

113TH CONGRESS  
2D SESSION

# H. R. 5169

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

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## IN THE HOUSE OF REPRESENTATIVES

JULY 23, 2014

Mr. WALBERG (for himself and Mr. ISSA) introduced the following bill; which was referred to the Committee on Oversight and Government Reform

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## 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 POSITIONS.**

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

1 each position, including the impact of such result on the  
2 agency mission.”.

3 **SEC. 3. EXTENSION OF PROBATIONARY PERIOD.**

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

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

10 **SEC. 4. MODIFICATION OF PAY RETENTION FOR SENIOR**  
11 **EXECUTIVE SERVICE MEMBERS REMOVED**  
12 **FOR UNDER PERFORMANCE.**

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

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

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

20 “(II) the rate of basic pay in effect at  
21 the time of the placement for the position  
22 the career appointee held in the civil serv-  
23 ice immediately before being appointed to  
24 the Senior Executive Service; or

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

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

9 **SEC. 5. REQUIREMENT THAT PERFORMANCE REQUIRE-**  
10 **MENTS BE ESTABLISHED IN ADVANCE.**

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

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

15 (2) by inserting “in writing” after “commu-  
16 nicated”.

17 **SEC. 6. AMENDMENTS TO ADVERSE ACTION PROVISIONS**  
18 **WITH RESPECT TO CAREER APPOINTEES IN**  
19 **THE SENIOR EXECUTIVE SERVICE.**

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

24 “(1) ‘employee’ means—

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

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

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

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

16           (b) MODIFICATION OF CAUSE AND PROCEDURE FOR  
17           SUSPENSION AND TERMINATION.—

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

20                   (A) in subsection (a), by striking “mis-  
21                   conduct,” and inserting “such cause as would  
22                   promote the efficiency of the service, mis-  
23                   conduct,”; and

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

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

4                   (A) in section 3593—

5                           (i) in subsection (a)(2), by striking  
6                           “misconduct,” and inserting “such cause  
7                           as would promote the efficiency of the  
8                           service, misconduct,”; and

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

13                   (B) in section 3594(a), by striking “mis-  
14                   conduct,” and inserting “such cause as would  
15                   promote the efficiency of the service, mis-  
16                   conduct,”.

17 **SEC. 7. MANDATORY LEAVE FOR CAREER APPOINTEES IN**  
18 **THE SENIOR EXECUTIVE SERVICE.**

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

22 **“§ 6329. Mandatory leave for Senior Executive Serv-**  
23 **ice career appointees**

24           “(a) In this section—

25                   “(1) the term ‘employee’ means—

1           “(A) a career appointee in the Senior Ex-  
2           ecutive Service who—

3                   “(i) has completed the probationary  
4                   period prescribed under section 3393(d) of  
5                   this title; or

6                   “(ii) was covered by the provisions of  
7                   subchapter II of chapter 75 of this title  
8                   immediately before appointment to the  
9                   Senior Executive Service; and

10           “(B) who has received written notice of re-  
11           moval from the civil service under subchapter V  
12           of chapter 75 of this title; and

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

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

18                   “(B) may not accrue any annual leave  
19                   under section 6303 for the period of such ab-  
20                   sence.

21           “(b) Under regulations prescribed by the Office of  
22           Personnel Management, an agency may place an employee  
23           on mandatory leave for misconduct, neglect of duty, mal-  
24           feasance, or such cause as would promote the efficiency  
25           of the service.

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

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

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

“6329. Mandatory leave for Senior Executive Service career appointees.”.

17       (c) REGULATIONS.—Not later than 6 months after  
18 the date of enactment of this Act, the Director of the Of-  
19 fice of Personnel Management shall prescribe regulations  
20 with respect to the leave provided by the amendment in  
21 subsection (a).

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