

119TH CONGRESS
1ST SESSION

S. 662

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

IN THE SENATE OF THE UNITED STATES

FEBRUARY 20, 2025

Mr. SHEEHY (for himself, Mr. CRAMER, and Mrs. HYDE-SMITH) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

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 2025” or the “MERIT Act of 2025”.

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. Actions against supervisors for performance or conduct.
- Sec. 7. Modification of procedures for furlough.
- Sec. 8. Reduction of annuity of employee convicted of a felony for which an adverse action is or would have been taken.
- Sec. 9. Authority to recoup bonuses or awards paid to employees.
- Sec. 10. Extension of probationary period for positions within the Senior Executive Service.
- Sec. 11. Extension of probationary period for employees in the competitive service.
- Sec. 12. 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4 Code, is repealed.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 12.

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 to read as follows:

23 **“§ 7513. Cause and procedure for actions other than**
 24 **furlough**

25 **“(a) IN GENERAL.—**

1 “(1) STANDARD FOR CERTAIN ADVERSE AC-
 2 TIONS.—Under regulations prescribed by the Office
 3 of Personnel Management, an agency may take an
 4 action described in paragraphs (1) through (4) of
 5 section 7512 against an employee if the agency de-
 6 termines by a preponderance of the evidence that the
 7 performance or misconduct of the employee warrants
 8 such action.

9 “(2) FACTORS FOR INITIAL DECISION.—When
 10 making an initial decision on an action described in
 11 paragraphs (1) through (4) of section 7512 with re-
 12 spect to an employee, the deciding employee of the
 13 agency shall exclusively apply the following factors:

14 “(A) The nature and seriousness of the of-
 15 fense, and its relation to the employee’s duties,
 16 position, and responsibilities, including whether
 17 the offense—

18 “(i) was intentional or technical or in-
 19 advertent;

20 “(ii) was committed maliciously or for
 21 gain; or

22 “(iii) was frequently repeated.

23 “(B) The employee’s job level and type of
 24 employment, including any supervisory or fidu-
 25 ciary role, and the prominence of the position.

1 “(C) The employee’s past disciplinary
2 records.

3 “(D) The employee’s past work record, in-
4 cluding length of service, performance on the
5 job, ability to get along with fellow workers,
6 and dependability.

7 “(E) Mitigating circumstances surrounding
8 the offense, such as—

9 “(i) unusual job tensions, personality
10 problems, or mental impairment; or

11 “(ii) harassment, bad faith, malice, or
12 provocation on the part of others involved
13 in the matter.

14 “(3) STANDARD OF REVIEW.—The agency
15 shall—

16 “(A) review the initial decision described in
17 paragraph (2), without regard to whether the
18 employee responds under subsection (e)(2); and

19 “(B) uphold the initial decision if it is sup-
20 ported by substantial evidence.

21 “(b) PAY OF CERTAIN EMPLOYEES SUBJECT TO A
22 REDUCTION IN GRADE.—

23 “(1) APPLICABLE RATE OF PAY.—Notwith-
24 standing any other provision of law, an employee
25 subject to a reduction in grade shall, beginning on

1 the date of the reduction in grade, receive the an-
 2 nual rate of pay applicable to the reduced grade.

3 “(2) NO ADMINISTRATIVE LEAVE, OR PAY
 4 WITHOUT WORKING OR USE OF OTHER LEAVE, DUR-
 5 ING APPEAL.—If an employee subject to a reduction
 6 in grade appeals the reduction in grade under this
 7 section, during the period during which the appeal
 8 is ongoing, the employee—

9 “(A) may not be placed on administrative
 10 leave; and

11 “(B) may only receive pay and benefits if
 12 the employee—

13 “(i) reports for duty; or

14 “(ii) is approved to use accrued un-
 15 used annual, sick, family medical, military,
 16 or court leave.

17 “(3) CONDITIONS ON PAY AND BENEFITS GEN-
 18 ERALLY.—During any period other than a period de-
 19 scribed in paragraph (2), if an employee subject to
 20 a reduction in grade does not report for duty or re-
 21 ceive approval to use accrued unused leave, the em-
 22 ployee may not receive pay or benefits.

23 “(c) PROCEDURE.—

24 “(1) RESPONSE PERIOD.—The period during
 25 which an employee may respond to a notice of an ac-

tion described in paragraphs (1) through (4) of section 7512 in writing and furnish affidavits and other documentary evidence in support of the response, as provided under subsection (e)(2), shall be 7 business days.

“(2) FINAL DECISION.—

“(A) IN GENERAL.—The agency shall issue a final decision with respect to an action described in paragraphs (1) through (4) of section 7512, with respect to an employee, not later than 15 business days after the agency provides notice, including a file containing all the evidence in support of the proposed action, to the employee, unless there is reasonable cause to believe the employee has committed a crime for which a sentence of imprisonment may be imposed.

“(B) FORM AND CONTENTS.—A final decision described in subparagraph (A) shall—

“(i) be in writing; and

“(ii) include the specific reasons therefor.

“(d) PIP.—The agency may carry out an action described in paragraphs (1) through (4) of section 7512 with

1 respect to an employee without first placing the employee
2 on a performance improvement plan.

3 “(e) EMPLOYEE RIGHTS.—An employee against
4 whom an action described in paragraphs (1) through (4)
5 of section 7512 is proposed is entitled to—

6 “(1) a written notice stating the specific rea-
7 sons for the proposed action;

8 “(2) respond in writing and furnish affidavits
9 and other documentary evidence in support of the
10 response;

11 “(3) be represented by an attorney or other
12 representative; and

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

15 “(f) HEARING.—An agency may provide, by regula-
16 tion, for a hearing which may be in lieu of or in addition
17 to the opportunity to respond provided under subsection
18 (e)(2).

19 “(g) APPEAL.—An employee against whom an action
20 described in paragraphs (1) through (4) of section 7512
21 is taken is entitled to appeal to the Merit Systems Protec-
22 tion Board (referred to in this section as the ‘Board’)
23 under section 7701 of this title not later than 10 business
24 days after the effective date of the action.

25 “(h) RECORDS.—

1 “(1) AGENCY RECORDS; PROVISION TO
 2 BOARD.—The agency shall maintain, and shall fur-
 3 nish to the Board upon request of the Board, copies
 4 of the notice of proposed action, the response of the
 5 employee when written, a summary thereof when
 6 made orally, the notice of decision and reasons
 7 therefor, and any order effecting an action described
 8 in paragraphs (1) through (4) of section 7512, to-
 9 gether with any supporting material.

10 “(2) PROVISION TO EMPLOYEE.—Upon the re-
 11 quest of an affected employee, the agency shall fur-
 12 nish copies of the documents described in paragraph
 13 (1) to the employee, to the extent those documents
 14 were not provided under subsection (c).”.

15 (b) DISCIPLINE OF SUPERVISORS BASED ON RETAL-
 16 IATION AGAINST WHISTLEBLOWERS.—Section
 17 7515(b)(2)(B) of title 5, United States Code, is amend-
 18 ed—

19 (1) in clause (i), by striking “not later than 14
 20 days” and inserting “not later than 7 business
 21 days”; and

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

24 (c) APPLICATION.—The amendments made by sub-
 25 sections (a) and (b) shall not apply to any action under

1 section 7513 or 7515 of title 5, United States Code, as
 2 amended by those subsections, respectively, commenced
 3 before the effective date provided in section 12.

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

6 Section 7121 of title 5, United States Code, is
 7 amended—

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

10 (2) in subsection (c)—

11 (A) by redesignating paragraphs (1)
 12 through (5) as paragraphs (5) through (9), re-
 13 spectively; and

14 (B) by inserting before paragraph (5), as
 15 so redesignated, the following:

16 “(1) an adverse action under subchapter II of
 17 chapter 75;

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

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

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

25 (3) in subsection (e)—

1 (A) in paragraph (1)—

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

4 (ii) in the second sentence, by striking
5 “Similar matters” and inserting “Matters
6 similar to those covered under subchapter
7 II of chapter 75”; and

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

9 (4) in subsection (f)—

10 (A) by striking the first sentence; and

11 (B) in the second sentence, by striking “In
12 matters similar to those covered under sections
13 4303 and 7512 of this title” and inserting “In
14 matters similar to those covered under sub-
15 chapter II of chapter 75”.

16 **SEC. 5. ACTIONS AGAINST SENIOR EXECUTIVES FOR PER-**
17 **FORMANCE OR CONDUCT.**

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

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

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

3 “(II) the rate of basic pay in effect at the
4 time of the placement for the position the ca-
5 reer appointee held in the civil service imme-
6 diately before being appointed to the Senior Ex-
7 ecutive Service; or

8 “(III) the rate of basic pay in effect for
9 the career appointee immediately before being
10 placed under subsection (a) or (b)(2) of this
11 section; and

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

16 (b) APPRAISAL SYSTEM REQUIREMENTS.—Section
17 4314(b) of title 5, United States Code, is amended—

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

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

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

4 “(1) ‘employee’ means—

5 “(A) an individual in the competitive serv-
 6 ice who is not serving a probationary period or
 7 trial period under an initial appointment or who
 8 has completed 1 year of current continuous em-
 9 ployment in the same or similar positions under
 10 other than a temporary appointment limited to
 11 1 year or less; or

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

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

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

20 (d) MODIFICATION OF CAUSE AND PROCEDURE FOR
 21 SUSPENSION AND TERMINATION.—Section 7543 of title
 22 5, United States Code, is amended to read as follows:

23 **“§ 7543. Cause and procedure**

24 “(a) STANDARD FOR ADVERSE ACTIONS.—Under
 25 regulations prescribed by the Office of Personnel Manage-

1 ment, an agency may take an action covered by this sub-
 2 chapter against an employee if the agency determines by
 3 a preponderance of the evidence that the performance or
 4 misconduct of the employee warrants such action.

5 “(b) FACTORS FOR INITIAL DECISION.—When mak-
 6 ing an initial decision on an action covered by this sub-
 7 chapter, the deciding employee of the agency shall exclu-
 8 sively apply the following factors:

9 “(1) The nature and seriousness of the offense,
 10 and its relation to the employee’s duties, position,
 11 and responsibilities, including whether the offense—

12 “(A) was intentional or technical or inad-
 13 vertent;

14 “(B) was committed maliciously or for
 15 gain; or

16 “(C) was frequently repeated.

17 “(2) The employee’s job level and type of em-
 18 ployment, including any supervisory or fiduciary
 19 role, and the prominence of the position.

20 “(c) STANDARD OF REVIEW.—The agency shall—

21 “(1) review the initial decision described in sub-
 22 section (b), without regard to whether the employee
 23 responds under subsection (e)(2); and

24 “(2) uphold the decision if it is supported by
 25 substantial evidence.

1 “(d) PROCEDURE.—

2 “(1) RESPONSE PERIOD.—The period during
3 which an employee may respond to a notice of an ac-
4 tion covered by this subchapter in writing and fur-
5 nish affidavits and other documentary evidence in
6 support of the response, as provided under sub-
7 section (e)(2), shall be 7 business days.

8 “(2) FINAL DECISION.—

9 “(A) IN GENERAL.—The agency shall issue
10 a final decision with respect to an action cov-
11 ered by this subchapter not later than 15 busi-
12 ness days after the agency provides notice, in-
13 cluding a file containing all the evidence in sup-
14 port of the proposed action, to the employee,
15 unless there is reasonable cause to believe the
16 employee has committed a crime for which a
17 sentence of imprisonment may be imposed.

18 “(B) FORM AND CONTENTS.—A final deci-
19 sion described in subparagraph (A) shall—

20 “(i) be in writing; and

21 “(ii) include the specific reasons
22 therefor.

23 “(e) EMPLOYEE RIGHTS.—An employee against
24 whom an action covered by this subchapter is proposed
25 is entitled to—

1 “(1) a written notice stating the specific rea-
2 sons for the proposed action;

3 “(2) respond in writing and furnish affidavits
4 and other documentary evidence in support of the
5 response;

6 “(3) be represented by an attorney or other
7 representative; and

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

10 “(f) HEARING.—An agency may provide, by regula-
11 tion, for a hearing which may be in lieu of or in addition
12 to the opportunity to respond provided under subsection
13 (e)(2).

14 “(g) APPEAL.—An employee against whom an action
15 is taken under this section is entitled to appeal to the
16 Merit Systems Protection Board (referred to in this sec-
17 tion as the ‘Board’) under section 7701 of this title not
18 later than 10 business days after the effective date of the
19 action.

20 “(h) RECORDS.—

21 “(1) AGENCY RECORDS; PROVISION TO
22 BOARD.—The agency shall maintain, and shall fur-
23 nish to the Board upon request of the Board, copies
24 of the notice of proposed action, the response of the
25 employee when written, a summary thereof when

1 made orally, the notice of decision and reasons
 2 therefor, and any order effecting an action covered
 3 by this subchapter, together with any supporting
 4 material.

5 “(2) PROVISION TO EMPLOYEE.—Upon the re-
 6 quest of an affected employee, the agency shall fur-
 7 nish copies of the documents described in paragraph
 8 (1) to the employee, to the extent those documents
 9 were not provided under subsection (d)(2)(A).

10 “(i) DEFINITION.—In this section, the term ‘mis-
 11 conduct’ includes neglect of duty, malfeasance, or failure
 12 to accept a directed reassignment or to accompany a posi-
 13 tion in a transfer of function.”.

14 (e) RELATION TO OTHER PROVISIONS OF LAW.—
 15 Section 3592(b)(1) of title 5, United States Code, shall
 16 not apply to an action under section 7543(a) of that title,
 17 as amended by subsection (d).

18 (f) CONFORMING AMENDMENTS.—Title 5, United
 19 States Code, is amended—

20 (1) in section 3592(b)(2)(B), by striking “any
 21 disciplinary action” and inserting “any action under
 22 section 7543”;

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

1 (3) in section 3594, by adding at the end the
2 following:

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

6 (4) in section 7542, by striking “or to a re-
7 moval under section 3592 or 3595” and inserting
8 the following: “to a removal from the Senior Execu-
9 tive Service under section 3592 of this title, to a re-
10 duction in force as defined in section 3595(d) of this
11 title, or to a transfer of function as described in sec-
12 tion 3595(e)”.

13 (g) APPLICATION.—The amendments made by this
14 section shall not apply to any personnel action under sub-
15 chapter V of chapter 75 of title 5, United States Code,
16 commenced before the effective date provided in section
17 12 of this Act.

18 **SEC. 6. ACTIONS AGAINST SUPERVISORS FOR PERFORM-**
19 **ANCE OR CONDUCT.**

20 Subchapter II of title 5, United States Code, is
21 amended—

22 (1) by redesignating sections 7514 and 7515 as
23 sections 7516 and 7517, respectively; and

24 (2) by inserting after section 7513 the fol-
25 lowing:

1 **“§ 7514. Supervisors**

2 “(a) DEFINITION.—In this section, the term ‘super-
3 visor’ has the meaning given that term in section 7103(a).

4 “(b) STANDARD FOR ADVERSE ACTIONS.—An agency
5 may take an action covered by this subchapter against a
6 supervisor if the agency determines by a preponderance
7 of the evidence that the performance or misconduct of the
8 supervisor warrants such action.

9 “(c) FACTORS FOR INITIAL DECISION.—When mak-
10 ing an initial decision on an action covered by this sub-
11 chapter with respect to a supervisor, the deciding employee
12 of the agency shall exclusively apply the following factors:

13 “(1) The nature and seriousness of the offense,
14 and its relation to the supervisor’s duties, position,
15 and responsibilities, including whether the offense—

16 “(A) was intentional or technical or inad-
17 vertent;

18 “(B) was committed maliciously or for
19 gain; or

20 “(C) was frequently repeated.

21 “(2) The supervisor’s job level and type of em-
22 ployment, including the supervisory role and any fi-
23 duciary role, and the prominence of the position.

24 “(d) STANDARD OF REVIEW.—The agency shall—

1 “(1) review the initial decision described in sub-
 2 section (c), without regard to whether the supervisor
 3 responds under subsection (g)(2); and

4 “(2) uphold the initial decision if it is supported
 5 by substantial evidence.

6 “(e) PROCEDURE.—

7 “(1) RESPONSE PERIOD.—The period during
 8 which a supervisor may respond to a notice of an ac-
 9 tion covered by this subchapter in writing and fur-
 10 nish affidavits and other documentary evidence in
 11 support of the response, as provided under sub-
 12 section (g)(2), shall be 7 business days.

13 “(2) FINAL DECISION.—

14 “(A) IN GENERAL.—The agency shall issue
 15 a final decision with respect to a covered action
 16 not later than 15 business days after the agen-
 17 cy provides notice, including a file containing all
 18 the evidence in support of the proposed action,
 19 to the supervisor, unless there is reasonable
 20 cause to believe the supervisor has committed a
 21 crime for which a sentence of imprisonment
 22 may be imposed.

23 “(B) FORM AND CONTENTS.—A final deci-
 24 sion described in subparagraph (A) shall—

25 “(i) be in writing; and

1 “(ii) include the specific reasons
2 therefor.

3 “(f) REDUCTION IN GRADE.—

4 “(1) IN GENERAL.—A reduction in grade under
5 subsection (b) with respect to a supervisor shall be
6 carried out as a reduction in grade—

7 “(A) for which the supervisor is qualified;

8 “(B) that the agency determines is appro-
9 priate; and

10 “(C) that reduces the annual rate of pay
11 of the supervisor.

12 “(2) PAY OF CERTAIN SUPERVISORS SUBJECT
13 TO A REDUCTION IN GRADE.—

14 “(A) APPLICABLE RATE OF PAY.—Not-
15 withstanding any other provision of law, a su-
16 pervisor subject to a reduction in grade shall,
17 beginning on the date of the reduction in grade,
18 receive the annual rate of pay applicable to the
19 reduced grade.

20 “(B) NO ADMINISTRATIVE LEAVE, OR PAY
21 WITHOUT WORKING OR USE OF OTHER LEAVE,
22 DURING APPEAL.—If a supervisor subject to a
23 reduction in grade appeals the reduction in
24 grade under this section, during the period dur-

1 ing which the appeal is ongoing, the super-
2 visor—

3 “(i) may not be placed on administra-
4 tive leave; and

5 “(ii) may only receive pay and bene-
6 fits if the supervisor—

7 “(I) reports for duty; or

8 “(II) is approved to use accrued
9 unused annual, sick, family medical,
10 military, or court leave.

11 “(C) CONDITIONS ON PAY AND BENEFITS
12 GENERALLY.—During any period other than a
13 period described in subparagraph (B), if a su-
14 pervisor subject to a reduction in grade does
15 not report for duty or receive approval to use
16 accrued unused leave, the supervisor shall not
17 receive pay or benefits.

18 “(g) SUPERVISOR RIGHTS.—A supervisor against
19 whom an action covered by this subchapter is proposed
20 is entitled to—

21 “(1) a written notice stating the specific rea-
22 sons for the proposed action;

23 “(2) respond in writing and furnish affidavits
24 and other documentary evidence in support of the
25 response;

1 “(3) be represented by an attorney or other
2 representative; and

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

5 “(h) PIP.—The agency may carry out an action cov-
6 ered by this subchapter with respect to a supervisor with-
7 out first placing the supervisor on a performance improve-
8 ment plan.

9 “(i) RELATION TO PERFORMANCE APPRAISAL PRO-
10 CEDURES.—The procedures under chapter 43 shall not
11 apply to an action covered by this subchapter with respect
12 to a supervisor.”.

13 **SEC. 7. MODIFICATION OF PROCEDURES FOR FURLOUGH.**

14 (a) GENERAL FURLOUGH OF 14 DAYS OR LESS;
15 EMERGENCY FURLOUGH.—Subchapter I of chapter 75 of
16 title 5, United States Code, is amended—

17 (1) in section 7501, as amended by section
18 5(c)—

19 (A) by redesignating paragraphs (1) and
20 (2) as paragraphs (2) and (5), respectively;

21 (B) by inserting before paragraph (2), as
22 so redesignated, the following:

23 “(1) ‘emergency furlough’ means a furlough
24 due to a lapse in appropriations;”;

1 (C) in paragraph (2), as so redesignated,
 2 by striking “and” at the end; and

3 (D) by inserting after paragraph (2), as so
 4 redesignated, the following:

5 “(3) ‘furlough’ has the meaning given that term
 6 in section 7511(a);

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

9 (2) in section 7502, by striking “This sub-
 10 chapter” and all that follows through “this title.”
 11 and inserting the following: “This subchapter applies
 12 to—

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

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

17 “(3) an emergency furlough of any duration.”;

18 (3) by redesignating section 7504 as section
 19 7505; and

20 (4) by inserting after section 7503 the fol-
 21 lowing:

22 **“§ 7504. General furlough and emergency furlough**
 23 **cause and procedure**

24 “(a) DEFINITION.—In this section, the term ‘em-
 25 ployee’ has the meaning given the term in section 7501.

1 “(b) GENERAL FURLOUGH.—

2 “(1) IN GENERAL.—An employee may be sub-
3 ject to a general furlough for such cause as will pro-
4 mote the efficiency of the service.

5 “(2) ENTITLEMENT TO PROCEDURES.—Any
6 employee furloughed under this subsection is entitled
7 to the procedures established under the regulations
8 promulgated under paragraph (3).

9 “(3) PROCEDURES.—Not later than 180 days
10 after the date of enactment of this section, the Of-
11 fice of Personnel Management shall promulgate reg-
12 ulations providing for—

13 “(A) the circumstances under which an
14 employee may be furloughed under this sub-
15 section;

16 “(B) the procedures to be afforded fur-
17 loughed employees, including, to the extent ap-
18 propriate and practicable under the cir-
19 cumstances of the furlough action—

20 “(i) a written notice stating the spe-
21 cific reasons for the proposed action;

22 “(ii) representation by an attorney or
23 other representative; and

1 “(iii) a written decision and the spe-
 2 cific reasons therefor at the earliest prac-
 3 ticable date; and

4 “(C) the materials that shall be furnished
 5 to a furloughed employee and the Merit Sys-
 6 tems Protection Board upon request of the em-
 7 ployee or the Board.

8 “(c) EMERGENCY FURLOUGH.—

9 “(1) IN GENERAL.—An employee may be sub-
 10 ject to an emergency furlough.

11 “(2) PROCEDURES.—

12 “(A) NOTICE.—

13 “(i) IN GENERAL.—Under regulations
 14 prescribed by the Office of Personnel Man-
 15 agement, any employee subject to an emer-
 16 gency furlough shall be afforded notice ex-
 17 plaining the reasons for the emergency fur-
 18 lough.

19 “(ii) TIMING.—If the notice described
 20 in clause (i) cannot be provided in advance
 21 of the emergency furlough, notice shall be
 22 provided as soon as reasonably practicable.

23 “(B) OTHER PROCEDURES.—No other pro-
 24 cedures, including those provided under sub-
 25 section (b) or any other provision of this title,

1 shall be available to any employee subject to an
2 emergency furlough under this subsection.”.

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

6 (1) in section 7511(a)(5), by inserting before
7 the period the following: “, but does not include an
8 emergency furlough as defined in section 7501”;

9 (2) in section 7512, as amended by section
10 2(c)—

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

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

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

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

21 “(F) an emergency furlough action under
22 section 7504.”; and

23 (3) by inserting after section 7514, as added by
24 section 6, the following:

1 **“§ 7515. Furlough cause and procedure**

2 “(a) IN GENERAL.—An employee may be subject to
3 a furlough for such cause as will promote the efficiency
4 of the service.

5 “(b) ENTITLEMENT TO PROCEDURES.—Any em-
6 ployee furloughed under this section is entitled to the pro-
7 cedures established under the regulations promulgated
8 under subsection (c).

9 “(c) PROCEDURES.—Not later than 180 days after
10 the date of enactment of this section, the Office of Per-
11 sonnel Management shall promulgate regulations pro-
12 viding for—

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

15 “(2) the procedures provided under section
16 7513 to the extent appropriate and practicable
17 under the circumstances of the furlough action; and

18 “(3) the materials that shall be furnished to a
19 furloughed employee and the Merit Systems Protec-
20 tion Board upon request of the employee or the
21 Board.

22 “(d) APPEAL.— An employee against whom a fur-
23 lough action is taken under this section is entitled to ap-
24 peal to the Merit Systems Protection Board under section
25 7701 not later than 10 business days after the effective
26 date of the action.”.

1 (c) ADMINISTRATIVE LAW JUDGES.—Section
2 7521(b) of title 5, United States Code, is amended—

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

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

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

8 “(D) an emergency furlough action under
9 section 7504.”.

10 (d) TECHNICAL AMENDMENTS.—

11 (1) SECTION 7503.—The heading of section
12 7503 of title 5, United States Code, is amended by
13 striking “**Cause and procedure**” and inserting
14 “**Suspension cause and procedure**”.

15 (2) SECTION 7513.—Section 7513 of title 5,
16 United States Code, is amended by striking
17 “**Cause and procedure**” and inserting “**Cause**
18 **and procedure for actions other than fur-**
19 **lough**”.

20 (e) CLERICAL AMENDMENTS.—

21 (1) SUBCHAPTER I OF CHAPTER 75 OF TITLE
22 5.—The table of sections for subchapter I of chapter
23 75 of title 5, United States Code, is amended by
24 striking the items relating to sections 7503 and
25 7504 and inserting the following:

“7503. Suspension cause and procedure.

“7504. General furlough and emergency furlough cause and procedure.
 “7505. Regulations.”.

1 (2) SUBCHAPTER II OF CHAPTER 75 OF TITLE
 2 5.—The table of sections for subchapter II of chap-
 3 ter 75 of title 5, United States Code, is amended by
 4 striking the items relating to sections 7513 through
 5 7515 and inserting the following:

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

“7514. Supervisors.

“7515. Furlough cause and procedure.

“7516. Regulations.

“7517. Discipline of supervisors based on retaliation against whistleblowers.”.

6 (f) APPLICATION.—Notwithstanding section 12, the
 7 amendments made by this section shall take effect on the
 8 earlier of—

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

11 (2) the date on which the Office of Personnel
 12 Management promulgates regulations under sections
 13 7504 and 7515 of title 5, United States Code, as
 14 added by this section.

15 **SEC. 8. REDUCTION OF ANNUITY OF EMPLOYEE CON-**
 16 **VICTED OF A FELONY FOR WHICH AN AD-**
 17 **VERSE ACTION IS OR WOULD HAVE BEEN**
 18 **TAKEN.**

19 (a) REDUCTION OF ANNUITY OF EMPLOYEE CON-
 20 VICTED OF A FELONY FOR WHICH AN ADVERSE ACTION
 21 IS TAKEN.—

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

4 **“§ 8323. Reduction of benefits of employees convicted**
 5 **of certain crimes**

6 “(a) REDUCTION OF ANNUITY.—

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

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

14 “(B) the head of the agency at which the
 15 individual was employed determines that the
 16 conviction was based on the acts or omissions
 17 of the covered individual that—

18 “(i) were taken or not taken in the
 19 performance of the covered individual’s of-
 20 ficial duties at the agency; and

21 “(ii) are sufficient to support a re-
 22 moval action under section 7513 or 7543,
 23 or any other provision of law, against the
 24 covered individual.

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

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

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

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

13 “(A) in the case of a covered individual
14 who responds under paragraph (2)(B), 5 busi-
15 ness days after receiving the response from the
16 covered individual, to the maximum extent
17 practicable; or

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

23 “(4) APPEAL.—A covered individual with re-
24 spect to whom an annuity is to be reduced under
25 this subsection may appeal the final order under

1 paragraph (3) to the Merit Systems Protection
2 Board in accordance with any regulations that the
3 Board may prescribe for purposes of this subsection.
4 An appeal may not be made under this paragraph
5 later than that date that is 10 business days after
6 the date on which an order is issued under para-
7 graph (3).

8 “(b) ADMINISTRATIVE REQUIREMENTS.—

9 “(1) IN GENERAL.—Not later than 30 business
10 days after the date on which the head of an agency
11 issues a final order under subsection (a) or a final
12 decision of the Merit Systems Protection Board is
13 rendered (as the case may be) with respect to an in-
14 dividual, the applicable employing agency shall
15 amend the covered individual’s retirement records to
16 reflect the period of service that is no longer cred-
17 itable by operation of this section and transmit the
18 amended records to the Director of the Office of
19 Personnel Management.

20 “(2) ANNUITANTS.—With respect to any cov-
21 ered individual who is an annuitant on the date on
22 which a final order is so issued, the Director of the
23 Office of Personnel Management shall, not later
24 than 30 business days after the receipt of amended

1 retirement records from an agency under paragraph
 2 (1), recalculate the annuity of the annuitant.

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

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

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

21 “(f) DEFINITIONS.—In this section—

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

23 “(A) an individual who is removed from a
 24 position as an employee (as defined in section
 25 2105) in the civil service for performance or

1 misconduct under section 7513 or 7543, or any
2 other provision of law; or

3 “(B) an individual who—

4 “(i) is an employee (as defined in sec-
5 tion 2105) subject to a removal action for
6 performance or misconduct under section
7 7513, 7543, or any other provision of law;
8 and

9 “(ii) voluntarily separates from service
10 with the employing agency prior to the
11 issuance of a final decision with respect to
12 the removal action;

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

15 “(A) beginning on the date on which the
16 head of the employing agency determines that
17 the individual commenced engaging in the acts
18 or omissions that gave rise to the removal ac-
19 tion or proposed removal action described in
20 paragraph (1); and

21 “(B) ending on the date that is the earlier
22 of—

23 “(i) the date on which the individual
24 is removed from or voluntarily separates
25 from a position at the agency; or

1 “(ii) the date on which the individual
 2 ceases engaging in the acts or omissions
 3 that gave rise to the removal action or pro-
 4 posed removal action described in para-
 5 graph (1);

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

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

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

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

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

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

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

23 (b) APPLICATION.—Section 8323 of title 5, United
 24 States Code, as added by subsection (a), shall apply to

1 acts or omissions described in subsection (a)(1)(B) of that
 2 section occurring after the date of enactment of this Act.

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. 9. AUTHORITY TO RECOUP BONUSES OR AWARDS**
 7 **PAID TO EMPLOYEES.**

8 (a) ADVERSE FINDINGS AND EMPLOYEES UNDER IN-
 9 VESTIGATION.—Chapter 45 of title 5, United States Code,
 10 is amended by adding at the end the following:

11 “SUBCHAPTER IV—LIMITATIONS ON BONUS
 12 AUTHORITY

13 “§ 4531. **Certain forms of misconduct**

14 “(a) DEFINITIONS.—In this section:

15 “(1) ADVERSE FINDING.—

16 “(A) IN GENERAL.—The term ‘adverse
 17 finding’ means a determination by the head of
 18 the agency employing an employee that the con-
 19 duct of the employee—

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

1 “(ii) violated a law for which the em-
2 ployee may be imprisoned for more than 1
3 year.

4 “(B) BASIS.—A determination described in
5 subparagraph (A) may be based on an inves-
6 tigation by, a determination of, or information
7 provided by the Inspector General or another
8 senior ethics official of an agency or the Comp-
9 troller General of the United States, as part of
10 carrying out an activity, authority, or function
11 of the Inspector General, senior ethics official,
12 or Comptroller General, respectively, under a
13 provision of law other than this section.

14 “(2) AGENCY.—The term ‘agency’ has the
15 meaning given the term in section 551.

16 “(3) BONUS.—The term ‘bonus’ means any
17 performance award or cash award under—

18 “(A) section 4505a;

19 “(B) section 5384; or

20 “(C) section 5754.

21 “(4) EMPLOYEE.—The term ‘employee’ means
22 an employee of an agency.

23 “(b) PROHIBITION.—The head of an agency may not
24 award a bonus to an employee of the agency until the date
25 that is 5 years after the end of the fiscal year during which

1 the head of the agency makes an adverse finding relating
2 to the employee.

3 “(c) AFTER BONUS AWARDED.—

4 “(1) IN GENERAL.—For a bonus awarded to an
5 employee after the date of enactment of this section,
6 if the head of the agency employing the employee
7 makes an adverse finding relating to the employee
8 during the fiscal year in which the bonus is awarded,
9 the head of the agency, after notice and an oppor-
10 tunity for a hearing, shall issue an order directing
11 the employee to repay the amount of the bonus.

12 “(2) REPAYMENT PLAN.—An agency shall allow
13 an employee who is required to repay a bonus under
14 paragraph (1) to repay that bonus using a repay-
15 ment plan.

16 “(3) HEARINGS.—A hearing under this sub-
17 section shall be conducted in accordance with regula-
18 tions relating to hearings promulgated by the head
19 of the agency under chapter 75.

20 “(d) CONDITION OF RECEIPT.—As a condition of re-
21 ceiving a bonus awarded after the date of enactment of
22 this section, an employee shall sign a certification stating
23 that the employee shall repay the bonus in accordance with
24 a final order issued under subsection (c).

1 “(e) APPEAL.—An employee determined to be ineli-
 2 gible for a bonus under subsection (b) or against whom
 3 an order is issued under subsection (c) may submit an
 4 appeal to the Merit Systems Protection Board under sec-
 5 tion 7701.

6 “(f) RULEMAKING.—The head of an agency may pro-
 7 mulgate rules to carry out this section.”.

8 (b) TECHNICAL AND CONFORMING AMENDMENT.—
 9 The table of sections for chapter 45 of title 5, United
 10 States Code, is amended by adding at the end the fol-
 11 lowing:

“SUBCHAPTER IV—LIMITATIONS ON BONUS AUTHORITY

“4531. Certain forms of misconduct.”.

12 **SEC. 10. EXTENSION OF PROBATIONARY PERIOD FOR POSI-**
 13 **TIONS WITHIN THE SENIOR EXECUTIVE**
 14 **SERVICE.**

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

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

21 (c) APPLICATION.—The amendments made by this
 22 section shall apply in the case of any individual initially
 23 appointed as a career appointee under section 3393 of title

1 5, United States Code, on or after the effective date pro-
 2 vided in section 12 of this Act.

3 **SEC. 11. EXTENSION OF PROBATIONARY PERIOD FOR EM-**
 4 **PLOYEES IN THE COMPETITIVE SERVICE.**

5 (a) EXTENSION OF PROBATIONARY PERIOD.—

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

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

11 (B) by redesignating subsection (c) as sub-
 12 section (e); and

13 (C) by inserting after subsection (b) the
 14 following:

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

17 “(A) with respect to any position that requires
 18 formal training, begin on the date of the appoint-
 19 ment to the position and end on the date that is 2
 20 years after the date on which the formal training is
 21 completed;

22 “(B) with respect to any position that requires
 23 a license, begin on the date of the appointment to
 24 the position and end on the date that is 2 years

1 after the date of the appointment or the date on
2 which the license is granted, whichever is later; and

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

7 “(2) For purposes of paragraph (1)—

8 “(A) the term ‘formal training’ means, with re-
9 spect to any position, a training program required
10 by law, rule, or regulation, or otherwise required by
11 the employing agency, to be completed by the em-
12 ployee before the employee is able to successfully
13 execute the duties of the applicable position; and

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

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

20 “(1) any announcement of a vacant position
21 and any offer of appointment made to an individual
22 with respect to a vacant position clearly states the
23 terms and conditions of any applicable probationary
24 period, including any formal training period and any
25 license requirement;

1 “(2) any individual who is required to complete
 2 a probationary period under this section receives
 3 timely notice of any requirements, including per-
 4 formance requirements, that must be met in order to
 5 satisfactorily complete that period;

6 “(3) any supervisor or manager of an individual
 7 who is required to complete a probationary period
 8 under this section receives periodic notifications of
 9 the end date of that period not later than 1 year,
 10 6 months, 3 months, and 30 days before the end
 11 date; and

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

19 (2) TECHNICAL AMENDMENT.—Section 3321(e)
 20 of title 5, United States Code (as so redesignated by
 21 paragraph (1)), is amended by striking “Subsections
 22 (a) and (b)” and inserting “Subsections (a) through
 23 (d)”.

24 (3) APPLICATION.—This subsection and the
 25 amendments made by this subsection shall apply in

the case of any appointment (as referred to in section 3321(a)(1) of title 5, United States Code) and any initial appointment (as referred to in section 3321(a)(2) of that title) taking effect on or after the effective date provided in section 12 of this Act.

(b) ADVERSE ACTIONS.—

(1) SUBCHAPTER I OF CHAPTER 75 OF TITLE 5.—Section 7501(2) of title 5, United States Code, as so redesignated by section 7(a)(1), is amended by striking “or who has completed 1 year of current” and inserting “and who has completed 2 years of current”.

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

(A) in subparagraph (A)—

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

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

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

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

1 (3) APPLICATION.—The amendments made by
 2 paragraphs (1) and (2) shall apply in the case of
 3 any individual whose period of continuous service
 4 commences on or after the effective date provided in
 5 section 12.

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

9 **SEC. 12. APPLICATION.**

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

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

19 (c) DEFINITION OF BUSINESS DAY.—For purposes
 20 of carrying out this Act and the amendments made by this
 21 Act, the term “business day” means any day other than
 22 a Saturday, Sunday, or legal public holiday under section
 23 6103(a) of title 5, United States Code.

○