

114TH CONGRESS
2D SESSION

H. R. 4361

AN ACT

To amend section 3554 of title 44, United States Code, to provide for enhanced security of Federal information systems, 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; TABLE OF CONTENTS.**

2 (a) SHORT TITLE.—This Act may be cited as the
3 “Government Reform and Improvement Act of 2016”.

4 (b) TABLE OF CONTENTS.—The table of contents for
5 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—FEDERAL INFORMATION SYSTEMS SAFEGUARDS

Sec. 101. Agency discretion to secure information technology and information systems.

TITLE II—ELIMINATING PORNOGRAPHY FROM AGENCIES

Sec. 201. Prohibition on accessing pornographic web sites from federal computers.

TITLE III—EXTENSION OF PROBATIONARY PERIOD FOR CAREER EMPLOYEES

Sec. 301. Extension of probationary period for positions within the competitive service.

Sec. 302. Appeals from adverse actions.

TITLE IV—SENIOR EXECUTIVE SERVICE ACCOUNTABILITY

Sec. 401. Biennial justification of Senior Executive Service positions.

Sec. 402. Extension of probationary period for career appointees.

Sec. 403. Modification of pay retention for career appointees removed for under performance.

Sec. 404. Advanced establishment of performance requirements under Senior Executive Service performance appraisal systems.

Sec. 405. Amendments with respect to adverse actions against career appointees.

Sec. 406. Mandatory leave for career appointees subject to removal.

Sec. 407. Expedited removal of career appointees for performance or misconduct.

Sec. 408. Mandatory reassignment of career appointees.

TITLE V—OPM REPORT ON OFFICIAL TIME

Sec. 501. Reporting requirement.

TITLE VI—MIDNIGHT RULE RELIEF

Sec. 601. Moratorium on midnight rules.

Sec. 602. Special rule on statutory, regulatory, and judicial deadlines.

Sec. 603. Exception.

Sec. 604. Judicial review.

Sec. 605. Definitions.

TITLE VII—REQUIREMENT TO MAINTAIN RECORDS

Sec. 701. Requirement to maintain records.

1 **TITLE I—FEDERAL INFORMA-**
2 **TION SYSTEMS SAFEGUARDS**

3 **SEC. 101. AGENCY DISCRETION TO SECURE INFORMATION**
4 **TECHNOLOGY AND INFORMATION SYSTEMS.**

5 (a) IN GENERAL.—In carrying out section 3554 of
6 title 44, United States Code, any action taken by the head
7 of an agency that is necessary to limit, restrict, or prohibit
8 access to any website the head of the agency determines
9 to present a current or future security weakness or risk
10 to the information technology or information system under
11 the control of the agency, and any impact or implementa-
12 tion of such action, shall not be subject to chapter 71 of
13 title 5, United States Code.

14 (b) INFORMATION SECURITY PROTOCOL.—An agency
15 employee acting in the official capacity of the employee
16 may not establish, operate, maintain, or otherwise permit
17 the use of information technology that is not certified by
18 the appropriate Federal entity responsible for information
19 security (either the Director of the Office of Management
20 and Budget, the head of the agency, the Secretary of
21 Homeland Security, or the Chief Information Officer of
22 the agency, as applicable) as in compliance with the estab-
23 lished information security policies, procedures, and pro-
24 grams.

1 (c) DEFINITIONS.—In this section—

2 (1) the terms “agency” and “information sys-
3 tem” have the meanings given the terms in section
4 3502 of title 44, United States Code; and

5 (2) the term “information technology” has the
6 meaning given the term in section 3552 of title 44,
7 United States Code.

8 **TITLE II—ELIMINATING POR-**
9 **NOGRAPHY FROM AGENCIES**

10 **SEC. 201. PROHIBITION ON ACCESSING PORNOGRAPHIC**
11 **WEB SITES FROM FEDERAL COMPUTERS.**

12 (a) PROHIBITION.—Except as provided in subsection
13 (b), not later than 90 days after the date of the enactment
14 of this Act, the Director of the Office of Management and
15 Budget shall issue guidelines that prohibit the access of
16 a pornographic or other explicit web site from a Federal
17 computer.

18 (b) EXCEPTION.—The prohibition described in sub-
19 section (a) shall not apply to any Federal computer that
20 is used for an investigative purpose that requires accessing
21 a pornographic web site.

1 **TITLE III—EXTENSION OF PRO-**
2 **BATIONARY PERIOD FOR CA-**
3 **REER EMPLOYEES**

4 **SEC. 301. EXTENSION OF PROBATIONARY PERIOD FOR PO-**
5 **SITIONS WITHIN THE COMPETITIVE SERVICE.**

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

8 (1) in subsection (a), by striking “The Presi-
9 dent” and inserting “Subject to subsections (c) and
10 (d), the President”;

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

13 (3) by inserting after subsection (b) the fol-
14 lowing:

15 “(c)(1) Except as provided in paragraph (2), the
16 length of a probationary period established under para-
17 graph (1) or (2) of subsection (a) shall be—

18 “(A) with respect to any position that requires
19 formal training, a period of 2 years beginning on the
20 date that such formal training is completed;

21 “(B) with respect to any position that requires
22 a license, a period of 2 years beginning on the date
23 that such license is granted; and

24 “(C) with respect to any position not covered by
25 subparagraph (A) or (B), not less than 2 years.

1 “(2) The length of a probationary period established
2 under paragraph (1) or (2) of subsection (a) in the case
3 of a preference eligible shall be not longer than—

4 “(A) if the appointment (as referred to in sub-
5 section (a)(1)) or the initial appointment (as re-
6 ferred to in subsection (a)(2)) is to a position that
7 exists on the effective date of this subsection, the
8 length of the probationary period which applies to
9 such position as of such effective date; or

10 “(B) if the appointment (as referred to in sub-
11 section (a)(1)) or the initial appointment (as re-
12 ferred to in subsection (a)(2)) is to a position that
13 does not exist on the effective date of this sub-
14 section, such length of time as the President may es-
15 tablish, consistent with the purposes of this subpara-
16 graph.

17 “(3) In paragraph (1)—

18 “(A) the term ‘formal training’ means, with re-
19 spect to any position, a training program required
20 by law, rule, or regulation, or otherwise required by
21 the employing agency, to be completed by the em-
22 ployee before the employee is able to successfully
23 execute the duties of the applicable position; and

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

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

7 “(1) any announcement of a vacant position
8 within such agency and any offer of appointment
9 made to any individual with respect to any such po-
10 sition shall clearly state the terms and conditions of
11 the probationary period applicable to such position;

12 “(2) any individual who is required to complete
13 a probationary period under this section shall receive
14 timely notice of the performance and other require-
15 ments which must be met in order to successfully
16 complete the probationary period; and

17 “(3) upon successful completion of a proba-
18 tionary period under this section, certification to
19 that effect shall be made, supported by a brief state-
20 ment of the basis for that certification, in such form
21 and manner as the President may by regulation pre-
22 scribe.”.

23 (b) TECHNICAL AMENDMENT.—Section 3321(e) of
24 title 5, United States Code (as so redesignated by sub-

1 section (a)(2)) is amended by striking “Subsections (a)
2 and (b)” and inserting “Subsections (a) through (d)”.

3 (c) **EFFECTIVE DATE.**—This section and the amend-
4 ments made by this section—

5 (1) shall take effect 180 days after the date of
6 enactment of this Act; and

7 (2) shall apply in the case of any appointment
8 (as referred to in section 3321(a)(1) of title 5,
9 United States Code) and any initial appointment (as
10 referred to in section 3321(a)(2) of such title) tak-
11 ing effect on or after the date on which this section
12 takes effect.

13 **SEC. 302. APPEALS FROM ADVERSE ACTIONS.**

14 (a) **SUBCHAPTER I OF CHAPTER 75 OF TITLE 5.**—
15 Section 7501(1) of title 5, United States Code, is amend-
16 ed—

17 (1) by striking “1 year” the first place it ap-
18 pears and inserting “not less than 2 years”; and

19 (2) by striking “1 year” the second place it ap-
20 pears and inserting “2 years”.

21 (b) **SUBCHAPTER II OF CHAPTER 75 OF TITLE 5.**—
22 Section 7511(a)(1) of title 5, United States Code, is
23 amended—

1 (1) in subparagraph (A)(ii), by striking “1
 2 year” the first place it appears and inserting “not
 3 less than 2 years”; and

4 (2) in subparagraph (C)(ii), by striking “2
 5 years” the first place it appears and inserting “not
 6 less than 2 years”.

7 (c) EFFECTIVE DATE.—The amendments made by
 8 subsections (a) and (b)—

9 (1) shall take effect 180 days after the date of
 10 enactment of this Act; and

11 (2) shall apply in the case of any individual
 12 whose period of continuous service (as referred to in
 13 the provision of law amended by paragraph (1) or
 14 (2) of subsection (b), as the case may be) com-
 15 mences on or after the date on which this section
 16 takes effect.

17 **TITLE IV—SENIOR EXECUTIVE** 18 **SERVICE ACCOUNTABILITY**

19 **SEC. 401. BIENNIAL JUSTIFICATION OF SENIOR EXECUTIVE** 20 **SERVICE POSITIONS.**

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

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

3 **SEC. 402. EXTENSION OF PROBATIONARY PERIOD FOR CA-**
4 **REER APPOINTEES.**

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

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

11 **SEC. 403. MODIFICATION OF PAY RETENTION FOR CAREER**
12 **APPOINTEES REMOVED FOR UNDER PER-**
13 **FORMANCE.**

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

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

19 “(I) the rate of basic pay in effect for the posi-
20 tion in which placed;

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

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

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

8 **SEC. 404. ADVANCED ESTABLISHMENT OF PERFORMANCE**
 9 **REQUIREMENTS UNDER SENIOR EXECUTIVE**
 10 **SERVICE PERFORMANCE APPRAISAL SYS-**
 11 **TEMS.**

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

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

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

18 **SEC. 405. AMENDMENTS WITH RESPECT TO ADVERSE AC-**
 19 **TIONS AGAINST CAREER APPOINTEES.**

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. 406. MANDATORY LEAVE FOR CAREER APPOINTEES**
18 **SUBJECT TO REMOVAL.**

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

24 “(a) In this section—

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

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

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

10 “(B) may not accrue any annual leave
11 under section 6303 for the period of such ab-
12 sence.

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

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

23 “(d) If a final order or decision is issued in favor
24 of such employee with respect to removal under sub-
25 chapter V of chapter 75 by the agency, the Merit Systems

1 Protection Board, or the United States Court of Appeals
 2 for the Federal Circuit, any annual leave that is charged
 3 to an employee by operation of this section shall be re-
 4 stored to the applicable leave account of such employee.”.

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

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

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

14 **SEC. 407. EXPEDITED REMOVAL OF CAREER APPOINTEES**
 15 **FOR PERFORMANCE OR MISCONDUCT.**

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

19 “SUBCHAPTER VI—SENIOR EXECUTIVE
 20 SERVICE: EXPEDITED REMOVAL

21 “§ 7551. Definitions

22 “In this subchapter—

23 “(1) the term ‘employee’ has the meaning given
 24 such term in section 7541(1), but does not include

1 any career appointee in the Senior Executive Service
2 within the Department of Veterans Affairs; and

3 “(2) the term ‘misconduct’ includes neglect of
4 duty, malfeasance, or failure to accept a directed re-
5 assignment or to accompany a position in a transfer
6 of function.

7 **“§ 7552. Actions covered**

8 “This subchapter applies to a removal from the civil
9 service or a transfer from the Senior Executive Service,
10 but does not apply to an action initiated under section
11 1215, to a removal under section 3592 or 3595, to a sus-
12 pension under section 7503, to a suspension or removal
13 under section 7532, to a suspension or removal under sec-
14 tion 7542, or to a suspension or removal under section
15 713 of title 38.

16 **“§ 7553. Cause and procedure**

17 “(a)(1) Under regulations prescribed by the Office of
18 Personnel Management, the head of an agency may re-
19 move an employee of the agency from the Senior Executive
20 Service if the head determines that the performance or
21 misconduct of the individual warrants such removal. If the
22 head so removes such an individual, the head may—

23 “(A) remove the individual from the civil serv-
24 ice; or

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

7 “(2) An employee described in this paragraph is an
8 individual who—

9 “(A) previously occupied a permanent position
10 within the competitive service;

11 “(B) previously occupied a permanent position
12 within the excepted service; or

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

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

19 “(b)(1) Notwithstanding any other provision of law,
20 including section 3594, any employee transferred to a
21 General Schedule position under subsection (a)(1)(B)
22 shall, beginning on the date of such transfer, receive the
23 annual rate of pay applicable to such position.

24 “(2) An employee so transferred may not be placed
25 on administrative leave or any other category of paid leave

1 during the period during which an appeal (if any) under
2 this section is ongoing, and may only receive pay if the
3 individual reports for duty. If an employee so transferred
4 does not report for duty, such employee shall not receive
5 pay or other benefits pursuant to section 7554(e).

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

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

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

18 **“§ 7554. Expedited review of appeal**

19 “(a) Upon receipt of an appeal under section
20 7553(d), the Merit Systems Protection Board shall refer
21 such appeal to an administrative judge pursuant to section
22 7701(b)(1). The administrative judge shall—

23 “(1) expedite any such appeal under such sec-
24 tion; and

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

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

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

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

18 “(e) During the period beginning on the date on
19 which an employee appeals a removal from the civil service
20 under section 7553(d) and ending on the date that the
21 administrative judge issues a final decision on such appeal,
22 such employee may not receive any pay, awards, bonuses,
23 incentives, allowances, differentials, student loan repay-
24 ments, special payments, or benefits.”.

25 (b) APPLICATION.—

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

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

13 (c) TECHNICAL AMENDMENTS.—

14 (1) TITLE 5.—Title 5, United States Code, is
15 amended—

16 (A) in section 3592(b)(2)—

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

19 (ii) by striking the period at the end
20 of subparagraph (B) and inserting “; or”;
21 and

22 (iii) by adding at the end the fol-
23 lowing:

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

1 (B) in section 3393(g), by striking “1215,,
 2 3592, 3595, 7532, or 7543 of this title” and in-
 3 serting “1215, 3592, 3595, 7532, 7543, or
 4 7553 of this title or section 713 of title 38”;
 5 and

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

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

17 (d) CLERICAL AMENDMENT.—The table of sections
 18 at the beginning of chapter 75 of title 5, United States
 19 Code, is amended by adding after the item relating to sec-
 20 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. 408. 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.

4 **TITLE V—OPM REPORT ON**
5 **OFFICIAL TIME**

6 **SEC. 501. REPORTING REQUIREMENT.**

7 (a) IN GENERAL.—Section 7131 of title 5, United
8 States Code, is amended by adding at the end the fol-
9 lowing:

10 “(e)(1)(A) Not later than March 31 of each calendar
11 year, the Office of Personnel Management, in consultation
12 with the Office of Management and Budget, shall submit
13 to each House of Congress a report on the operation of
14 this section during the fiscal year last ending before the
15 start of such calendar year.

16 “(B) Not later than December 31 of each calendar
17 year, each agency (as defined by section 7103(a)(3)) shall
18 furnish to the Office of Personnel Management the infor-
19 mation which such Office requires, with respect to such
20 agency, for purposes of the report which is next due under
21 subparagraph (A).

22 “(2) Each report by the Office of Personnel Manage-
23 ment under this subsection shall include, with respect to
24 the fiscal year described in paragraph (1)(A), at least the
25 following information:

1 “(A) The total amount of official time granted
2 to employees.

3 “(B) The average amount of official time ex-
4 pended per bargaining unit employee.

5 “(C) The specific types of activities or purposes
6 for which official time was granted, and the impact
7 which the granting of such official time for such ac-
8 tivities or purposes had on agency operations.

9 “(D) The total number of employees to whom
10 official time was granted, and, of that total, the
11 number who were not engaged in any activities or
12 purposes except activities or purposes involving the
13 use of official time.

14 “(E) The total amount of compensation (includ-
15 ing fringe benefits) afforded to employees in connec-
16 tion with activities or purposes for which they were
17 granted official time.

18 “(F) A description of any room or space des-
19 ignated at the agency (or its subcomponent) where
20 official time activities will be conducted, including
21 the square footage of any such room or space.

22 “(3) All information included in a report by the Of-
23 fice of Personnel Management under this subsection with
24 respect to a fiscal year—

1 “(A) shall be shown both agency-by-agency and
2 for all agencies; and

3 “(B) shall be accompanied by the corresponding
4 information (submitted by the Office in its report
5 under this subsection) for the fiscal year before the
6 fiscal year to which such report pertains, together
7 with appropriate comparisons and analyses.

8 “(4) For purposes of this subsection, the term ‘offi-
9 cial time’ means any period of time, regardless of agency
10 nomenclature—

11 “(A) which may be granted to an employee
12 under this chapter (including a collective bargaining
13 agreement entered into under this chapter) to per-
14 form representational or consultative functions; and

15 “(B) during which the employee would other-
16 wise be in a duty status.”.

17 (b) APPLICABILITY.—The amendment made by sub-
18 section (a) shall be effective beginning with the report
19 which, under the provisions of such amendment, is first
20 required to be submitted by the Office of Personnel Man-
21 agement to each House of Congress by a date which oc-
22 curs at least 6 months after the date of the enactment
23 of this Act.

TITLE VI—MIDNIGHT RULE RELIEF

SEC. 601. MORATORIUM ON MIDNIGHT RULES.

Except as provided under sections 602 and 603, during the moratorium period, an agency may not propose or adopt any midnight rule unless the Administrator finds the midnight rule will not result in any of the following:

(1) An annual effect on the economy of \$100,000,000 or more.

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

(3) Significant adverse effects on competition, employment, wages, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

(4) A significant economic impact on a substantial number of small entities.

SEC. 602. SPECIAL RULE ON STATUTORY, REGULATORY, AND JUDICIAL DEADLINES.

(a) IN GENERAL.—Section 601 shall not apply with respect to any midnight rule required by statute, other regulation, or judicial order to be proposed or adopted by a deadline that—

1 (1) was established before the beginning of the
2 moratorium period; and

3 (2) occurs during the moratorium period.

4 (b) PUBLICATION OF DEADLINES.—Not later than
5 30 days after the beginning of a moratorium period, the
6 Administrator shall identify and publish in the Federal
7 Register a list of midnight rules covered by subsection (a).

8 **SEC. 603. EXCEPTION.**

9 (a) EMERGENCY EXCEPTION.—Section 601 shall not
10 apply to a midnight rule if the President determines by
11 Executive order that the midnight rule is—

12 (1) necessary because of an emergency;

13 (2) necessary for the enforcement of criminal
14 laws;

15 (3) necessary for the national security of the
16 United States; or

17 (4) issued pursuant to any statute imple-
18 menting an international trade agreement.

19 (b) DEREGULATORY EXCEPTION.—Section 601 shall
20 not apply to a midnight rule that the Administrator finds
21 is limited to repealing an existing rule and certifies such
22 finding in writing. The certification shall be published in
23 the Federal Register.

1 **SEC. 604. JUDICIAL REVIEW.**

2 Any person or entity subject to the any midnight rule
3 promulgated in violation of this title is entitled to judicial
4 review.

5 **SEC. 605. DEFINITIONS.**

6 In this title:

7 (1) ADMINISTRATOR.—The term “Adminis-
8 trator” means the Administrator of the Office of In-
9 formation and Regulatory Affairs within the Office
10 of Management and Budget.

11 (2) AGENCY.—The term “agency” has the
12 meaning given that term under section 551 of title
13 5, United States Code, except such term does not in-
14 clude—

15 (A) the Federal Election Commission;

16 (B) the Board of Governors of the Federal
17 Reserve System;

18 (C) the Federal Deposit Insurance Cor-
19 poration; or

20 (D) the United States Postal Service.

21 (3) DEADLINE.—The term “deadline” means
22 any date certain for fulfilling any obligation or exer-
23 cising any authority established by or under any
24 Federal statute or rule, or by or under any court
25 order implementing any Federal statute, regulation,
26 or rule.

1 (4) EMERGENCY.—The term “emergency”
 2 means a declaration by the President of a state of
 3 emergency.

4 (5) MIDNIGHT RULE.—The term “midnight
 5 rule” means a rule proposed or adopted during the
 6 moratorium period.

7 (6) MORATORIUM PERIOD.—The term “morato-
 8 rium period” means the day after the day referred
 9 to in section 1 of title 3, United States Code,
 10 through January 20 of the following year, in which
 11 a President is not serving a consecutive term.

12 (7) RULE.—The term “rule” has the meaning
 13 given that term under section 551 of title 5, United
 14 States Code.

15 (8) SMALL ENTITY.—The term “small entity”
 16 has the meaning given the term “small business”
 17 under section 601 of title 5, United States Code.

18 **TITLE VII—REQUIREMENT TO** 19 **MAINTAIN RECORDS**

20 **SEC. 701. REQUIREMENT TO MAINTAIN RECORDS.**

21 (a) AMENDMENT.—Chapter 31 of title 44, United
 22 States Code, is amended by adding at the end the fol-
 23 lowing new section:

1 **“§ 3108. Requirement to maintain records**

2 “(a) IN GENERAL.—If the Internal Revenue Service
3 obtains a preserved record, the Internal Revenue Service
4 shall preserve for not less than 3 years from the date on
5 which the record was obtained—

6 “(1) the preserved record or a copy of the pre-
7 served record; and

8 “(2) all records related to the preserved record.

9 “(b) PRESERVED RECORD DEFINED.—In this sec-
10 tion, the term ‘preserved record’ means any record that
11 is maintained by a person other than the Federal Govern-
12 ment pursuant to a rule, guidance, or other directive from
13 the Internal Revenue Service that requires or recommends
14 the person maintain records for a particular period of time
15 on a particular matter.

16 “(c) RULE OF CONSTRUCTION.—Nothing in this sec-
17 tion shall be construed as—

18 “(1) limiting the preservation of a preserved
19 record for a longer period of time than is required
20 by this section; or

21 “(2) shortening the period of time a preserved
22 record is otherwise required to be maintained.”.

23 (b) TECHNICAL AND CONFORMING AMENDMENT.—
24 The table of sections for chapter 31 of title 44, United

1 States Code, is amended by adding at the end the fol-
2 lowing new item:

“3108. Requirement to maintain records.”.

3 (c) EFFECTIVE DATE; APPLICABILITY.—The amend-
4 ments made by this section shall take effect as of the date
5 of the enactment of this Act and shall apply with respect
6 to any preserved record (as such term is defined in section
7 3108(b) of title 44, United States Code, as added by sub-
8 section (a)) obtained on or after the effective date.

Passed the House of Representatives July 7 (legisla-
tive day July 6), 2016.

Attest:

Clerk.

114TH CONGRESS
2^D SESSION

H. R. 4361

AN ACT

To amend section 3554 of title 44, United States Code, to provide for enhanced security of Federal information systems, and for other purposes.