Calendar No. 720

114TH CONGRESS *2d Session*	SENATE	REPORT 114–406

BONUSES FOR COST CUTTERS ACT OF 2015

R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS UNITED STATES SENATE

TOGETHER WITH

ADDITIONAL VIEWS

TO ACCOMPANY

S. 1378

TO STRENGTHEN EMPLOYEE COST SAVINGS SUGGESTIONS PROGRAM WITHIN THE FEDERAL GOVERNMENT

DECEMBER 20, 2016.—Ordered to be printed

Filed, under authority of the order of the Senate of December 10 (legislative day, December 9), 2016

U.S. GOVERNMENT PUBLISHING OFFICE

69–010 WASHINGTON : 2016

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Mr. JOHNSON, from the Committee on Homeland Security and Governmental Affairs, submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany S. 1378]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 1378) to strengthen employee cost savings suggestions programs within the Federal Government, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill, as amended, do pass.

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I. PURPOSE AND SUMMARY

S. 1378, the Bonuses for Cost-Cutters Act of 2015, seeks to strengthen employee cost savings suggestions programs within the

Federal Government by improving incentive structures for Federal employees to report unneeded funds that can be returned to the Treasury for the purposes of deficit reduction and reallocation.

II. Background and the Need for Legislation

The practice by Federal agencies of expending funds at the end of the fiscal year has long been a concern for the Committee. For example, in 1980, the Committee issued a report titled "Hurry-Up Spending," which found that the rush to spend money at the end of the year led to unnecessarily high prices, lack of competition, and generally poor adherence to contracting regulations.[1] In 2006, then-Chairman of the Subcommittee on Federal Financial Management Tom Coburn held a hearing titled "Unobligated Balances at Federal Agencies," that examined how various Federal agencies work around unobligated balances at the end of the year.[2]

Continuing this oversight, on September 30, 2015, the Committee's Federal Spending Oversight and Emergency Management Subcommittee held a hearing titled "Prudent Planning or Wasteful Binge? A Look at End of the Year Spending."[3] The hearing examined the incentive structure currently in place for Federal managers making decisions about how to use money at the end of each fiscal year.[4] Witness Dean W. Sinclair, from Changing the Culture of Washington, argued that the problem is with the incentives for the use of funds: "if a manager returns money to the Treasury, it will have a negative career impact."[5]

The Bonuses for Cost-Cutters Act of 2016 directly addresses this incentives problem by expanding the existing awards program for Federal employees to disclose waste, fraud, or mismanagement that result in cost savings. Under the provisions of the bill, an employee can identify unnecessary surplus salary and expenses and refer them to the inspector general of the agency or other agency employees designated to undertake such reviews, as well as the Chief Financial Officer of the agency for review. If both concur that the funds are not necessary for their intended purpose, and the rescission of the funds would not be detrimental to the execution of that purpose, then the head of the agency shall transfer the surplus or unnecessary funds to the general fund of the Treasury Department. However, the head may retain up to ten percent of any funds for reprogramming, or also for the purpose of paying a cash award to the employee who identified the surplus. The remainder of the funds would be used by the Treasury Department for the purpose of deficit reduction.

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[1] Subcomm. on Oversight of Gov't Mgmt. of the S. Comm. on Governmental Affairs, "Hurry-Up" Spending (1980), U.S. Gov't Printing Office.

[2] *Unobligated Balances at Fed. Agencies: Hearing Before the Subcomm. on Fed. Fin. Mgmt., Gov't Info. & Int'l Sec. of the S. Comm. on Homeland Sec. & Governmental Affairs*, 109th Cong. (2006).

[3] *Prudent Planning or Wasteful Binge? A Look at End of the Year Spending: Hearing Before Subcomm on Fed. Spending Oversight & Emergency Mgmt. of the S. Comm. on Homeland Sec. & Governmental Affairs,* 114th Cong. (2015).

[4] *Id.*

[5] *Prudent Planning or Wasteful Binge? A Look at End of the Year Spending: Hearing Before Subcomm on Fed. Spending Oversight & Emergency Mgmt. of the S. Comm. on Homeland Sec. & Governmental Affairs,* 114th Cong. 60 (2015) (statement of Dean W. Sinclair, Changing the Culture of Washington).

III. Legislative History

S. 1378, the Bonuses for Cost-Cutters Act of 2015, was introduced on May 19, 2015, by Senator Rand Paul (R–KY) with Senators Mark Warner (D–VA), Michael Enzi (R–WY), Gory Gardner (R–CO), and Pat Toomey (R–PA). Senators Kelly Ayotte (R–NH), Michael Bennet (D–CO), John Cornyn (R–TX), Steve Daines (R–MT), Joni Ernst (R–IA), Ron Johnson (R–WI), James Lankford (R–OK), Mike Lee (R–UT), Claire McCaskill (D–MO), David Perdue (R–GA), and Rob Portman (R–OH) later joined as co-sponsors. The bill was referred to the Committee on Homeland Security and Governmental Affairs.

The Committee considered S. 1378 at a business meeting on May 25, 2016. A substitute amendment was offered by Senator Paul. The substitute amendment adds protections that limit spending affected by the bill to "salaries and expenses" and truly "use it or lose it money" and also adds a six-year sunset on the program.

The Committee adopted the Paul substitute amendment by unanimous consent, and ordered the bill, as amended, be reported favorably by a roll call vote of nine in favor and five against. Senators voting in the affirmative were Johnson, Portman, Paul, Lankford, Ayotte, Ernst, Sasse, McCaskill, and Heitkamp. For the record only, Senators McCain and Enzi voted in the affirmative by proxy vote. Senators voting in the negative were Carper, Tester, Baldwin, Booker, and Peters.

IV. Section-by-Section Analysis of the Bill, as Reported

Section 1 establishes the short title of the bill as the "Bonuses for Cost-Cutters Act of 2016."

Section 2 amends the sections of the U.S. Code that provide for awards for cost-savings disclosures awards by expanding them to include surplus salaries and expenses funds that are determined to be unnecessary.

Subsection (a)(1) defines key terms, such as "surplus salaries and expenses funds."

Subsection (a)(2) establishes a process by which an employee may identify surplus salaries and expenses that are unnecessary. The agency Inspector General and Chief Financial Officer will review the disclosure to determine whether the funds are necessary and the recession of which would not be detrimental to the full execution of the purposes for which the amounts were made available. The remaining funds must be transferred to the Treasury for the purposes of deficit reduction, except that the head of an agency may retain up to 10 percent for reprogramming or to provide awards to the employee or employees who identified the surplus funds. This subsection also contains reporting requirements so that Congress can assess the efficacy of the disclosure program.

Subsection (a)(3) modifies the table of sections in statute to reflect the changes made by this bill.

Subsection (a)(4) provides that the authorities will sunset six years after the date of enactment.

Subsection (b) identifies certain employees who are prohibited from receiving a cash award: an individual serving in a position at level I of the Executive Schedule; the head of the agency; or a commissioner, board member, or other voting member of an independent establishment. This subsection also makes a technical amendment.

V. Evaluation of Regulatory Impact

Pursuant to the requirements of paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee has considered the regulatory impact of this bill and determined that the bill will have no regulatory impact within the meaning of the rules. The Committee agrees with the Congressional Budget Office's statement that the bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

VI. Congressional Budget Office Cost Estimate

July 29, 2016.

Hon. Ron Johnson, *Chairman,*
Committee on Homeland Security and Governmental Affairs,
U.S. Senate, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1378, the Bonuses for Cost-Cutters Act of 2016.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Matthew Pickford.

Sincerely,

Keith Hall.

Enclosure.

S. 1378—Bonuses for Cost-Cutters Act of 2016

Under current law, inspectors general (IG) of agencies can pay bonuses to federal employees who identify waste, fraud, or mismanagement of funds. S. 1378 would authorize agencies to pay bonuses to employees who identify unnecessary expenditures from amounts provided for agencies' salaries and expenses. Under the bill, if an agency's IG and its Chief Financial Officer agree that funds appropriated to the agency are no longer required then 90 percent of those surplus amounts would be transferred to the Treasury. The agency would retain 10 percent of the surplus funds and could pay a bonus to the employee who identified those surplus amounts.

To the extent that the process envisioned under S. 1378 results in fewer unnecessary expenditures, implementing the bill could reduce federal spending; however, CBO has no basis for estimating any reductions in spending under the bill.

Because salaries and expenses for some agencies are mandatory appropriations, enacting the bill could affect direct spending; therefore, pay-as-you-go procedures apply. Enacting S. 1378 would not affect revenues.

CBO estimates that enacting S. 1378 would not increase direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2027.

S. 1378 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

The CBO staff contacts for this estimate are Megan Carroll and Matthew Pickford. The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

VII. Additional Views

ADDITIONAL VIEWS OF SENATORS CARPER, BALDWIN, AND PETERS

While we support efforts to provide incentives for federal employees to find savings within their agencies, we have serious concerns with the way this bill would delegate Congress' spending authority to executive branch officials.

We believe we can all agree that it is important to curb wasteful spending, including wasteful spending at the end of a fiscal year when agency managers might fear that they need to use the funds they've been appropriated or lose them. However, this bill goes much further than that. If this bill were enacted, it would allow agency Inspectors General and Chief Financial Officers to make decisions on whether or not funds appropriated for a specific purpose are necessary and redirect that funding without congressional approval. Congress would have no power to ensure that the money appropriated to a specific purpose is actually used for that purpose and would have no power to redirect the funding to other projects and priorities.

During consideration of this bill, Senator Carper suggested additional changes that would have helped address some of these concerns by requiring that agencies return 50 percent of surplus funds identified by this bill to the Treasury when they expire, while allowing an agency to reprogram the remaining 50 percent for other uses. Senator Carper also suggested that the bill should include a role for the head of an agency, an official that is held accountable by Congress, in determining which funds are actually surplus. We believe that with these changes the bill would still provide an incentive for agencies to make smarter spending decisions at the end of the year without Congress ceding its spending power.

Allowing executive branch officials to determine whether or not funds Congress has already appropriated for a particular use are necessary effectively takes away Congress' ability to control where these funds are spent and places far too much power in the hands of unelected agency officials. Therefore, we oppose this flawed measure.

Thomas R. Carper.

VII. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by S. 1818 as reported are shown as follows (existing law proposed to be omitted is enclosed in brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

UNITED STATES CODE

* * * * * * *

TITLE 5—GOVERNMENT ORGANIZATION AND EMPLOYEES

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PART III—EMPLOYEES

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CHAPTER—INCENTIVE AWARDS

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Subchapter I—Awards for Superior Accomplishments

* * * * * * *

[SEC. 4509. PROHIBITION OF CASH AWARD TO EXECUTIVE SCHEDULE OFFICERS.

[No officer may receive a cash award under the provisions of this subchapter, if such officer—

[(1) serves in—

[(A) an Executive Schedule position under subchapter II of chapter 53; or

[(B) a position for which the compensation is set in statute by reference to a section or level under subchapter II of chapter 53; and

[(2) was appointed to such position by the President, by and with the advice and consent of the Senate.]

SEC. 4509. PROHIBITION OF CASH AWARDS TO CERTAIN OFFICERS.

(a) DEFINITIONS.—In this section, the term 'agency'—

(1) has the meaning given that term under section 551(1); and

(2) includes any entity described in section 4501(1).

(b) PROHIBITION.—An officer may not receive a cash award under this subchapter if the officer—

(1) serves in a position at level I of the Executive Schedule;

(2) is the head of an agency;

(3) is a commissioner, board member, or other voting member of an independent establishment.

Subchapter II—Awards for Cost Savings Disclosures

* * * * * * *

SEC. 4511. [DEFINITION] *DEFINITIONS* AND GENERAL PROVISIONS.

(a) For purposes of [this subchapter, the term] *this subchapter—*

(1) the term "agency" means any Executive agency[.]; and

(2) the term 'surplus salaries and expenses funds' means amounts made available for the salaries and expenses account, or equivalent account, of an agency—

(A) that are identified by an employee of the agency under section 4512(a) as unnecessary;

(B) that the Inspector General of the agency or other agency employee designated under section 4512(b) determines are not required for the purpose for which the amounts were made available;

(C) that the Chief Financial Officer of the agency determines are not required for the purpose for which the amounts were made available; and

(D) the recession of which would not be detrimental to the full execution of the purposes for which the amounts were made available.

* * * * * * *

SEC. 4512. AGENCY AWARDS FOR COST SAVINGS DISCLOSURES.

(a) The Inspector General of an agency, or any other agency employee designated under subsection (b), may pay a cash award to any employee of such agency whose disclosure of fraud, waste, or mismanagement or *identification of surplus salaries and expenses funds* to the Inspector General of the agency, or to such other designated agency employee, has resulted in cost savings for the agency. The amount of an award under this section may not exceed the lesser of

(1) $10,000; or,

(2) an amount equal to 1 percent of the agencys cost savings which the Inspector General, or other employee designated under subsection (b), determines to be the total savings attributable of the employees disclosure *or identification.*

For purposes of paragraph (2) the Inspector General or other designated employee may take into account agency cost savings projected for subsequent fiscal years which will be attributable to such disclosure or *identification.*

(b) * * *

(c)

(1) The Inspector General of an agency or other agency employee designated under subsection (b) shall refer to the Chief Financial Officer of the agency any potential surplus salaries and expenses funds identified by an employee that the Inspector General or other agency employee determines meets the requirements under subparagraphs (B) and (D) of section 4511(a)(2), along with any recommendations of the Inspector General or other agency employee.

(2)

(A) If the Chief Financial Officer of the agency determines that potential surplus salaries and expenses funds

referred under paragraph (1) meet the requirements under section 4511(a)(2), except as provided in subsection (d), the head of the agency shall transfer the amount of the surplus funds or unnecessary budget authority from the applicable appropriations account to the general fund of the Treasury.

(B) Any amounts transferred under subparagraph (A) shall be deposited in the Treasury and used for deficit reduction, except that in the case of a fiscal year for which there is no Federal budget deficit, such amounts shall be used to reduce the Federal debt (in such manner as the Secretary of the Treasury considers appropriate).

(3) The Inspector General or other agency employee designated under subsection (b) for each agency and the Chief Financial Officer for each agency shall issue standards and definitions for purposes of making determinations relating to potential surplus salaries and expenses funds identified by an employee under this subsection.

(d)

(1) The head of an agency may retain not more than 10 percent of amounts to be transferred to the general fund of the Treasury under subsection (c)(2).

(2) Amounts retained by the head of an agency under paragraph (1) may be—

(A) used for the purpose of paying a cash award under subsection (a) to 1 or more employees who identified the surplus salaries and expense funds; and

(B) to the extent amounts remain after paying cash awards under subsection (a), transferred or reprogrammed for use by the agency, in accordance with any limitation on such a transfer or reprogramming under any provision of law.

(e)

(1) Not later than October 1 of each fiscal year, the head of each agency shall submit to the Secretary of the Treasury a report identifying the total savings achieved during the previous fiscal year through disclosures of possible fraud, waste, or mismanagement and identifications of surplus salaries and expense funds by an employee.

(2) Not later than September 30 of each fiscal year, the head of each agency shall submit to the Secretary of the Treasury a report that, for the previous fiscal year—

(A) describes each disclosure of possible fraud, waste, or mismanagement or identification of potentially surplus salaries and expenses funds by an employee of the agency to have merit; and

(B) provides the number and amount of cash awards by the agency under subsection (a).

(3) The head of each agency shall include the information described in paragraphs (1) and (2) in each budget request of the agency submitted to the Office of Management and Budget as part of the preparation of the budget of the President submitted to Congress under section 1105(a) of title 31.

(4) The Secretary of the Treasury shall submit to the Committee on Appropriations of the Senate, the Committee on Ap-

propriations of the House of Representatives, and the Government Accountability Office an annual report on Federal cost saving and awards based on the reports submitted under paragraphs (1) and (2).

(f) The Director of the Office of Personnel Management shall—

(1) ensure that the cash award program of each agency complies with this section; and

(2) submit to Congress an annual certification indicating whether the cash award program of each agency complies with this section.

(g) Not later than 3 years after the date of enactment of this subsection, and every 3 years thereafter, the Comptroller General of the United States shall submit to Congress a report on the operation of the cost savings and awards program under this section, including any recommendations for legislative changes.

○