

ALCOHOL AND TOBACCO TAX AND TRADE BUREAU  
PERSONNEL FLEXIBILITIES ACT

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JULY 16, 2013.—Committed to the Committee of the Whole House on the State of  
the Union and ordered to be printed

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Mr. ISSA, from the Committee on Oversight and Government  
Reform, submitted the following

R E P O R T

[To accompany H.R. 2067]

[Including cost estimate of the Congressional Budget Office]

The Committee on Oversight and Government Reform, to whom was referred the bill (H.R. 2067) to amend title 5, United States Code, to make permanent the authority of the Secretary of the Treasury to establish a separate compensation and performance management system with respect to persons holding critical scientific, technical, or professional positions within the Alcohol and Tobacco Tax and Trade Bureau, Department of the Treasury, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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## COMMITTEE STATEMENT AND VIEWS

## PURPOSE AND SUMMARY

In 1998, Congress granted the Treasury Department the authority to establish a three-year personnel management demonstration project in the FY1999 Omnibus Appropriations Act.

The demonstration project's authority expired on October 20, 2012. Until President Obama's FY 2014 budget request, the Alcohol and Tobacco Tax and Trade Bureau (TTB) of the Department of the Treasury had asked for the continuation of this authority in its own budget justification. The President's FY 14 budget did not support extending the demonstration project. Instead, the budget states the Administration would "allow" TTB to petition the Office of Personnel Management (OPM) for authorization of a new demonstration project.

Moving legislation to grant TTB permanent authority for the demonstration project is consistent with the Committee's effort to strengthen the link between federal worker pay and performance.

## BACKGROUND AND NEED FOR LEGISLATION

H.R. 2067, the Alcohol and Tobacco Tax and Trade Bureau Personnel Flexibilities Act, would make permanent a performance-based compensation system for the scientific and technical employees of the Alcohol and Tobacco Tax and Trade Bureau (TTB) of the Department of the Treasury.

## LEGISLATIVE HISTORY

In 1998, Congress granted the Treasury Department the authority to establish a three-year personnel management demonstration project in the FY1999 Omnibus Appropriations Act (P.L. 105-119).

In 2002, authority for the demonstration project was split between the new Alcohol and Tobacco Tax and Trade Bureau (TTB) and the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) by direction of the Homeland Security Act. TTB has received authorization to extend its pilot annually since FY2004 through the appropriations process because of the program's success and employee satisfaction. The program's authority expired in October 2012 when the current continuing resolution failed to include language extending it.

## SECTION-BY-SECTION

*Section 1. Short title*

This Act may be cited as the "Alcohol and Tobacco Tax and Trade Bureau Personnel Flexibilities Act."

*Section 2. Alcohol and Tobacco Tax and Trade Bureau*

This section adds a new chapter to Title 5, U.S.C: "Chapter 96—Alcohol and Tobacco Tax and Trade Bureau".

It establishes a compensation and performance management system using criteria the Secretary of the Treasury deems appropriate for employees holding critical scientific, technical, or professional positions within the Alcohol and Tobacco Tax and Trade Bureau (TTB).

The total number of covered positions under this compensation and performance management system may not exceed the number equal to 50 percent of the total full time employees within TTB.

The Secretary of the Treasury is required to consult with the Director of the Office of Personnel Management (OPM) in using the authority to establish this system. It does not require agreement; it merely means TTB should share its plans for continuing the demo with OPM as it moves forward, allowing OPM the opportunity to comment as appropriate.

Nothing in this Act may provide for a waiver of employees' rights as it relates to merit system principles. The system established under this Act shall be consistent with collective bargaining agreements and rights.

The Act also limits the level of compensation to ensure it does not exceed level III of the Executive Schedule.

It requires managers have at least three levels of performance review for employees.

Finally, it ensures that nothing in the Act would preclude the Bureau from using an existing system that has already been in effect so long as it complies with the requirements of this Act.

The compensation and performance management system excludes senior executives or an employee in the Senior Executive Service.

### *Section 3. Study*

This section requires the Government Accountability Office to issue a report to Congress on the operation of the system established in this Act, as well as the operation of ongoing demonstration projects relating to a performance-based compensation system no later than one year from enactment.

### EXPLANATION OF AMENDMENTS

No amendments to H.R. 2067 were offered.

### COMMITTEE CONSIDERATION

On May 22, 2013, the Committee met in open session and ordered reported favorably the bill, H.R. 2067, by voice vote, a quorum being present.

### APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104–1 requires a description of the application of this bill to the legislative branch where the bill relates to the terms and conditions of employment or access to public services and accommodations. This bill establishes a compensation and performance management system using criteria the Secretary of the Treasury deems appropriate for employees holding critical scientific, technical, or professional positions within the Alcohol and Tobacco Tax and Trade Bureau (TTB). Legislative branch employees and their families, to the extent that they are otherwise eligible for the benefits provided by this legislation, have equal access to its benefits.

#### STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE

In compliance with clause 3(c)(1) of rule XIII and clause (2)(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the descriptive portions of this report.

#### STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee's performance goals and objectives are reflected in the descriptive portions of this report.

#### DUPLICATION OF FEDERAL PROGRAMS

No provision of H.R. 2067 establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

#### DISCLOSURE OF DIRECTED RULE MAKINGS

The Committee estimates that enacting H.R. 2067 does not direct the completion of any specific rule makings within the meaning of 5 U.S.C. 551.

#### FEDERAL ADVISORY COMMITTEE ACT

The Committee finds that the legislation does not establish or authorize the establishment of an advisory committee within the definition of 5 U.S.C. App., Section 5(b).

#### UNFUNDED MANDATE STATEMENT

Section 423 of the Congressional Budget and Impoundment Control Act (as amended by Section 101(a)(2) of the Unfunded Mandate Reform Act, P.L. 104-4) requires a statement as to whether the provisions of the report include unfunded mandates. In compliance with this requirement the Committee has received a letter from the Congressional Budget Office included herein.

#### EARMARK IDENTIFICATION

H.R. 2067 does not include any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of Rule XXI.

#### COMMITTEE ESTIMATE

Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs that would be incurred in carrying out H.R. 2067. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act.

BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE COST  
ESTIMATE

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause (3)(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.R. 2067 from the Director of Congressional Budget Office:

JULY 9, 2013.

Hon. DARRELL ISSA,  
*Chairman, Committee on Oversight and Government Affairs and  
Government Reform, House of Representatives, Washington,  
DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2067, the Alcohol and Tobacco Tax and Trade Bureau Personnel Flexibilities Act.

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

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

*H.R. 2067—Alcohol and Tobacco Tax and Trade Bureau Personnel  
Flexibilities Act*

Summary: H.R. 2067 would permanently authorize the Secretary of the Treasury to establish a separate compensation and performance management system for certain employees in scientific, technical, or professional positions within the Alcohol and Tobacco Tax and Trade Bureau (TBB). It also would require the Government Accountability Office (GAO) to submit a report to the Congress analyzing the effectiveness of the system. CBO estimates that implementing this bill would cost about \$5 million over the 2014–2018 period, assuming appropriations of the necessary amounts. Pay-as-you-go procedures do not apply to this legislation because it would not affect direct spending or revenues.

H.R. 2067 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 impact of H.R. 2067 is shown in the following table. The costs of this legislation fall within budget function 800 (general government).

|                                              | By fiscal year, in millions of dollars— |      |      |      |      |               |
|----------------------------------------------|-----------------------------------------|------|------|------|------|---------------|
|                                              | 2014                                    | 2015 | 2016 | 2017 | 2018 | 2014–<br>2018 |
| CHANGES IN SPENDING SUBJECT TO APPROPRIATION |                                         |      |      |      |      |               |
| Estimated Authorization Level .....          | 1                                       | 1    | 1    | 1    | 1    | 5             |
| Estimated Outlays .....                      | 1                                       | 1    | 1    | 1    | 1    | 5             |

Basis of estimate: For this estimate, CBO assumes that H.R. 2067 will be enacted late in 2013, and that appropriations will be provided as estimated.

Currently, 123 employees at the TBB are under an alternative pay system in which their yearly pay raises are tied to their performance ratings. Those participants, who are mostly chemists and auditors, are eligible to receive both merit increases (until they reach the top of their pay band) and bonuses. Authority for those employees to participate in the performance-based system expires at the end of fiscal year 2013.

Based on information from the TBB, CBO anticipates that the bureau would implement H.R. 2067 by making this existing system permanent (rather than by creating a new performance-based pay system). We also expect that the number of eligible employees would remain roughly the same. Under the current performance-based system, compensation would probably increase more quickly than it would under the General Schedule, and many employees could be paid bonuses in excess of what they would otherwise be eligible to receive. As a result, based on information provided by the TBB about the salaries of employees currently in the performance-based system, CBO estimates that implementing H.R. 2067 would cost \$5 million over the 2014–2018 period, assuming appropriation of the necessary amounts.

The bill also would require GAO to submit a report, within one year of the establishment of TBB's permanent compensation system, that evaluates the system and other demonstration projects. CBO estimates that that reporting requirement would cost less than \$500,000 in 2015.

Pay-As-You-Go considerations: None.

Intergovernmental and private-sector impact: H.R. 2067 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

Estimate prepared by: Federal costs: Santiago Vallinas; Impact on state, local, and tribal governments: Elizabeth Cove Delisle; Impact on the private sector: Paige Piper/Bach.

Estimate approved by: Theresa Gullo, Deputy Assistant Director for Budget Analysis.

#### CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in *italic* and existing law in which no change is proposed is shown in roman):

## TITLE 5, UNITED STATES CODE

\* \* \* \* \*

## PART III—EMPLOYEES

|       |   |   |   |   |   |   |   |      |
|-------|---|---|---|---|---|---|---|------|
| Chap. | * | * | * | * | * | * | * | Sec. |
|-------|---|---|---|---|---|---|---|------|

## Subpart I—Miscellaneous

|                                                                            |      |
|----------------------------------------------------------------------------|------|
| 95. Personnel flexibilities relating to the Internal Revenue Service ..... | 9501 |
| 96. Alcohol and Tobacco Tax and Trade Bureau .....                         | 9601 |

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## SUBPART I—MISCELLANEOUS

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## CHAPTER 96—ALCOHOL AND TOBACCO TAX AND TRADE BUREAU

9601. Definitions; applicability.

9602. Compensation and performance management system.

**§ 9601. Definitions; applicability**

(a) DEFINITIONS.—For purposes of this chapter—

(1) the term “Secretary” means the Secretary of the Treasury;

(2) the term “Bureau” means the Alcohol and Tobacco Tax and Trade Bureau, Department of the Treasury; and

(3) the terms “senior executive” and “Senior Executive Service position” have the respective meanings given them in section 3132(a).

(b) APPLICABILITY.—A compensation and performance management system established under section 9602 shall not cover, and nothing in any such system shall be considered to apply with respect to, a senior executive or a Senior Executive Service position.

**§ 9602. Compensation and performance management system**

(a) ESTABLISHMENT.—

(1) IN GENERAL.—The Secretary shall establish a system, applying such criteria and procedures as the Secretary considers appropriate, which shall govern the compensation and performance management of any number of employees holding critical scientific, technical, or professional positions in the Bureau.

(2) AUTHORITY.—Subject to the provisions of this chapter—

(A) the establishment of a compensation and performance management system under this section shall not be limited by any lack of specific authority under this title to take the action contemplated, or by any provision of this title or any rule or regulation prescribed under this title which is inconsistent with the action; and

(B) the total number of positions covered by the system or systems established under authority of this section (determined on a full-time equivalent basis) may not at any time

*exceed the number equal to 50 percent of the total number of positions within the Bureau (so determined).*

(3) *CONSULTATION.—The Secretary shall consult with the Director of the Office of Personnel Management in the exercise of any authority under this section.*

(b) *NONWAIVABLE PROVISIONS; COLLABORATION.—A compensation and performance management system established under this section—*

*(1) may not provide for a waiver of any provision of law, rule, or regulation identified in section 4703(c); and*

*(2) shall be established and implemented in a manner consistent with subsections (f) and (g) of section 4703.*

(c) *LIMITATIONS ON COMPENSATION.—Except as otherwise provided by law—*

*(1) no employee compensated under a system established under this section may be paid at a rate of basic pay in excess of the rate payable for level III of the Executive Schedule under section 5314; and*

*(2) total payments made to employees under a system so established shall be subject to any limitation on payments under section 5307, to the same extent and in the same manner as would apply in the case of employees paid under section 5376.*

(d) *LEVELS OF PERFORMANCE.—A system established under this section shall have not less than 2 levels of performance above a retention standard.*

(e) *DISCLOSURE OF INFORMATION.—The Secretary of the Treasury, on request of the Director of the Office of Personnel Management, shall furnish information relating to the operation of any compensation and performance management system established under this section.*