

Calendar No. 241

116TH CONGRESS }
1st Session }

SENATE

{ REPORT
116-129

TO AMEND SECTION 3116 OF TITLE 5,
UNITED STATES CODE, TO CLARIFY THE
APPLICABILITY OF THE APPOINTMENT
LIMITATIONS FOR STUDENTS APPOINTED
UNDER THE EXPEDITED HIRING AUTHOR-
ITY FOR POST-SECONDARY STUDENTS

R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

S. 2169



OCTOBER 15, 2019.—Ordered to be printed

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TO AMEND SECTION 3116 OF TITLE 5, UNITED STATES CODE, TO CLARIFY THE APPLICABILITY OF THE APPOINTMENT LIMITATIONS FOR STUDENTS APPOINTED UNDER THE EXPEDITED HIRING AUTHORITY FOR POST-SECONDARY STUDENTS

OCTOBER 15, 2019.—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. 2169]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 2169), to amend section 3116 of title 5, United States Code, to clarify the applicability of the appointment limitations for students appointed under the expedited hiring authority for post-secondary students, having considered the same, 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. 2169 is to allow Federal agencies the flexibility to directly hire qualified post-secondary students and recent graduates outside the Federal competitive examination process.

II. BACKGROUND AND THE NEED FOR LEGISLATION

Over the past several decades, the concern over an impending Federal employee “retirement wave” has increased as agencies

have struggled to hire young adults.¹ The Federal Government authorized a number of programs since 1965 specifically targeted at reducing the barriers for students and recent graduates in the Federal hiring process.² Most recently, the Fiscal Year 2019 John S. McCain National Defense Authorization Act (FY19 NDAA) authorized Federal agencies to directly recruit and hire post-secondary students and recent graduates to civilian professional and administration positions in the competitive service.³ However, the FY19 NDAA included legislative text that limits the application of this direct hire authority. The FY19 NDAA limited the number of direct hires permitted under this authority each year to a percentage of direct hires made for college students and recent graduates to the competitive service positions in the previous fiscal year.⁴

The Office of Personnel Management (OPM) notified the Committee that the direct hire authority granted in the FY19 NDAA does not allow Federal agencies to make these hires as intended:⁵

Students currently come into the Federal service by appointment to internships in the *excepted* service. This poses a problem for the formula in the [FY19 NDAA], which instructs the number of students an agency may appoint should be based on the number of *competitive* service student appointments by the agency in the previous fiscal year. Under the [FY19 NDAA] formula, there may be no base for students appointed to the competitive service in the previous fiscal year by an agency, and zero students may be hired using the new authority.

Without a correction to the FY19 NDAA language, agencies “would not be able to count the number of students appointed to the excepted service positions for application of the new law’s formula in addressing their expedited hiring needs.”⁶

This bill would make the necessary correction to allow agencies to directly hire, for time-limited appointments, students enrolled in or accepted for enrollment in an institution of higher education and pursuing a baccalaureate or graduate degree. Agencies would be able to make these direct hires for professional or administrative positions at the GS–11 level or below and would be subject to a 15 percent limit of students appointed to positions at this level in the previous fiscal year. If an agency considers using this authority to hire a student or recent graduate to an available position, it must be publicly noticed. Agencies using this authority are also required to report to Congress and to OPM on the use of this authority and its impact on the workforce.

¹ S. Rep. No. 115–205, at 1 (2018).

² See, e.g., Exec. Order No. 11202, 30 Fed. Reg. 3185 (Mar. 9, 1965); Exec. Order No. 11813, 39 Fed. Reg. 36,317 (Oct. 9, 1974); Exec. Order No. 12008, 42 Fed. Reg. 43,373 (Aug. 25, 1977) (amended by Exec. Order No. 12107, 44 Fed. Reg. 1055 (Jan. 3, 1979)); Exec. Order No. 12015, 42 Fed. Reg. 56,947 (Oct. 31, 1977) (amended by Exec. Order No. 12107, 44 Fed. Reg. 1055 (Jan. 3, 1979) and Exec. Order No. 13024, 61 Fed. Reg. 58,125 (Nov. 12, 1996)); Exec. Order No. 12364, 47 Fed. Reg. 22,931 (May 26, 1982) (amended by Exec. Order No. 12645, 53 Fed. Reg. 26,570 (July 12, 1988)); Exec. Order No. 12596, 52 Fed. Reg. 17,357 (May 11, 1987); Exec. Order No. 13162, 65 Fed. Reg. 43,211 (July 12, 2000); Exec. Order No. 13318, 68 Fed. Reg. 56,515 (Sept. 30, 2003); Exec. Order 13562, 75 Fed. Reg. 82,585 (Dec. 27, 2010).

³ Fiscal Year 2019 John S. McCain National Defense Authorization Act, Pub. L. 115–232, 1108, 132 Stat. 2005 (Aug. 13, 2018). See also S. 1887, 115th Cong. (2017).

⁴ *Id.*

⁵ Letter from Margaret M. Weichert, Acting Director, Office of Personnel Mgmt., to Sens. James Lankford and Heidi Heitkamp, Chairman and Ranking Member, S. Comm. on Homeland Sec. and Governmental Affairs., Subcomm. on Regulatory Affairs and Fed. Mgmt. at 1–2 (Oct. 26, 2018) (on file with subcommittee).

⁶ *Id.* at 2.

III. LEGISLATIVE HISTORY

S. 2169 was introduced on July 18, 2019, by Senators James Lankford, Gary Peters, and Kyrsten Sinema. The bill was referred to the Committee on Homeland Security and Governmental Affairs.

The Committee considered S. 2169 at a business meeting on July 24, 2019. During the business meeting, Senator Thomas Carper offered an amendment creating the personnel leave categories of rest and recuperation leave for Federal employees serving in combat or other high risk, high threat posts, and of foreign holiday leave for Federal employees serving in a foreign area. The Committee adopted the amendment by voice vote and ordered the bill, as amended, reported favorably by voice vote *en bloc* with Senators Johnson, Portman, Paul, Lankford, Romney, Scott, Enzi, Hawley, Peters, Carper, Hassan, Sinema, and Rosen present.

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

Section 1. Clarification of limitation on expedited hiring authority for post-secondary students

This section limits the number of students that can be directly hired into a competitive service position to 15 percent of the number of students that the agency head appointed during the previous fiscal year to a position at the GS-11 level, or an equivalent level, or below.

Section 2. Rest and recuperation leave and foreign holiday leave

Section 2 establishes two new categories of leave for eligible Federal employees. Agencies may allow up to 20 days of paid rest or recuperation leave, per year, to a civilian employee serving in a combat zone or other high risk, high threat post. Agencies may also grant up to five days of paid foreign holiday leave each year for a civilian employee serving in a foreign area to observe local holidays in that area. This leave is granted if an agency head determines that observing the local holiday is consistent with the practice of the host-country or is in the best interest of the United States.

Subsection (b) amends the table of sections for subchapter II of chapter 63 of title 5, United States Code, to include new sections for rest and recuperation leave and for foreign holiday leave.

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, October 8, 2019.

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. 2169, a bill to amend section 3116 of title 5, United States Code, to clarify the applicability of the appointment limitations for students appointed under the expedited hiring authority for post-secondary students.

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

Sincerely,

PHILLIP L. SWAGEL,
Director.

Enclosure.

S. 2169, a bill to amend section 3116 of title 5, United States Code, to clarify the applicability of the appointment limitations for students appointed under the expedited hiring authority for post-secondary students			
As ordered reported by the Senate Committee on Homeland Security and Governmental Affairs on July 24, 2019			
By Fiscal Year, Millions of Dollars	2020	2020-2024	2020-2029
Direct Spending (Outlays)	0	0	0
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	0	0	0
Spending Subject to Appropriation (Outlays)	0	107	not estimated
Statutory pay-as-you-go procedures apply?	No	Mandate Effects	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2030?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No

S. 2169 would permit federal agencies to provide additional leave for federal employees working in specified foreign areas. Agencies could grant up to 5 days of leave to those employees to recognize local holidays or to advance the diplomatic interests of the United States. Under the bill, agencies could also grant up to 20 days of leave for rest and recuperation to federal employees in combat zones or other areas with high levels of political violence or terrorism. Currently, agencies may provide administrative leave for those purposes, but the Administrative Leave Act of 2016 generally limits the amount to 10 days. Because final regulations implementing that law have not been issued, those limitations have not yet gone into effect.

The costs of the legislation, detailed in Table 1, largely fall within budget functions 050 (national defense) and 150 (international affairs).

For this estimate, CBO assumes that the leave provisions would take effect halfway through fiscal year 2020 and that the costs would increase each year because of anticipated inflation.

TABLE 1.—ESTIMATED INCREASES IN SPENDING SUBJECT TO APPROPRIATION UNDER S. 2169

	By fiscal year, millions of dollars—					
	2020	2021	2022	2023	2024	2020–2024
Leave for Overseas Holidays						
Estimated Authorization	7	15	16	16	17	71
Estimated Outlays	7	15	16	16	17	71
Leave for Rest and Recuperation						
Estimated Authorization	4	8	8	8	8	36
Estimated Outlays	4	8	8	8	8	36
Total Changes						
Estimated Authorization	11	23	24	24	25	107
Estimated Outlays	11	23	24	24	25	107

CBO estimates that the additional leave provided under the bill would cost a total of \$214 million between 2020 and 2024. Of that amount, \$142 million stems from the additional holiday leave provided to employees working abroad, with annual costs growing from \$14 million in 2020 to \$34 million in 2024. According to the Department of Defense (DoD), the Department of State, and the Office of Personnel Management (OPM), approximately 50,000 federal employees are working abroad at a daily cost of \$450 per employee, on average. Using information from those agencies, CBO estimates that roughly 25 percent of those employees would receive the additional leave. If agencies provided that leave to a larger proportion of employees, the costs associated with providing holiday leave would be greater.

CBO also estimates that the additional leave for rest and recuperation would cost \$72 million over the next five years, with annual costs rising from \$8 million in 2020 to \$16 million in 2024. Using information from DoD and OPM, CBO estimates that about 1,500 employees in combat zones would be granted on average an additional 15 days of leave each year. According to the Department of State, about 400 of its employees would receive an additional 20 days of leave each year.

The costs included in this estimate equal 50 percent of the total costs of implementing the bill's policies because on July 13, 2017, OPM published a notice of proposed rulemaking to limit the amount of administrative leave agencies may use as stipulated in the Administrative Leave Act of 2016.

CBO estimates that the other provisions of S. 2169 would not significantly affect the budget.

The CBO staff contact for this estimate is Dan Ready. The estimate was reviewed by 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 31—AUTHORITY FOR EMPLOYMENT

Subchapter I—Employment Authorities

* * * * *

SEC. 3116. EXPEDITED HIRING AUTHORITY FOR POST-SECONDARY STUDENTS; COMPETITIVE SERVICE

(a) * * *

* * * * *

(d) LIMITATION ON APPOINTMENTS.—

(1) IN GENERAL.—Except as provided in paragraph (2), the total number of students that the head of an agency may appoint under this section during a fiscal year may not exceed the number equal to 15 percent of the number of students that the agency head appointed during the previous fiscal year to a position [in the competitive service] at the GS-11 level, or an equivalent level, or below.

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Subpart E—Attendance and Leave

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CHAPTER 63—LEAVE

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Subchapter II—Other Paid Leave

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Table of Sections

Sec.						
6321.	* * *					
	*	*	*	*	*	*
6329d.	<i>Rest and recuperation leave</i>					
6329e.	<i>Foreign holiday leave</i>					
	*	*	*	*	*	*

SEC. 6329D. REST AND RECUPERATION LEAVE.

(a) DEFINITIONS.—In this section—

(1) the term “agency”—

- (A) means an Executive agency; and
 (B) does not include the Government Accountability Office;
- (2) the term “combat zone” means—
 (A) a geographic area designated by an Executive Order of the President as an area in which the Armed Forces are engaging or have engaged in combat;
 (B) an area designated by law to be treated as a combat zone; or
 (C) a location the Secretary of Defense has certified for combat zone tax benefits due to its direct support of military operations;
- (3) the term “employee” has the meaning given the term in section 6301;
- (4) the term “high risk, high threat post” has the meaning given the term in section 104 of the Omnibus Diplomatic Security and Antiterrorism Act of 1986 (22 U.S.C. 4803); and
- (5) the term “leave year” means the period beginning on the first day of the first complete pay period in a calendar year and ending on the day immediately before the first day of the first complete pay period in the following calendar year.
- (b) **LEAVE FOR REST AND RECUPERATION.**—
- (1) **IN GENERAL.**—During a leave year, the head of an agency may grant not more than 20 days of leave without loss of or reduction in pay, leave to which an employee is otherwise entitled under law, or credit for time or service to a civilian employee of the agency serving in a combat zone or other high risk, high threat post for the purposes of rest and recuperation.
- (2) **CONVERSION OF LEAVE PERIOD INTO HOURS.**—The 20 days of leave referred to in paragraph (1) shall be converted to 160 hours of leave for full-time employees and proportionally adjusted for employees with a part-time tour of duty or an uncommon tour of duty in which the hours for which leave may be charged are in excess of 80 hours in a biweekly pay period.
- (c) **DISCRETIONARY AUTHORITY OF AGENCY HEAD.**—
- (1) **IN GENERAL.**—Use of the authority under subsection (b) shall be at the sole and exclusive discretion of the head of the agency concerned.
- (2) **POLICIES.**—The head of an agency may prescribe agency-wide policies to govern the use of the authority under subsection (b) within the agency.
- (d) **RECORDS.**—An agency shall record leave provided under this section separately from leave authorized under any other provision of law.
- SEC. 6329E. FOREIGN HOLIDAY LEAVE.**
- (a) **DEFINITIONS.**—In this section—
- (1) the term “agency”—
 (A) means an Executive agency; and
 (B) does not include the Government Accountability Office;
- (2) the term “employee” has the meaning given that term in section 6301; and
- (3) the term “leave year” means the period beginning on the first day of the first complete pay period in a calendar year and

ending on the day immediately before the first day of the first complete pay period in the following calendar year.

(b) LEAVE FOR LOCAL HOLIDAYS OBSERVED IN FOREIGN AREAS.—During a leave year, the head of an agency may grant not more than 5 days of leave without loss of or reduction in pay, leave to which an employee is otherwise entitled under law, or credit for time or service to a civilian employee of the agency serving in a foreign area for local holidays observed in the foreign area—

(1) if the head of the agency determines that the conduct of business during the local holidays would be inconsistent with host-country practice or otherwise not in the best interest of the United States; or

(2) for such other reasons as the head of the agency determines necessary to advance the diplomatic interests of the United States.

(c) DISCRETIONARY AUTHORITY OF AGENCY HEAD.—

(1) IN GENERAL.—Use of the authority under subsection (b) shall be at the sole and exclusive discretion of the head of the agency concerned.

(2) POLICIES.—The head of an agency may prescribe agency-wide policies to govern the use of the authority under subsection (b) within the agency.

(d) RECORDS.—An agency shall record leave provided under this section separately from leave authorized under any other provision of law.

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