

113TH CONGRESS
1ST SESSION

H. R. 2879

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 9, 2013

Received; read twice and referred to the Committee on Homeland Security and
Governmental Affairs

AN ACT

To provide limitations on bonuses for Federal employees during sequestration, to provide for investigative leave requirements for members of the Senior Executive Service, to establish certain procedures for conducting in-person or telephonic interactions by Executive branch employees with individuals, 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; TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
 5 “Stop Government Abuse Act”.

6 (b) **TABLE OF CONTENTS.**—The table of contents is
 7 as follows:

Sec. 1. Short title; table of contents.

TITLE I—COMMON SENSE IN COMPENSATION

Sec. 101. Definitions.
 Sec. 102. Limitations.
 Sec. 103. Regulations.

TITLE II—GOVERNMENT EMPLOYEE ACCOUNTABILITY

Sec. 201. Suspension for 14 days or less for Senior Executive Service employ-
 ees.
 Sec. 202. Investigative leave and termination authority for Senior Executive
 Service employees.
 Sec. 203. Suspension of Senior Executive Service employees.
 Sec. 204. Misappropriation of funds amendments.

TITLE III—CITIZEN EMPOWERMENT

Sec. 301. Amendments.

8 **TITLE I—COMMON SENSE IN**
 9 **COMPENSATION**

10 **SEC. 101. DEFINITIONS.**

11 For purposes of this title—

12 (1) the term “employee” means an employee
 13 (as defined by section 2105(a) of title 5, United
 14 States Code) holding a position in or under an Exec-
 15 utive agency;

1 (2) the term “Executive agency” has the mean-
2 ing given such term by section 105 of title 5, United
3 States Code;

4 (3) the term “discretionary monetary payment”
5 means—

6 (A) any award or other monetary payment
7 under chapter 45, or section 5753 or 5754, of
8 title 5, United States Code; and

9 (B) any step-increase under section 5336
10 of title 5, United States Code;

11 (4) the term “covered compensation”, as used
12 with respect to an employee in connection with any
13 period, means the sum of—

14 (A) the basic pay, and

15 (B) any discretionary monetary payments
16 (excluding basic pay),
17 payable to such employee during such period;

18 (5) the term “basic pay” means basic pay for
19 service as an employee; and

20 (6) the term “sequestration period” means a
21 period beginning on the first day of a fiscal year in
22 which a sequestration order with respect to discre-
23 tionary spending or direct spending is issued under
24 section 251A or section 254 of the Balanced Budget
25 and Emergency Deficit Control Act of 1985 and

1 ending on the last day of the fiscal year to which the
2 sequestration order applies.

3 **SEC. 102. LIMITATIONS.**

4 (a) IN GENERAL.—Notwithstanding any other provi-
5 sion of law—

6 (1) no discretionary monetary payment may be
7 made to an employee during any sequestration pe-
8 riod to the extent that such payment would cause in
9 a fiscal year the total covered compensation of such
10 employee for such fiscal year to exceed 105 percent
11 of the total amount of basic pay payable to such in-
12 dividual (before the application of any step-increase
13 in such fiscal year under section 5336 of title 5,
14 United States Code) for such fiscal year; and

15 (2) except as provided in subsection (b), during
16 any sequestration period, an agency may not pay a
17 performance award under section 5384 of title 5,
18 United States Code, to the extent that such payment
19 would cause the number of employees in the agency
20 receiving such award during such period to exceed
21 33 percent of the total number of employees in the
22 agency eligible to receive such award during such pe-
23 riod.

24 (b) WAIVERS.—For the purposes of any sequestra-
25 tion period—

1 (1) the head of any agency may, subject to ap-
2 proval by the Director of the Office of Personnel
3 Management, waive the requirements of subsection
4 (a)(2); and

5 (2) the head of any agency may waive the re-
6 quirements of subsection (a)(1) with respect to any
7 employee if the requirements of such subsection
8 would violate the terms of a collective bargaining
9 agreement covering such employee, except that this
10 paragraph shall not apply to any employee covered
11 by a collective bargaining agreement that is renewed
12 on or after the date of enactment of this title.

13 (c) NOTIFICATION.—In the case of an agency for
14 which the Director of the Office of Personnel Management
15 grants a waiver under subsection (b)(1), the agency shall
16 notify the Committee on Oversight and Government Re-
17 form of the House of Representatives and the Committee
18 on Homeland Security and Governmental Affairs of the
19 Senate of the percentage of career appointees receiving
20 performance awards under section 5384 of title 5, United
21 States Code, and the dollar amount of each performance
22 award.

23 (d) APPLICATION.—This section shall apply to any
24 discretionary monetary payment or performance award

1 under section 5384 of title 5, United States Code, made
2 on or after the date of enactment of this title.

3 **SEC. 103. REGULATIONS.**

4 The Office of Personnel Management may prescribe
5 regulations to carry out this title.

6 **TITLE II—GOVERNMENT**
7 **EMPLOYEE ACCOUNTABILITY**

8 **SEC. 201. SUSPENSION FOR 14 DAYS OR LESS FOR SENIOR**
9 **EXECUTIVE SERVICE EMPLOYEES.**

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

12 “(1) ‘employee’ means—

13 “(A) an individual in the competitive serv-
14 ice who is not serving a probationary or trial
15 period under an initial appointment or who has
16 completed 1 year of current continuous employ-
17 ment in the same or similar positions under
18 other than a temporary appointment limited to
19 1 year or less; or

20 “(B) a career appointee in the Senior Ex-
21 ecutive Service who—

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

24 “(ii) was covered by the provisions of
25 subchapter II of this chapter immediately

1 before appointment to the Senior Executive
2 Service;”.

3 **SEC. 202. INVESTIGATIVE LEAVE AND TERMINATION AU-**
4 **THORITY FOR SENIOR EXECUTIVE SERVICE**
5 **EMPLOYEES.**

6 (a) IN GENERAL.—Chapter 75 of title 5, United
7 States Code, is amended by adding at the end the fol-
8 lowing:

9 “SUBCHAPTER VI—INVESTIGATIVE LEAVE FOR
10 SENIOR EXECUTIVE SERVICE EMPLOYEES

11 “§ 7551. Definitions

12 “For the purposes of this subchapter—

13 “(1) ‘employee’ has the meaning given such
14 term in section 7541; and

15 “(2) ‘investigative leave’ means a temporary ab-
16 sence without duty for disciplinary reasons, of a pe-
17 riod not greater than 90 days.

18 “§ 7552. Actions covered

19 “This subchapter applies to investigative leave.

20 “§ 7553. Cause and procedure

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

1 “(2) If an agency determines, as prescribed in regula-
2 tion by the Office of Personnel Management, that such
3 employee’s conduct is flagrant and that such employee in-
4 tentionally engaged in such conduct, the agency may place
5 such employee on investigative leave under this subchapter
6 without pay.

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

12 “(2) Not later than 5 business days after the end of
13 each such 45-day period, the agency shall submit a report
14 describing such review to the Committee on Oversight and
15 Government Reform of the House of Representatives and
16 the Committee on Homeland Security and Governmental
17 Affairs of the Senate.

18 “(3) At the end of a period of investigative leave im-
19 plemented under this section, the agency shall—

20 “(A) remove an employee placed on investiga-
21 tive leave under this section;

22 “(B) suspend such employee without pay; or

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

1 “(4) The agency may extend the period of investiga-
2 tive leave with respect to an action under this subchapter
3 for an additional period not to exceed 90 days.

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

7 “(1) at least 30 days’ advance written notice,
8 stating specific reasons for the proposed action, un-
9 less—

10 “(A) there is reasonable cause to believe
11 that the employee has committed a crime for
12 which a sentence of imprisonment can be im-
13 posed; or

14 “(B) the agency determines, as prescribed
15 in regulation by the Office of Personnel Man-
16 agement, that the employee’s conduct with re-
17 spect to which an action covered by this sub-
18 chapter is proposed is flagrant and that such
19 employee intentionally engaged in such conduct;

20 “(2) a reasonable time, but not less than 7
21 days, to answer orally and in writing and to furnish
22 affidavits and other documentary evidence in sup-
23 port of the answer;

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

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

3 “(d) An agency may provide, by regulation, for a
4 hearing which may be in lieu of or in addition to the op-
5 portunity to answer provided under subsection (c)(2).

6 “(e) An employee against whom an action is taken
7 under this section is entitled to appeal to the Merit Sys-
8 tems Protection Board under section 7701.

9 “(f) Copies of the notice of proposed action, the an-
10 swer of the employee when written, and a summary there-
11 of when made orally, the notice of decision and reasons
12 therefor, and any order effecting an action covered by this
13 subchapter, together with any supporting material, shall
14 be maintained by the agency and shall be furnished to the
15 Merit Systems Protection Board upon its request and to
16 the employee affected upon the employee’s request.

17 “SUBCHAPTER VII—REMOVAL OF SENIOR
18 EXECUTIVE SERVICE EMPLOYEES

19 “§ 7561. **Definition**

20 “For purposes of this subchapter, the term ‘em-
21 ployee’ has the meaning given such term in section 7541.

22 “§ 7562. **Removal of Senior Executive Service employ-**
23 **ees**

24 “(a) Notwithstanding any other provision of law and
25 consistent with the requirements of subsection (b), the

1 head of an agency may remove an employee for serious
2 neglect of duty, misappropriation of funds, or malfeasance
3 if the head of the agency—

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

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

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

14 “(b) An employee may not be removed under this sec-
15 tion—

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

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

20 “(B) paragraphs (8) or (9) of section
21 2302(b); or

22 “(2) on any basis, described in paragraph (1),
23 as to which any administrative or judicial pro-
24 ceeding—

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

3 “(B) is pending.

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

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

17 “(e) An employee against whom an action is taken
18 under this section is entitled to appeal to the Merit Sys-
19 tems Protection Board under section 7701 of this title.

20 “(f) Copies of the notice of proposed action, the an-
21 swer of the employee when written, and a summary there-
22 of when made orally, the notice of decision and reasons
23 therefor, and any order effecting an action covered by this
24 subchapter, together with any supporting material, shall
25 be maintained by the agency and shall be furnished to the

1 Merit Systems Protection Board upon its request and to
2 the employee affected upon the employee’s request.

3 “(g) A removal under this section does not affect the
4 right of the employee affected to seek or accept employ-
5 ment with any other department or agency of the United
6 States if that employee is declared eligible for such em-
7 ployment by the Director of the Office of Personnel Man-
8 agement.

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

11 (b) CLERICAL AMENDMENT.—The table of sections
12 at the beginning of chapter 75 of title 5, United States
13 Code, is amended by adding after the item relating to sec-
14 tion 7543 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.”.

15 **SEC. 203. SUSPENSION OF SENIOR EXECUTIVE SERVICE EM-**
16 **PLOYEES.**

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

19 (1) in subsection (a), by inserting “misappro-
20 priation of funds,” after “malfeasance,”; and

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

3 “(1) at least 30 days’ advance written notice,
4 stating specific reasons for the proposed action, un-
5 less—

6 “(A) there is reasonable cause to believe
7 that the employee has committed a crime for
8 which a sentence of imprisonment can be im-
9 posed; or

10 “(B) the agency determines, as prescribed
11 in regulation by the Office of Personnel Man-
12 agement, that the employee’s conduct with re-
13 spect to which an action covered by this sub-
14 chapter is proposed is flagrant and that such
15 employee intentionally engaged in such con-
16 duct;”.

17 **SEC. 204. MISAPPROPRIATION OF FUNDS AMENDMENTS.**

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

21 (1) in subsection (a)(2), by inserting “mis-
22 appropriation of funds,” after “malfeasance,”; and

23 (2) in subsection (b), by striking “or malfea-
24 sance” and inserting “malfeasance, or misappropria-
25 tion of funds”.

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

5 **TITLE III—CITIZEN**
 6 **EMPOWERMENT**

7 **SEC. 301. AMENDMENTS.**

8 (a) IN GENERAL.—Part III of title 5, United States
 9 Code, is amended by inserting after chapter 79 the fol-
 10 lowing:

11 **“CHAPTER 79A—SERVICES TO MEMBERS**
 12 **OF THE PUBLIC**

“Sec.

“7921. Procedure for in-person and telephonic interactions conducted by Execu-
 tive Branch employees.

13 **“§ 7921. Procedure for in-person and telephonic inter-**
 14 **actions conducted by Executive Branch**
 15 **employees**

16 “(a) PURPOSE.—The purpose of this section is to en-
 17 sure that individuals have the right to record in-person
 18 and telephonic interactions with Executive agency employ-
 19 ees and to ensure that individuals who are the target of
 20 enforcement actions conducted by Executive agency em-
 21 ployees are notified of such right.

22 “(b) DEFINITIONS.—For purposes of this section—

23 “(1) the term ‘telephonic’ means by telephone
 24 or other similar electronic device; and

1 “(2) the term ‘employee’ means an employee of
2 an Executive agency.

3 “(c) CONSENT OF EXECUTIVE AGENCY EMPLOY-
4 EES.—Participation by an employee, acting in an official
5 capacity, in an in-person or telephonic interaction shall
6 constitute consent by the employee to a recording of that
7 interaction by any participant in the interaction.

8 “(d) NOTICE OF RIGHTS WHEN FEDERAL EMPLOY-
9 EES ENGAGED IN CERTAIN ACTIONS.—A notice of an in-
10 dividual’s right to record conversations with employees
11 shall be included in any written material provided by an
12 Executive agency to the individual concerning an audit,
13 investigation, inspection, or enforcement action that could
14 result in the imposition of a fine, forfeiture of property,
15 civil monetary penalty, or criminal penalty against, or the
16 collection of an unpaid tax, fine, or penalty from, such
17 individual or a business owned or operated by such indi-
18 vidual.

19 “(e) OFFICIAL REPRESENTATIVE.—Any person who
20 is permitted to represent before an Executive agency an
21 individual under this section shall receive the same notice
22 as required under subsection (d) with respect to such indi-
23 vidual.

24 “(f) NO CAUSE OF ACTION.—This section does not
25 create any express or implied private right of action.

