

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

# H. R. 4361

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IN THE SENATE OF THE UNITED STATES

JULY 7, 2016

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

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## 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  
20 position in which placed;

21 “(II) the rate of basic pay in effect at the  
22 time of the placement for the position the ca-  
23 reer appointee held in the civil service imme-  
24 diately before being appointed to the Senior Ex-  
25 ecutive Service; or

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

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

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

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

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

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

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

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

25           “(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 sserting “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 igned 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.

1           **TITLE VI—MIDNIGHT RULE**  
2                           **RELIEF**

3 **SEC. 601. MORATORIUM ON MIDNIGHT RULES.**

4           Except as provided under sections 602 and 603, dur-  
5 ing the moratorium period, an agency may not propose  
6 or adopt any midnight rule unless the Administrator finds  
7 the midnight rule will not result in any of the following:

8                   (1) An annual effect on the economy of  
9                   \$100,000,000 or more.

10                   (2) A major increase in costs or prices for con-  
11 sumers, individual industries, Federal, State, or local  
12 government agencies, or geographic regions.

13                   (3) Significant adverse effects on competition,  
14 employment, wages, investment, productivity, inno-  
15 vation, or on the ability of United States-based en-  
16 terprises to compete with foreign-based enterprises  
17 in domestic and export markets.

18                   (4) A significant economic impact on a substan-  
19 tial number of small entities.

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

22           (a) IN GENERAL.—Section 601 shall not apply with  
23 respect to any midnight rule required by statute, other  
24 regulation, or judicial order to be proposed or adopted by  
25 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:

KAREN L. HAAS,

*Clerk.*