

VOLUNTARY SEPARATION INCENTIVE  
PAYMENT ADJUSTMENT ACT OF 2017

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R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND  
GOVERNMENTAL AFFAIRS  
UNITED STATES SENATE

TO ACCOMPANY

S. 1888

TO AMEND TITLE 5, UNITED STATES CODE, TO INCREASE THE  
MAXIMUM AMOUNT OF A VOLUNTARY SEPARATION INCENTIVE  
PAYMENT AND TO INCLUDE AN ANNUAL ADJUSTMENT IN  
ACCORDANCE WITH THE CONSUMER PRICE INDEX



SEPTEMBER 4, 2018.—Ordered to be printed

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2d Session }

SENATE

{ REPORT  
115-330

VOLUNTARY SEPARATION INCENTIVE PAYMENT  
ADJUSTMENT ACT OF 2017

SEPTEMBER 4, 2018.—Ordered to be printed

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

**R E P O R T**

[To accompany S. 1888]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 1888), to amend title 5, United States Code, to increase the maximum amount of a Voluntary Separation Incentive Payment and to include an annual adjustment in accordance with the Consumer Price Index, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

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I. PURPOSE AND SUMMARY

The purpose of S. 1888, the Voluntary Separation Incentive Payment Adjustment Act of 2017, is to increase the maximum allowable amount of voluntary separation incentive payments (VSIP) from \$25,000 to \$40,000 and to annually adjust the VSIP maximum amount based on the Consumer Price Index. This bill will also allow certain employees of the Transportation Security Administration (TSA) and Federal Air Marshal Service to have their law

enforcement availability pay credited as basic pay for retirement benefit purposes.

## II. BACKGROUND AND THE NEED FOR LEGISLATION

### *Voluntary Separation Incentive Payment*

Since 1993, some Federal agencies have been authorized to provide VSIPs to facilitate agency workforce reductions or restructuring.<sup>1</sup> The Federal Workforce Restructuring Act of 1994 expanded VSIP authority Government-wide and set the maximum payment amount at \$25,000.<sup>2</sup> The Clinton Administration recommended this VSIP authority “in order to avoid excessive reductions-in-force that are costly, disruptive, and disproportionately strike younger workers, many of whom are recently hired women and minorities.”<sup>3</sup> A tool for the Clinton Administration’s initiative to reduce the number of Federal employees, the VSIP authority was created so “agencies can target employees in unnecessary high level jobs and maximize savings.”<sup>4</sup>

Since its creation, Congress has passed legislation to strengthen the oversight and objectives of the VSIP authority. In 1996, the Omnibus Consolidated Appropriations Act of 1997 included provisions limiting the VSIP authority by requiring an agency to submit a strategic plan that described how the VSIP would be used, the number of employees and the VSIP amount that would be offered, and how the agency would operate without those employees once the VSIP had been implemented.<sup>5</sup> The law required Federal agencies to reduce their number of Federally-funded employee positions by one position for each vacancy created by a VSIP acceptance.<sup>6</sup> This law also charged the Office of Management and Budget (OMB) with overseeing agencies’ use of VSIPs.<sup>7</sup>

The VSIP authorization process was later reformed by the Homeland Security Act of 2002.<sup>8</sup> That Act required the Office of Personnel Management (OPM) to approve VSIP authority for an agency based on that agency’s strategic plan.<sup>9</sup> An agency can submit for OPM approval either a specific VSIP implementation plan or the agency’s human capital plan that describes its intended use of VSIPs.<sup>10</sup> The agency’s plan for VSIP must include:

Identification of the specific positions and functions to be reduced or eliminated, identified by organizational unit, geographic location, occupational series, grade level and

<sup>1</sup>U.S. Gov’t Accountability Office, Human Capital: Agencies are Using Buyouts and Early Outs With Increasing Frequency to Help Reshape Their Workforces, GAO-06-324, 9 (Mar. 2006), available at <http://www.gao.gov/assets/250/249480.pdf>. See also National Defense Authorization Act for Fiscal Year 1993, Pub. L. No. 102-484, § 4436, 106 Stat. 2315, 2723-24 (1992).

<sup>2</sup>Federal Workforce Restructuring Act of 1994, Pub. L. No. 103-226, § 3, 108 Stat. 111, 112-15 (1994).

<sup>3</sup>The White House, Statement on Signing the Federal Workforce Restructuring Act of 1994 (Mar. 30, 1994), available at <https://www.gpo.gov/fdsys/pkg/WCPD-1994-04-04/pdf/WCPD-1994-04-04-Pg651.pdf>.

<sup>4</sup>*Id.*

<sup>5</sup>Omnibus Consolidated Appropriations Act of 1997, Pub. L. No. 104-208, § 663, 110 Stat. 3009, 3009-383 (1996).

<sup>6</sup>*Id.* at 3009-385.

<sup>7</sup>*Id.*

<sup>8</sup>Homeland Security Act of 2002, Pub. L. No. 107-296, § 1313, 116 Stat. 2135, 2291-94 (2002).

<sup>9</sup>*Id.* at 2292.

<sup>10</sup>U.S. Off. of Personnel Mgmt., Guide to Voluntary Separation Incentive Payments, 6 (Mar. 2017) available at <https://www.opm.gov/policy-data-oversight/workforce-restructuring/voluntary-separation-incentive-payments/guide.pdf>.

any other factors related to the position; A description of the categories of employees who will be offered VSIP, identified by organizational unit, geographic location, occupational series, grade level, and any other factors, such as skills, knowledge, or retirement eligibility; . . . The time period during which incentives may be paid; . . . The number and amounts of VSIPs to be offered; A description of how the agency will operate without the eliminated or restructured positions and functions; A proposed organizational chart displaying the expected changes in the agency's organizational structure after the agency has completed the VSIPs; . . . A short explanation of how Voluntary Early Retirement Authority (VERA) will be used in conjunction with VSIP . . . A description of how VSIPs offered under another statutory authority are being used . . . .<sup>11</sup>

OPM must also consult with OMB in reviewing the agency's strategic plan before issuing any approval for the use of VSIP.<sup>12</sup> The agency must also ensure that employees are not coerced into accepting a VSIP or that an employee's acceptance of a VSIP is not based on erroneous or misleading information.<sup>13</sup> An employee who leaves Federal service with a VSIP, but believes the separation was coerced or involuntary, can appeal the separation to the Merit Systems Protection Board.<sup>14</sup>

Since fiscal year 2012, OPM approved VSIP authority for 307 Federal agencies and agency components, including those of the Department of Defense.<sup>15</sup> During this time, 36,910 Federal employees resigned from Federal service with a VSIP for a total of \$903,197,868, an average of \$24,470.38 per person.<sup>16</sup> According to OPM, "agencies with prior VSIP authority reported that buyouts were a successful tool that notably increased voluntary attrition, particularly for [Voluntary Early Retirement Authority] retirements of employees in excess positions."<sup>17</sup>

The \$25,000 maximum amount for VSIPs Government-wide has remained unchanged since the creation of VSIP authority in 1994.<sup>18</sup> Adjusting for inflation, this amount in March 1994, when the VSIP authority was first enacted, is worth \$41,918.99 as of September 2017.<sup>19</sup> In the National Defense Authorization Act for Fiscal Year 2017, Congress increased the VSIP maximum amount for Department of Defense civilian employees to \$40,000.<sup>20</sup> This bill would extend the \$40,000 VSIP maximum amount Government-wide.

<sup>11</sup>*Id.* at 6–7.

<sup>12</sup> Homeland Security Act of 2002, *supra* note 8 at 2292.

<sup>13</sup> U.S. Off. of Personnel Mgmt., *supra* note 10 at 15.

<sup>14</sup>*Id.*

<sup>15</sup> Email from U.S. Off. of Personnel Mgmt. representative to Committee majority staff (Oct. 30, 2017). This data is from the beginning of fiscal year 2012 through May 2017.

<sup>16</sup>*Id.*

<sup>17</sup> U.S. Off. of Personnel Mgmt., Workforce Reshaping Operations Handbook: A Guide for Agency Management and Human Resource Offices, 12 (Mar. 2017), available at [https://www.opm.gov/policy-data-oversight/workforce-restructuring/reductions-in-force/workforce\\_reshaping.pdf](https://www.opm.gov/policy-data-oversight/workforce-restructuring/reductions-in-force/workforce_reshaping.pdf).

<sup>18</sup> Federal Workforce Restructuring Act of 1994, *supra* note 2. See also 5 U.S.C. § 3523(b)(3)(B).

<sup>19</sup> U.S. Bureau of Labor Statistics, CPI Inflation Calculator, available at [https://www.bls.gov/data/inflation\\_calculator.htm](https://www.bls.gov/data/inflation_calculator.htm), last accessed Oct. 20, 2017.

<sup>20</sup> National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114–328, § 1107, 130 Stat. 2000, 2449 (2016).

An increase to \$40,000 would help agencies restructure their workforces and remove excess job positions by offering a higher incentive amount. The VSIP maximum amount would also be adjusted annually according to any change in the Consumer Price Index from the previous year.

*Transportation Security Administration Law Enforcement Availability Pay Reform*

Signed into law on November 19, 2001, the Aviation and Transportation Security Act (ATSA) allows TSA to set its own compensation system outside of the statutory provision—Title 5 of the United States Code—that governs most of the Federal workforce.<sup>21</sup> Under ATSA, TSA employees can be compensated above the annual pay limitation to which the rest of the Federal workforce is subject.<sup>22</sup> However, TSA employees receive the same retirement benefits as Federal employees through the Civil Service Retirement System (CSRS) Federal Employee Retirement System (FERS).<sup>23</sup>

Under CSRS and FERS, certain types of employee compensation are credited towards retirement annuity calculations, and some types of compensation are not.<sup>24</sup> One type of credited pay is unscheduled overtime pay for criminal investigators, also known as LEAP pay.<sup>25</sup> For Federal criminal investigators, eligibility for LEAP pay is governed by Title 5 but is still subject to the annual pay limitation for Federal employees.<sup>26</sup> Although TSA employees' compensation is not governed by Title 5, the TSA Core Compensation System allows TSA criminal investigators and Federal air marshals to be compensated for unscheduled overtime under an identical LEAP payment.<sup>27</sup>

On July 1, 2016, OPM issued a letter to TSA explaining that the LEAP pay provided to TSA criminal investigators would no longer be considered creditable as basic pay for retirement annuity calculations and that LEAP pay would be subject to annual pay limitations for retirement credibility purposes.<sup>28</sup> Former OPM Acting Director Beth Cobert wrote:

[B]ecause TSA created its own personnel and compensation system, TSA's criminal investigators are not actually paid [LEAP pay] under [title 5.] Their payment scheme looks the same in many respects, but they are not paid under title 5; they are paid under TSA's own authority contained in title 49. . . . [W]ith respect to TSA criminal investigators, OPM's position is that we do not presently have authority to credit *any amount* of [LEAP] pay for retirement purposes in the computation of TSA criminal in-

<sup>21</sup> Aviation and Transportation Security Act, Pub. L. No. 107-71, § 101, 115 Stat. 597, 601 (2001). See 49 U.S.C. § 114(n); 49 U.S.C. § 40122(g).

<sup>22</sup> 49 U.S.C. § 40122(g)(2).

<sup>23</sup> 49 U.S.C. § 40122(g)(2)(G).

<sup>24</sup> 5 U.S.C. § 8331(3).

<sup>25</sup> 5 U.S.C. § 8331(3)(E). See also 5 U.S.C. § 5545a.

<sup>26</sup> 5 U.S.C. 5545a. See also 5 U.S.C. § 5547. Federal employees receiving LEAP pay are also exempt from the minimum wage and maximum hours requirements of the Fair Labor Standards Act of 1938, as amended. See 29 U.S.C. § 213(a)(16).

<sup>27</sup> Transp. Security Admin., TSA Management Directive 1100.53-7 Handbook: Setting Pay Upon Appointment, 4 (June 25, 2017).

<sup>28</sup> Letter from Beth Cobert, Acting Director, Off. of Personnel Mgmt., to Huban Gowadia, Deputy Administrator, Transp. Security Admin. (July 1, 2016).

investigators' annuities, because they are not receiving their [LEAP] pay "under [title 5]."<sup>29</sup>

For Federal air marshals, Cobert wrote:

[LEAP] pay for air marshals is creditable as part of basic pay for purposes of retirement, but only to the extent it is subject to the restrictions and earning limitations imposed on criminal investigators under [title 5]. . . . [N]otwithstanding TSA's authority to establish its own compensation system, it must comply with existing retirement laws in title 5 unless and until Congress provides otherwise.<sup>30</sup>

As a result of this decision, OPM prepared, and in a few instances delivered, debt notices to TSA criminal investigators and Federal air marshals who received retirement annuity payments based on previous calculations that included LEAP pay.<sup>31</sup> OPM also issued notices to those TSA annuitants explaining that their monthly annuity payments would be recalculated and reduced based on new calculations that exclude LEAP pay and that exclude any compensation in excess of the annual pay limitation for the Federal workforce under Title 5.<sup>32</sup> TSA and OPM estimate that approximately 200 TSA criminal investigators and Federal air marshals are affected by this OPM decision.<sup>33</sup>

For TSA criminal investigators, this bill would provide parity in the treatment of their LEAP pay compared to that of other Federal criminal investigators receiving LEAP pay under title 5. For those TSA criminal investigators and Federal air marshals who have paid retirement contributions above the annual pay limitation under Title 5, this bill will allow their compensation that exceeded the limitation to also be credited to their retirement annuities. TSA criminal investigators and Federal air marshals who have not paid retirement contributions above the annual pay limitation would be subject to the limitation for the purposes of calculating retirement annuities.

### III. LEGISLATIVE HISTORY

S. 1888, the Voluntary Separation Incentive Payment Adjustment Act of 2017, was introduced on September 28, 2017, by Senator James Lankford. The bill was referred to the Committee on Homeland Security and Governmental Affairs. The Committee considered S. 1888 at a business meeting on October 4, 2017.

During the business meeting, Chairman Ron Johnson offered an amendment allowing the law enforcement availability pay for certain TSA employees to be creditable for retirement benefits. The Committee adopted the amendment by voice vote and ordered the bill, as amended, reported favorably by voice vote *en bloc* with Senators Johnson, Lankford, Daines, McCaskill, Tester, Heitkamp, Hassan, and Harris present.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> Information provided to Committee staff by Off. of Personnel Mgmt. (Sept. 26, 2017).

<sup>32</sup> Letter from Off. of Personnel Mgmt. representative to Transp. Security Admin. annuitant (May 26, 2016).

<sup>33</sup> Information provided by Committee staff by U.S. Off. of Personnel Mgmt. (Sept. 26, 2017).

## IV. SECTION-BY-SECTION ANALYSIS OF THE BILL, AS REPORTED

*Section 1. Short title*

This section establishes the short title of the bill as the “Voluntary Separation Incentive Payment Adjustment Act of 2017.”

*Section 2. Voluntary separation incentive pay increase*

This section increases the authorized amount an agency, including the Department of Defense, can provide as a VSIP to a Federal employee from \$25,000 to \$40,000. This section also requires OPM to adjust this amount annually based on the percentage increase in the Consumer Price Index.

*Section 3. Retirement-credible basic pay*

This section allows the LEAP pay earned by TSA criminal investigators and Federal air marshals to be credited for purposes of calculating the employees’ basic pay for retirement annuities. OPM is required to implement this credibility within 90 days of enactment of this bill. OPM must also immediately begin refunding any TSA criminal investigator or Federal air marshal who made a debt collection payment as a result of the July 1, 2016, OPM decision.

## 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

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, August 29, 2018.*

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. 1888, the Voluntary Separation Incentive Payment Adjustment Act of 2017.

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

Sincerely,

KEITH HALL,  
*Director.*

Enclosure.



*S. 1888—Voluntary Separation Incentive Payment Adjustment Act of 2017*

Summary: S. 1888 would increase from \$25,000 to \$40,000 the amount that federal agencies can offer to employees as part of a separation incentive. That amount would rise annually to account for inflation.

The bill also would clarify the treatment of law enforcement availability pay (LEAP) for federal air marshals and criminal investigators of the Transportation Security Administration (TSA). A recent review of the relevant federal statutes by the Office of Personnel Management (OPM) found that LEAP has been incorrectly applied to the retirement benefit calculations for certain TSA criminal investigators and federal air marshals, resulting in benefit payments that are higher than authorized under current law. S. 1888 would hold harmless the retirees and current employees who are affected by OPM's findings and would clarify the treatment of LEAP for future retirees.

CBO estimates those changes would, assuming appropriation of the necessary amounts, increase discretionary outlays by \$698 million over the 2019–2023 period. In addition, direct spending would increase by \$314 million and revenues would increase by \$1 million over the 2019–2028 period.

Because enacting S. 1888 would affect direct spending and revenues, pay-as-you-go procedures apply.

CBO estimates that enacting S. 1888 would not increase net direct spending by more than \$2.5 billion or on-budget deficits by more than \$5 billion in any of the four consecutive 10-year periods beginning in 2029.

S. 1888 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA).

Estimated Cost to the Federal Government: The estimated budgetary effects of S. 1888 are shown in Table 1. The costs of the legislation stemming from estimated increases in authorization levels fall within all budget functions that have personnel accounts. The direct spending costs fall within budget functions 550 (health) and 600 (income security).

TABLE 1.—SUMMARY OF BUDGETARY EFFECTS OF S. 1888

	By fiscal year, in millions of dollars													
	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2019–2023	2019–2028	
INCREASES IN SPENDING SUBJECT TO APPROPRIATION														
Estimated Budget Authority .....	0	73	81	91	226	236	n.a.	n.a.	n.a.	n.a.	n.a.	707	n.a.	
Estimated Outlays .....	0	70	81	91	221	235	n.a.	n.a.	n.a.	n.a.	n.a.	698	n.a.	
INCREASES IN DIRECT SPENDING														
Estimated Budget Authority .....	0	6	15	18	27	40	44	43	41	40	38	107	314	
Estimated Outlays .....	0	6	15	18	27	40	44	43	41	40	38	107	314	
INCREASES IN REVENUES														
Estimated Revenues .....	0	0	1	0	0	0	0	0	0	0	0	1	1	
NET INCREASE IN THE DEFICIT FROM CHANGES IN DIRECT SPENDING AND REVENUES														
Effect on the Deficit .....	0	6	14	18	27	40	44	43	41	40	38	106	313	

Components do not sum to totals because of rounding; n.a. = not applicable.

Basis of estimate: For this estimate, CBO assumes that S. 1888 will be enacted at the beginning of fiscal year 2019 and that future appropriations will be increased by the amount of the estimated authorizations.

*Spending Subject to Appropriation*

S. 1888 would permanently increase, to \$40,000, the maximum amount of lump-sum payments that federal agencies can offer to employees as an incentive to separate voluntarily from federal service earlier than they otherwise would. In addition, that new maximum amount would rise annually with inflation, reaching \$45,000 by 2023, CBO estimates. Under current law, most federal agencies are authorized to make separation payments of no more than \$25,000. The Department of Defense (DoD) has temporary authority—through 2021—to offer up to \$40,000 for such payments. The proposed changes would increase federal spending for voluntary separations by raising the costs of separations that would have occurred under current law and by inducing more people to voluntarily separate from federal service. CBO estimates that implementing S. 1888 would effectively authorize additional appropriations totaling \$707 million over the 2019–2023 period.

Using information from OPM, CBO estimates that in 2016 and 2017 about 2,100 employees at DoD and 2,000 employees at all other agencies received a voluntary separation incentive payment (sometimes called a “buyout”) each year. CBO expects that nearly all employees who will receive a buyout under current law would see an increased payment under S. 1888. Buyout recipients at DoD would see small increases averaging a little over \$1,000 each year through 2021. All other employees would see an increase of about \$16,000, on average, through that year. Following the expiration of DoD’s temporary authority to pay higher amounts, both defense and nondefense employees would see much larger payments—about \$18,000 in 2022 and \$20,000 through 2023. CBO estimates that the incremental increase in the costs of buyouts paid to employees who would have separated under current law would total \$365 million over the 2019–2023 period.

CBO also expects that a number of people would be induced to separate by the higher payments under S. 1888. Using information from DoD and OPM, CBO estimates that about 1,000 additional people would separate from the federal workforce through 2021. In 2022, that number would jump to 2,500 additional people each year. The amounts paid to those people would range from \$40,000 in 2019 to \$45,000 in 2023. In total, those additional payments would cost the federal government \$342 million over the 2019–2023 period. Those additional separations would probably lead to some employees retiring sooner than they would have under current law. The cost of those early retirements are discussed below under the heading “Direct Spending and Revenues.”

Increased buyouts could have other effects on personnel costs. For example, if an agency hired lower paid employees to replace those who separated, it might save on personnel costs, even after considering the costs of hiring and training those new employees. However, those potential savings could be offset by other personnel decisions, such as promoting current employees into vacated, high-

er-paying positions; hiring additional people to fill agency needs in other areas; or rewarding high-performing employees with bonuses.

Ultimately, enacting S. 1888 would not fundamentally alter any agency's mission or legal obligations. Without a reduction in the amount of work required of an agency, CBO assumes agencies would shift any resources freed up by buyouts to boost the level of service it would otherwise be able to provide, instead of allowing those resources to lapse. Therefore, CBO does not estimate any changes in spending resulting from other personnel decisions related to employee buyouts.

#### *Direct Spending and Revenues*

As shown in Table 2, enacting S. 1888 would increase direct spending by \$314 million over the 2019–2028 period. That increase arises from two changes in law. First, the provisions of S. 1888 that would increase the maximum amount agencies can pay employees to leave the workforce would cause some employees to retire sooner than they would under current law. CBO estimates those induced retirements would increase benefits for retirees by \$302 million. Second, the bill would hold harmless certain current and former employees of the TSA for an error the agency made when calculating their pension benefits. Because of that change, those employees would receive \$12 million more than they would under current law. In addition, the TSA provisions would increase revenues by \$1 million.

**Retirement Effects of Voluntary Separation Incentive Payments.** In total, CBO estimates that direct spending for annuities and health insurance premiums for retired federal employees would increase by \$302 million under S. 1888. As discussed above, those costs arise because S. 1888 would permanently increase the maximum amount of lump-sum payments that federal agencies can offer to employees to entice them to separate from federal service, which would, in CBO's estimation, induce employees to retire, on average, 1.5 years sooner than they otherwise would have. Using information from OPM and DoD, CBO estimates that over the 2019–2021 period, an annual average of about 300 employees would receive their retirement annuities sooner than they would under current law, which would rise to 700 such employees in 2022, after DoD's temporary authority expires.

However, the annuities of individuals who accept the buyout would be smaller than what those workers would have otherwise received, because retirement benefits are based on the number of years of service that the annuitant worked; that number would be somewhat lower as a result of the decision to accept an earlier retirement. Nevertheless, CBO estimates the net effect of those early retirements would increase spending for retirement annuities by \$196 million over 2019–2028 period.

Federal employees also participate in the Federal Employees Health Benefits (FEHB) program. When those employees retire, the federal government pays a portion of their health insurance premiums; those payments are classified as direct spending. CBO estimates that the government's share of those premiums for each retiree will average \$11,000 in 2019, rising to \$17,000 by 2028. Because of the early retirements resulting from S. 1888, the legislation also would increase the federal government's contributions for

annuitants under the FEHB program. CBO estimates that those contributions would increase direct spending by \$106 million over the 2019–2028 period.

TABLE 2.—DIRECT SPENDING EFFECTS OF S. 1888

	By fiscal year, in millions of dollars—												
	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2019–2023	2019–2028
INCREASES IN DIRECT SPENDING													
Retirement Effects of Voluntary Separation Incentive Payments:													
Estimated Budget Authority ...	0	6	14	17	25	39	43	42	40	39	37	101	302
Estimated Outlays .....	0	6	14	17	25	39	43	42	40	39	37	101	302
TSA LEAP Authority:													
Estimated Budget Authority ...	0	1	1	1	1	1	1	1	1	1	1	6	12
Estimated Outlays .....	0	1	1	1	1	1	1	1	1	1	1	6	12
Total Changes:													
Estimated Budget Authority .....	0	6	15	18	26	40	44	43	41	40	38	107	314
Estimated Outlays .....	0	6	15	18	26	40	44	43	41	40	38	107	314
INCREASES IN REVENUES													
TSA LEAP Authority:													
Estimated Revenues .....	0	0	1	0	0	0	0	0	0	0	0	1	1
NET INCREASE IN THE DEFICIT FROM CHANGES IN DIRECT SPENDING AND REVENUES													
Effect on the Deficit .....	0	6	14	18	27	40	44	43	41	40	38	106	313

Components do not sum to totals because of rounding; TSA = Transportation Security Administration; LEAP = law enforcement availability pay.

**TSA LEAP Authority.** The bill would allow TSA criminal investigators and federal air marshals who, at the time of enactment, are paid above the premium pay cap to include above-the-cap salary amounts in the calculation of their future retirement annuities. Upon their retirement, employees whose salaries do not exceed the cap as of enactment would have their annuities calculated subject to the cap. In addition, the bill would authorize TSA’s criminal investigators to receive LEAP. Enacting S. 1888 would increase net direct spending by \$12 million over the 2019–2028 period. That increase would be partially offset by increased revenues from the cancellation of refunds of employee retirement contributions that are expected under current law.

*Background.* In 2016, OPM issued a notice to TSA that LEAP was being improperly incorporated into the retirement benefit calculations for two categories of employees at TSA: federal air marshals and criminal investigators. LEAP is a type of premium pay (that pays an additional 25 percent of base salary) provided to certain law enforcement officers whose positions require a substantial amount of unscheduled duty. Employees of federal agencies that use the General Schedule pay scale and are subject to provisions of title 5 of the U.S. Code have a statutory limit on LEAP: An employee’s total biweekly pay (base pay plus LEAP) cannot exceed the premium pay cap—the rate payable for GS–15, step 10.

TSA has the authority to administer its own compensation system—the agency is exempt from many of the provisions of title 5, and its employees are not paid under the General Schedule. Under TSA’s authority, criminal investigators and air marshals at TSA can receive a salary including LEAP that exceeds the premium pay cap. (However, OPM has determined that TSA’s criminal investiga-

tors are not properly authorized to receive LEAP.) Before OPM's review of the governing statutes, TSA had been including all earned LEAP in the calculation of annuities for retiring air marshals and criminal investigators. OPM concluded that TSA has the authority to pay salaries that exceed the premium pay cap but that OPM's statutory authority to administer the civil service retirement system requires it to apply the cap when calculating retirement annuities. Thus, in OPM's view, the annuity calculations for TSA's criminal investigators and air marshals should not include LEAP amounts that exceed the premium pay cap.

After it provided notice to TSA, OPM began to calculate annuities for new retirements of criminal investigators and air marshals on the basis of the premium pay cap and the exclusion of LEAP from the benefit calculation for criminal investigators' annuities. In addition, OPM will recalculate benefits for existing retirees and refund contributions that were based on the higher pay to retirees and current employees. OPM has not yet pursued those actions, but CBO expects that it will shortly. Under those actions:

- All criminal investigators and federal air marshals who retired before 2016 with salaries in excess of the premium pay cap at the time of retirement (or, in the case of TSA criminal investigators, that contained any LEAP amounts) have been paid retirement benefits in excess of what they should have received. Retroactively adjusting retirement benefits will reduce those retirees' future benefits and also require them to repay OPM the portion of benefits received that was based on salary amounts over the cap.
- Those retirees and any current criminal investigators and air marshals who are earning salaries over the premium pay cap have paid retirement contributions in excess of what is required to fund their future benefits. Those contributions are recorded in the budget as revenues. They are owed refunds for the contributions paid on the portions of their salaries that have been deemed not creditable toward retirement. (In addition, TSA has paid the required agency share of retirement contributions on the portion of employee salaries that is not creditable toward retirement and is owed a refund of those amounts from OPM.)

*Retirement Annuities.* Using data provided by TSA, CBO estimates that enacting S. 1888 would increase the average retirement benefit by about \$10,000 a year for a TSA criminal investigator and by about \$2,000 a year for an affected federal air marshal. (The effect is much larger for the criminal investigators because of OPM's determination that criminal investigators are not eligible to receive LEAP under current law—LEAP increases an employee's base salary by 25 percent.)

*Retirees.* CBO estimates that the effect of including salary amounts that exceed the cap in the retirement benefit calculation for the identified population of current retirees—53 TSA criminal investigators and 63 federal air marshals—would increase direct spending for retirement benefits scheduled to be paid over the 2019–2028 period by about \$7 million.

In addition, under current law, those retirees will be expected to repay the difference between their recalculated annual retirement benefit (based on the capped salary) and their prior annual benefit

(which included salary amounts over the premium pay cap) for all years in which an annuity payment was received. According to data provided by TSA, the average length of retirement for affected TSA criminal investigators and federal air marshals is 5 years and 3 years, respectively.

Overpayments to annuitants are generally recovered by OPM on an installment basis and CBO expects that such payments will occur over the 2020–2025 period. Enacting S. 1888 would eliminate those expected recoveries, which CBO estimates would reduce offsetting receipts (which are recorded in the federal budget as a decrease in direct spending) by about \$3 million over the 10-year period.

*Employees.* S.1888 also would increase benefits for future retirees—the 47 TSA criminal investigators and 84 federal air marshals who are currently in service and are expected to earn a salary in excess of the salary cap at the time of enactment. Using retirement eligibility data provided by TSA, CBO estimates that about 75 of the 131 identified employees would retire over the 2019–2028 period. The increase in benefits associated with including salary amounts over the premium pay cap in the annuity calculation for those future retirements would increase direct spending by an estimated \$2 million over the same period.

*Retirement Contributions.* Under current law, OPM is expected to refund the portion of retirement contributions that were withheld from paychecks for salaries that exceeded the premium pay cap to 100 retired and current TSA criminal investigators and to 147 retired and current federal air marshals. Enacting S. 1888 would stop those payments. According to TSA, the average overpayment of retirement contributions per employee is about \$5,500 for a TSA criminal investigator and about \$500 for a federal air marshal. (In most cases, those employees pay 1.3 percent of salary toward their future federal retirement.) CBO estimates that canceling those refunds would increase revenues by about \$1 million in 2020.

Under current law, OPM also is expected to refund to TSA the portion of the agency’s share of retirement contributions that has been paid for salaries over the cap. Data from TSA show that the agency’s average overpayment for a TSA criminal investigator is about \$110,000 and for a federal air marshal is about \$11,000. (The percentage of an employee’s salary that federal agencies contribute toward their employees’ federal retirement is adjusted from time to time based on actuarial calculations by OPM; the average rate contributed by TSA for the affected population is about 25 percent.) CBO estimates that the overpayment from TSA to OPM totals \$12 million. Under S. 1888 OPM would not refund that amount to TSA. Because payments between TSA and OPM are intragovernmental transfers, those transactions do not affect the deficit.

*Pay-As-You-Go considerations:* The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. The net changes in outlays and revenues that are subject to those pay-as-you-go procedures are shown in the following table.

TABLE 3.—CBO ESTIMATE OF PAY-AS-YOU-GO EFFECTS FOR S. 1888, AS ORDERED REPORTED BY THE SENATE COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS ON OCTOBER 4, 2017

	By fiscal year, in millions of dollars—													2018–2023	2018–2028
	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028				
	NET INCREASE IN THE DEFICIT														
Statutory Pay-As-You-Go Impact ....	0	6	14	18	27	40	44	43	41	40	38	106	313		
Memorandum:															
Increases in Direct Spending	0	6	15	18	27	40	44	43	41	40	38	107	314		
Increases in Revenues .....	0	0	1	0	0	0	0	0	0	0	0	1	1		

Components do not sum to totals because of rounding.

Intergovernmental and private-sector impact: S. 1888 contains no intergovernmental or private-sector mandates as defined in UMRA.

Increase in long-term direct spending and deficits: CBO estimates that enacting S. 1888 would not increase net direct spending or on-budget deficits by more than \$5 billion in any of the four consecutive 10-year periods beginning in 2029.

Previous CBO estimate: On June 8, 2018, CBO transmitted an estimate for S. 2987, the John S. McCain National Defense Authorization Act for Fiscal Year 2019. Section 1123 of that bill would have authorized voluntary separation payments up to \$40,000 and linked them to inflation in the same manner as would S. 1888. The estimated budgetary effects for those provisions are the same.

Estimate prepared by: Federal costs: Dan Ready, Amber Marcellino; Impact on State, local, and tribal governments and the Private sector: Susan Willie.

Estimate reviewed by: Christina Hawley Anthony, Chief, Projections; H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

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 the bill, 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**

\* \* \* \* \*

**Part III—Employees**

\* \* \* \* \*

**Subpart B—Employment and Retention**

\* \* \* \* \*

**Chapter 35—Retention Preference, Voluntary Separation Incentive Payments, Restoration, and Reemployment**

\* \* \* \* \*

**Subchapter II—Voluntary Separation Incentive Payments**

\* \* \* \* \*

**SEC. 3523. AUTHORITY TO PROVIDE VOLUNTARY SEPARATION INCENTIVE PAYMENTS.**

(a) \* \* \*

(b) \* \* \*

(1) \* \* \*

(2) \* \* \*

(3) \* \* \*

(A) \* \* \*

(B) an amount determined by the agency head, not to exceed ~~【\$25,000】~~ \$40,000, as adjusted in accordance with subsection (c);

\* \* \* \* \*

(c) **CONSUMER PRICE INDEX ADJUSTMENT.**—

(1) *In general.*—On March 1 of each year, the Director of the Office of Personnel Management shall adjust the amount under subsection (b)(3)(B) by the amount determined by the Secretary of Labor to reflect the percentage increase between—

(A) the Consumer Price Index (all items; United States city average) published for December of the preceding year; and

(B) the Consumer Price Index (all items United states city average) published for December of the year before the preceding year.

(2) *Rounding.*—In making an adjustment under paragraph (1), the Director of the Office of Personnel Management shall—

(A) round the percentage increase to the nearest 1/10 of 1 percent; and

(B) round the amount of adjustment to the nearest multiple of \$1,000.

\* \* \* \* \*

**Subpart G—Insurance and Annuities**

\* \* \* \* \*

**CHAPTER 83—RETIREMENT**

\* \* \* \* \*

**Subchapter III—Civil Service Retirement**

\* \* \* \* \*

**SEC. 8331. DEFINITIONS.**

(1) \* \* \*

(2) \* \* \*

(3) \* \* \*

(A) \* \* \*

\* \* \* \* \*



(E) \* \* \*

(i) \* \* \*

(ii) received after September 11, 2001, by a Federal air marshal or criminal investigator (as defined in section 5545a(a)(2)) of the Transportation Security Administration, subject to all restrictions and earning limitations imposed on criminal investigators receiving such pay under section 5545a, including the premium pay limitations under section 5547;

\* \* \* \* \*

**Subpart I—Miscellaneous**

\* \* \* \* \*

**CHAPTER 99—DEPARTMENT OF DEFENSE PERSONNEL AUTHORITIES**

\* \* \* \* \*

**SEC. 9902. DEPARTMENT OF DEFENSE PERSONNEL AUTHORITIES.**

(a) \* \* \*

\* \* \* \* \*

(f) \* \* \*

(1) \* \* \*

\* \* \* \* \*

(5)(A)

(i) \* \* \*

(ii) **[\$25,000]** an amount determined by the Secretary, not to exceed \$40,000, as adjusted in accordance with subparagraph (D).

(B) \* \* \*

(C) \* \* \*

(D) \* \* \*

(i) On March 1 of each year, the Secretary of Defense shall adjust the amount under subparagraph (A)(ii) by the amount determined by the Secretary of Labor to reflect the percentage difference between—

(I) the Consumer Price Index (all items; United States city average) published for December of the preceding year; and

(II) the Consumer Price Index (all items; United States city average) published for December of the year before the preceding year.

(ii) In making an adjustment under clause (i), the Secretary of Defense shall—

(I) round the percentage increase to the nearest 1/10 of 1 percent; and

(II) round the amount of the adjustment to the nearest multiple of \$1,000.

\* \* \* \* \*

**TITLE 29—LABOR**

\* \* \* \* \*

CHAPTER 8—FAIR LABOR STANDARDS

\* \* \* \* \*

SEC. 213. EXEMPTIONS.

(a) \* \* \*

(1) \* \* \*

\* \* \* \* \*

(16) a criminal investigator who **[is paid]** *is entitled to availability pay under section 5545a of title 5, or a Federal air marshal or criminal investigator employed by the Administrator of the Transportation Security Administration who is entitled to 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;*

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

\* \* \* \* \*

(30) a criminal investigator who **[is paid]** *is entitled to availability pay under section 5545a of title 5, or a Federal air marshal or criminal investigator employed by the Administrator of the Transportation Security Administration who is entitled to 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).*

