

114TH CONGRESS
2D SESSION

S. 3494

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

IN THE SENATE OF THE UNITED STATES

DECEMBER 5, 2016

Mr. FLAKE (for himself and Ms. HEITKAMP) introduced the following bill;
which was read twice and referred to the Committee on Homeland Security
and Governmental Affairs

A BILL

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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “CBP Hiring and Re-
5 tention Act of 2016” or the “CBP HiRe Act”.

6 **SEC. 2. RETENTION INCENTIVES.**

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

1 **“§ 9702. U.S. Customs and Border Protection reten-**
2 **tion incentives**

3 “(a) DEFINITIONS.—In this section—

4 “(1) the term ‘bonus percentage rate’ means
5 the bonus percentage rate for a covered CBP em-
6 ployee established in accordance with subsection (d);

7 “(2) the term ‘covered CBP employee’ means
8 an employee of U.S. Customs and Border Protection
9 performing activities that are critical to border secu-
10 rity, as determined by the Secretary; and

11 “(3) the term ‘Secretary’ means the Secretary
12 of Homeland Security.

13 “(b) AUTHORITY.—The Secretary may pay a reten-
14 tion bonus to a covered CBP employee if the Secretary
15 determines that, in the absence of a retention bonus, the
16 covered CBP employee would be likely to leave—

17 “(1) Federal service; or

18 “(2) for a different position in the Federal serv-
19 ice, including a position in another agency or compo-
20 nent of the Department of Homeland Security.

21 “(c) WRITTEN AGREEMENT.—

22 “(1) IN GENERAL.—Payment of a retention
23 bonus under this section is contingent upon the cov-
24 ered CBP employee entering into a written service
25 agreement with U.S. Customs and Border Protec-

1 tion to complete a period of employment with U.S.
 2 Customs and Border Protection.

3 “(2) TERMS AND CONDITIONS.—A written
 4 agreement under this section shall include—

5 “(A) the length of the required service pe-
 6 riod;

7 “(B) the amount of the bonus;

8 “(C) the method of payment;

9 “(D) other terms and conditions under
 10 which the bonus is payable, subject to the re-
 11 quirements of this section and regulations of
 12 the Secretary, which shall include—

13 “(i) the conditions under which the
 14 agreement may be terminated before the
 15 agreed-upon service period has been com-
 16 pleted; and

17 “(ii) the effect of the termination.

18 “(d) AMOUNT.—A retention bonus under this sec-
 19 tion—

20 “(1) shall be stated as a percentage of the basic
 21 pay of the covered CBP employee for the service pe-
 22 riod associated with the bonus; and

23 “(2) may not exceed 25 percent of the basic pay
 24 of the covered CBP employee.

25 “(e) FORM OF PAYMENT.—

1 “(1) IN GENERAL.—A retention bonus may be
2 paid to a covered CBP employee in installments
3 after completion of specified periods of service or in
4 a single lump sum at the end of the full period of
5 service required by the written service agreement.

6 “(2) INSTALLMENT PAYMENTS.—

7 “(A) CALCULATION OF INSTALLMENTS.—

8 An installment payment is derived by multi-
9 plying the amount of basic pay earned in the
10 installment period by a percentage not to ex-
11 ceed the bonus percentage rate established for
12 the covered CBP employee.

13 “(B) LUMP SUM FINAL PAYMENT.—If the
14 installment payment percentage established for
15 the covered CBP employee under subparagraph
16 (A) is less than the bonus percentage rate es-
17 tablished for the covered CBP employee, the ac-
18 crued but unpaid portion of the bonus is pay-
19 able as part of the final installment payment to
20 the covered CBP employee after completion of
21 the full service period under the terms of the
22 written service agreement.

23 “(f) EXCLUSION FROM BASIC PAY.—A retention
24 bonus under this section is not part of the basic pay of
25 an employee for any purpose.”.

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 retention incentives.”.

5 **SEC. 3. PILOT PROGRAMS FOR U.S. CUSTOMS AND BORDER**
6 **PROTECTION.**

7 (a) DEFINITIONS.—In this section—

8 (1) the term “covered area” means a geo-
9 graphic area that the Secretary determines—

10 (A) is in a remote location; or

11 (B) is an area for which it is difficult to
12 find employees willing to accept the area as a
13 permanent duty station;

14 (2) the term “covered CBP employee” has the
15 meaning given that term in section 9702 of title 5,
16 United States Code, as added by section 2;

17 (3) the term “Department” means the Depart-
18 ment of Homeland Security; and

19 (4) the term “Secretary” means the Secretary
20 of Homeland Security.

21 (b) SPECIAL RATES OF PAY.—

22 (1) AUTHORITY.—The Secretary may establish
23 one or more special rates of pay for covered CBP
24 employees whose permanent duty station is located
25 in a covered area.

1 (2) MAXIMUM AMOUNT.—A special rate of pay
2 established under this subsection may not provide a
3 rate of basic pay for any covered CBP employee that
4 exceeds 125 percent of the otherwise applicable rate
5 of basic pay for the covered CBP employee.

6 (3) SUNSET.—

7 (A) IN GENERAL.—Subject to subpara-
8 graph (B), on and after the first day of the
9 first pay period that begins more than 2 years
10 after the date of enactment of this Act, the Sec-
11 retary may not pay a covered CBP employee
12 under a special rate of pay established under
13 this subsection.

14 (B) EXTENSION.—If the Secretary deter-
15 mines the program of special rates of pay under
16 this subsection is performing satisfactorily, the
17 Secretary may extend the period during which
18 the Secretary may pay covered CBP employees
19 under such special rates of pay through the day
20 before the first pay period that begins more
21 than 4 years after the date of enactment of this
22 Act.

23 (4) SAVINGS PROVISION.—For any covered
24 CBP employee being paid at a special rate of pay es-
25 tablished under this subsection on the day before the

1 date the pilot program terminates under paragraph
2 (3), effective on the date the pilot program termi-
3 nates under paragraph (3) the rate of pay for the
4 covered CBP employee shall be the rate of pay that
5 would have been in effect for the covered CBP em-
6 ployee had this section never been enacted, including
7 any periodic step-increase or other adjustment that
8 would have taken effect if the covered CBP employee
9 had not been paid at a special rate of pay.

10 (c) LIMITATION ON USE OF POLYGRAPHS.—

11 (1) IN GENERAL.—Subject to paragraph (2),
12 during the 1-year period beginning on the date of
13 enactment of this Act, if an applicant for a position
14 in U.S. Customs and Border Protection does not
15 successfully complete a polygraph examination re-
16 quired for appointment to that position—

17 (A) U.S. Customs and Border Protection
18 may not disclose the results of the polygraph
19 examination to any other Federal agency or any
20 other agency or component of the Department;
21 and

22 (B) another Federal agency or another
23 agency or component of the Department may
24 not use the results of the polygraph examina-
25 tion, in whole or in part, in determining wheth-

1 er to appoint the individual to a position in the
2 agency or component.

3 (2) EXTENSION.—If the Secretary determines
4 that the limitation on the use of polygraphs under
5 paragraph (1) is performing satisfactorily, the Sec-
6 retary may extend the limitation until the end of the
7 2-year period beginning on the date of enactment of
8 this Act.

9 (3) DISCLOSURES.—

10 (A) IN GENERAL.—The Secretary shall
11 provide each applicant for a position in U.S.
12 Customs and Border Protection who will be re-
13 quired to successfully complete a polygraph ex-
14 amination before appointment to the position a
15 list of actions or conduct of, or events relating
16 to, the applicant that could disqualify the appli-
17 cant from being appointed to the position.

18 (B) LIST REQUIREMENTS.—When pro-
19 viding the list required under subparagraph
20 (A), the Secretary shall—

21 (i) provide applicants as complete a
22 list as is possible of potential disqualifying
23 actions, conduct, or events; and

24 (ii) clearly inform all applicants that
25 the list provided under subparagraph (A)

1 does not constitute the complete list of po-
2 tential disqualifying actions, conduct, or
3 events.

4 (4) USE OF POLYGRAPHS.—Paragraph (1) shall
5 not—

6 (A) restrict the authority of U.S. Customs
7 and Border Protection to report or refer an ad-
8 mission of criminal activity made by an appli-
9 cant during a polygraph examination;

10 (B) limit the authority of U.S. Customs
11 and Border Protection to use the results of a
12 polygraph examination administered as a re-
13 quirement for appointment to a position in U.S.
14 Customs and Border Protection, in whole or in
15 part, in determining whether to appoint the in-
16 dividual to the position; or

17 (C) limit the authority of another Federal
18 agency or another agency or component of the
19 Department to use the results of a polygraph
20 examination administered to an individual by a
21 Federal agency other than U.S. Customs and
22 Border Protection, in whole or in part, in deter-
23 mining whether to appoint the individual to a
24 position in the agency or component.

○