119TH CONGRESS		
1st Session	5.	

To enhance the security operations of the Transportation Security Administration and stability of the transportation security workforce by applying the personnel system under title 5, United States Code, to employees of the Transportation Security Administration, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr.	SCHATZ	introduced	the following	bill;	which	was	read	twice	and	referre	d
		to the Co	ommittee on $_{-}$								

A BILL

- To enhance the security operations of the Transportation Security Administration and stability of the transportation security workforce by applying the personnel system under title 5, United States Code, to employees 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.
 - This Act may be cited as the "Rights for the Trans-
 - 5 portation Security Administration Workforce Act" or the
 - 6 "Rights for the TSA Workforce Act".

1	SEC. 2. DEFINITIONS.
-	DEC. Z. DEI II (III OI (D.

2	In this Act—
3	(1) the term "2022 Determination" means the
4	publication, entitled "Determination on Transpor-
5	tation Security Officers and Collective Bargaining",
6	issued on December 30, 2022, by Administrator
7	David P. Pekoske, as modified, or any superseding
8	subsequent determination;
9	(2) the term "adjusted basic pay" means—
10	(A) the rate of pay fixed by law or admin-
11	istrative action for a position occupied by a cov-
12	ered employee before any deductions; and
13	(B) any regular, fixed supplemental pay-
14	ment for non-overtime hours of work creditable
15	as basic pay for retirement purposes, including
16	any applicable locality payment and any special
17	rate supplement;
18	(3) the term "Administration" means the
19	Transportation Security Administration;
20	(4) the term "Administrator" means the Ad-
21	ministrator of the Administration;
22	(5) the term "appropriate congressional com-
23	mittees" means—
24	(A) the Committee on Commerce, Science,
25	and Transportation of the Senate;

1	(B) the Committee on Homeland Security
2	and Governmental Affairs of the Senate;
3	(C) the Committee on Homeland Security
4	of the House of Representatives; and
5	(D) the Committee on Oversight and Gov-
6	ernment Reform of the House of Representa-
7	tives;
8	(6) the term "conversion date" means the date
9	on which subparagraphs (A) through (F) of section
10	3(c)(1) take effect;
11	(7) the term "covered employee" means an em-
12	ployee who occupies a covered position;
13	(8) the term "covered position" means a posi-
14	tion within the Administration;
15	(9) the term "employee" has the meaning given
16	the term in section 2105 of title 5, United States
17	Code;
18	(10) the term "screening agent" means a full-
19	or part-time non-supervisory covered employee car-
20	rying out screening functions under section 44901 of
21	title 49, United States Code;
22	(11) the term "Secretary" means the Secretary
23	of Homeland Security; and

(12) the term "TSA personnel management
system" means any personnel management system
established or modified under—
(A) section 111(d) of the Aviation and
Transportation Security Act (49 U.S.C. 44935
note); or
(B) section 114(n) of title 49, United
States Code.
SEC. 3. CONVERSION OF TSA PERSONNEL.
(a) Restrictions on Certain Personnel Au-
THORITIES.—
(1) IN GENERAL.—Notwithstanding any other
provision of law, effective as of the date of enact-
ment of this Act—
(A) any TSA personnel management sys-
tem in use for covered employees and covered
positions on the day before that date of enact-
ment, and any personnel management policy,
letter, guideline, or directive of the Administra-
tion in effect on that day, may not be modified;
(B) no personnel management policy, let-
ter, guideline, or directive of the Administration
that was not established before that date issued
pursuant to section 111(d) of the Aviation and
Transportation Security Act (49 U.S.C. 44935

1	note) or section 114(n) of title 49, United
2	States Code, may be established; and
3	(C) any authority to establish or adjust a
4	human resources management system under
5	chapter 97 of title 5, United States Code, shall
6	terminate with respect to covered employees
7	and covered positions.
8	(2) Exceptions.—
9	(A) Pay.—Notwithstanding paragraph
10	(1)(A), the limitation in that paragraph shall
11	not apply to any personnel management policy,
12	letter, guideline, or directive of the Administra-
13	tion relating to annual adjustments to pay
14	schedules and locality-based comparability pay-
15	ments in order to maintain parity with those
16	adjustments authorized under sections 5303,
17	5304, 5304a, and 5318 of title 5, United States
18	Code.
19	(B) Additional policy.—Notwith-
20	standing paragraph (1)(B), new personnel man-
21	agement policy of the Administration may be
22	issued if—
23	(i) that policy is needed to resolve a
24	matter not specifically addressed in policy

1	in effect on the date of enactment of this
2	Act; and
3	(ii) the Secretary provides that policy,
4	with an explanation of the necessity of that
5	policy, to the appropriate congressional
6	committees not later than 7 days after the
7	date on which the policy is issued.
8	(C) Emerging threats to transpor-
9	TATION SECURITY DURING TRANSITION PE-
10	RIOD.—
11	(i) In General.—Notwithstanding
12	paragraph (1), any personnel management
13	policy, letter, guideline, or directive of the
14	Administration relating to an emerging
15	threat to transportation security, including
16	national emergencies or disasters and pub-
17	lic health threats to transportation secu-
18	rity, may be modified or established until
19	the conversion date.
20	(ii) Submission to congress.—Not
21	later than 7 days after the date on which
22	any personnel management policy, letter
23	guideline, or directive of the Administra-
24	tion is modified or established under clause
25	(i), the Secretary shall provide to the ap-

1	propriate congressional committees that es-
2	tablished or modified policy, letter, guide-
3	line, or directive, as applicable, which shall
4	contain an explanation of the necessity of
5	that establishment or modification.
6	(b) Personnel Authorities During Transition
7	Period.—Any TSA personnel management system in use
8	for covered employees and covered positions on the day
9	before the date of enactment of this Act, and any per-
10	sonnel management policy, letter, guideline, or directive
11	of the Administration in effect on the day before the date
12	of enactment of this Act, shall remain in effect until the
13	conversion date.
14	(e) Transition to Title 5.—
15	(1) In general.—Except as provided in para-
16	graph (2), effective beginning on a date determined
17	by the Secretary, but in no event later than Decem-
18	ber 31, 2025—
19	(A) all TSA personnel management sys-
20	tems shall cease to be in effect;
21	(B) section 114(n) of title 49, United
22	States Code, is repealed;
23	(C) section 111(d) of the Aviation and
24	Transportation Security Act (Public Law 107–
25	71; 49 U.S.C. 44935 note) is repealed;

1	(D) any personnel management policy, let-
2	ter, guideline, or directive of the Administra-
3	tion, including the 2022 Determination, shall
4	cease to be effective;
5	(E) any human resources management sys-
6	tem established or adjusted under chapter 97 of
7	title 5, United States Code, with respect to cov-
8	ered employees or covered positions shall cease
9	to be effective; and
10	(F) covered employees and covered posi-
11	tions shall be subject to the provisions of title
12	5, United States Code.
13	(2) Chapters 71 and 77 of title 5.—Not
14	later than 90 days after the date of enactment of
15	this Act—
16	(A) chapters 71 and 77 of title 5, United
17	States Code, shall apply to covered employees
18	carrying out screening functions pursuant to
19	section 44901 of title 49, United States Code;
20	and
21	(B) any policy, letter, guideline, or direc-
22	tive issued under section 111(d) of the Aviation
23	and Transportation Security Act (49 U.S.C.
24	44935 note) relating to matters otherwise cov-

1	ered by chapter 71 or 77 of title 5, United
2	States Code, shall cease to be in effect.
3	(3) Assistance of other agencies.—Not
4	later than 180 days after the date of enactment of
5	this Act, or December 31, 2025, whichever is ear-
6	lier—
7	(A) the Director of the Office of Personnel
8	Management shall establish a position series
9	and classification standard for the positions of
10	Transportation Security Officer, Federal air
11	marshal, Transportation Security Inspector,
12	and other positions requested by the Adminis-
13	trator; and
14	(B) the National Finance Center of the
15	Department of Agriculture shall make nec-
16	essary changes to Financial Management Serv-
17	ices and Human Resources Management Serv-
18	ices to ensure payroll, leave, and other per-
19	sonnel processing systems for covered employees
20	are consistent with chapter 53 of title 5, United
21	States Code, and provide functions as needed to
22	implement this Act.
23	(d) Safeguards on Grievances and Appeals.—
24	(1) In general.—Each covered employee with
25	a grievance or appeal pending within the Adminis-

tration on the date of enactment of this Act, or initiated during the 90-day period beginning on the date of enactment of this Act, may have that grievance or appeal removed to proceedings pursuant to title 5. United States Code, or continued within TSA.

- (2) AUTHORITY.—With respect to any grievance or appeal continued within the Administration under paragraph (1), the Administrator may consider and finally adjudicate that grievance or appeal notwithstanding any other provision of this Act.
- (3) PRESERVATION OF RIGHTS.—Notwithstanding any other provision of law, any appeal or grievance continued under this subsection that is not finally adjudicated under paragraph (2) shall be preserved and all timelines tolled until the rights afforded by application of chapters 71 and 77 of title 5, United States Code, are made available under subsection (c)(2).

19 SEC. 4. TRANSITION RULES.

- 20 (a) Nonreduction in Pay and Compensation.—
- 21 Under such pay conversion rules as the Secretary may pre-
- 22 scribe to carry out this Act, a covered employee converted
- 23 from a TSA personnel management system to the provi-
- 24 sions of title 5, United States Code, under section
- 25 3(c)(1)(F)—

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(1) may not be subject to any reduction in either the rate of adjusted basic pay payable or law enforcement availability pay payable to that covered employee; and

(2) shall be credited for years of service in a specific pay band under a TSA personnel management system as if the covered employee had served in an equivalent General Schedule position at the same grade, for purposes of determining the appropriate step within a grade at which to establish the converted rate of pay of the covered employee.

(b) Retirement Pay.—

- (1) IN GENERAL.—Not later than 90 days after the date of enactment of this Act, the Secretary shall submit to the appropriate congressional committees a proposal, including proposed legislative changes if needed, for determining the average pay of any covered employee who retires not later than 3 years after the conversion date for purposes of calculating the retirement annuity of the covered employee.
- (2) REQUIREMENTS.—The proposal required under paragraph (1) shall be structured in a manner that—

1	(A) is consistent with title 5, United States
2	Code; and
3	(B) appropriately accounts for the service
4	of a covered employee to which the proposal ap-
5	plies, and the annual rate of basic pay of such
6	a covered employee, following the conversion
7	date.
8	(c) Limitation on Premium Pay.—
9	(1) In General.—Notwithstanding section
10	5547 of title 5, United States Code, or any other
11	provision of law, a Federal air marshal or criminal
12	investigator who is appointed to that position before
13	the date of enactment of this Act may be eligible for
14	premium pay up to the maximum level allowed by
15	the Administrator before the date of enactment of
16	this Act.
17	(2) OPM RECOGNITION.—The Director of the
18	Office of Personnel Management shall recognize pre-
19	mium pay paid pursuant to paragraph (1) as fully
20	creditable for the purposes of calculating pay and re-
21	tirement benefits.
22	(d) Preservation of Law Enforcement Avail-
23	ABILITY PAY AND OVERTIME PAY RATES FOR FEDERAL
24	Air Marshals.—

1	(1) LEAP.—Section 5545a of title 5, United			
2	States Code, is amended—			
3	(A) in subsection (a)(2), in the matter pre-			
4	ceding subparagraph (A), by striking "sub-			
5	section (k)" and inserting "subsection (l)";			
6	(B) by redesignating subsection (k) as sub-			
7	section (l); and			
8	(C) by inserting after subsection (j) the			
9	following:			
10	"(k) The provisions of subsections (a) through (h)			
11	providing for availability pay shall apply to any Federal			
12	air marshal who is an employee of the Transportation Se-			
13	curity Administration.".			
14	(2) Overtime.—Section 5542 of title 5, United			
15	States Code, is amended by adding at the end the			
16	following:			
17	"(i) Notwithstanding any other provision of law, a			
18	Federal air marshal who is an employee of the Transpor-			
19	tation Security Administration shall receive overtime pay			
20	under this section, at such a rate and in such a manner			
21	so that such Federal air marshal does not receive less			
22	overtime pay than such Federal air marshal would receive			
23	were that Federal air marshal subject to the overtime pay			
24	provisions of section 7 of the Fair Labor Standards Act			
25	of 1938 (29 U.S.C. 207).".			

1 (3) Effective date.—The amendments made 2 by paragraphs (1) and (2) shall apply beginning on 3 the conversion date. 4 (e) COLLECTIVE BARGAINING UNIT.—Notwith-5 standing section 7112 of title 5, United States Code, following the application of chapter 71 of that title pursuant 6 to section 3(c)(2) of this Act, screening agents shall re-8 main eligible to form a collective bargaining unit. 9 (f) Preservation of Other Rights.—The Sec-10 retary shall take any actions necessary to ensure that the following rights are preserved and available for each cov-11 12 ered employee beginning on the conversion date, and for 13 any covered employee appointed after the conversion date, 14 and continue to remain available to covered employees 15 after the conversion date: 16 (1) Any annual leave, sick leave, or other paid 17 leave accrued, accumulated, or otherwise available to 18 a covered employee immediately before the conver-19 sion date shall remain available to the covered em-20 ployee until used, subject to any limitation on accu-21 mulated leave under chapter 63 of title 5, United 22 States Code. 23 (2) Part-time screening agents pay premiums 24 under chapter 89 of title 5, United States Code, on 25 the same basis as full-time covered employees.

1	(3) Notwithstanding section 6329a of title 5,
2	United States Code, covered employees are provided
3	appropriate leave during national emergencies to as-
4	sist the covered employees and ensure the Adminis-
5	tration meets mission requirements.
6	(4) Eligible screening agents receive a split-shift
7	differential for regularly scheduled split-shift work
8	as well as regularly scheduled overtime and irregular
9	and occasional split-shift work.
10	(5) Notwithstanding sections subsections (c),
11	(e), and (f) of section 5754 of title 5, United States
12	Code, eligible covered employees receive group reten-
13	tion incentives, as appropriate.
14	SEC. 5. CONSULTATION REQUIREMENT.
15	(a) Exclusive Representative.—
16	(1) In general.—
17	(A) APPLICATION.—Beginning on the date
18	that chapter 71 of title 5, United States Code
19	(referred to in this subsection as "chapter 71"),
20	begins to apply to covered employees under sec-
21	tion 3(c)(2), the labor organization certified by
22	the Federal Labor Relations Authority on June
23	29, 2011, or any successor labor organization,
24	shall be treated as the exclusive representative
25	of screening agents and shall be the exclusive

1	representative for screening agents under chap-
2	ter 71, with full rights under chapter 71.
3	(B) Rule of Construction.—Nothing in
4	this subsection may be construed to prevent
5	covered employees from selecting an exclusive
6	representative other than the labor organization
7	described in paragraph (1) for purposes of col-
8	lective bargaining under chapter 71.
9	(2) National Level.—
10	(A) In General.—Notwithstanding any
11	provision of chapter 71, collective bargaining
12	for any unit of covered employees shall occur at
13	the national level, but may be supplemented by
14	local level bargaining and local level agreements
15	in furtherance of elements of a national agree-
16	ment or on issues of any local unit of covered
17	employees not otherwise covered by a national
18	agreement.
19	(B) MUTUAL CONSENT REQUIRED.—Local-
20	level bargaining and local-level agreements de-
21	scribed in subparagraph (A) shall occur only by
22	mutual consent of the exclusive representative
23	of screening agents and the Federal Security
24	Director (or a designee of such an official) of

those screening agents.

(3) Current agreement.—Any collective bargaining agreement covering such personnel in effect on the date of enactment of this Act shall remain in effect until a collective bargaining agreement is entered into under chapter 71, unless the Administrator and exclusive representative mutually agree to revisions to such an agreement.

(b) Consultation Process.—

- (1) IN GENERAL.—Not later than 7 days after the date of enactment of this Act, the Secretary shall consult with the exclusive representative for the screening agents described in subsection (a)(1) under chapter 71 of title 5, United States Code, on the formulation of plans and deadlines to carry out the conversion, under this Act, of those screening agents.
- (2) Written Plans.—Before the date that chapter 71 of title 5, United States Code, begins to apply under section 3(c)(2), the Secretary shall provide (in writing) to the exclusive representative described in paragraph (1) the plans for how the Secretary intends to carry out the conversion of covered employees under this Act, including with respect to such matters as—
 - (A) the anticipated conversion date; and

1	(B) measures to ensure compliance with
2	sections 3 and 4.
3	(c) Required Agency Response.—If any views or
4	recommendations are presented under subsection (b) by
5	the exclusive representative described in that subsection,
6	the Secretary shall—
7	(1) consider the views or recommendations be-
8	fore taking final action on any matter with respect
9	to which the views or recommendations are pre-
10	sented; and
11	(2) provide the exclusive representative a writ-
12	ten statement of the reasons for the final actions to
13	be taken.
14	SEC. 6. NO RIGHT TO STRIKE.
15	Nothing in this Act may be considered—
16	(1) to repeal or otherwise affect—
17	1
17	(A) section 1918 of title 18, United States
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	(A) section 1918 of title 18, United States
18	(A) section 1918 of title 18, United States Code (relating to disloyalty and asserting the
18 19	(A) section 1918 of title 18, United States Code (relating to disloyalty and asserting the right to strike against the Government); or
18 19 20	(A) section 1918 of title 18, United States Code (relating to disloyalty and asserting the right to strike against the Government); or (B) section 7311 of title 5, United States
18 19 20 21	 (A) section 1918 of title 18, United States Code (relating to disloyalty and asserting the right to strike against the Government); or (B) section 7311 of title 5, United States Code (relating to loyalty and striking); or

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	SEC.	7.	PROPOSAL	\mathbf{ON}	HIRING	AND	CONTRACTING	BACK-

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7	CDOIND CHECK DECHIDEMENTS
Z	GROUND CHECK REQUIREMENTS.

- Not later than 1 year after the date of enactment
- 4 of this Act, the Secretary shall submit to the appropriate
- 5 congressional committees a plan to harmonize and update,
- 6 for the purposes of making appointments and for author-
- 7 izing or entering into any contract for service, the restric-
- 8 tions under section 70105(c) of title 46, United States
- 9 Code, (relating to the issuance of transportation security
- 10 cards) and section 44936 of title 49, United States Code,
- 11 (relating to employment investigations and restrictions).

12 SEC. 8. COMPTROLLER GENERAL REVIEWS.

13 (a) Review of Recruitment.—

of such members.

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- 14 (1) IN GENERAL.—Not later than 1 year after
 15 the date of enactment of this Act, the Comptroller
 16 General of the United States shall submit to Con17 gress a report on the efforts of the Administration
 18 regarding recruitment, including recruitment efforts
 19 relating to veterans, the dependents of veterans,
 20 members of the Armed Forces, and the dependents
 - (2) Recruitment.—The report required under paragraph (1) shall include recommendations regarding how the Administration may improve the recruitment efforts described in that paragraph.

1	(b) REVIEW OF IMPLEMENTATION.—The Comptroller
2	General of the United States shall—
3	(1) not later than 60 days after the conversion
4	date, commence a review of the implementation of
5	this Act; and
6	(2) not later than 1 year after the conversion
7	date, submit to Congress a report on the review con-
8	ducted under paragraph (1).
9	(e) REVIEW OF PROMOTION POLICIES AND LEADER-
10	SHIP DIVERSITY.—Not later than 1 year after the date
11	of enactment of this Act, the Comptroller General of the
12	United States shall submit to Congress a report—
13	(1) on the efforts of the Administration to en-
14	sure that recruitment, appointment, promotion, and
15	advancement opportunities within the Administra-
16	tion are equitable and provide for demographics
17	among senior leadership that are reflective of the
18	workforce demographics of the United States; and
19	(2) that, to the extent possible, includes—
20	(A) an overview and analysis of the current
21	(as of the date on which the report is sub-
22	mitted) demographics of the leadership of the
23	Administration; and
24	(B) as appropriate, recommendations to
25	improve appointment and promotion procedures

1	and diversity in leadership roles, which may in-
2	clude recommendations for how the Administra-
3	tion can better promote from within the Admin-
4	istration and retain and advance covered em-
5	ployees.
6	(d) REVIEW OF HARASSMENT AND ASSAULT POLI-
7	CIES AND PROTECTIONS.—
8	(1) IN GENERAL.—Not later than 1 year after
9	the date of enactment of this Act, the Comptroller
10	General of the United States shall submit to Con-
11	gress a report on the efforts of the Administration
12	to ensure the safety of the staff of the Administra-
13	tion with respect to harassment and assault in the
14	workplace, such as incidents—
15	(A) of sexual harassment and violence and
16	harassment and violence motivated by the per-
17	ceived race, ethnicity, religion, gender identity,
18	or sexuality of an individual; and
19	(B) in which the alleged perpetrator is a
20	member of the general public.
21	(2) Inclusions.—The report required under
22	paragraph (1) shall include—
23	(A) an overview and analysis of the current
24	(as of the date on which the report is sub-

1	mitted) policies and response procedures of the
2	Administration;
3	(B) a detailed description of if, when, and
4	how the policies described in subparagraph (A)
5	fail to adequately protect covered employees
6	and
7	(C) as appropriate, recommendations for
8	steps the Administration can take to better pro-
9	tect covered employees from harassment and vi-
10	olence in the workplace.
11	(3) Opportunity for comment.—In con-
12	ducting the review required under this subsection
13	the Comptroller General of the United States shall
14	provide opportunities for covered employees of all
15	levels and positions, and labor organizations and as-
16	sociations representing those covered employees, to
17	submit comments, including in an anonymous form
18	and take those comments into account in the final
19	recommendations of the Comptroller General.
20	SEC. 9. SENSE OF CONGRESS.
21	It is the sense of Congress that—
22	(1) TSA personnel management systems pro-
23	vide insufficient benefits and workplace protections
24	to the workforce that secures the transportation sys-
25	tems of the United States;

1	(2) covered employees should be provided pro
2	tections and benefits under title 5, United States
3	Code; and
4	(3) the provision of the protections and benefits
5	described in paragraph (2) should not result in a re
6	duction of pay or benefits to current covered employ
7	ees.
8	SEC. 10. ASSISTANCE FOR FEDERAL AIR MARSHAL SERV
9	ICE.
10	The Administrator shall communicate with organiza
11	tions representing a significant number of Federal air
12	marshals, to the extent provided by law, to address con-
13	cerns regarding Federal Air Marshals related to the fol
14	lowing:
15	(1) Mental health.
16	(2) Suicide rates.
17	(3) Morale and recruitment.
18	(4) Equipment and training.
19	(5) Work schedules and shifts, including man
20	dated periods of rest.
21	(6) Any other personnel issues the Adminis
22	trator determines appropriate.

	24
1	SEC. 11. BRIEFING ON ASSAULTS AND THREATS ON TSA EM-
2	PLOYEES.
3	Not later than 90 days after the date of enactment
4	of this Act, the Administrator shall brief the appropriate
5	congressional committees regarding the following:
6	(1) Reports to the Administrator of instances of
7	physical or verbal assaults or threats made by mem-
8	bers of the general public against screening agents
9	since January 1, 2019.
10	(2) Procedures for reporting the assaults and
11	threats described in paragraph (1), including infor-
12	mation on how the Administrator communicates the
13	availability of those procedures.
14	(3) Any steps taken by the Administration to
15	prevent and respond to the assaults and threats de-
16	scribed in paragraph (1).
17	(4) Any related civil actions and criminal refer-
18	rals made annually since January 1, 2019.
19	(5) Any additional authorities needed by the
20	Administrator to better prevent or respond to the as-
21	saults and threats described in paragraph (1).
22	SEC. 12. ANNUAL REPORTS ON TSA WORKFORCE.
23	Not later than 1 year after the date of enactment
24	of this Act, and annually thereafter, the Administrator
25	shall submit to the appropriate congressional committees

 $26\,\,$ a report that contains the following:

1 (1) An analysis of the Federal Employee View-2 point Survey of the Office of Personnel Management 3 to determine job satisfaction rates of covered employees. 4 5 (2) Information relating to retention rates of 6 covered employees at each airport, including trans-7 fers, in addition to aggregate retention rates of cov-8 ered employees across the workforce of the Adminis-9 tration. 10 (3) Information relating to actions taken by the 11 Administration intended to improve workforce mo-12 rale and retention. 13 SEC. 13. AUTHORIZATION OF APPROPRIATIONS. 14 There is authorized to be appropriated such sums as 15 may be necessary, to remain available until expended, to carry out this Act and the amendments made by this Act. 16