) INCUMBENTS OF EXISTING COMPETITIVE SERVICE POSITIONS.—

"(1) IN GENERAL.—An individual serving in a position on the date of enactment of this section that is selected to be converted to a position in the excepted service under this section shall have the right to refuse such conversion.

"(2) SUBSEQUENT CONVERSION.—After the date on which an individual who refuses a conversion under paragraph (1) stops serving in the position selected to be converted, the position may be converted to a position in the excepted service.

"(f) STUDY AND REPORT.—Not later than 120 days after the date of enactment of this section, the National Protection and Programs Directorate shall submit a report regarding the availability of, and benefits (including cost savings and security) of using, cybersecurity personnel and facilities outside of the National Capital Region (as defined in section 2674 of title 10, United States Code) to serve the Federal and national need to—

"(1) the Subcommittee on Homeland Security of the Committee on Appropriations and the Committee on Homeland Security and Governmental Affairs of the Senate; and

"(2) the Subcommittee on Homeland Security of the Committee on Appropriations and the Committee on Homeland Security of the House of Representatives.".

(b) CONFORMING AMENDMENT.—Section 3132(a)(2) of title 5, United States Code, is amended in the matter following subparagraph (E)—

(1) in clause (i), by striking "or" at the end;

(2) in clause (ii), by inserting "or" after the semicolon; and

(3) by inserting after clause (ii) the following:

"(iii) any position established as a qualified position in the excepted service by the Secretary of Homeland Security under section 226 of the Homeland Security Act of 2002;".

(c) TABLE OF CONTENTS AMENDMENT.—The table of contents in section 1(b) of the Homeland Security Act of 2002 (6 U.S.C. 101 et seq.) is amended by inserting after the item relating to section 225 the following:

"Sec. 226. Cybersecurity recruitment and retention.".

Homeland Security Cybersecurity Workforce Assessment Act. 6 USC 146 note.

SEC. 4. HOMELAND SECURITY CYBERSECURITY WORKFORCE ASSESSMENT.

(a) SHORT TITLE.—This section may be cited as the "Homeland Security Cybersecurity Workforce Assessment Act".

(b) DEFINITIONS.—In this section:

(1) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term "appropriate congressional committees" means—

(A) the Committee on Homeland Security and Governmental Affairs of the Senate;

(B) the Committee on Homeland Security of the House of Representatives; and

(C) the Committee on House Administration of the House of Representatives.

(2) CYBERSECURITY WORK CATEGORY; DATA ELEMENT CODE; SPECIALTY AREA.—The terms "Cybersecurity Work Category", "Data Element Code", and "Specialty Area" have the meanings given such terms in the Office of Personnel Management's Guide to Data Standards.

(3) DEPARTMENT.—The term "Department" means the Department of Homeland Security.

(4) DIRECTOR.—The term "Director" means the Director of the Office of Personnel Management.

(5) SECRETARY.—The term "Secretary" means the Secretary of Homeland Security.

(c) NATIONAL CYBERSECURITY WORKFORCE MEASUREMENT INITIATIVE.—

(1) IN GENERAL.—The Secretary shall—

(A) identify all cybersecurity workforce positions within the Department;

(B) determine the primary Cybersecurity Work Category and Specialty Area of such positions; and Determination.

(C) assign the corresponding Data Element Code, as set forth in the Office of Personnel Management's Guide to Data Standards which is aligned with the National Initiative for Cybersecurity Education's National Cybersecurity Workforce Framework report, in accordance with paragraph (2).

(2) EMPLOYMENT CODES.— Deadlines.

(A) PROCEDURES.—Not later than 90 days after the date of the enactment of this Act, the Secretary shall establish procedures—

(i) to identify open positions that include cybersecurity functions (as defined in the OPM Guide to Data Standards); and

(ii) to assign the appropriate employment code to each such position, using agreed standards and definitions.

(B) CODE ASSIGNMENTS.—Not later than 9 months after the date of the enactment of this Act, the Secretary shall assign the appropriate employment code to—

(i) each employee within the Department who carries out cybersecurity functions; and

(ii) each open position within the Department that have been identified as having cybersecurity functions.

(3) PROGRESS REPORT.—Not later than 1 year after the date of the enactment of this Act, the Director shall submit a progress report on the implementation of this subsection to the appropriate congressional committees.

(d) IDENTIFICATION OF CYBERSECURITY SPECIALTY AREAS OF CRITICAL NEED.—

(1) IN GENERAL.—Beginning not later than 1 year after the date on which the employment codes are assigned to employees pursuant to subsection (c)(2)(B), and annually through 2021, the Secretary, in consultation with the Director, shall— Effective date. Deadline.

(A) identify Cybersecurity Work Categories and Specialty Areas of critical need in the Department's cybersecurity workforce; and

Reports.

(B) submit a report to the Director that—

(i) describes the Cybersecurity Work Categories and Specialty Areas identified under subparagraph (A); and

(ii) substantiates the critical need designations.

(2) GUIDANCE.—The Director shall provide the Secretary with timely guidance for identifying Cybersecurity Work Categories and Specialty Areas of critical need, including—

(A) current Cybersecurity Work Categories and Specialty Areas with acute skill shortages; and

(B) Cybersecurity Work Categories and Specialty Areas with emerging skill shortages.

Deadline. Consultation. Reports.

(3) CYBERSECURITY CRITICAL NEEDS REPORT.—Not later than 18 months after the date of the enactment of this Act, the Secretary, in consultation with the Director, shall—

(A) identify Specialty Areas of critical need for cybersecurity workforce across the Department; and

(B) submit a progress report on the implementation of this subsection to the appropriate congressional committees.

(e) GOVERNMENT ACCOUNTABILITY OFFICE STATUS REPORTS.—The Comptroller General of the United States shall—

(1) analyze and monitor the implementation of subsections (c) and (d); and

(2) not later than 3 years after the date of the enactment of this Act, submit a report to the appropriate congressional committees that describes the status of such implementation.

Approved December 18, 2014.

LEGISLATIVE HISTORY—S. 1691:

SENATE REPORTS: No. 113–248 (Comm. on Homeland Security and Governmental Affairs).

CONGRESSIONAL RECORD, Vol. 160 (2014):
Sept. 18, considered and passed Senate.
Dec. 10, considered and passed House.

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