

113<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 5169

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IN THE SENATE OF THE UNITED STATES

SEPTEMBER 17 (legislative day, SEPTEMBER 16), 2014

Received; read twice and referred to the Committee on Homeland Security and  
Governmental Affairs

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## AN ACT

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,*

1 **SECTION 1. SHORT TITLE.**

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

4 **SEC. 2. BIENNIAL JUSTIFICATION OF POSITIONS.**

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

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

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

15 (b) CONFORMING AMENDMENT.—Section 3592(a)(1)  
16 of such title is amended by striking “1-year” and inserting  
17 “2-year”.

18 **SEC. 4. MODIFICATION OF PAY RETENTION FOR SENIOR**  
19 **EXECUTIVE SERVICE MEMBERS REMOVED**  
20 **FOR UNDER PERFORMANCE.**

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

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

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

3           “(II) the rate of basic pay in effect at  
4           the time of the placement for the position  
5           the career appointee held in the civil serv-  
6           ice immediately before being appointed to  
7           the Senior Executive Service; or

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

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

16 **SEC. 5. REQUIREMENT THAT PERFORMANCE REQUIRE-**  
17 **MENTS BE ESTABLISHED IN ADVANCE.**

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

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

22               (2) by inserting “in writing” after “commu-  
23               nicated”.

1 **SEC. 6. AMENDMENTS TO ADVERSE ACTION PROVISIONS**  
2 **WITH RESPECT TO CAREER APPOINTEES IN**  
3 **THE SENIOR EXECUTIVE SERVICE.**

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

8 “(1) ‘employee’ means—

9 “(A) an individual in the competitive serv-  
10 ice who is not serving a probationary period or  
11 trial period under an initial appointment or who  
12 has completed 1 year of current continuous em-  
13 ployment in the same or similar positions under  
14 other than a temporary appointment limited to  
15 1 year or less; or

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

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

20 “(ii) was covered by the provisions of  
21 subchapter II of this chapter immediately  
22 before appointment to the Senior Executive  
23 Service; and”.

24 (b) **MODIFICATION OF CAUSE AND PROCEDURE FOR**  
25 **SUSPENSION AND TERMINATION.**—

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

3           (A) in subsection (a), by striking “mis-  
4 conduct,” and inserting “such cause as would  
5 promote the efficiency of the service, mis-  
6 conduct,”;

7           (B) in subsection (b)(4), by adding at the  
8 end before the period the following: “, but no  
9 later than 30 days after the date that the em-  
10 ployee’s answer was received under paragraph  
11 (2)”;

12           (C) by redesignating subsections (c), (d),  
13 and (e) as subsections (d), (e), and (f), respec-  
14 tively;

15           (D) by inserting after subsection (b) the  
16 following:

17           “(c) An agency head may extend the deadline for an  
18 employee to answer under subsection (b)(2) or the dead-  
19 line for the agency to issue a written decision under sub-  
20 section (b)(4) for no more than 30 days each. Any exten-  
21 sion by the agency head under this subsection must be  
22 in writing and document the reasons for granting the ex-  
23 tension.”; and

24           (E) by adding at the end the following:

1       “(g)(1) With respect to an employee subject to re-  
2       moval under this subchapter, if a final order or decision  
3       is issued in favor of the agency by the agency, the Merit  
4       Systems Protection Board, or the applicable reviewing  
5       court under section 7703, the employee—

6               “(A) shall pay to the agency an amount equal  
7       to any pay received by the employee during the pe-  
8       riod beginning on the date that the employee re-  
9       ceived notice under subsection (b)(1) and ending on  
10       the date of such final order or decision; and

11               “(B) have removed from such employee’s credit  
12       any annual leave accrued during such period.

13       “(2) Paragraph (1) shall apply only to an employee  
14       who, during the period described in paragraph (1)(A), is  
15       placed on administrative leave or any other type of leave  
16       whereby the employee is in a status without duties but  
17       with pay.”.

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

21               (A) in section 3593—

22                       (i) in subsection (a)(2), by striking  
23               “misconduct,” and inserting “such cause  
24               as would promote the efficiency of the  
25               service, misconduct,”; and

1                   (ii) in subsection (b), by striking  
2                   “misconduct,” and inserting “such cause  
3                   as would promote the efficiency of the  
4                   service, misconduct,”; and

5                   (B) in section 3594(a), by striking “mis-  
6                   conduct,” and inserting “such cause as would  
7                   promote the efficiency of the service, mis-  
8                   conduct,”.

Passed the House of Representatives September 16,  
2014.

Attest:

KAREN L. HAAS,

*Clerk.*