

116TH CONGRESS
1ST SESSION

H. R. 3348

To amend title 5, United States Code, to provide for an alternative removal for performance or misconduct for Federal employees.

IN THE HOUSE OF REPRESENTATIVES

JUNE 19, 2019

Mr. LOUDERMILK (for himself, Mr. MITCHELL, Mr. HICE of Georgia, Mr. HIGGINS of Louisiana, Mr. NORMAN, Mr. ALLEN, Mr. BABIN, Mr. WALKER, Mr. GREEN of Tennessee, Mr. JOYCE of Pennsylvania, Mr. CHABOT, Mr. BANKS, Mr. GROTHMAN, Mr. MCCLINTOCK, Mr. HILL of Arkansas, Mr. GIANFORTE, and Mr. FLORES) introduced the following bill; which was referred to the Committee on Oversight and Reform

A BILL

To amend title 5, United States Code, to provide for an alternative removal for performance or misconduct for Federal employees.

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 “Modern Employment Reform, Improvement, and Trans-
6 formation Act of 2019” or the “MERIT Act of 2019”.

7 (b) TABLE OF CONTENTS.—The table of contents for
8 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Termination of authority for chapter 43 performance-based actions.
- Sec. 3. Adverse actions based on performance or conduct.
- Sec. 4. Prohibition on grieving adverse actions and reductions in force.
- Sec. 5. Actions against senior executives for performance or conduct.
- Sec. 6. Modification of procedures for furlough.
- Sec. 7. Reduction of annuity of employee convicted of a felony for which an adverse action is or would have been taken.
- Sec. 8. Authority to recoup bonuses or awards paid to employees.
- Sec. 9. Extension of probationary period for positions within the Senior Executive Service.
- Sec. 10. Extension of probationary period for employees in the competitive service.
- Sec. 11. Application.

1 SEC. 2. TERMINATION OF AUTHORITY FOR CHAPTER 43
2 PERFORMANCE-BASED ACTIONS.

3 (a) REPEAL.—Section 4303 of title 5, United States
4 Code, is repealed.

5 (b) APPLICATION.—Subsection (a) shall not apply to
6 any performance-based action under section 4303 of title
7 5, United States Code, commenced before the effective
8 date provided in section 11.

9 (c) CONFORMING AMENDMENTS.—

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

12 (A) in section 2302(e)(1)(A), by striking
13 “3504, and 4303(e)” and inserting “and
14 3504”;

15 (B) in section 4302(c)(6), by striking “but
16 only after an opportunity to demonstrate ac-
17 ceptable performance”;

18 (C) in section 7512, by striking subpara-
19 graph (D) and redesignating subparagraphs (E)

1 and (F) as subparagraphs (D) and (E), respec-
 2 tively;

3 (D) in section 7701(c)(1), by striking “de-
 4 cision” and all that follows through “preponder-
 5 ance of the evidence” and inserting “decision is
 6 supported by a preponderance of the evidence”;

7 (E) in section 9508(d), by striking “(1) In
 8 applying” and all that follows through “(2)”;
 9 and

10 (F) in section 9902(a)(2), by striking “sec-
 11 tions 4302 and 4303(e)” and inserting “section
 12 4302”.

13 (2) TITLE 31.—Section 732(d)(3) of title 31,
 14 United States Code, is amended by striking “con-
 15 sistent with section 4303 of title 5”.

16 (d) CLERICAL AMENDMENT.—The table of sections
 17 for chapter 43 of title 5, United States Code, is amended
 18 by striking the item relating to section 4303.

19 **SEC. 3. ADVERSE ACTIONS BASED ON PERFORMANCE OR**
 20 **CONDUCT.**

21 (a) IN GENERAL.—Section 7513 of title 5, United
 22 States Code, is amended—

23 (1) in subsection (b)—

24 (A) in paragraph (1)—

1 (i) by striking “at least 30 days’ ad-
2 vance written notice” and inserting “writ-
3 ten notice 15 business days in advance”;
4 and

5 (ii) by inserting before the semicolon
6 at the end the following: “, and including
7 a file containing all the evidence in support
8 of the proposed action”;

9 (B) in paragraph (2), by striking “but not
10 less than 7 days” and inserting “but not more
11 than 7 business days”; and

12 (C) in paragraph (4), by striking “at the
13 earliest practicable date”;

14 (2) by amending subsection (c) to read as fol-
15 lows:

16 “(c) An agency shall issue the decision not later than
17 15 business days after the agency provides notice, to the
18 maximum extent practicable, to the employee affected.”;

19 (3) in subsection (d), by inserting before the pe-
20 riod at the end the following: “not later than 10
21 business days after the effective date of the action”;
22 and

23 (4) in subsection (e)—

24 (A) by striking “and to the employee af-
25 fected upon the employee’s request”; and

1 (B) by adding at the end the following:
2 “Upon the affected employee’s request, copies
3 of the documents described in the preceding
4 sentence shall be furnished to the employee, to
5 the extent those documents were not provided
6 under subsection (c).”.

7 (b) DISCIPLINE OF SUPERVISORS BASED ON RETAL-
8 LATION AGAINST WHISTLEBLOWERS.—Section
9 7515(b)(2)(B) of title 5, United States Code, is amend-
10 ed—

11 (1) in clause (i), by striking “not later than 14
12 days” and inserting “not more than 7 business
13 days”; and

14 (2) in clause (ii), by striking “14-day period”
15 and inserting “7-business-day period”.

16 (c) APPLICATION.—The amendments made by sub-
17 sections (a) and (b) shall not apply to any action under
18 section 7513 or 7515 of title 5, United States Code, as
19 amended by those subsections, respectively, commenced
20 before the effective date provided in section 11.

21 **SEC. 4. PROHIBITION ON GRIEVING ADVERSE ACTIONS**
22 **AND REDUCTIONS IN FORCE.**

23 Section 7121 of title 5, United States Code, is
24 amended—

1 (1) in subsection (a)(1), by striking “the settle-
2 ment of”;

3 (2) in subsection (c)—

4 (A) by redesignating paragraphs (1)
5 through (5) as paragraphs (5) through (9), re-
6 spectively; and

7 (B) by inserting before paragraph (5), as
8 so redesignated, the following:

9 “(1) an adverse action under subchapter II of
10 chapter 75;

11 “(2) a furlough of more than 30 days by a re-
12 duction in force action under subchapter I of chap-
13 ter 35;

14 “(3) a separation by a reduction in force action
15 under subchapter I of chapter 35;

16 “(4) a demotion by a reduction in force action
17 under subchapter I of chapter 35;”;

18 (3) in subsection (e)—

19 (A) in paragraph (1)—

20 (i) by striking “(1) Matters” and all
21 that follows through “but not both.”; and

22 (ii) in the second sentence, by striking
23 “Similar matters” and inserting “Matters
24 similar to those covered under subchapter
25 II of chapter 75”; and

1 (B) by striking paragraph (2); and

2 (4) in subsection (f)—

3 (A) by striking the first sentence; and

4 (B) in the second sentence, by striking “In
5 matters similar to those covered under sections
6 4303 and 7512 of this title” and inserting “In
7 matters similar to those covered under sub-
8 chapter II of chapter 75”.

9 **SEC. 5. ACTIONS AGAINST SENIOR EXECUTIVES FOR PER-**
10 **FORMANCE OR CONDUCT.**

11 (a) REPEAL OF PAY RETENTION FOR CAREER AP-
12 PPOINTEES REMOVED FROM THE SENIOR EXECUTIVE
13 SERVICE.—Section 3594(c)(1)(B) of title 5, United States
14 Code, is amended to read as follows:

15 “(B)(i) any career appointee placed under sub-
16 section (a) or (b)(2) of this section shall be entitled
17 to receive basic pay at the highest of—

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

20 “(II) the rate of basic pay in effect at the
21 time of the placement for the position the ca-
22 reer appointee held in the civil service imme-
23 diately before being appointed to the Senior Ex-
24 ecutive Service; or

1 “(III) the rate of basic pay in effect for
 2 the career appointee immediately before being
 3 placed under subsection (a) or (b) of this sec-
 4 tion; and

5 “(ii) any career appointee placed under sub-
 6 section (b)(1) of this section shall be entitled to re-
 7 ceive basic pay at the rate of basic pay in effect for
 8 the position in which placed; and”.

9 (b) APPRAISAL SYSTEM REQUIREMENTS.—Section
 10 4314(b) of title 5, United States Code, is amended—

11 (1) in paragraph (3), by inserting before the
 12 semicolon the following: “or, as warranted, from the
 13 civil service”; and

14 (2) in paragraph (4), by inserting before the pe-
 15 riod at the end the following: “or, as warranted,
 16 from the civil service”.

17 (c) SUSPENSION FOR 14 DAYS OR LESS.—Paragraph
 18 (1) of section 7501 of title 5, United States Code, is
 19 amended to read as follows:

20 “(1) ‘employee’ means—

21 “(A) an individual in the competitive serv-
 22 ice who is not serving a probationary period or
 23 trial period under an initial appointment or, ex-
 24 cept as provided in section 1599e of title 10,
 25 who has completed 1 year of current continuous

1 employment in the same or similar positions
2 under other than a temporary appointment lim-
3 ited to 1 year or less; or

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

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

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

12 (d) MODIFICATION OF CAUSE AND PROCEDURE FOR
13 SUSPENSION AND TERMINATION.—Section 7543 of title
14 5, United States Code, is amended—

15 (1) by striking subsections (a), (b), and (c) and
16 inserting the following:

17 “(a) Under regulations prescribed by the Office of
18 Personnel Management, an agency may take an action
19 covered by this subchapter against an employee only for
20 such cause as would promote the efficiency of the service.

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

23 “(1) written notice 15 business days in advance,
24 unless there is reasonable cause to believe the em-
25 ployee has committed a crime for which a sentence

1 of imprisonment can be imposed, stating specific
2 reasons for the proposed action, and including a file
3 containing all the evidence in support of the pro-
4 posed action;

5 “(2) a reasonable time, but not more than 7
6 business days, to answer orally and in writing and
7 to furnish affidavits and other documentary evidence
8 in support of the answer;

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

11 “(4) a written decision and the specific reasons
12 therefor.

13 “(c) An agency shall issue the decision not later than
14 15 business days after the agency provides notice, to the
15 maximum extent practicable, to the employee affected.”;

16 (2) in subsection (d), by inserting before the pe-
17 riod at the end the following: “not later than 10
18 business days after the effective date of the action”;
19 and

20 (3) in subsection (e)—

21 (A) by striking “and to the employee af-
22 fected upon the employee’s request”; and

23 (B) by adding at the end the following:
24 “Upon the affected employee’s request, copies
25 of the documents described in the preceding

1 sentence shall be furnished to the employee, to
2 the extent those documents were not provided
3 under subsection (c).”.

4 (e) CONFORMING AMENDMENTS.—Title 5, United
5 States Code, is amended—

6 (1) in section 3592(b)(2)(B), by striking “any
7 disciplinary action” and inserting “any action under
8 section 7543”;

9 (2) in section 3593(a)(2), by striking “mis-
10 conduct, neglect of duty, malfeasance,” and insert-
11 ing “a removal under section 7543”;

12 (3) in section 3594, by adding at the end the
13 following:

14 “(d) This section shall not apply to any career ap-
15 pointee who is subject to a personnel action under sub-
16 chapter V of chapter 75.”; and

17 (4) in section 7542, by striking “or to a re-
18 moval under section 3592 or 3595” and inserting
19 the following: “to a removal from the Senior Execu-
20 tive Service under section 3592 of this title, to a re-
21 duction in force as defined in section 3595(d) of this
22 title, or to a transfer of function as described in sec-
23 tion 3595(e)”.

24 (f) APPLICATION.—The amendments made by this
25 section shall not apply to any personnel action under sub-

1 chapter V of chapter 75 of title 5, United States Code,
2 commenced before the effective date provided in section
3 11.

4 **SEC. 6. MODIFICATION OF PROCEDURES FOR FURLOUGH.**

5 (a) GENERAL FURLOUGH OF 14 DAYS OR LESS;
6 FURLOUGH DUE TO LAPSE IN APPROPRIATIONS.—Sub-
7 chapter I of chapter 75 of title 5, United States Code,
8 is amended—

9 (1) in section 7501, as amended by section
10 5(c)—

11 (A) in paragraph (1), by striking “and” at
12 the end;

13 (B) by redesignating paragraph (2) as
14 paragraph (5); and

15 (C) by inserting after paragraph (1) the
16 following:

17 “(2) ‘furlough’ has the meaning given that term
18 in section 7511(a)(5);

19 “(3) ‘furlough due to lapse in appropriations’
20 means a furlough due to a lapse in appropriations;

21 “(4) ‘general furlough’ means a furlough that is
22 not due to a lapse in appropriations; and”;

23 (2) in section 7502, by striking “This sub-
24 chapter” and all that follows through “this title.”

1 and inserting the following: “This subchapter applies
2 to—

3 “(1) a suspension for 14 days or less, but not
4 a suspension under section 7521 or 7532 or any ac-
5 tion initiated under section 1215;

6 “(2) a general furlough for 14 days or less; and

7 “(3) a furlough due to lapse in appropriations
8 of any duration.”;

9 (3) by redesignating section 7504 as section
10 7505; and

11 (4) by inserting after section 7503 the fol-
12 lowing:

13 **“§ 7504. Furlough cause and procedure**

14 “(a) GENERAL FURLOUGH.—

15 “(1) IN GENERAL.—An employee may be sub-
16 ject to a general furlough for such cause as will pro-
17 mote the efficiency of the service. Any employee fur-
18 loughed under this subsection is entitled to the pro-
19 cedures established under the regulations promul-
20 gated under paragraph (2).

21 “(2) PROCEDURES.—Not later than 180 days
22 after the date of enactment of this section, the Of-
23 fice of Personnel Management shall promulgate reg-
24 ulations providing for—

1 “(A) the circumstances under which an
2 employee may be furloughed under this sub-
3 section;

4 “(B) the procedures to be afforded fur-
5 loughed employees, including, to the extent ap-
6 propriate and practicable under the cir-
7 cumstances of the furlough action—

8 “(i) advanced notice stating the spe-
9 cific reasons for the proposed furlough;

10 “(ii) a reasonable time to answer oral-
11 ly and in writing and to furnish affidavits
12 and other documentary evidence in support
13 of the answer;

14 “(iii) representation by an attorney or
15 other representative; and

16 “(iv) a written decision and specific
17 reasons therefor at the earliest practicable
18 date; and

19 “(C) the materials that shall be furnished
20 to a furloughed employee and the Merit Sys-
21 tems Protection Board upon request of the em-
22 ployee or the Board.

23 “(b) FURLOUGH DUE TO LAPSE IN APPROPRIA-
24 TIONS.—

1 “(1) IN GENERAL.—An employee may be sub-
2 ject to a furlough due to lapse in appropriations.

3 “(2) PROCEDURES.—

4 “(A) NOTICE.—Under regulations pre-
5 scribed by the Office of Personnel Management,
6 any employee subject to a furlough due to lapse
7 in appropriations shall be afforded notice ex-
8 plaining the reasons for the furlough. If the no-
9 tice cannot be provided in advance of the fur-
10 lough, notice shall be provided as soon as rea-
11 sonably practicable.

12 “(B) OTHER PROCEDURES.—No other pro-
13 cedures, including those provided under sub-
14 section (a) or any other provision of this title,
15 shall be available to any employee subject to a
16 furlough due to lapse in appropriations under
17 this subsection.

18 “(c) DEFINITION.—For purposes of this section, the
19 term ‘employee’ means any employee described under sec-
20 tion 7501(1)(A).”.

21 (b) GENERAL FURLOUGH OF MORE THAN 14
22 DAYS.—Subchapter II of chapter 75 of title 5, United
23 States Code, is amended—

24 (1) in section 7511(a)—

1 (A) in paragraph (4), by striking “and” at
2 the end;

3 (B) in paragraph (5), by striking the pe-
4 riod at the end and inserting a semicolon; and

5 (C) by adding at the end the following:

6 “(6) ‘furlough due to lapse in appropriations’
7 means a furlough due to a lapse in appropriations;
8 and

9 “(7) ‘general furlough’ means a furlough that is
10 not due to a lapse in appropriations.”;

11 (2) in section 7512, as amended by section
12 2(c)—

13 (A) in paragraph (5), by striking “a fur-
14 lough of 30 days or less” and inserting “a gen-
15 eral furlough of more than 14 days but less
16 than 31 days”;

17 (B) in subparagraph (D), as redesignated
18 by section 2(c), by striking “or” at the end;

19 (C) in subparagraph (E), as redesignated
20 by section 2(c), by striking the period at the
21 end and inserting “; or”; and

22 (D) by adding at the end the following:

23 “(F) a furlough due to lapse in appropriations
24 action under section 7504.”;

1 (3) in section 7513(a), by striking “an action
2 covered by this subchapter” and inserting “an action
3 described in paragraphs (1) through (4) of section
4 7512”; and

5 (4) by inserting after section 7515 the fol-
6 lowing:

7 **“§ 7516. General furlough cause and procedure**

8 “(a) IN GENERAL.—An employee may be subject to
9 a general furlough for such cause as will promote the effi-
10 ciency of the service. An employee furloughed under this
11 section is entitled to the procedures established under the
12 regulations promulgated under subsection (b).

13 “(b) PROCEDURES.—Not later than 180 days after
14 the date of enactment of this section, the Office of Per-
15 sonnel Management shall promulgate regulations pro-
16 viding for—

17 “(1) the circumstances under which an em-
18 ployee may be furloughed under this section;

19 “(2) the procedures provided under section
20 7513 to the extent appropriate and practicable
21 under the circumstances of the furlough; and

22 “(3) the materials that shall be furnished to a
23 furloughed employee and the Merit Systems Protec-
24 tion Board upon request of the employee or the
25 Board.

1 “(c) APPEAL.—An employee against whom a fur-
 2 lough action is taken under this section is entitled to ap-
 3 peal to the Merit Systems Protection Board under section
 4 7701 not later than 10 business days after the effective
 5 date of the action.”.

6 (c) ADMINISTRATIVE LAW JUDGES.—Section
 7 7521(b) of title 5, United States Code, is amended—

8 (1) in subparagraph (B), by striking “or” at
 9 the end;

10 (2) in subparagraph (C), by striking the period
 11 at the end and inserting “; or”; and

12 (3) by adding at the end the following:

13 “(D) a furlough due to lapse in appropriations
 14 action under section 7504.”.

15 (d) TECHNICAL AMENDMENTS.—

16 (1) SECTION 7503.—The heading of section
 17 7503 of title 5, United States Code, is amended by
 18 striking “**Cause and procedure**” and inserting
 19 “**Suspension cause and procedure**”.

20 (2) SECTION 7513.—The heading of section
 21 7513 of title 5, United States Code, is amended by
 22 striking “**Cause and procedure**” and inserting
 23 “**Cause and procedure for actions other**
 24 **than furlough**”.

25 (e) CLERICAL AMENDMENTS.—

1 (1) SUBCHAPTER I OF CHAPTER 75 OF TITLE
 2 5.—The table of sections for subchapter I of chapter
 3 75 of title 5, United States Code, is amended by
 4 striking the items relating to sections 7503 and
 5 7504 and inserting the following:

“7503. Suspension cause and procedure.

“7504. Furlough cause and procedure.

“7505. Regulations.”.

6 (2) SUBCHAPTER II OF CHAPTER 75 OF TITLE
 7 5.—The table of sections for subchapter II of chap-
 8 ter 75 of title 5, United States Code, is amended—
 9 (A) by striking the item relating to section
 10 7513 and inserting the following:

“7513. Cause and procedure for actions other than furlough.”;

11 and

12 (B) by inserting after the item relating to
 13 section 7515 the following:

“7516. General furlough cause and procedure.”.

14 (f) APPLICATION.—Notwithstanding section 11, the
 15 amendments made by this section shall take effect on the
 16 earlier of—

17 (1) the date that is 180 days after the date of
 18 enactment of this Act; or

19 (2) the date on which the Office of Personnel
 20 Management promulgates regulations under sections
 21 7504 and 7516 of title 5, United States Code, as
 22 added by this section.

1 **SEC. 7. REDUCTION OF ANNUITY OF EMPLOYEE CON-**
2 **VICTED OF A FELONY FOR WHICH AN AD-**
3 **VERSE ACTION IS OR WOULD HAVE BEEN**
4 **TAKEN.**

5 (a) REDUCTION OF ANNUITY OF EMPLOYEE CON-
6 VICTED OF A FELONY FOR WHICH AN ADVERSE ACTION
7 IS TAKEN.—

8 (1) IN GENERAL.—Subchapter II of chapter 83
9 of title 5, United States Code, is amended by adding
10 at the end the following:

11 **“§ 8323. Reduction of benefits of employees convicted**
12 **of certain crimes**

13 “(a) REDUCTION OF ANNUITY.—

14 “(1) IN GENERAL.—The felonious service of a
15 covered individual shall not be taken into account
16 for purposes of calculating an annuity with respect
17 to the individual under subchapter III of this chap-
18 ter or chapter 84 if—

19 “(A) the covered individual is finally con-
20 victed of a felony; and

21 “(B) the head of the agency at which the
22 individual was employed determines that the
23 conviction was based on the acts or omissions
24 of the covered individual that—

1 “(i) were taken or not taken in the
2 performance of the covered individual’s of-
3 ficial duties at the agency; and

4 “(ii) are sufficient to support a re-
5 moval action under section 7513, 7543, or
6 any other provision of law against the cov-
7 ered individual.

8 “(2) PROCEDURES.—A covered individual
9 against whom a determination is made under para-
10 graph (1) shall be afforded—

11 “(A) notice of the determination not later
12 than 15 business days in advance of a final
13 order under paragraph (3); and

14 “(B) an opportunity to respond to the de-
15 termination by not later than 10 business days
16 after receipt of the notice.

17 “(3) FINAL ORDER.—The head of the agency
18 shall issue a final order to carry out paragraph (1)
19 not later than—

20 “(A) in the case of a covered individual
21 who responds under paragraph (2)(B), 5 busi-
22 ness days after receiving the response from the
23 covered individual, to the maximum extent
24 practicable; or

1 “(B) in the case of a covered individual
2 who does not so respond, 15 business days after
3 the date on which the head of the agency pro-
4 vided notice to the individual under paragraph
5 (2)(A), to the maximum extent practicable.

6 “(4) APPEAL.—A covered individual with re-
7 spect to whom an annuity is to be reduced under
8 this subsection may appeal the final order under
9 paragraph (3) to the Merit Systems Protection
10 Board in accordance with any regulations that the
11 Board may prescribe for purposes of this subsection.
12 An appeal may not be made under this paragraph
13 later than that date that is 10 business days after
14 the date on which an order is issued under para-
15 graph (3).

16 “(b) ADMINISTRATIVE REQUIREMENTS.—

17 “(1) IN GENERAL.—Not later than 30 business
18 days after the date on which the head of an agency
19 issues a final order under subsection (a) or a final
20 decision of the Merit Systems Protection Board is
21 rendered (as the case may be) with respect to an in-
22 dividual, the applicable employing agency shall
23 amend the covered individual’s retirement records to
24 reflect the period of service that is no longer cred-
25 itable by operation of this section and transmit the

1 amended records to the Director of the Office of
2 Personnel Management.

3 “(2) ANNUITANTS.—With respect to any cov-
4 ered individual who is an annuitant on the date on
5 which a final order is so issued, the Director of the
6 Office of Personnel Management shall, not later
7 than 30 business days after the receipt of amended
8 retirement records from an agency under paragraph
9 (1), recalculate the annuity of the annuitant.

10 “(c) LUMP-SUM ANNUITY CREDIT.—A covered indi-
11 vidual with respect to whom an annuity is reduced under
12 subsection (a) shall be entitled to be paid so much of the
13 individual’s lump-sum credit as is attributable to the pe-
14 riod of felonious service.

15 “(d) SPOUSE EXCEPTION.—The spouse of any cov-
16 ered individual referred to in subsection (a) shall be eligi-
17 ble for spousal annuity benefits that, but for subsection
18 (a), would otherwise have been payable if the Attorney
19 General of the United States or the attorney general of
20 a State, a territory, or the District of Columbia determines
21 that the spouse fully cooperated with authorities in the
22 conduct of a criminal investigation and subsequent pros-
23 ecution of the individual that resulted in the benefit reduc-
24 tion.

1 “(e) APPLICATION.—Nothing in this section shall be
2 construed to affect or otherwise mitigate the application
3 of any other section of this subchapter.

4 “(f) DEFINITIONS.—In this section—

5 “(1) the term ‘covered individual’ means—

6 “(A) an individual who is removed from a
7 position as an employee (as defined in section
8 2105) in the civil service for performance or
9 misconduct under section 7513, 7543, or any
10 other provision of law; or

11 “(B) an individual who—

12 “(i) is an employee (as defined in sec-
13 tion 2105) subject to a removal action for
14 performance or misconduct under section
15 7513, 7543, or any other provision of law;
16 and

17 “(ii) voluntarily separates from service
18 with the employing agency prior to the
19 issuance of a final decision with respect to
20 the removal action;

21 “(2) the term ‘felonious service’ means, with re-
22 spect to a covered individual, the period of service—

23 “(A) beginning on the date on which the
24 head of the employing agency determines that
25 the individual commenced engaging in the acts

1 or omissions that gave rise to the removal ac-
2 tion or proposed removal action described in
3 paragraph (1); and

4 “(B) ending on the date that is the earlier
5 of—

6 “(i) the date on which the individual
7 is removed from or voluntarily separates
8 from a position at the agency; or

9 “(ii) the date on which the individual
10 ceases engaging in the acts or omissions
11 that gave rise to the removal action or pro-
12 posed removal action described in para-
13 graph (1);

14 “(3) the term ‘finally convicted’ or ‘final convic-
15 tion’ refers to a conviction of a felony—

16 “(A) that has not been appealed and is no
17 longer appealable because the time for taking
18 an appeal has expired; or

19 “(B) that has been appealed and the ap-
20 peals process for which is completed;

21 “(4) the term ‘lump-sum credit’ has the mean-
22 ing given that term in section 8331(8) or 8401(19)
23 (as the case may be); and

1 “(5) the term ‘service’ has the meaning given
2 that term in section 8331(12) or 8401(26) (as the
3 case may be).”.

4 (2) CLERICAL AMENDMENT.—The table of sec-
5 tions for subchapter II of chapter 83 of title 5,
6 United States Code, is amended by adding at the
7 end the following:

“8323. Reduction of benefits of employees convicted of certain crimes.”.

8 (b) APPLICATION.—Section 8323 of title 5, United
9 States Code, as added by subsection (a), shall apply to
10 acts or omissions described in subsection (a)(1)(B) of that
11 section occurring after the date of enactment of this Act.

12 (c) REGULATIONS.—The Office of Personnel Man-
13 agement may prescribe regulations to carry out this sec-
14 tion and the amendments made by this section.

15 **SEC. 8. AUTHORITY TO RECOUP BONUSES OR AWARDS**
16 **PAID TO EMPLOYEES.**

17 (a) AUTHORITY.—

18 (1) IN GENERAL.—Chapter 45 of title 5, United
19 States Code, is amended by adding at the end the
20 following:

1 “SUBCHAPTER IV—REPAYMENT OF BONUSES
2 OR AWARDS

3 “§ 4531. **Recoupment of bonuses or awards paid to**
4 **employees**

5 “(a) IN GENERAL.—Notwithstanding any other pro-
6 vision of law, and except as provided in subsection (c),
7 the head of an agency may issue an order directing an
8 employee or former employee of the agency to repay the
9 amount, or a portion of the amount, of any award or
10 bonus paid to the employee under this title, including
11 under this chapter or section 5384, 5753, or 5754, if—

12 “(1) the agency head determines by clear and
13 convincing evidence that—

14 “(A) the employee or former employee en-
15 gaged in misconduct or unsatisfactory perform-
16 ance prior to payment of the award or bonus;
17 and

18 “(B) the award or bonus would not have
19 been paid, in whole or in part, had the mis-
20 conduct or unsatisfactory performance de-
21 scribed in subparagraph (A) been known by the
22 agency prior to payment;

23 “(2) before the repayment, the employee or
24 former employee is afforded—

1 “(A) notice of the determination not later
2 than 15 business days in advance of a final
3 order under this subsection; and

4 “(B) an opportunity to respond to the pro-
5 posed order by not later than 10 business days
6 after the receipt of the notice; and

7 “(3) the agency head issues the order not later
8 than—

9 “(A) in the case of a proposed order to
10 which an employee or former employee responds
11 under paragraph (2)(B), 5 business days after
12 receiving the response of the employee or
13 former employee (as the case may be), to the
14 maximum extent practicable; or

15 “(B) in the case of a proposed order to
16 which an employee or former employee does not
17 respond, 15 business days after the agency
18 head provides notice to the employee or former
19 employee (as the case may be) under paragraph
20 (2)(A), to the maximum extent practicable.

21 “(b) RECRUITMENT, RELOCATION, OR RETENTION
22 BONUS.—

23 “(1) IN GENERAL.—In addition to ordering an
24 employee to repay any payments received under a
25 service agreement under subsection (a), the head of

1 an agency shall terminate a recruitment, relocation,
2 or retention service agreement and make no further
3 recruitment, relocation, or retention bonus payments
4 under the agreement.

5 “(2) APPLICATION.—A bonus repayment order
6 or a termination or withholding of a bonus payment
7 under this subsection shall supersede any other
8 bonus payment or repayment requirement estab-
9 lished by law or regulation.

10 “(c) OFFICE OF SPECIAL COUNSEL FILING.—If an
11 employee or former employee has filed a claim with the
12 Office of Special Counsel, an agency seeking repayment
13 of any bonus or award from the employee or former em-
14 ployee shall provide the Office with notice of intent to seek
15 repayment, and the repayment order shall not be effective
16 unless and until the Office approves the order.

17 “(d) APPEAL.—Upon the issuance of an order by an
18 agency head under subsection (a) with respect to an em-
19 ployee or former employee, the employee or former em-
20 ployee (as the case may be) shall have an opportunity to
21 appeal the order to the Merit Systems Protection Board
22 under section 7701 not later than 10 business days after
23 the date of the issuance.”.

24 (2) CLERICAL AMENDMENT.—The table of sec-
25 tions for chapter 45 of title 5, United States Code,

1 is amended by adding after the item relating to sec-
 2 tion 4523 the following:

“SUBCHAPTER IV—REPAYMENT OF BONUSES OR AWARDS

“4531. Recoupment of bonuses or awards paid to employees.”.

3 (b) OTHER BONUSES OR AWARDS.—

4 (1) IN GENERAL.—Notwithstanding any other
 5 provision of law, a bonus or award to an employee
 6 (as that term is defined in section 2105 of title 5,
 7 United States Code) that is similar to a bonus or
 8 award covered by section 4531 of that title (as
 9 added by subsection (a)) shall be subject to the re-
 10 quirements in such section 4531. The head of the
 11 applicable agency shall ensure that such section
 12 4531 shall apply to employees of that agency.

13 (2) APPLICATION.—An employee covered by
 14 such section 4531 by operation of paragraph (1)
 15 may not appeal any decision regarding a bonus
 16 under that section or paragraph to the Merit Sys-
 17 tems Protection Board if the employee is not other-
 18 wise authorized by law to appeal to the Board.

19 (c) SERVICE AGREEMENTS.—

20 (1) IN GENERAL.—The Director of the Office of
 21 Personnel Management shall direct each agency (as
 22 that term is defined in section 4501(1) of title 5,
 23 United States Code) to incorporate into service
 24 agreements entered into after the date of enactment

1 of this Act under sections 5753 and 5754 of that
2 title terms addressing the conditions under which
3 the agreement and bonus payments shall be termi-
4 nated and employees may be required to repay bonus
5 payments under such section 4531.

6 (2) CONFORMING AMENDMENTS.—Subchapter
7 IV of chapter 57 of title 5, United States Code, is
8 amended—

9 (A) in section 5753(c)(2)(A)—

10 (i) in clause (iii), by striking “and” at
11 the end;

12 (ii) by redesignating clause (iv) as
13 clause (v); and

14 (iii) by inserting after clause (iii) the
15 following:

16 “(iv) notwithstanding any additional bonus pay-
17 ment and service agreement termination require-
18 ments under this subsection, the conditions under
19 which—

20 “(I) the agreement and bonus payments
21 shall be terminated under section 4531; and

22 “(II) the employee may be required to
23 repay bonus payments under section 4531 dur-
24 ing or after the completion of the service pe-
25 riod; and”;

1 (B) in section 5754(d)—

2 (i) in paragraph (2)(A)—

3 (I) in clause (iii), by striking
4 “and” at the end;

5 (II) by redesignating clause (iv)
6 as clause (v); and

7 (III) by inserting after clause
8 (iii) the following:

9 “(iv) notwithstanding any additional bonus pay-
10 ment and service agreement termination require-
11 ments under this subsection, the conditions under
12 which—

13 “(I) the agreement and bonus payments
14 shall be terminated under section 4531; and

15 “(II) the employee may be required to
16 repay bonus payments under section 4531 dur-
17 ing or after the completion of the service pe-
18 riod; and”;

19 (ii) by striking paragraph (3); and

20 (iii) by redesignating paragraph (4) as
21 paragraph (3).

22 (d) REGULATIONS.—Not later than 1 year after the
23 date of enactment of this Act, the Director of the Office
24 of Personnel Management shall issue any regulations nec-

1 essary to carry out section 4531 of title 5, United States
2 Code, as added by subsection (a).

3 (e) **EFFECTIVE DATE.**—Section 4531 of title 5,
4 United States Code, as added by subsection (a), shall
5 apply with respect to an award or bonus authorized by
6 an agency to an employee of the agency on or after the
7 effective date provided in section 11 of this Act.

8 **SEC. 9. EXTENSION OF PROBATIONARY PERIOD FOR POSI-**
9 **TIONS WITHIN THE SENIOR EXECUTIVE**
10 **SERVICE.**

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

14 (b) **CONFORMING AMENDMENT.**—Section 3592(a)(1)
15 of title 5, United States Code, is amended by striking “1-
16 year” and inserting “2-year”.

17 (c) **APPLICATION.**—The amendments made by this
18 section shall apply in the case of any individual initially
19 appointed as a career appointee under section 3393 of title
20 5, United States Code, on or after the effective date pro-
21 vided in section 11 of this Act.

22 **SEC. 10. EXTENSION OF PROBATIONARY PERIOD FOR EM-**
23 **PLOYEES IN THE COMPETITIVE SERVICE.**

24 (a) **EXTENSION OF PROBATIONARY PERIOD.**—

1 (1) IN GENERAL.—Section 3321 of title 5,
2 United States Code, is amended—

3 (A) in subsection (a), by striking “The
4 President” and inserting “Subject to sub-
5 sections (c) and (d), the President”;

6 (B) by redesignating subsection (c) as sub-
7 section (e); and

8 (C) by inserting after subsection (b) the
9 following:

10 “(c)(1) The length of a probationary period estab-
11 lished under paragraph (1) or (2) of subsection (a) shall—

12 “(A) with respect to any position that requires
13 formal training, begin on the date of the appoint-
14 ment to the position and end on the date that is 2
15 years after the date on which the formal training is
16 completed;

17 “(B) with respect to any position that requires
18 a license, begin on the date of the appointment to
19 the position and end on the date that is 2 years
20 after the date of the appointment or the date on
21 which the license is granted, whichever is later; and

22 “(C) with respect to any position not covered by
23 subparagraph (A) or (B), be a period of 2 years be-
24 ginning on the date of the appointment to the posi-
25 tion.

1 “(2) For purposes of paragraph (1)—

2 “(A) the term ‘formal training’ means, with re-
3 spect to any position, a training program required
4 by law, rule, or regulation, or otherwise required by
5 the employing agency, to be completed by the em-
6 ployee before the employee is able to successfully
7 execute the duties of the applicable position; and

8 “(B) the term ‘license’ means a license, certifi-
9 cation, or other grant of permission to engage in a
10 particular activity.

11 “(d) The head of each agency shall, in the adminis-
12 tration of this section, take appropriate measures to en-
13 sure that—

14 “(1) any announcement of a vacant position
15 and any offer of appointment made to an individual
16 with respect to a vacant position clearly states the
17 terms and conditions of any applicable probationary
18 period, including any formal training period and any
19 license requirement;

20 “(2) any individual who is required to complete
21 a probationary period under this section receives
22 timely notice of any requirements, including per-
23 formance requirements, that must be met in order to
24 satisfactorily complete that period;

1 “(3) any supervisor or manager of an individual
2 who is required to complete a probationary period
3 under this section receives periodic notifications of
4 the end date of that period not later than 1 year,
5 6 months, 3 months, and 30 days before the end
6 date; and

7 “(4) if the agency head decides to retain an in-
8 dividual after the completion of a probationary pe-
9 riod under this section, the agency head submits a
10 certification to that effect to the President, sup-
11 ported by a brief statement of the basis for the cer-
12 tification, in such form and manner as the President
13 may by regulation prescribe.”.

14 (2) TECHNICAL AMENDMENT.—Section 3321(e)
15 of title 5, United States Code (as so redesignated by
16 paragraph (1)), is amended by striking “Subsections
17 (a) and (b)” and inserting “Subsections (a) through
18 (d)”.

19 (3) APPLICATION.—This subsection and the
20 amendments made by this subsection shall apply in
21 the case of any appointment (as referred to in sec-
22 tion 3321(a)(1) of title 5, United States Code) and
23 any initial appointment (as referred to in section
24 3321(a)(2) of that title) taking effect on or after the
25 effective date provided in section 11 of this Act.

1 (b) ADVERSE ACTIONS.—

2 (1) SUBCHAPTER I OF CHAPTER 75 OF TITLE
3 5.—Section 7501(1) of title 5, United States Code,
4 as amended by sections 5(c) and 6(a)(1), is further
5 amended—

6 (A) by striking “or, except” and inserting
7 “and, except”; and

8 (B) by striking “1 year of current” and in-
9 serting “2 years of current”.

10 (2) SUBCHAPTER II OF CHAPTER 75 OF TITLE
11 5.—Section 7511(a)(1) of title 5, United States
12 Code, is amended—

13 (A) in subparagraph (A)—

14 (i) in clause (i), by striking “; or” and
15 inserting “; and”; and

16 (ii) in clause (ii), by striking “1 year”
17 the first place it appears and inserting “2
18 years”;

19 (B) in subparagraph (B), by striking “1
20 year” and inserting “2 years”; and

21 (C) in subparagraph (C)(i), by striking “;
22 or” and inserting “; and”.

23 (3) APPLICATION.—The amendments made by
24 paragraphs (1) and (2) shall apply in the case of
25 any individual whose period of continuous service

1 commences on or after the effective date provided in
2 section 11.

3 (c) REGULATIONS.—The Office of Personnel Man-
4 agement may prescribe regulations to carry out this sec-
5 tion and the amendments made by this section.

6 **SEC. 11. APPLICATION.**

7 (a) EFFECTIVE DATE.—Unless otherwise specifically
8 provided for in this Act, the amendments made by this
9 Act shall take effect on the date that is 1 year after the
10 date of enactment of this Act.

11 (b) COLLECTIVE BARGAINING AGREEMENTS.—Not-
12 withstanding any other provision of law, the procedures
13 established or amended by this Act shall supersede any
14 collective bargaining agreement to the extent that the
15 agreement is inconsistent with those procedures.

16 (c) DEFINITION OF BUSINESS DAY.—For purposes
17 of carrying out this Act and the amendments made by this
18 Act, the term “business day” means any day other than
19 a Saturday, Sunday, or legal public holiday under section
20 6103(a) of title 5, United States Code.

