CONGRESSIONAL BUDGET OFFICE
COST ESTIMATE

September 4, 2018

S. 1896
TSA LEAP Pay Reform Act of 2017

As ordered reported by the Senate Committee on Commerce, Science, and Transportation on June 27, 2018

SUMMARY

S. 1896 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 and 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. 1896 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 that enacting S. 1896 would increase direct spending by $12 million over the 2019-2028 period. The largest components of that increase are higher retirement benefit payments for current and future retirees and the loss of the expected recovery of overpayments from retirees who have been receiving annuities higher than current law allows. The bill also would increase revenues by $1 million in 2020.

Because enacting S. 1896 would affect direct spending and revenues, pay-as-you-go procedures apply.

CBO estimates that enacting S. 1896 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. 1896 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 effect of S. 1896 is shown in the following table. The costs of the legislation fall within budget function 600 (income security).

	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													
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
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	1	*	1	1	1	1	1	1	1	1	5	11

Components do not sum to totals because of rounding; * = between zero and $500,000.

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 investigators 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 all 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.)

BASIS OF ESTIMATE

Enacting S. 1896 would eliminate the need to recalculate benefits and refund contributions. The bill also 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. 1896 would increase direct spending by authorizing the use of salaries in excess of the cap in the calculation of retirement annuities for affected retirees and employees. That increase would be partially offset by increased revenues from the cancellation of refunds of employee retirement contributions that are expected under current law.

Retirement Annuities

Using data provided by TSA, CBO estimates that enacting S. 1896 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. 1896 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. 1896 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. 1896 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. 1896 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.

CBO Estimate of Pay-As-You-Go Effects for S. 1896, the TSA LEAP Pay Reform Act of 2017, as Ordered Reported by the Senate Committee on Commerce, Science, and Transportation on June 27, 2018.

	By Fiscal Year, in Millions of Dollars												
	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2018-2023	2018-2028
NET INCREASE IN THE DEFICIT													
Statutory Pay-As-You-Go Effect	0	1	0	1	1	1	1	1	1	1	1	5	11
Memorandum:													
Changes in Outlays	0	1	1	1	1	1	1	1	1	1	1	6	12
Changes in Revenues	0	0	1	0	0	0	0	0	0	0	0	1	1

INCREASE IN LONG-TERM DIRECT SPENDING AND DEFICITS

CBO estimates that enacting S. 1896 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.

MANDATES

S. 1896 contains no intergovernmental or private-sector mandates as defined in UMRA.

PREVIOUS ESTIMATE

On August 29, 2018, CBO transmitted an estimate for S. 1888, the Voluntary Separation Incentive Payment Adjustment Act of 2017, as ordered reported by the Senate Committee on Homeland Security and Governmental Affairs on October 4, 2017. The provisions related to LEAP in that bill are similar to those in S. 1896 and the estimated budgetary effects are the same.

ESTIMATE PREPARED BY

Federal Costs: Amber G. Marcellino
Mandates: Jon Sperl

ESTIMATE REVIEWED BY

Christina Hawley Anthony
Chief, Projections Unit

H. Samuel Papenfuss
Deputy Assistant Director for Budget Analysis