

Union Calendar No. 369

114TH CONGRESS
2^D SESSION

H. R. 4358

[Report No. 114–485]

To amend title 5, United States Code, to enhance accountability within the Senior Executive Service, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 8, 2016

Mr. WALBERG introduced the following bill; which was referred to the Committee on Oversight and Government Reform

APRIL 12, 2016

Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

A BILL

To amend title 5, United States Code, to enhance accountability within the Senior Executive Service, 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.**

4 This Act may be cited as the “Senior Executive Serv-
5 ice Accountability Act”.

6 **SEC. 2. BIENNIAL JUSTIFICATION OF SENIOR EXECUTIVE**
7 **SERVICE POSITIONS.**

8 Section 3133(a)(2) of title 5, United States Code, is
9 amended by inserting after “positions” the following: “,
10 with a justification for each position (by title and organi-
11 zational location) and the specific result expected from
12 each position, including the impact of such result on the
13 agency mission,”.

14 **SEC. 3. EXTENSION OF PROBATIONARY PERIOD FOR CA-**
15 **REER APPOINTEES.**

16 (a) IN GENERAL.—Section 3393(d) of title 5, United
17 States Code, is amended by striking “1-year” and insert-
18 ing “2-year”.

19 (b) CONFORMING AMENDMENT.—Section 3592(a)(1)
20 of such title is amended by striking “1-year” and inserting
21 “2-year”.

1 **SEC. 4. MODIFICATION OF PAY RETENTION FOR CAREER**
2 **APPOINTEES REMOVED FOR UNDER PER-**
3 **FORMANCE.**

4 Section 3594(c)(1)(B) of title 5, United States Code,
5 is amended to read as follows:

6 “(B)(i) any career appointee placed under
7 subsection (a) or (b)(2) of this section shall be
8 entitled to receive basic pay at the highest of—

9 “(I) the rate of basic pay in effect for
10 the position in which placed;

11 “(II) the rate of basic pay in effect at
12 the time of the placement for the position
13 the career appointee held in the civil serv-
14 ice immediately before being appointed to
15 the Senior Executive Service; or

16 “(III) the rate of basic pay in effect
17 for the career appointee immediately before
18 being placed under subsection (a) or (b) of
19 this section; and

20 “(ii) any career appointee placed under
21 subsection (b)(1) of this section shall be entitled
22 to receive basic pay at the rate of basic pay in
23 effect for the position in which placed; and”.

1 **SEC. 5. ADVANCED ESTABLISHMENT OF PERFORMANCE RE-**
2 **QUIREMENTS UNDER SENIOR EXECUTIVE**
3 **SERVICE PERFORMANCE APPRAISAL SYS-**
4 **TEMS.**

5 Section 4312(b)(1) of title 5, United States Code, is
6 amended—

7 (1) by striking “on or” and inserting “not later
8 than 30 calendar days”; and

9 (2) by inserting “in writing” after “commu-
10 nicated”.

11 **SEC. 6. AMENDMENTS WITH RESPECT TO ADVERSE AC-**
12 **TIONS AGAINST CAREER APPOINTEES.**

13 (a) **SUSPENSION FOR 14 DAYS OR LESS FOR SENIOR**
14 **EXECUTIVE SERVICE EMPLOYEE.**—Paragraph (1) of Sec-
15 tion 7501 of title 5, United States Code, is amended to
16 read as follows:

17 “(1) ‘employee’ means—

18 “(A) an individual in the competitive serv-
19 ice who is not serving a probationary period or
20 trial period under an initial appointment or who
21 has completed 1 year of current continuous em-
22 ployment in the same or similar positions under
23 other than a temporary appointment limited to
24 1 year or less; or

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

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

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

7 (b) MODIFICATION OF CAUSE AND PROCEDURE FOR
8 SUSPENSION AND TERMINATION.—

9 (1) IN GENERAL.—Section 7543 of title 5,
10 United States Code, is amended—

11 (A) in subsection (a), by striking “mis-
12 conduct,” and inserting “such cause as would
13 promote the efficiency of the service, mis-
14 conduct,”; and

15 (B) in subsection (b)(1), by striking “30”
16 and inserting “15”.

17 (2) CONFORMING AMENDMENTS.—Subchapter
18 V of chapter 35 of title 5, United States Code, is
19 amended—

20 (A) in section 3593—

21 (i) in subsection (a)(2), by striking
22 “misconduct,” and inserting “such cause
23 as would promote the efficiency of the
24 service, misconduct,”; and

1 (ii) in subsection (b), by striking
 2 “misconduct,” and inserting “such cause
 3 as would promote the efficiency of the
 4 service, misconduct,”; and

5 (B) in section 3594(a), by striking “mis-
 6 conduct,” and inserting “such cause as would
 7 promote the efficiency of the service, mis-
 8 conduct,”.

9 **SEC. 7. MANDATORY LEAVE FOR CAREER APPOINTEES**

10 **SUBJECT TO REMOVAL.**

11 (a) IN GENERAL.—Subchapter II of chapter 63 of
 12 title 5, United States Code, is amended by adding at the
 13 end the following:

14 **“§ 6330. Mandatory leave for Senior Executive Serv-**
 15 **ice career appointees subject to removal**

16 “(a) In this section—

17 “(1) the term ‘employee’ means an employee
 18 (as that term is defined in section 7541(1)) who has
 19 received written notice of removal from the civil
 20 service under subchapter V of chapter 75; and

21 “(2) the term ‘mandatory leave’ means, with re-
 22 spect to an employee, an absence with pay but with-
 23 out duty during which such employee—

24 “(A) shall be charged accrued annual leave
 25 for the period of such absence; and

1 “(B) may not accrue any annual leave
2 under section 6303 for the period of such ab-
3 sence.

4 “(b) Under regulations prescribed by the Office of
5 Personnel Management, an agency may place an employee
6 on mandatory leave for misconduct, neglect of duty, mal-
7 feasance, or such cause as would promote the efficiency
8 of the service.

9 “(c) If an agency determines that an employee should
10 be placed on mandatory leave under subsection (b), such
11 leave shall begin no earlier than the date on which the
12 employee received written notice of a removal under sub-
13 chapter V of chapter 75.

14 “(d) If a final order or decision is issued in favor
15 of such employee with respect to removal under sub-
16 chapter V of chapter 75 by the agency, the Merit Systems
17 Protection Board, or the United States Court of Appeals
18 for the Federal Circuit, any annual leave that is charged
19 to an employee by operation of this section shall be re-
20 stored to the applicable leave account of such employee.”.

21 (b) CLERICAL AMENDMENT.—The table of sections
22 of chapter 63 of title 5, United States Code, is amended
23 by adding after the item relating to section 6328 the fol-
24 lowing new item:

 “6330. Mandatory leave for Senior Executive Service career appointees subject
 to removal.”.

1 (c) REGULATIONS.—Not later than 6 months after
 2 the date of enactment of this Act, the Director of the Of-
 3 fice of Personnel Management shall prescribe regulations
 4 with respect to the leave provided by the amendment in
 5 subsection (a).

6 **SEC. 8. EXPEDITED REMOVAL OF CAREER APPOINTEES**
 7 **FOR PERFORMANCE OR MISCONDUCT.**

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

11 “SUBCHAPTER VI—SENIOR EXECUTIVE
 12 SERVICE: EXPEDITED REMOVAL

13 **“§ 7551. Definitions**

14 “In this subchapter—

15 “(1) the term ‘employee’ has the meaning given
 16 such term in section 7541(1), but does not include
 17 any career appointee in the Senior Executive Service
 18 within the Department of Veterans Affairs; and

19 “(2) the term ‘misconduct’ includes neglect of
 20 duty, malfeasance, or failure to accept a directed re-
 21 assignment or to accompany a position in a transfer
 22 of function.

23 **“§ 7552. Actions covered**

24 “This subchapter applies to a removal from the civil
 25 service or a transfer from the Senior Executive Service,

1 but does not apply to an action initiated under section
2 1215, to a removal under section 3592 or 3595, to a sus-
3 pension under section 7503, to a suspension or removal
4 under section 7532, to a suspension or removal under sec-
5 tion 7542, or to a suspension or removal under section
6 713 of title 38.

7 **“§ 7553. Cause and procedure**

8 “(a)(1) Under regulations prescribed by the Office of
9 Personnel Management, the head of an agency may re-
10 move an employee of the agency from the Senior Executive
11 Service if the head determines that the performance or
12 misconduct of the individual warrants such removal. If the
13 head so removes such an individual, the head may—

14 “(A) remove the individual from the civil serv-
15 ice; or

16 “(B) in the case of an employee described in
17 paragraph (2), transfer the employee from the Sen-
18 ior Executive Service to a General Schedule position
19 at any grade of the General Schedule for which the
20 employee is qualified and that the head determines
21 is appropriate.

22 “(2) An employee described in this paragraph is an
23 individual who—

24 “(A) previously occupied a permanent position
25 within the competitive service;

1 “(B) previously occupied a permanent position
2 within the excepted service; or

3 “(C) prior to employment as a career appointee
4 at the agency, did not occupy any position within the
5 Federal Government.

6 “(3) An employee against whom an action is proposed
7 under paragraph (1) is entitled to 5 days’ advance written
8 notice.

9 “(b)(1) Notwithstanding any other provision of law,
10 including section 3594, any employee transferred to a
11 General Schedule position under subsection (a)(1)(B)
12 shall, beginning on the date of such transfer, receive the
13 annual rate of pay applicable to such position.

14 “(2) An employee so transferred may not be placed
15 on administrative leave or any other category of paid leave
16 during the period during which an appeal (if any) under
17 this section is ongoing, and may only receive pay if the
18 individual reports for duty. If an employee so transferred
19 does not report for duty, such employee shall not receive
20 pay or other benefits pursuant to section 7554(e).

21 “(c) Not later than 30 days after removing or trans-
22 ferring an employee under subsection (a), the applicable
23 head of the agency shall submit to Congress notice in writ-
24 ing of such removal or transfer and the reason for such
25 removal or transfer.

1 “(d) Section 3592(b)(1) does not apply to an action
2 to remove or transfer an employee under this section.

3 “(e) Subject to the requirements of section 7554, an
4 employee may appeal a removal or transfer under sub-
5 section (a) to the Merit Systems Protection Board under
6 section 7701, but only if such appeal is made not later
7 than seven days after the date of such removal or transfer.

8 **“§ 7554. Expedited review of appeal**

9 “(a) Upon receipt of an appeal under section
10 7553(d), the Merit Systems Protection Board shall refer
11 such appeal to an administrative judge pursuant to section
12 7701(b)(1). The administrative judge shall—

13 “(1) expedite any such appeal under such sec-
14 tion; and

15 “(2) in any such case, issue a decision not later
16 than 21 days after the date of the appeal.

17 “(b) Notwithstanding any other provision of law, in-
18 cluding section 7703, the decision of an administrative
19 judge under subsection (a) shall be final and shall not be
20 subject to any further appeal.

21 “(c) In any case in which the administrative judge
22 cannot issue a decision in accordance with the 21-day re-
23 quirement under subsection (a)(2), the removal or transfer
24 is final. In such a case, the Merit Systems Protection
25 Board shall, within 14 days after the date that such re-

1 removal or transfer is final, submit to Congress a report
2 that explains the reasons why a decision was not issued
3 in accordance with such requirement.

4 “(d) The Merit Systems Protection Board or admin-
5 istrative judge may not stay any removal or transfer under
6 this section.

7 “(e) During the period beginning on the date on
8 which an employee appeals a removal from the civil service
9 under section 7553(d) and ending on the date that the
10 administrative judge issues a final decision on such appeal,
11 such employee may not receive any pay, awards, bonuses,
12 incentives, allowances, differentials, student loan repay-
13 ments, special payments, or benefits.”.

14 (b) APPLICATION.—

15 (1) IN GENERAL.—Subchapter VI of chapter 75
16 of title 5, United States Code, as added by sub-
17 section (a), shall not apply to any personnel action
18 against a career appointee (as that term is defined
19 in section 3132(a)(4) of title 5, United States Code)
20 that was commenced before the date of enactment of
21 this Act.

22 (2) RELATION TO OTHER AUTHORITIES.—The
23 authority provided by such subchapter is in addition
24 to the authority provided under section 3592 or sub-

1 chapter V of chapter 75 of title 5, United States
2 Code.

3 (c) TECHNICAL AMENDMENTS.—

4 (1) TITLE 5.—Title 5, United States Code, is
5 amended—

6 (A) in section 3592(b)(2)—

7 (i) by striking “or” at the end of sub-
8 paragraph (A);

9 (ii) by striking the period at the end
10 of subparagraph (B) and inserting “; or”;
11 and

12 (iii) by adding at the end the fol-
13 lowing:

14 “(C) any removal under subchapter VI of
15 this title or section 713 of title 38.”;

16 (B) in section 3393(g), by striking “or
17 7543 of this title” and inserting “, 7543, or
18 7553 of this title or section 713 of title 38”;
19 and

20 (C) in section 7542, by striking “or to a
21 removal under section 3592 or 3595 of this
22 title” and inserting “to a removal under section
23 3592 or 3595 of this title, to a suspension
24 under section 7503, to a removal or transfer

1 under section 7553, or a removal or transfer
 2 under section 713 of title 38”.

3 (2) TITLE 38.—Section 713(f)(1) of title 38,
 4 United States Code, is amended by striking “or sub-
 5 chapter V” and inserting “, chapter 43, or sub-
 6 chapters V and VI”.

7 (d) CLERICAL AMENDMENT.—The table of sections
 8 at the beginning of chapter 75 of title 5, United States
 9 Code, is amended by adding after the item relating to sec-
 10 tion 7543 the following:

“SUBCHAPTER VI—SENIOR EXECUTIVE SERVICE: EXPEDITED REMOVAL

“7551. Definitions.

“7552. Actions covered.

“7553. Cause and procedure.

“7554. Expedited review of appeal.”.

11 **SEC. 9. MANDATORY REASSIGNMENT OF CAREER AP-**
 12 **POINTEES.**

13 (a) IN GENERAL.—Section 3395(a) of title 5, United
 14 States Code, is amended by adding at the end the fol-
 15 lowing:

16 “(3)(A) Consistent with the requirements of para-
 17 graphs (1) and (2), at least once every five years beginning
 18 on the date that a career appointee is initially appointed
 19 to the Senior Executive Service, each career appointee at
 20 an agency shall be reassigned to another Senior Executive
 21 Service position at the agency at a different geographic

1 location that does not include the supervision of the same
2 agency personnel or programs.

3 “(B) The head of an agency may waive the require-
4 ment under subparagraph (A) for any career appointee if
5 the head submits notice of the waiver and an explanation
6 of the reasons for the waiver to the Committee on Over-
7 sight and Government Reform of the House of Represent-
8 atives and the Committee on Homeland Security and Gov-
9 ernmental Affairs of the Senate.”.

10 (b) CONFORMING AMENDMENT.—Section
11 3395(a)(1)(A) of title 5, United States Code, is amended
12 by striking “paragraph (2)” and inserting “paragraphs
13 (2) and (3)”.

14 (c) EFFECTIVE DATE.—The amendments made by
15 this section shall take effect 90 days after the date of en-
16 actment of this Act.

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