

GOVERNMENT EMPLOYEE ACCOUNTABILITY ACT

JULY 31, 2013.—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. 2579]

[Including cost estimate of the Congressional Budget Office]

The Committee on Oversight and Government Reform, to whom was referred the bill (H.R. 2579) to amend title 5, United States Code, to provide for investigative 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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AMENDMENT

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. SUSPENSION FOR 14 DAYS OR LESS FOR SENIOR EXECUTIVE SERVICE EMPLOYEES.

Paragraph (1) of section 7501 of title 5, United States Code, is amended to read as follows:

“(1) ‘employee’ means—

“(A) an individual in the competitive service who is not serving a probationary or trial period under an initial appointment or who has completed 1 year of current continuous employment in the same or similar positions under other than a temporary appointment limited to 1 year or less; or

“(B) a career appointee in the Senior Executive Service who—

“(i) has completed the probationary period prescribed under section 3393(d); or

“(ii) was covered by the provisions of subchapter II of this chapter immediately before appointment to the Senior Executive Service; and”.

SEC. 3. INVESTIGATIVE LEAVE AND TERMINATION AUTHORITY 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—INVESTIGATIVE 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) ‘investigative leave’ means a temporary absence without duty for disciplinary reasons, of a period not greater than 90 days.

“§ 7552. Actions covered

“This subchapter applies to investigative leave.

“§ 7553. Cause and procedure

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

“(2) If an agency determines, as prescribed in regulation by the Office of Personnel Management, that such employee’s conduct is flagrant and that such employee intentionally engaged in such conduct, the agency may place such employee on investigative leave under this subchapter without pay.

“(b)(1) At the end of each 45-day period during a period of investigative leave implemented under this section, the relevant agency shall review the investigation into the employee with respect to the misconduct, neglect of duty, malfeasance, or misappropriation of funds.

“(2) Not later than 5 business days after the end of each such 45-day period, the agency 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 investigative leave implemented under this section, the agency shall—

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

“(B) suspend such employee without pay; or

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

“(4) The agency may extend the period of investigative leave with respect to an action under this subchapter for an additional period not to exceed 90 days.

“(c) An employee against whom an action covered by this subchapter is proposed is entitled to, before being placed on investigative 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 determines, as prescribed in regulation by the Office of Personnel Management, that the employee’s conduct with respect to which an action covered by this subchapter is proposed is flagrant and that such employee intentionally engaged in such conduct;
- “(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) 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).
- “(e) An employee against whom an action is taken under this section is entitled to appeal to the Merit Systems Protection Board under section 7701.
- “(f) 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.

“SUBCHAPTER VII—REMOVAL OF SENIOR EXECUTIVE SERVICE
EMPLOYEES

“§ 7561. Definition

“For purposes of this subchapter, the term ‘employee’ has the meaning given such term in section 7541.

“§ 7562. Removal of Senior Executive Service employees

“(a) Notwithstanding any other provision of law and consistent with the requirements of subsection (b), the head of an agency may remove an employee for serious neglect of duty, misappropriation of funds, or malfeasance if the head of the agency—

“(1) determines that the employee knowingly acted in a manner that endangers the interest of the agency mission;

“(2) considers the removal to be necessary or advisable in the interests of the United States; and

“(3) determines that the procedures prescribed in other provisions of law that authorize the removal of such employee cannot be invoked in a manner that the head of an agency considers consistent with the efficiency of the Government.

“(b) An employee may not be removed under this section—

“(1) on any basis that would be prohibited under—

“(A) any provision of law referred to in section 2302(b)(1); or

“(B) paragraphs (8) or (9) of section 2302(b); or

“(2) on any basis, described in paragraph (1), as to which any administrative or judicial proceeding—

“(A) has been commenced by or on behalf of such employee; and

“(B) is pending.

“(c) An employee removed under this section shall be notified of the reasons for such removal. Within 30 days after the notification, the employee is entitled to submit to the official designated by the head of the agency statements or affidavits to show why the employee should be restored to duty. If such statements and affidavits are submitted, the head of the agency shall provide a written response, and may restore the employee’s employment if the head of the agency chooses.

“(d) Whenever the head of the agency removes an employee under the authority of this section, the head of the agency shall notify Congress of such termination, and the specific reasons for the action.

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

“(f) 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.

“(g) A removal under this section does not affect the right of the employee affected to seek or accept employment with any other department or agency of the United States if that employee is declared eligible for such employment by the Director of the Office of Personnel Management.

“(h) The authority of the head of the agency under this section may not be delegated.”

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

“SUBCHAPTER VI—INVESTIGATIVE LEAVE FOR SENIOR EXECUTIVE SERVICE EMPLOYEES

“7551. Definitions.

“7552. Actions covered.

“7553. Cause and procedure.

“SUBCHAPTER VII—REMOVAL OF SENIOR EXECUTIVE SERVICE EMPLOYEES

“7561. Definition.

“7562. Removal of Senior Executive Service employees.”

SEC. 4. 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,”; and

(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 determines, as prescribed in regulation by the Office of Personnel Management, that the employee’s conduct with respect to which an action covered by this subchapter is proposed is flagrant and that such employee intentionally engaged in such conduct;”.

SEC. 5. MISAPPROPRIATION OF FUNDS AMENDMENTS.

(a) REINSTATEMENT IN THE SENIOR EXECUTIVE SERVICE.—Section 3593 of title 5, United States Code, is amended—

(1) in subsection (a)(2), by inserting “misappropriation of funds,” after “malfeasance,”; and

(2) in subsection (b), by striking “or malfeasance” and inserting “malfeasance, or misappropriation of funds”.

(b) PLACEMENT IN OTHER PERSONNEL SYSTEMS.—Section 3594(a) of title 5, United States Code, is amended by striking “or malfeasance” and inserting “malfeasance, or misappropriation of funds”.

COMMITTEE STATEMENT AND VIEWS

PURPOSE AND SUMMARY

H.R. 2579 provides agencies with additional tools to hold Senior Executive Service (SES) employees accountable for their actions. The legislation allows an SES employee to be fired for neglect of duty, misappropriation of funds, or malfeasance, 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 numerous employees in the SES whose behavior is unacceptable, irresponsible, and in some instances, illegal. 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

This Committee has uncovered numerous examples of high-ranking government employees engaging in behavior contrary to the principles of public service, including those in the Senior Executive Service (SES) who frivolously spend taxpayer dollars on lavish and unnecessary conferences; those whose agency inappropriately targeted conservative groups seeking tax exempt status; and those whose leadership resulted in discrimination against veterans and retaliation against whistleblowers.

Even when accused of serious wrongdoing, these individuals are typically placed on administrative leave with pay.

Senior Executive Service employees serve in key leadership positions, and must be held accountable for individual and organizational performance. When SES employees engage in misconduct, they must be held to a high standard, especially when their conduct is flagrant.

H.R. 2579 provides additional tools for agencies to use when their senior executives have engaged in misappropriation of funds, misconduct, neglect of duty, or malfeasance.

LEGISLATIVE HISTORY

H.R. 2579 was introduced by Rep. Mike Kelly on June 28, 2013. The legislation was marked up by the Committee on July 24, 2013. There were several amendments adopted, which are described in this report.

A version of this bill was adopted unanimously by this Committee last Congress. It passed the House by a vote of 402 to 2 on December 19, 2012.

SECTION-BY-SECTION

Section 1. Short title

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

Section 2. Suspension for 14 days or less for Senior Executive Service employees

Section 2 grants agencies discretionary authority to suspend without pay a member of the Senior Executive Service (SES) for 14 days or less. The provision makes SES employees subject to short-term suspensions in the same manner as those they supervise.

Section 3. Investigative leave and termination authority for Senior Executive Service employees

Section 3 establishes two new subchapters within chapter 75 of title 5. The first subchapter provides agencies authority to place an SES employee on investigative leave. Investigative leave is defined as a temporary absence without duty for a period not to exceed 90 days, for disciplinary reasons.

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

Following each 45-day period of investigative leave, the agency must review the investigation into the SES 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 investigative leave, the agency must: (1) remove the employee; (2) suspend the employee without pay; or (3) restore the employee to duty. The agency may extend the period of investigative leave for an additional 90 days.

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

The second new subchapter allows for the removal of SES employees if the head of an agency: (1) determines that the employee acted in a manner that endangered the interest of the agency; (2) considers the removal to be in the best interests of the United States; and (3) determines that existing procedures prescribed in law cannot be invoked in a manner that the Secretary considers consistent with the efficiency of government.

An agency is prohibited from using the expedited termination procedure to retaliate against an SES employee who has a pending claim of discrimination or a pending claim of whistleblower retaliation.

Such an employee shall be given notice of the reasons for removal. Within 30 days after notice is given, the employee is entitled to submit to the head of the agency statements or affidavits to show why the employee should be restored to duty. The head of the agency shall respond in writing to that information, and may restore the employee back to duty.

The decision of the head of the agency to remove the employee is final and may not be appealed or reviewed by an outside agency.

If the head of an agency removes an employee, he or she shall notify Congress of that termination.

Termination would not affect the right of the employee to seek other federal employment if they are otherwise eligible.

Section 4. Suspension of Senior Executive Service employees

Section 4 allows for an SES employee to be terminated or suspended without pay for more than 14 days for misappropriation of funds. The SES employee is not entitled to 30 days advance notice of the proposed termination or suspension without pay if a crime has been committed or if the employee's conduct is serious or flagrant.

Section 5. Misappropriation of funds amendments

Section 5 makes conforming changes to reinstatement or placement of SES employees who misappropriate funds.

EXPLANATION OF AMENDMENTS

The Committee adopted by voice vote an amendment in the nature of a substitute offered by Mr. Issa.

The Committee adopted by voice vote an amendment offered by Mr. Cummings and Ms. Norton to prohibit an agency from using the expedited termination procedure to retaliate against an SES employee who has a pending claim of discrimination.

The Committee adopted by voice vote an amendment offered by Mr. Connolly to prohibit an agency from using the expedited termination procedure to retaliate against an SES employee who has a pending claim of whistleblower retaliation.

The Committee adopted by voice vote an amendment by Mr. Lynch that would change the threshold used by an agency head to discipline an employee using the new authorities in this Act.

The Committee adopted by voice vote an amendment by Ms. Speier that makes several changes to the standard for immediate

termination, allowing an agency to terminate an SES employee for serious neglect of duty, misappropriation of funds, or malfeasance if the agency determines the SES employee acted in a manner that knowingly endangers the interest of the agency mission.

The Committee rejected by a vote of 17 ayes to 22 noes an amendment by Mr. Lynch that would prevent an agency head from terminating a Senior Executive Service employee without an administrative waiting period.

COMMITTEE CONSIDERATION

On July 24, 2013, the Committee met in open session and ordered reported favorably the bill, H.R. 2579, as amended, by voice vote, a quorum being present.

ROLL CALL VOTES

One vote occurred during consideration of H.R. 2579—on the Lynch amendment to the Issa ANS (regarding an agency head terminating an SES employee without due process). The amendment was defeated by a vote of 17 ayes to 22 noes.

Voting aye: Cummings, Maloney, Norton, Tierney, Clay, Lynch, Cooper, Connolly, Speier, Cartwright, Pocan, Duckworth, Kelly, Davis, Welch, Cárdenas, and Lujan Grisham.

Voting no: Issa, Mica, Turner, McHenry, Jordan, Chaffetz, Walberg, Lankford, Amash, Gosar, Meehan, DesJarlais, Gowdy, Farenthold, Hastings, Lummis, Woodall, Massie, Collins, Meadows, Bentivolio, and DeSantis.

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 allows an SES employee to be fired for neglect of duty, misappropriation of funds, or malfeasance, and gives agencies discretion to place SES employees on unpaid leave, while maintaining existing due process rights. 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. 2579 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

H.R. 2579 directs OPM to prescribe regulations related to SES employees who may be placed on administrative leave with pay, administrative leave without pay, and investigative leave.

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. 2579 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. 2579. 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. 2579 from the Director of Congressional Budget Office:

JULY 30, 2013.

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. 2579, 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. 2579—Government Employee Accountability Act

CBO estimates that implementing H.R. 2579 would not have a significant impact on federal spending. Enacting the bill could affect revenues; therefore, pay-as-you-go procedures apply. However, CBO estimates that any effects would be insignificant for each year.

H.R. 2579 would allow agencies to place federal employees who are part of the Senior Executive Service (SES) on unpaid leave for up to 180 days if they are being investigated for misappropriation of funds, misconduct, neglect of duty, or malfeasance; serious violations would lead to immediate termination. 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 or terminated. Agencies do not track administrative leave for misconduct separately, so CBO cannot determine how many times such suspensions have occurred in the past. According to the Office of Personnel Management and other federal agencies, such situations are very uncommon. CBO assumes that even under H.R. 2579, suspensions for misconduct would continue to be uncommon and therefore only a few SES employees would be subject to unpaid leave or termination over the 2014–2023 period.

Implementing this bill would lead to lower discretionary spending for salaries and expenses for those placed on unpaid administrative leave or terminated, but CBO estimates that such reductions would be small because of the small number of employees likely to be affected. Because some 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 also would not be significant.

H.R. 2579 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

* * * * *

PART III—EMPLOYEES

* * * * *

SUBPART B—EMPLOYMENT AND RETENTION

* * * * *

CHAPTER 35—RETENTION PREFERENCE, VOLUNTARY SEPARATION INCENTIVE PAYMENTS, RESTORATION, AND REEMPLOYMENT

* * * * *

SUBCHAPTER V—REMOVAL, REINSTATEMENT, AND GUARANTEED PLACEMENT IN THE SENIOR EXECUTIVE SERVICE

* * * * *

§ 3593. Reinstatement in the Senior Executive Service

(a) A former career appointee may be reinstated, without regard to section 3393(b) and (c) of this title, to any Senior Executive Service position for which the appointee is qualified if—

(1) * * *

(2) the appointee left the Senior Executive Service for reasons other than misconduct, neglect of duty, malfeasance, *misappropriation of funds*, or less than fully successful executive performance as determined under subchapter II of chapter 43.

(b) A career appointee who is appointed by the President to any civil service position outside the Senior Executive Service and who leaves the position for reasons other than misconduct, neglect of duty, [or malfeasance] *malfeasance, or misappropriation of funds* shall be entitled to be placed in the Senior Executive Service if the appointee applies to the Office of Personnel Management within 90 days after separation from the Presidential appointment.

* * * * *

§ 3594. Guaranteed placement in other personnel systems

(a) A career appointee who was appointed from a civil service position held under a career or career-conditional appointment (or an appointment of equivalent tenure, as determined by the Office of Personnel Management) and who, for reasons other than misconduct, neglect of duty, [or malfeasance] *malfeasance, or misappropriation of funds*, is removed from the Senior Executive Service during the probationary period under section 3393(d) of this

title, shall be entitled to be placed in a civil service position (other than a Senior Executive Service position) in any agency.

* * * * *

SUBPART F—LABOR-MANAGEMENT AND EMPLOYEE RELATIONS

* * * * *

CHAPTER 75—ADVERSE ACTIONS

SUBCHAPTER I—SUSPENSION OF 14 DAYS OR LESS

Sec.
7501. Definitions.

* * * * *

SUBCHAPTER VI—INVESTIGATIVE LEAVE FOR SENIOR EXECUTIVE SERVICE EMPLOYEES

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

SUBCHAPTER VII—REMOVAL OF SENIOR EXECUTIVE SERVICE EMPLOYEES

7561. Definition.
7562. Removal of Senior Executive Service employees.

SUBCHAPTER I—SUSPENSION FOR 14 DAYS OR LESS

§ 7501. Definitions

For the purpose of this subchapter—

[(1) “employee” means an individual in the competitive service who is not serving a probationary or trial period under an initial appointment or who has completed 1 year of current continuous employment in the same or similar positions under other than a temporary appointment limited to 1 year or less; and]

(1) “employee” means—

(A) an individual in the competitive service who is not serving a probationary or trial period under an initial appointment or who has completed 1 year of current continuous employment in the same or similar positions under other than a temporary appointment limited to 1 year or less; or

(B) a career appointee in the Senior Executive Service who—

(i) has completed the probationary period prescribed under section 3393(d); or

(ii) was covered by the provisions of subchapter II of this chapter immediately before appointment to the Senior Executive Service; and

* * * * *

SUBCHAPTER V—SENIOR EXECUTIVE SERVICE

* * * * *

§ 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 determines, as prescribed in regulation by the Office of Personnel Management, that the employee's conduct with respect to which an action covered by this subchapter is proposed is flagrant and that such employee intentionally engaged in such conduct;

* * * * *

SUBCHAPTER VI—INVESTIGATIVE 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) "investigative leave" means a temporary absence without duty for disciplinary reasons, of a period not greater than 90 days.

§ 7552. Actions covered

This subchapter applies to investigative leave.

§ 7553. Cause and procedure

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

(2) If an agency determines, as prescribed in regulation by the Office of Personnel Management, that such employee's conduct is flagrant and that such employee intentionally engaged in such conduct, the agency may place such employee on investigative leave under this subchapter without pay.

(b)(1) At the end of each 45-day period during a period of investigative leave implemented under this section, the relevant agency shall review the investigation into the employee with respect to the misconduct, neglect of duty, malfeasance, or misappropriation of funds.

(2) *Not later than 5 business days after the end of each such 45-day period, the agency 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 investigative leave implemented under this section, the agency shall—*

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

(B) *suspend such employee without pay; or*

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

(4) *The agency may extend the period of investigative leave with respect to an action under this subchapter for an additional period not to exceed 90 days.*

(c) *An employee against whom an action covered by this subchapter is proposed is entitled to, before being placed on investigative 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 determines, as prescribed in regulation by the Office of Personnel Management, that the employee's conduct with respect to which an action covered by this subchapter is proposed is flagrant and that such employee intentionally engaged in such conduct;*

(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) *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).*

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

(f) *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.*

SUBCHAPTER VII—REMOVAL OF SENIOR EXECUTIVE SERVICE EMPLOYEES

§ 7561. Definition

For purposes of this subchapter, the term "employee" has the meaning given such term in section 7541.

§ 7562. Removal of Senior Executive Service employees

(a) Notwithstanding any other provision of law and consistent with the requirements of subsection (b), the head of an agency may remove an employee for serious neglect of duty, misappropriation of funds, or malfeasance if the head of the agency—

(1) determines that the employee knowingly acted in a manner that endangers the interest of the agency mission;

(2) considers the removal to be necessary or advisable in the interests of the United States; and

(3) determines that the procedures prescribed in other provisions of law that authorize the removal of such employee cannot be invoked in a manner that the head of an agency considers consistent with the efficiency of the Government.

(b) An employee may not be removed under this section—

(1) on any basis that would be prohibited under—

(A) any provision of law referred to in section 2302(b)(1);

or

(B) paragraphs (8) or (9) of section 2302(b); or

(2) on any basis, described in paragraph (1), as to which any administrative or judicial proceeding—

(A) has been commenced by or on behalf of such employee; and

(B) is pending.

(c) An employee removed under this section shall be notified of the reasons for such removal. Within 30 days after the notification, the employee is entitled to submit to the official designated by the head of the agency statements or affidavits to show why the employee should be restored to duty. If such statements and affidavits are submitted, the head of the agency shall provide a written response, and may restore the employee's employment if the head of the agency chooses.

(d) Whenever the head of the agency removes an employee under the authority of this section, the head of the agency shall notify Congress of such termination, and the specific reasons for the action.

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

(f) 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.

(g) A removal under this section does not affect the right of the employee affected to seek or accept employment with any other department or agency of the United States if that employee is declared eligible for such employment by the Director of the Office of Personnel Management.

(h) The authority of the head of the agency under this section may not be delegated.

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MINORITY VIEWS

Committee Democrats oppose H.R. 2579, the Government Employee Accountability Act. H.R. 2579, as amended, would give an agency head broad discretion to place a Senior Executive on unpaid investigative leave or suspension or to fire the employee immediately without advance notice. The bill would provide no opportunity for a proper investigation or for the employee to address the agency head's concerns before such action is initiated.

The legislation would eliminate due process protections and is unnecessary. During Committee consideration, the majority offered an Amendment in the Nature of a Substitute that revised the standard under which an agency may remove a Senior Executive and provided an employee the right to appeal to the Merit Systems Protection Board. In addition, several Democratic amendments were accepted that protected employees alleging whistleblower retaliation and discrimination claims and raised the standard for immediate removal, leave, and suspension. However, the majority did not accept an amendment offered by Representative Lynch that would have applied existing due process protections to the expedited removal provisions in the bill.

H.R. 2579 would strip existing due process protections that were put in place to protect civil servants from partisan, political influence. It would shift the burden onto the employee to prove his or her innocence and to seek reinstatement. This is contrary to the core legal principle of the American justice system—the presumption that one is innocent until proven guilty.

Under section 7543 of title 5 of the U.S. Code, agencies already may take action against Senior Executives for misconduct, neglect of duty, malfeasance, or failure to accept a reassignment or a transfer of function. However, current law requires agencies to give Senior Executive employees 30 days' advance notice before disciplinary action is commenced, unless there is reasonable cause to believe that the employee has committed a crime. Abuses committed by government employees certainly need to be addressed, but it should not be done by denying employees due process rights.

ELIJAH E. CUMMINGS,
Ranking Member.

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