STOP IMPROPER FEDERAL BONUSES ACT

REPORT

OF THE

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

S. 2119

TO AMEND TITLE 5, UNITED STATES CODE, TO APPROPRIATELY LIMIT THE AUTHORITY TO AWARD BONUSES TO FEDERAL EMPLOYEES

OCTOBER 24, 2019.—Ordered to be printed

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The purpose of S. 2119, the Stop Improper Federal Bonuses Act, is to prevent agencies from giving bonuses to employees that engage in serious misconduct. Specifically, this bill would prevent a Federal agency from awarding bonuses to an employee for five years after an adverse finding is made. An adverse finding is a finding that the employee violated a policy for which the employee could be terminated or suspended for at least 14 days or violated a law for which the employee could be imprisoned for more than one year. An adverse finding may be based on information known by the employee’s supervisor or human resources department, a

Information provided by the Office of Personnel Management to Committee staff (June 26, 2017).


Id.
OIG found that she got the job by falsely claiming that she had a master’s degree in medicine, and she received a $23,000 bonus the next year.

Cases of bonuses awarded by the VA in fiscal years 2014 and 2015, with the agency plagued by scandals of systematic fraud and misconduct, indicate that the agency continued to pay bonuses to some employees who committed these violations. The VA distributed over $142 million in bonuses to 156,000 VA employees in fiscal year 2014. One recipient was Dr. David Houlihan, the chief of staff of the Tomah VA Medical Center (Tomah VAMC) in Wisconsin. Despite a March 12, 2014 VA OIG report that found Dr. Houlihan’s opioid prescription practices “raised potentially serious concerns”, he received a $4,000 bonus in December 2014. During this 16-month long investigation, the Committee found that veterans nicknamed Dr. Houlihan the “Candy Man”, because of his reputation for dispensing narcotics like candy. The Committee discovered this nickname for Dr. Houlihan was known to law enforcement agencies and executive branch agencies since at least 2009. Dr. Houlihan surrendered his medical license in January 2017 pursuant to an agreement with Wisconsin state regulators to stop investigating his activities at the Tomah VAMC.

Kimberly Graves, a VA benefits office director, also received a bonus for 2014, the year in which she improperly used her authority for personal and financial benefit, according to a VA OIG report. The VA OIG found that Graves “participated personally and substantially in creating [a position] vacancy and then volunteering for the vacancy.” The VA provided Graves over $129,000 in relocation expenses for taking this position that she created for herself. Yet, Graves also collected an $8,697 bonus for her performance during this time.

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9 Id.
13 Id. at 1.
14 Id. at vi.
17 Id.
18 Id.
19 Donovan Slack and Bill Theobald, supra note 11.
In fiscal year 2015, the VA awarded more than $177 million in bonuses to more than half of the agency’s employees.20 VA employees receiving these bonuses included Dr. Darren Deering, the former chief of staff at the Phoenix VA Health Care System, who received a $5,000 bonus just four months before being fired for “negligent performance of duties and failure to provide effective oversight.”21 Another bonus recipient, Jack Hetrick, a VA official at the Cincinnati VA Medical Center, retired within weeks of collecting a $12,075 bonus after receiving a notice of pending removal.22 The VA proposed firing Hetrick after a review found that Barbara Temeck, the acting chief of staff at the Cincinnati VA Medical Center, was prescribing medications and providing other medical care to Hetrick’s family without a proper license.23 Temeck was later hired and given a bonus of $5,000 in January 2016.24 Temeck was later suspended from employment and indicted on three felony charges of writing drug prescriptions outside the scope of her government licensing.25

The VA is not the only agency to fail to take into account serious allegations or investigations against employees before paying them bonuses. In February 2017, the Bureau of Prisons agreed to a $20 million settlement in a class-action Equal Employment Opportunity complaint filed by more than 500 female employees of a Federal prison in Florida.26 This complaint alleged that “the [BOP] created a hostile work environment when it failed to correct known egregious sexual harassment perpetrated by inmates at Federal Correctional Complex (FCC) Coleman since February 6, 2011.”27 Despite this complaint by hundreds of FCC Coleman employees that was filed in 2011,28 four senior executives at FCC Coleman during the course of these allegations received some of the largest bonuses paid by the BOP in 2015.29 Among them, the then-warden of FCC Coleman received $34,500 in bonuses during the previous two years.30

Further illustrating the disconnect between bonuses and actual performance is an OIG report finding that large numbers of Patent and Trademark Office employees did not do any work at all for weeks at a time and still received bonuses.31

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21 Id.
22 Id.
23 Id. See also Dept of Veterans Affairs, VA Takes Action on Allegations of Wrongdoing in Cincinnati (Feb. 25, 2016), available at https://www.va.gov/opa/pressrel/includes/viewPDF.cfm?id=2750.
24 Id.
28 Id.
30 Id.
Some agencies have internal policies related to bonuses for employees involved in serious misconduct. The Drug Enforcement Agency (DEA), for example, prohibits employees from receiving promotions or performance awards for three years after being disciplined for misconduct or while an investigation is pending.\(^{32}\) However, the DEA did not follow this policy when it awarded bonuses and time-off awards to employees who were disciplined for patronizing prostitutes, visiting a brothel overseas, sexually harassing a Foreign Service National, and attending sex parties.\(^{33}\)

These cases illustrate that some Federal managers awarded bonuses to employees who engaged in serious misconduct. A performance award or bonus should be reserved for employees who excel at their work for the American people.

S. 2119 would help address the most extreme of these systemic problems by barring employees who commit serious misconduct from receiving bonuses and would provide a mechanism to recover previously awarded bonuses when the agency learns of misconduct after the bonus has already been awarded. The bill allows employees to utilize a repayment plan for returning improper bonus awards to agencies. The provisions of this bill are triggered if the head of an agency makes an “adverse finding” that the employee either violated an agency policy that would warrant removal or suspension of not less than 14 days, or violated a law for which the employee could be imprisoned for more than one year. An adverse finding may be based on, among other things, information, investigations, or findings of an OIG, the Comptroller General of the United States, or another senior ethics official of an agency.

### III. LEGISLATIVE HISTORY

S. 2119, the Stop Improper Federal Bonuses Act, was introduced on July 15, 2019, by Senator Deb Fischer. The bill was referred to the Committee on Homeland Security and Governmental Affairs. The Committee considered S. 2119 at a business meeting on July 24, 2019, and ordered the bill reported favorably by voice vote en bloc with Senators Johnson, Portman, Paul, Lankford, Romney, Scott, Enzi, Hawley, Peters, Carper, Hassan, Sinema and Rosen present.

### IV. SECTION-BY-SECTION ANALYSIS OF THE BILL, AS REPORTED

**Section 1. Short title**

This section establishes the short title of the bill as the “Stop Improper Federal Bonuses Act.”

**Section 2. Bonuses**

This section provides definitions for “adverse finding”, “agency”, “bonus”, and “employee”.

Under this section, the head of an agency shall not award a bonus to an employee of the agency for a period of five years after the head of an agency makes a qualifying adverse finding against that employee. An adverse finding is a finding that the employee

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\(^{33}\)Id.
violated a policy of the agency for which the employee may be re-
moved or suspended for at least fourteen days, or that the em-
ployee violated a law for which the employee could be imprisoned
for longer than one year.

This section also lists some sources of information that may be
the basis for such a finding, including reports prepared by the
GAO, OIG, and senior ethics officials. This is not intended to be an
exhaustive list.

This section further requires the head of an agency to recover bo-

duses already paid to an employee in a fiscal year in which an ad-
verse finding is made, after notice and opportunity for a hearing,
in addition to appeal rights before the MSPB. An agency will also
be required to allow a bonus to be repaid under a repayment plan.

Finally, this section requires that as a condition of receiving a
bonus awarded after the date of enactment, a Federal employee
must sign a certification stating that the employee will repay the
bonus if so compelled under this section.

V. EVALUATION OF REGULATORY IMPACT

Pursuant to the requirements of paragraph 11(b) of rule XXVI of
the Standing Rules of the Senate, the Committee has considered
the regulatory impact of this bill and determined that the bill will
have no regulatory impact within the meaning of the rules. The
Committee agrees with the Congressional Budget Office’s state-
ment that the bill contains no intergovernmental or private-sector
mandates as defined in the Unfunded Mandates Reform Act
(UMRA) and would impose no costs on state, local, or tribal govern-
ments.

VI. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, August 9, 2019.

Hon. RON JOHNSON,
Chairman, Committee on Homeland Security and Governmental Af-
fairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has pre-
pared the enclosed cost estimate for S. 2119, the Stop Improper
Federal Bonuses Act.

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

Sincerely,

PHILLIP L. SWAGEL.

Enclosure.
S. 2119 would prohibit federal agencies from awarding a bonus to an employee for five years following an adverse finding against that employee. The bill defines an adverse finding as a determination that an employee either has violated agency policy for which the employee could be removed or suspended from employment for 14 or more days, or has broken the law and could be imprisoned for more than one year. Under S. 2119, any employee who received a bonus in the same year as an adverse finding would need to repay the bonus to the agency.

Under current law, there are no restrictions on awarding bonuses to federal employees. Information from the Department of Veterans Affairs and the Internal Revenue Service indicates that some employees with conduct and performance issues have received bonuses. However, recent memorandums issued by the Office of Personnel Management direct agencies to reward the highest performing employees using rigorous standards. While CBO expects that the bill would make it more difficult to award bonuses to employees with performance issues it would not change the total amount of bonuses that could be awarded nor add any significant administrative costs to agencies. Therefore, CBO estimates that implementing S. 2119 would not have a significant budgetary effect.

Enacting S. 2119 could affect direct spending by some agencies that are allowed to use fees, receipts from the sale of goods, and other collections to cover operating costs. CBO estimates that any net changes in direct spending by those agencies would be negligible because most of them can adjust amounts collected to reflect changes in operating costs.

The CBO staff contacts for this estimate are Matthew Pickford and Dan Ready. The estimate was reviewed by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

VII. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows: (existing law proposed to be omitted
is enclosed in brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

UNITED STATES CODE

TITLE 5—GOVERNMENT ORGANIZATION AND EMPLOYEES

PART III—EMPLOYEES

Subpart C—Employee Performance

Chapter 45—Incentive Awards

Table of sections.

SUBCHAPTER I—AWARDS FOR SUPERIOR ACCOMPLISHMENTS

SUBCHAPTER IV—LIMITATIONS ON BONUS AUTHORITY

SEC. 4531. CERTAIN FORMS OF MISCONDUCT.

(a) DEFINITIONS.—In this section:

(1) ADVERSE FINDING.—

(A) IN GENERAL.—The term “adverse finding” means a determination by the head of the agency employing an employee that the conduct of the employee—

(i) violated a policy of the agency for which the employee may be removed or suspended for a period of not less than 14 days; or

(ii) violated a law for which the employee may be imprisoned for more than 1 year.

(B) BASIS.—A determination described in subparagraph (A) may be based on an investigation by, determination of, or information provided by the Inspector General or another senior ethics official of an agency or the Comptroller General of the United States, as part of carrying out an activity, authority, or function of the Inspector General, senior ethics official, or Comptroller General, respectively, under a provision of law other than this section.

(2) AGENCY.—The term “agency” has the meaning given that term under section 551.

(3) BONUS.—The term “bonus” means any performance award or cash award under—
(A) section 4505a;
(B) section 5384; or
(C) section 5754.

(b) PROHIBITION.—The head of an agency shall not award a bonus to an employee of the agency until 5 years after the end of the fiscal year during which the head of an agency makes an adverse finding relating to the employee.

(c) AFTER BONUS AWARDED.—

(1) IN GENERAL.—For a bonus awarded to an employee after the date of enactment of this section, if the head of the agency employing the employee makes an adverse finding relating to the employee during the fiscal year during which the bonus is awarded, the head of the agency, after notice and an opportunity for a hearing, shall issue an order directing the employee to repay the amount of the bonus.

(2) REPAYMENT PLAN.—An agency shall allow an employee who is required to repay a bonus under paragraph (1) to repay that bonus using a repayment plan.

(3) HEARINGS.—A hearing under this paragraph shall be conducted in accordance with regulations relating to hearings promulgated by the head of the agency under chapter 75.

(d) CONDITION OF RECEIPT.—As a condition of receiving a bonus awarded after the enactment of this section, an employee shall sign a certification stating that the employee shall repay the bonus in accordance with a final order issued under subsection (c).

(e) APPEAL.—An employee determined to be ineligible for a bonus under subsection (b) or against whom an order is issued under subsection (c) may submit an appeal to the Merit Systems Protection Board under section 7701.