

114TH CONGRESS
2D SESSION

H. R. 4358

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

IN THE HOUSE OF REPRESENTATIVES

JANUARY 8, 2016

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

A BILL

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

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

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

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

8 Section 3133(a)(2) of title 5, United States Code, is
9 amended by inserting after “positions” the following: “,
10 with a justification for each position (by title and organi-

1 zational location) and the specific result expected from
2 each position, including the impact of such result on the
3 agency mission,”.

4 **SEC. 3. EXTENSION OF PROBATIONARY PERIOD FOR CA-**
5 **REER APPOINTEES.**

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

9 (b) CONFORMING AMENDMENT.—Section 3592(a)(1)
10 of such title is amended by striking “1-year” and inserting
11 “2-year”.

12 **SEC. 4. MODIFICATION OF PAY RETENTION FOR CAREER**
13 **APPOINTEES REMOVED FOR UNDER PER-**
14 **FORMANCE.**

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

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

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

22 “(II) the rate of basic pay in effect at
23 the time of the placement for the position
24 the career appointee held in the civil serv-

1 ice immediately before being appointed to
2 the Senior Executive Service; or

3 “(III) the rate of basic pay in effect
4 for the career appointee immediately before
5 being placed under subsection (a) or (b) of
6 this section; and

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

11 **SEC. 5. ADVANCED ESTABLISHMENT OF PERFORMANCE RE-**
12 **QUIREMENTS UNDER SENIOR EXECUTIVE**
13 **SERVICE PERFORMANCE APPRAISAL SYS-**
14 **TEMS.**

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

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

19 (2) by inserting “in writing” after “commu-
20 nicated”.

21 **SEC. 6. AMENDMENTS WITH RESPECT TO ADVERSE AC-**
22 **TIONS AGAINST CAREER APPOINTEES.**

23 (a) **SUSPENSION FOR 14 DAYS OR LESS FOR SENIOR**
24 **EXECUTIVE SERVICE EMPLOYEE.**—Paragraph (1) of Sec-

1 tion 7501 of title 5, United States Code, is amended to
2 read as follows:

3 “(1) ‘employee’ means—

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

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

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

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

19 (b) MODIFICATION OF CAUSE AND PROCEDURE FOR
20 SUSPENSION AND TERMINATION.—

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

23 (A) in subsection (a), by striking “mis-
24 conduct,” and inserting “such cause as would

1 promote the efficiency of the service, mis-
2 conduct,”; and

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

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

8 (A) in section 3593—

9 (i) in subsection (a)(2), by striking
10 “misconduct,” and inserting “such cause
11 as would promote the efficiency of the
12 service, misconduct,”; and

13 (ii) in subsection (b), by striking
14 “misconduct,” and inserting “such cause
15 as would promote the efficiency of the
16 service, misconduct,”; and

17 (B) in section 3594(a), by striking “mis-
18 conduct,” and inserting “such cause as would
19 promote the efficiency of the service, mis-
20 conduct,”.

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

22 **SUBJECT TO REMOVAL.**

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

1 **“§ 6330. Mandatory leave for Senior Executive Serv-**
2 **ice career appointees subject to removal**

3 “(a) In this section—

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

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

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

13 “(B) may not accrue any annual leave
14 under section 6303 for the period of such ab-
15 sence.

16 “(b) Under regulations prescribed by the Office of
17 Personnel Management, an agency may place an employee
18 on mandatory leave for misconduct, neglect of duty, mal-
19 feasance, or such cause as would promote the efficiency
20 of the service.

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

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

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

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

12 (c) REGULATIONS.—Not later than 6 months after
13 the date of enactment of this Act, the Director of the Of-
14 fice of Personnel Management shall prescribe regulations
15 with respect to the leave provided by the amendment in
16 subsection (a).

17 **SEC. 8. EXPEDITED REMOVAL OF CAREER APPOINTEES**
18 **FOR PERFORMANCE OR MISCONDUCT.**

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

1 “SUBCHAPTER VI—SENIOR EXECUTIVE
2 SERVICE: EXPEDITED REMOVAL

3 **“§ 7551. Definitions**

4 “In this subchapter—

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

9 “(2) the term ‘misconduct’ includes neglect of
10 duty, malfeasance, or failure to accept a directed re-
11 assignment or to accompany a position in a transfer
12 of function.

13 **“§ 7552. Actions covered**

14 “This subchapter applies to a removal from the civil
15 service or a transfer from the Senior Executive Service,
16 but does not apply to an action initiated under section
17 1215, to a removal under section 3592 or 3595, to a sus-
18 pension under section 7503, to a suspension or removal
19 under section 7532, to a suspension or removal under sec-
20 tion 7542, or to a suspension or removal under section
21 713 of title 38.

22 **“§ 7553. Cause and procedure**

23 “(a)(1) Under regulations prescribed by the Office of
24 Personnel Management, the head of an agency may re-
25 move an employee of the agency from the Senior Executive

1 Service if the head determines that the performance or
2 misconduct of the individual warrants such removal. If the
3 head so removes such an individual, the head may—

4 “(A) remove the individual from the civil serv-
5 ice; or

6 “(B) in the case of an employee described in
7 paragraph (2), transfer the employee from the Sen-
8 ior Executive Service to a General Schedule position
9 at any grade of the General Schedule for which the
10 employee is qualified and that the head determines
11 is appropriate.

12 “(2) An employee described in this paragraph is an
13 individual who—

14 “(A) previously occupied a permanent position
15 within the competitive service;

16 “(B) previously occupied a permanent position
17 within the excepted service; or

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

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

24 “(b)(1) Notwithstanding any other provision of law,
25 including section 3594, any employee transferred to a

1 General Schedule position under subsection (a)(1)(B)
2 shall, beginning on the date of such transfer, receive the
3 annual rate of pay applicable to such position.

4 “(2) An employee so transferred may not be placed
5 on administrative leave or any other category of paid leave
6 during the period during which an appeal (if any) under
7 this section is ongoing, and may only receive pay if the
8 individual reports for duty. If an employee so transferred
9 does not report for duty, such employee shall not receive
10 pay or other benefits pursuant to section 7554(e).

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

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

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

23 **“§ 7554. Expedited review of appeal**

24 “(a) Upon receipt of an appeal under section
25 7553(d), the Merit Systems Protection Board shall refer

1 such appeal to an administrative judge pursuant to section
2 7701(b)(1). The administrative judge shall—

3 “(1) expedite any such appeal under such sec-
4 tion; and

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

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

11 “(c) In any case in which the administrative judge
12 cannot issue a decision in accordance with the 21-day re-
13 quirement under subsection (a)(2), the removal or transfer
14 is final. In such a case, the Merit Systems Protection
15 Board shall, within 14 days after the date that such re-
16 moval or transfer is final, submit to Congress a report
17 that explains the reasons why a decision was not issued
18 in accordance with such requirement.

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

22 “(e) During the period beginning on the date on
23 which an employee appeals a removal from the civil service
24 under section 7553(d) and ending on the date that the
25 administrative judge issues a final decision on such appeal,

1 such employee may not receive any pay, awards, bonuses,
2 incentives, allowances, differentials, student loan repay-
3 ments, special payments, or benefits.”.

4 (b) APPLICATION.—

5 (1) IN GENERAL.—Subchapter VI of chapter 75
6 of title 5, United States Code, as added by sub-
7 section (a), shall not apply to any personnel action
8 against a career appointee (as that term is defined
9 in section 3132(a)(4) of title 5, United States Code)
10 that was commenced before the date of enactment of
11 this Act.

12 (2) RELATION TO OTHER AUTHORITIES.—The
13 authority provided by such subchapter is in addition
14 to the authority provided under section 3592 or sub-
15 chapter V of chapter 75 of title 5, United States
16 Code.

17 (c) TECHNICAL AMENDMENTS.—

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

20 (A) in section 3592(b)(2)—

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

23 (ii) by striking the period at the end
24 of subparagraph (B) and inserting “; or”;

25 and

1 (iii) by adding at the end the fol-
2 lowing:

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

5 (B) in section 3393(g), by striking “or
6 7543 of this title” and inserting “, 7543, or
7 7553 of this title or section 713 of title 38”;
8 and

9 (C) in section 7542, by striking “or to a
10 removal under section 3592 or 3595 of this
11 title” and inserting “to a removal under section
12 3592 or 3595 of this title, to a suspension
13 under section 7503, to a removal or transfer
14 under section 7553, or a removal or transfer
15 under section 713 of title 38”.

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

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

“SUBCHAPTER VI—SENIOR EXECUTIVE SERVICE: EXPEDITED REMOVAL

“7551. Definitions.

“7552. Actions covered.

“7553. Cause and procedure.

“7554. Expedited review of appeal.”.

1 **SEC. 9. MANDATORY REASSIGNMENT OF CAREER AP-**
2 **POINTEES.**

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

6 “(3)(A) Consistent with the requirements of para-
7 graphs (1) and (2), at least once every five years beginning
8 on the date that a career appointee is initially appointed
9 to the Senior Executive Service, each career appointee at
10 an agency shall be reassigned to another Senior Executive
11 Service position at the agency at a different geographic
12 location that does not include the supervision of the same
13 agency personnel or programs.

14 “(B) The head of an agency may waive the require-
15 ment under subparagraph (A) for any career appointee if
16 the head submits notice of the waiver and an explanation
17 of the reasons for the waiver to the Committee on Over-
18 sight and Government Reform of the House of Represent-
19 atives and the Committee on Homeland Security and Gov-
20 ernmental Affairs of the Senate.”.

21 (b) CONFORMING AMENDMENT.—Section
22 3395(a)(1)(A) of title 5, United States Code, is amended
23 by striking “paragraph (2)” and inserting “paragraphs
24 (2) and (3)”.

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

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