

115TH CONGRESS  
1ST SESSION

# S. 1896

To amend section 8331 of title 5, United States Code, and the Fair Labor Standards Act of 1938 to clarify the treatment of availability pay for Federal air marshals and criminal investigators of the Transportation Security Administration, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

SEPTEMBER 28, 2017

Mr. JOHNSON introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

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## A BILL

To amend section 8331 of title 5, United States Code, and the Fair Labor Standards Act of 1938 to clarify the treatment of availability pay for Federal air marshals and criminal investigators of the Transportation Security Administration, and for other purposes.

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 “TSA LEAP Pay Re-  
5 form Act of 2017”.

1 **SEC. 2. RETIREMENT-CREDITABLE BASIC PAY.**

2 (a) DEFINITION OF BASIC PAY.—Clause (ii) of sec-  
3 tion 8331(3)(E) of title 5, United States Code, is amended  
4 to read as follows:

5 “(ii) received after September 11,  
6 2001, by a Federal air marshal or criminal  
7 investigator (as defined in section  
8 5545a(a)(2)) of the Transportation Secu-  
9 rity Administration, subject to all restric-  
10 tions and earning limitations imposed on  
11 criminal investigators receiving such pay  
12 under section 5545a, including the pre-  
13 mium pay limitations under section  
14 5547;”.

15 (b) FAIR LABOR STANDARDS ACT EXEMPTION.—  
16 Section 13 of the Fair Labor Standards Act of 1938 (29  
17 U.S.C. 213) is amended—

18 (1) in subsection (a)(16)—

19 (A) by striking “is paid” and inserting “is  
20 entitled to”; and

21 (B) by inserting “, or a Federal air mar-  
22 shal or criminal investigator employed by the  
23 Administrator of the Transportation Security  
24 Administration who is entitled to such avail-  
25 ability pay, as described in section  
26 8331(3)(E)(ii) of such title (where entitlement

1 is determined before the application of any pre-  
2 mium pay limitation)” before the semicolon;  
3 and

4 (2) in subsection (b)(30)—

5 (A) by striking “is paid” and inserting “is  
6 entitled to”; and

7 (B) by inserting “, or a Federal air mar-  
8 shal or criminal investigator employed by the  
9 Administrator of the Transportation Security  
10 Administration who is entitled to such avail-  
11 ability pay, as described in section  
12 8331(3)(E)(ii) of such title (where entitlement  
13 is determined before the application of any pre-  
14 mium pay limitation)” before the period.

15 (c) EFFECTIVE DATE; APPLICABILITY.—

16 (1) IN GENERAL.—Subject to paragraph (2),  
17 this Act, and the amendments made by this Act,  
18 shall take effect on the first day of the first pay pe-  
19 riod commencing on or after the date of enactment  
20 of this Act.

21 (2) RETROACTIVE APPLICATION.—

22 (A) IN GENERAL.—Any availability pay re-  
23 ceived for any pay period commencing before  
24 the date of enactment of this Act by a Federal  
25 air marshal or criminal investigator employed

1 by the Transportation Security Administration  
2 shall be deemed basic pay under section  
3 8331(3) of title 5, United States Code, if the  
4 Transportation Security Administration treated  
5 such pay as retirement-creditable basic pay, but  
6 the Office of Personnel Management, based on  
7 an interpretation of section 8331(3) of title 5,  
8 United States Code, did not accept such pay as  
9 retirement-creditable basic pay.

10 (B) IMPLEMENTATION.—Not later than 3  
11 months after the date of enactment of this Act,  
12 the Director of the Office of Personnel Manage-  
13 ment shall commence taking such actions as are  
14 necessary to implement the amendments made  
15 by this section with respect to availability pay  
16 deemed to be basic pay under subparagraph  
17 (A).

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