

I want to thank the chairman for working with the minority, and particularly with Representative LYNCH, to address our concerns that the original bill could have encouraged agencies to suspend employees without pay and without due process.

The bill, as reported, would preserve the ability of an agency to place employees on administrative leave in those exceptional circumstances when they may pose a threat to safety, agency mission, or government property. It would also allow the agency to consider the results of a thorough and complete investigation prior to taking disciplinary action. The bill, however, would not punish employees by stripping them of pay before allegations are properly adjudicated, preserving the principle that one is innocent until proven guilty.

The bill before us strikes the appropriate balance, we believe, between the need for stricter oversight of agency use of administrative leave and the due process rights of Federal employees. I urge my colleagues to join me in supporting H.R. 4359.

I yield back the balance of my time. Mr. CHAFFETZ. Mr. Speaker, I urge the passage of H.R. 4359. We have worked in a good, bipartisan way. It is a good bill for the country and is good for the employees of the Federal Government.

I yield back the balance of my time. The SPEAKER pro tempore (Mr. WOMACK). The question is on the motion offered by the gentleman from Utah (Mr. CHAFFETZ) that the House suspend the rules and pass the bill, H.R. 4359, as amended.

The question was taken; and (two-thirds being in the affirmative) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

OFFICIAL PERSONNEL FILE ENHANCEMENT ACT

Mr. CHAFFETZ. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 4360) to amend title 5, United States Code, to provide that a Federal employee who leaves Government service while under personnel investigation shall have a notation of any adverse findings under such investigation placed in such employee's official personnel file, and for other purposes, as amended.

The Clerk read the title of the bill. The text of the bill is as follows:

H.R. 4360

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Official Personnel File Enhancement Act".

SEC. 2. RECORD OF INVESTIGATION OF PERSONNEL ACTION IN SEPARATED EMPLOYEE'S OFFICIAL PERSONNEL FILE.

(a) IN GENERAL.—Subchapter I of chapter 33 of title 5, United States Code, is amended by inserting after section 3321 the following:

"§ 3322. Voluntary separation before resolution of personnel investigation

"(a) With respect to any employee occupying a position in the competitive service or the excepted service who is the subject of a personnel investigation and resigns from Government employment prior to the resolution of such investigation, the head of the agency from which such employee so resigns shall, if an adverse finding was made with respect to such employee pursuant to such investigation, make a permanent notation in the employee's official personnel record file. The head shall make such notation not later than 40 days after the date of the resolution of such investigation.

"(b) Prior to making a permanent notation in an employee's official personnel record file under subsection (a), the head of the agency shall—

"(1) notify the employee in writing within 5 days of the resolution of the investigation and provide such employee a copy of the adverse finding and any supporting documentation;

"(2) provide the employee with a reasonable time, but not less than 30 days, to respond in writing and to furnish affidavits and other documentary evidence to show why the adverse finding was unfounded (a summary of which shall be included in any notation made to the employee's personnel file under subsection (d)); and

"(3) provide a written decision and the specific reasons therefore to the employee at the earliest practicable date.

"(c) An employee is entitled to appeal the decision of the head of the agency to make a permanent notation under subsection (a) to the Merit Systems Protection Board under section 7701.

"(d)(1) If an employee files an appeal with the Merit Systems Protection Board pursuant to subsection (c), the agency head shall make a notation in the employee's official personnel record file indicating that an appeal disputing the notation is pending not later than 2 weeks after the date on which such appeal was filed.

"(2) If the head of the agency is the prevailing party on appeal, not later than 2 weeks after the date that the Board issues the appeal decision, the head of the agency shall remove the notation made under paragraph (1) from the employee's official personnel record file.

"(3) If the employee is the prevailing party on appeal, not later than 2 weeks after the date that the Board issues the appeal decision, the head of the agency shall remove the notation made under paragraph (1) and the notation of an adverse finding made under subsection (a) from the employee's official personnel record file.

"(e) In this section, the term 'personnel investigation' includes—

"(1) an investigation by an Inspector General; and

"(2) an adverse personnel action as a result of performance, misconduct, or for such cause as will promote the efficiency of the service under chapter 43 or chapter 75.

(b) APPLICATION.—The amendment made by subsection (a) shall apply to any employee described in section 3322 of title 5, United States Code, (as added by such subsection) who leaves the service after the date of enactment of this Act.

(c) CLERICAL AMENDMENT.—The table of sections of subchapter I of chapter 33 of title 5, United States Code, is amended by inserting after the item relating to section 3321 the following:

"3322. Voluntary separation before resolution of personnel investigation."

SEC. 3. REVIEW OF OFFICIAL PERSONNEL FILE OF FORMER FEDERAL EMPLOYEES BEFORE REHIRING.

(a) IN GENERAL.—Subchapter I of chapter 33 of title 5, United States Code, is amended by adding at the end the following:

"§ 3330e. Review of official personnel file of former Federal employees before rehiring

"(a) If a former Government employee is a candidate for a position within the competitive service or the excepted service, prior to making any determination with respect to the appointment or reinstatement of such employee to such position, the appointing authority shall review and consider the information relating to such employee's former period or periods of service in such employee's official personnel record file.

"(b) In subsection (a), the term 'former Government employee' means an individual whose most recent position with the Government prior to becoming a candidate as described under subsection (a) was within the competitive service or the excepted service.

"(c) The Office of Personnel Management shall prescribe regulations to carry out the purpose of this section."

(b) APPLICATION.—The amendment made by subsection (a) shall apply to any former Government employee (as described in section 3330e of title 5, United States Code, as added by such subsection) appointed or reinstated on or after the date that is 180 days after the date of enactment of this Act.

(c) CLERICAL AMENDMENT.—The table of sections of subchapter I of chapter 33 of title 5, United States Code, is amended by adding at the end the following:

"3330e. Review of official personnel file of former Federal employees before rehiring."

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Utah (Mr. CHAFFETZ) and the gentlewoman from the Virgin Islands (Ms. PLASKETT) each will control 20 minutes.

The Chair recognizes the gentleman from Utah.

GENERAL LEAVE

Mr. CHAFFETZ. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks and include extraneous material on the bill under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Utah?

There was no objection.

Mr. CHAFFETZ. Mr. Speaker, I yield myself such time as I may consume.

The vast majority of Federal workers are patriotic, they are honest, they are decent, they work hard, they show up early, they do what they are supposed to do, and they are proud to serve their country and provide their role in when they do. For that, we are very grateful.

But like any large group of people, there are some bad apples. If you go through the barrel, you are going to find a few bad apples. We have a responsibility to make sure that we weed those out. These individuals must be treated fairly, but they must be held accountable. H.R. 4360 is a bill that accomplishes this balance and that strengthens the integrity of our civil service.

□ 1800

Under the current system, a loophole allows Federal employees who are

guilty of serious, but not necessarily criminal, infractions to leave Federal service before an investigation is completed and join a new agency without that new agency ever becoming aware of those previous issues. Unfortunately, in our work on the Committee on Oversight and Government Reform, we have had some examples of this.

H.R. 4360 corrects this problem by requiring a notation to be made in the employee's official personnel file if an investigation leads to an adverse finding against that person even if the employee has already resigned. For example, under the current system, Federal employees who commit some form of misconduct or poor performance could resign from their positions and escape accountability.

This is exactly what occurred at the United States Patent and Trademark Office. As part of an investigation, the Department of Commerce, Office of the Inspector General requested that a patent examiner attend a voluntary interview with the Office of the Inspector General. However, 2 hours before the interview with the OIG, the patent examiner resigned. In an instant message with a coworker, the examiner explained that the union recommended that he resign in order to have a clean slate, with no record of conduct or performance issues, if he applied to work for another agency.

We cannot continue to have a system that creates loopholes for an individual to elude accountability by simply having to submit a piece of paper on a napkin—or something as simple as that—and writing, "I hereby resign," and then keeping his record clean so he can get another job.

Mr. Speaker, another example is of a similar event that unfolded with an Interior Department employee who was under investigation for lying about his education credentials. After being interviewed by the Interior Department's Office of Inspector General, this individual resigned from the Interior and later joined the Census Bureau; but when he went over to the Census Bureau, the Census Bureau was unaware of the history until well after it had hired this person.

Mr. Speaker, H.R. 4360 remedies the scenarios I just discussed, thereby helping to protect agencies from making employment hires when having incomplete pictures of the individuals' backgrounds. This has happened on several occasions. It is almost disappointing that one has to go forward and legislate this, but given that it is happening, it is the responsible thing to do, and we have come together in a good, bipartisan way to make this happen.

Specifically under this legislation, separated employees will have notations made in their official personnel files if they resign while under investigation and if those investigations lead to adverse findings. Additionally, if the individuals apply for other positions in the Federal Government, those

notations will follow them as agencies will now be required to examine the personnel files of former Federal employees during the hiring process.

Bad actors should not be able to resign from government service with clean slates and effectively dupe another agency that will then be hiring them. However, this bill also ensures that separated employees are provided the opportunity to contest the findings of an investigation. I think that is a fair and just way for them to be able to clean their records if they think that they have cases to be made. By working closely with my Democratic colleagues, we were able to build a process into this legislation that gives former employees a mechanism by which to fairly present their cases in the event an investigation leads to an adverse finding.

Mr. Speaker, it is also important to note that H.R. 4360 does nothing to diminish the rights or protections that are afforded to whistleblowers. This is a bill to prevent individuals from maneuvering within the Federal Government in order to hide their misconduct. It is that simple. I urge its passage.

I reserve the balance of my time.

Ms. PLASKETT. Mr. Speaker, I yield myself such time as I may consume.

H.R. 4360, the Official Personnel File Enhancement Act, addresses a legitimate concern of employees who resign their positions during pending investigations or adverse disciplinary actions and then reapply for employment elsewhere in the Federal Government.

I think we can agree that measures need to be taken to prevent such incidents from happening in order to protect the integrity of the Federal workforce.

I thank Chairman CHAFFETZ for working with the minority and, particularly, for working with Congressman CONNOLLY from Virginia to address our concerns with the original bill.

The introduced version of this legislation would have allowed an agency to put a permanent notation of an investigative finding in an employee's file without giving the employee an opportunity to respond. The bill, as reported, would preserve the principles of due process that help to protect our Federal employees from arbitrary acts and political influence. It would provide a former employee with notice and opportunity to respond to an adverse investigative finding before a notation is placed in the individual's personnel file. The legislation also gives the individual the right to appeal the agency's decision to the Merit Systems Protection Board, which we believe is the appropriate place for that.

These due process protections are consistent with our Constitution and with the fundamental American principle that a person is innocent until proven guilty.

I understand that some concerns have been raised regarding how the legislation would be implemented. We

hope to address those concerns as the bill moves forward in the legislative process.

I urge my colleagues to join me in supporting H.R. 4360.

Mr. Speaker, I yield back the balance of my time.

Mr. CHAFFETZ. Mr. Speaker, I yield myself such time as I may consume.

I urge the passage of H.R. 4360. I believe this is a good bill. We worked in a good, bipartisan way. It does make the system more fair and it makes it more accountable. It makes sure, for those who have adverse actions, that they can't simply skirt away from their responsibilities. It does hold people accountable. To that effect, it is a good bill, and I urge its passage.

I yield back the balance of my time.

Mr. ABRAHAM. Mr. Speaker, I rise today in support of H.R. 4360, the Official Personnel File Enhancement Act.

As a member of the House Veterans Affairs Committee, myself and other committee members are constantly reading reports of and investigating instances of employee misconduct and performance shortcomings. Yet too often, these investigations come up empty because the employee decided to resign or otherwise leave federal service before the investigation is over, thereby ending the investigation. I cannot tell you how frustrating this is.

These investigations must be completed, and any employee seeking to return to federal service must have the results of that investigation as a part their record. We owe it to the American taxpayer to ensure that the federal government only hires the most qualified and honorable employees. H.R. 4360 will allow that to happen.

I urge my colleagues to support this bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Utah (Mr. CHAFFETZ) that the House suspend the rules and pass the bill, H.R. 4360, as amended.

The question was taken; and (two-thirds being in the affirmative) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

PROTECT AND PRESERVE INTERNATIONAL CULTURAL PROPERTY ACT

Mr. ROYCE. Mr. Speaker, I move to suspend the rules and concur in the Senate amendment to the bill (H.R. 1493) to protect and preserve international cultural property at risk due to political instability, armed conflict, or natural or other disasters, and for other purposes.

The Clerk read the title of the bill.

The text of the Senate amendment is as follows:

Senate amendment:

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Protect and Preserve International Cultural Property Act".

SEC. 2. SENSE OF CONGRESS.

It is the sense of Congress that the President should establish an interagency coordinating