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REPORT
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GOVERNMENT EMPLOYEE ACCOUNTABILITY ACT

SEPTEMBER 21, 2012.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 6016]

[Including cost estimate of the Congressional Budget Office]

The Committee on Oversight and Government Reform, to whom was referred the bill (H.R. 6016) to amend title 5, United States Code, to provide for administrative leave requirements with respect to Senior Executive Service employees, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:
Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Government Employee Accountability Act".

SEC. 2. ADMINISTRATIVE LEAVE FOR SENIOR EXECUTIVE SERVICE EMPLOYEES.

(a) IN GENERAL.—Chapter 75 of title 5, United States Code, is amended by adding at the end the following:

"SUBCHAPTER VI—ADMINISTRATIVE LEAVE FOR SENIOR EXECUTIVE SERVICE EMPLOYEES

"§ 7551. Definitions

"For the purposes of this subchapter—

"(1) 'employee' has the meaning given such term in section 7541; and

"(2) 'administrative leave' means an absence from duty administratively authorized, for disciplinary reasons, of a period not greater than 90 days.

"§ 7552. Actions covered

"This subchapter applies to administrative leave.

"§ 7553. Cause and procedure

"(a)(1) Under regulations prescribed by the Office of Personnel Management, the head of an agency may place an employee on administrative leave, without loss of pay and without charge to annual or sick leave, only for misappropriation of funds, misconduct, neglect of duty, or malfeasance.

"(2) If the head of an agency determines that such employee's conduct is serious or flagrant, the head may place such employee on administrative leave under this subchapter without pay.

"(b)(1) At the end of each 2-week period during a period of administrative leave implemented under this section, the head of the relevant agency shall review the investigation into the employee with respect to the misappropriation of funds, misconduct, neglect of duty, or malfeasance.

"(2) Not later than 5 business days after the end of each such 2-week period, such head shall submit a report describing such review to the Committee on Oversight and Government Reform of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate.

"(3) At the end of a period of administrative leave implemented under this section, the head of the agency shall—

"(A) remove an employee placed on administrative leave under this section;

"(B) suspend such employee without pay; or

"(C) reinstate or restore such employee to duty.

"(4) At the discretion of the agency head, an employee may be placed on one additional period of administrative leave with respect to an action under this subchapter.

"(c) An employee against whom an action covered by this subchapter is proposed is entitled to, before being placed on administrative leave under this section—

"(1) at least 30 days' advance written notice, stating specific reasons for the proposed action, unless—

"(A) there is reasonable cause to believe that the employee has committed a crime for which a sentence of imprisonment can be imposed; or

"(B) the agency head determines that the employee's conduct with respect to which an action covered by this subchapter is proposed is serious or flagrant;

"(2) a reasonable time, but not less than 7 days, to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer;

"(3) be represented by an attorney or other representative; and

"(4) a written decision and specific reasons therefor at the earliest practicable date.

"(d) For purposes of subsection (c)(1)(A), the head of an agency may determine that there is reasonable cause to believe that an employee has committed a crime for which a sentence of imprisonment can be imposed if the head receives a report from such agency's Inspector General, or, in the case of an agency without an Inspector General, from an employee of the agency designated by such head to carry out duties similar to duties of an inspector general for purposes of this subsection, indicating that such employee has committed such a crime.

"(e) An agency may provide, by regulation, for a hearing which may be in lieu of or in addition to the opportunity to answer provided under subsection (c)(2).

"(f) An employee against whom an action is taken under this section is entitled to appeal to the Merit Systems Protection Board under section 7701.

"(g) Copies of the notice of proposed action, the answer of the employee when written, and a summary thereof when made orally, the notice of decision and reasons therefor, and any order effecting an action covered by this subchapter, together with any supporting material, shall be maintained by the agency and shall be furnished to the Merit Systems Protection Board upon its request and to the employee affected upon the employee's request.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 75 of title 5, United States Code, is amended by adding after the item relating to section 7543 the following:

"SUBCHAPTER VI—ADMINISTRATIVE LEAVE FOR SENIOR EXECUTIVE SERVICE EMPLOYEES

"7551. Definitions.
"7552. Actions covered.
"7553. Cause and procedure.".

SEC. 3. SUSPENSION OF SENIOR EXECUTIVE SERVICE EMPLOYEES.

Section 7543 of title 5, United States Code, is amended—

(1) in subsection (a), by inserting "misappropriation of funds," after "malfeasance,";

(2) in subsection (b), by amending paragraph (1) to read as follows:

"(1) at least 30 days' advance written notice, stating specific reasons for the proposed action, unless—

"(A) there is reasonable cause to believe that the employee has committed a crime for which a sentence of imprisonment can be imposed; or

"(B) the agency head determines that the employee's conduct with respect to which an action covered by this subchapter is proposed is serious or flagrant;"; and

(3) by adding at the end the following:

"(f) For purposes of subsection (b)(1)(A), the head of an agency may determine that there is reasonable cause to believe that an employee has committed a crime for which a sentence of imprisonment can be imposed if the head receives a report from such agency's Inspector General, or, in the case of an agency without an Inspector General, from an employee of the agency designated by such head to carry out duties similar to duties of an inspector general for purposes of this subsection, indicating that such employee has committed such a crime.".

COMMITTEE STATEMENT AND VIEWS

PURPOSE AND SUMMARY

The Senior Executive Service (SES) was designed to ensure accountability for honest, economical, and efficient government.[1] H.R. 6016 provides agencies with an additional tool to hold SES employees accountable for their actions. The legislation allows an SES employee to be fired for misappropriation of funds and gives agencies discretion to place SES employees on unpaid leave, while maintaining existing due process rights. The legislation responds to the Committee's review of the planning and execution of the General Services Administration's (GSA) 2010 Western Regional Conference, including GSA's response to employee misconduct. The bill represents an important step in ensuring senior leaders are held to a high standard, especially when their conduct is flagrant.

BACKGROUND AND NEED FOR LEGISLATION

In April 2012, the Committee held a hearing concerning the excessive, wasteful, and in some cases impermissible spending that occurred during the preparation for and implementation of GSA's

[1] 5 U.S.C. 3131(10).

2010 Western Regional Conference.[2] The GSA spent more than $820,000 on a conference originally budgeted at $250,000. The GSA had no triggers or controls in place to stop the flagrant spending.

GSA employees, including Mr. Jeff Neely, Regional Commissioner, Public Buildings Service Pacific Rim Region, failed to follow GSA policy and Federal procurement law.

In May 2011, GSA Inspector General Brian Miller personally briefed then-GSA Administrator Martha Johnson and then-Senior Counselor to the Administrator Steve Leeds on an investigation into the Western Regional Conference.[3] The Office of Inspector General (OIG) subsequently presented GSA leadership with the final management deficiency report concerning the conference on February 17, 2012.[4] The agency typically has 30 days to review and respond. In this case, GSA requested an additional 30 days. Despite having 60 days to consider taking action from receipt of the final management deficiency report, then-Administrator Johnson took no action.

The Washington Post broke the news of then-Administrator Johnson's resignation on April 2, 2012, the same day the OIG released the report.[5] On April 20, 2012, GSA provided notice of its intent to terminate Mr. Jeff Neely for misconduct. Mr. Neely was placed on paid administrative leave. Rather than attempting to contest the charges, Mr. Neely retired.[6]

LEGISLATIVE HISTORY

The Civil Service Reform Act of 1978 established the Senior Executive Service and clarified the grounds for taking action against SES employees whose conduct was unacceptable.[7]

SECTION-BY-SECTION

Section 1. Short title

The short title of the bill is the "Government Employee Accountability Act."

Section 2. Administrative leave for Senior Executive Service employees

Section 2 establishes a new subchapter within chapter 75 of title 5. The new subchapter provides the head of an agency authority to use administrative leave when disciplining a member of the Senior Executive Service (SES). For purposes of the new subchapter, administrative leave is defined as an authorized absence from duty for a period not to exceed 90 days, for disciplinary reasons. The administrative leave options available to agencies under the new subchapter VI are in addition to agencies' existing authority to grant employees excused absences and place them on administrative leave for reasons determined to be in the government's interest.

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[2] *Addressing GSA's Culture of Wasteful Spending: Hearing before the H. Comm. on Oversight and Gov't Reform,* 112th Con. (April 4, 2012).

[3] Briefing by Gen. Serv. Admin. Office of Inspector Gen. for H. Comm. on Oversight & Gov't Reform staff (Apr. 4, 2012) [hereinafter OIG briefing].

[4] OIG briefing.

[5] Lisa Rein & Joe Davidson, *GSA Chief Resigns Amid Reports of Excessive Spending,* Wash. Post (Apr. 2, 2012).

[6] E-mail from Deputy Associate Admin. for Legislative Affairs to H. Oversight & Gov't Reform Comm. staff (Apr. 10, 2012).

[7] P.L. 94–454.

Under regulations prescribed by the Office of Personnel Management, the head of an agency may place an SES employee on administrative leave, with pay, for misappropriation of funds, misconduct, neglect of duty, or malfeasance. SES employees whose misconduct is determined to be serious or flagrant may be placed on administrative leave without pay.

Not later than 5 business days after the end of the two-week period of administrative leave, the agency head must review the investigation into the employee's conduct and describe the review to the House Committee on Oversight and Government Reform and Senate Committee on Homeland Security and Governmental Affairs.

At the end of the period of administrative leave, the agency must: (1) remove the employee; (2) suspend the employee without pay; or (3) restore the employee to duty. The agency head has discretion to place the employee on one additional period of administrative leave.

Employees retain their existing due process rights afforded to them under chapter 75, including the right to appeal to the Merit Systems Protection Board.

An agency head may use an Inspector General report that states an SES employee has committed a crime as the basis for removing or suspending the employee without pay. An agency head may also determine the conduct is serious or flagrant. In these instances, the employee is not entitled to 30 days' advance notice of administrative leave.

Section 3. Suspension of Senior Executive Service employees

Section 3 allows for an SES employee to be terminated or suspended without pay for more than 14 days for misappropriation of funds. An agency head may use an Inspector General report that states a Senior Executive Service employee has committed a crime as the basis for removing or suspending the employee without pay. In this instance, the employee is not entitled to 30 days' advance notice of the proposed termination or suspension without pay. The agency head may also elect to waive the advance notice requirement if he determines the conduct to be serious or flagrant.

EXPLANATION OF AMENDMENTS

Mr. Kelly offered a substitute amendment to make clear an agency could waive the advance notice requirement when placing a Senior Executive Service on unpaid leave or taking an adverse action against a Senior Executive Service employee if the conduct was serious or flagrant. In addition, the substitute amendment made a number of technical changes to the bill. The amendment was agreed to by voice vote.

COMMITTEE CONSIDERATION

On June 27, 2012, the Committee met in open session and ordered reported favorably the bill, H.R. 6016, as amended, by roll call vote, a quorum being present.

ROLL CALL VOTES

There were no roll call votes during consideration of H.R. 6016.

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 provides agencies with an additional tool to hold SES employees accountable for their actions. 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.

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 reported 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. 6016 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.6016. 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. 6016 from the Director of Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 14, 2012.

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

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 6016, the Government Employee Accountability 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. 6016—Government Employee Accountability Act

CBO estimates that implementing H.R. 6016 would not have a significant impact on federal spending. Enacting the bill could affect revenues; therefore, pay-as-you-go procedures apply. However, CB0 estimates that any effects would be insignificant for each year.

H.R. 6016 would allow agencies to place Senior Executive Service (SES) employees on unpaid administrative leave for up to 180 days if they are accused of misappropriation of funds, misconduct, neglect of duty, or malfeasance. Currently, investigations of such offenses generally require agencies to initially place employees on paid leave, but later those employees may be suspended indefinitely without pay. Since administrative leave for misconduct is not tracked separately it is difficult to quantify the number of instances that it has occurred, but according to the Office of Personnel Management and other federal agencies, it is very uncommon. CBO assumes that citations for such misconduct will continue to be uncommon and therefore only a few SES employees would be subject to unpaid leave over the 2013–2022 period.

Implementing this bill would lead to lower discretionary spending for salaries and expenses for those placed on unpaid administrative leave, but CBO estimates that such reductions would be small. Because affected employees would not receive a salary for a period of time, they also would not make scheduled retirement contributions, resulting in a reduction in revenues. CBO estimates that those reductions would not be significant.

H.R. 6016 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

The CBO staff contact for this estimate is Santiago Vallinas. The estimate was 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 (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 5, UNITED STATES CODE

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PART III—EMPLOYEES

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SUBPART F—LABOR-MANAGEMENT AND EMPLOYEE RELATIONS

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CHAPTER 75—ADVERSE ACTIONS

SUBCHAPTER I—SUSPENSION OF 14 DAYS OR LESS

Sec.
7501. Definitions.

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SUBCHAPTER VI—ADMINISTRATIVE LEAVE FOR SENIOR EXECUTIVE SERVICE EMPLOYEES

7551. Definitions.
7552. Actions covered.
7553. Cause and procedure.

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SUBCHAPTER V—SENIOR EXECUTIVE SERVICE

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§ 7543. Cause and procedure

(a) Under regulations prescribed by the Office of Personnel Management, an agency may take an action covered by this subchapter against an employee only for misconduct, neglect of duty, malfeasance, *misappropriation of funds,* or failure to accept a directed reassignment or to accompany a position in a transfer of function.

(b) An employee against whom an action covered by this subchapter is proposed is entitled to—

[(1) at least 30 days' advance written notice, unless there is reasonable cause to believe that the employee has committed a crime for which a sentence of imprisonment can be imposed, stating specific reasons for the proposed action;]

(1) at least 30 days' advance written notice, stating specific reasons for the proposed action, unless—

(A) there is reasonable cause to believe that the employee has committed a crime for which a sentence of imprisonment can be imposed; or

(B) the agency head determines that the employee's conduct with respect to which an action covered by this subchapter is proposed is serious or flagrant;

* * * * * * *

(f) For purposes of subsection (b)(1)(A), the head of an agency may determine that there is reasonable cause to believe that an employee has committed a crime for which a sentence of imprisonment can be imposed if the head receives a report from such agency's Inspector General, or, in the case of an agency without an Inspector General, from an employee of the agency designated by such head to carry out duties similar to duties of an inspector general for purposes of this subsection, indicating that such employee has committed such a crime.

SUBCHAPTER VI—ADMINISTRATIVE LEAVE FOR SENIOR EXECUTIVE SERVICE EMPLOYEES

§ 7551. Definitions

For the purposes of this subchapter—

(1) "employee" has the meaning given such term in section 7541; and

(2) "administrative leave" means an absence from duty administratively authorized, for disciplinary reasons, of a period not greater than 90 days.

§ 7552. Actions covered

This subchapter applies to administrative leave.

§ 7553. Cause and procedure

(a)(1) Under regulations prescribed by the Office of Personnel Management, the head of an agency may place an employee on administrative leave, without loss of pay and without charge to annual or sick leave, only for misappropriation of funds, misconduct, neglect of duty, or malfeasance.

(2) If the head of an agency determines that such employee's conduct is serious or flagrant, the head may place such employee on administrative leave under this subchapter without pay.

(b)(1) At the end of each 2-week period during a period of administrative leave implemented under this section, the head of the relevant agency shall review the investigation into the employee with respect to the misappropriation of funds, misconduct, neglect of duty, or malfeasance.

(2) Not later than 5 business days after the end of each such 2-week period, such head shall submit a report describing such review to the Committee on Oversight and Government Reform of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate.

(3) At the end of a period of administrative leave implemented under this section, the head of the agency shall—

(A) remove an employee placed on administrative leave under this section;

(B) suspend such employee without pay; or

(C) reinstate or restore such employee to duty.

(4) At the discretion of the agency head, an employee may be placed on one additional period of administrative leave with respect to an action under this subchapter.

(c) An employee against whom an action covered by this subchapter is proposed is entitled to, before being placed on administrative leave under this section—

(1) at least 30 days' advance written notice, stating specific reasons for the proposed action, unless—

(A) there is reasonable cause to believe that the employee has committed a crime for which a sentence of imprisonment can be imposed; or

(B) the agency head determines that the employee's conduct with respect to which an action covered by this subchapter is proposed is serious or flagrant;

(2) a reasonable time, but not less than 7 days, to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer;

(3) be represented by an attorney or other representative; and

(4) a written decision and specific reasons therefor at the earliest practicable date.

(d) For purposes of subsection (c)(1)(A), the head of an agency may determine that there is reasonable cause to believe that an employee has committed a crime for which a sentence of imprisonment can be imposed if the head receives a report from such agency's Inspector General, or, in the case of an agency without an Inspector General, from an employee of the agency designated by such head to carry out duties similar to duties of an inspector general for purposes of this subsection, indicating that such employee has committed such a crime.

(e) An agency may provide, by regulation, for a hearing which may be in lieu of or in addition to the opportunity to answer provided under subsection (c)(2).

(f) An employee against whom an action is taken under this section is entitled to appeal to the Merit Systems Protection Board under section 7701.

(g) Copies of the notice of proposed action, the answer of the employee when written, and a summary thereof when made orally, the notice of decision and reasons therefor, and any order effecting an action covered by this subchapter, together with any supporting material, shall be maintained by the agency and shall be furnished to the Merit Systems Protection Board upon its request and to the employee affected upon the employee's request.

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MINORITY VIEWS

The purposes of H.R. 6016—to prevent the misappropriation of taxpayer dollars by Senior Executive Service employees and hold them accountable for such misconduct—are commendable. However, current law (Subchapter V of Chapter 75 of Title 5 of the United States Code) already provides authority for agencies to take disciplinary action against Senior Executives who misappropriate funds. In addition, although some of the bill's deficiencies were addressed prior to the Committee's consideration, other issues remain unaddressed. For example:

- It is unclear how "serious or flagrant" conduct would be defined and how such conduct differs from "misconduct, neglect of duty or malfeasance" as set forth in current law.
- It is unclear how "misappropriation of funds" differs from "misconduct or malfeasance" as set forth in current law.
- It is unclear how administrative leave without pay, as redefined by the bill, differs from suspension, which is an available remedy under current law.
- It is unclear why the bill appears to eliminate agency authority to use administrative leave for non-disciplinary reasons, which is a necessary management tool.
- It is unclear why the bill appears to force agency heads to decide whether to remove, suspend, or reinstate employees even if investigations have not yet been completed, which could interfere with ongoing investigations, jeopardize the due process rights of employees, and risk overturning disciplinary actions on appeal.
- It is unclear whether the bill provides sufficient due process rights for employees, especially in cases in which conduct is serious or flagrant or when there is reasonable cause to believe that an employee has committed a crime.
- It is unclear under the bill whether an Inspector General's report would be the sole basis for agencies to determine that employees may have engaged in criminal conduct.

The Majority has acknowledged some of the problems in the bill, and we appreciate their commitment to work with the Minority to craft an appropriate solution.

Any misuse of taxpayer funds is unacceptable, and Congress should help agencies hold federal employees accountable for waste, fraud, and abuse. However, the bad actions of a few individuals should not be allowed to undermine the reputation of our nation's dedicated federal employees. These honest and hardworking men and women devote their lives to serving the public, and the vast

majority of federal workers are excellent stewards of the public trust.

ELIJAH E. CUMMINGS.

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