

114TH CONGRESS
1ST SESSION

S. 2345

To establish an expedited process for removal of senior executives of the Internal Revenue Service based on performance or misconduct.

IN THE SENATE OF THE UNITED STATES

DECEMBER 2, 2015

Mr. BURR (for himself, Mr. ISAKSON, Mr. SCOTT, Mr. ENZI, Mr. GRASSLEY, and Mr. HELLER) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To establish an expedited process for removal of senior executives of the Internal Revenue Service based on performance or misconduct.

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 “IRS Accountability Act
5 of 2015”.

1 **SEC. 2. REMOVAL OF SENIOR EXECUTIVES OF THE INTER-**
 2 **NAL REVENUE SERVICE FOR PERFORMANCE**
 3 **OR MISCONDUCT.**

4 (a) IN GENERAL.—Section 1203 of the Internal Rev-
 5 enue Service Restructuring and Reform Act of 1998 (26
 6 U.S.C. 7804 note) is amended by adding at the end the
 7 following new subsection:

8 “(f) REMOVAL OF SENIOR EXECUTIVES BASED ON
 9 PERFORMANCE OR MISCONDUCT.—

10 “(1) REMOVAL OR TRANSFER.—

11 “(A) IN GENERAL.—The Commissioner of
 12 Internal Revenue (referred to in this subsection
 13 as the ‘Commissioner’) may remove an indi-
 14 vidual employed in a senior executive position
 15 at the Internal Revenue Service from the senior
 16 executive position if the Commissioner deter-
 17 mines the performance or misconduct of the in-
 18 dividual warrants such removal. If the Commis-
 19 sioner so removes such an individual, the Com-
 20 missioner may—

21 “(i) remove the individual from the
 22 civil service (as defined in section 2101 of
 23 title 5, United States Code); or

24 “(ii) in the case of an individual de-
 25 scribed in subparagraph (B), transfer the
 26 individual from the senior executive posi-

tion to a General Schedule position at any grade of the General Schedule for which the individual is qualified and that the Commissioner determines is appropriate.

“(B) INDIVIDUALS ELIGIBLE FOR TRANSFER.—An individual described in this subparagraph is an individual who—

“(i) previously occupied a permanent position within the competitive service (as that term is defined in section 2102 of title 5, United States Code);

“(ii) previously occupied a permanent position within the excepted service (as that term is defined in section 2103 of title 5, United States Code); or

“(iii) prior to employment in a senior executive position at the Internal Revenue Service, did not occupy any position within the Federal Government.

“(2) PAY OF TRANSFERRED INDIVIDUALS.—

“(A) IN GENERAL.—Notwithstanding any other provision of law, including the requirements of section 3594 of title 5, United States Code, any individual transferred to a General Schedule position under paragraph (1)(A)(ii)

1 shall, beginning on the date of such transfer,
2 receive the annual rate of pay applicable to
3 such position.

4 “(B) PAID LEAVE DURING APPEAL.—An
5 individual so transferred may not be placed on
6 administrative leave or any other category of
7 paid leave during the period during which an
8 appeal (if any) under this section is ongoing,
9 and may only receive pay if the individual re-
10 ports for duty. If an individual so transferred
11 does not report for duty, such individual shall
12 not receive pay or other benefits pursuant to
13 paragraph (5)(E).

14 “(3) NOTICE TO CONGRESS.—Not later than 30
15 days after removing or transferring an individual
16 from a senior executive position under paragraph
17 (1), the Commissioner shall submit written notice of
18 such removal or transfer and the reason for such re-
19 moval or transfer to—

20 “(A) the Committee on Finance of the
21 Senate;

22 “(B) the Committee on Homeland Security
23 and Governmental Affairs of the Senate;

24 “(C) the Committee on Ways and Means
25 of the House of Representatives; and

1 “(D) the Committee on Oversight and
2 Government Reform of the House of Represent-
3 atives.

4 “(4) PROCEDURE.—

5 “(A) IN GENERAL.—The procedures under
6 section 7543(b) of title 5, United States Code,
7 shall not apply to a removal or transfer under
8 this section.

9 “(B) APPEAL TO MERIT SYSTEM PROTEC-
10 TION BOARD.—

11 “(i) IN GENERAL.—Subject to clause
12 (ii) and paragraph (5), any removal or
13 transfer under paragraph (1) may be ap-
14 pealed to the Merit Systems Protection
15 Board under section 7701 of title 5,
16 United States Code.

17 “(ii) DEADLINE FOR APPEAL.—An
18 appeal under clause (i) of a removal or
19 transfer may only be made if such appeal
20 is made not later than seven days after the
21 date of such removal or transfer.

22 “(5) EXPEDITED REVIEW BY ADMINISTRATIVE
23 JUDGE.—

24 “(A) IN GENERAL.—Upon receipt of an
25 appeal under paragraph (4)(B)(i), the Merit

1 Systems Protection Board shall refer such ap-
2 peal to an administrative judge pursuant to sec-
3 tion 7701(b)(1) of title 5, United States Code.
4 The administrative judge shall expedite any
5 such appeal under such section and, in any
6 such case, shall issue a decision not later than
7 21 days after the date of the appeal.

8 “(B) FINALITY OF DECISION.—Notwith-
9 standing any other provision of law, including
10 section 7703 of title 5, United States Code, the
11 decision of an administrative judge under sub-
12 paragraph (A) shall be final and shall not be
13 subject to any further appeal.

14 “(C) FAILURE TO REACH DECISION.—In
15 any case in which the administrative judge can-
16 not issue a decision in accordance with the 21-
17 day requirement under subparagraph (A), the
18 removal or transfer is final. In such a case, the
19 Merit Systems Protection Board shall, within
20 14 days after the date that such removal or
21 transfer is final, submit to Congress and the
22 Committees described in paragraph (3) a report
23 that explains the reasons why a decision was
24 not issued in accordance with such requirement.

1 “(D) PROHIBITION ON STAY OF REMOVAL
2 OR TRANSFER.—The Merit Systems Protection
3 Board or administrative judge may not stay any
4 removal or transfer under this subsection.

5 “(E) PERIOD OF REVIEW.—During the pe-
6 riod beginning on the date on which an indi-
7 vidual appeals a removal from the civil service
8 under paragraph (4) and ending on the date
9 that the administrative judge issues a final de-
10 cision on such appeal, such individual may not
11 receive any pay, awards, bonuses, incentives, al-
12 lowances, differentials, student loan repay-
13 ments, special payments, or benefits.

14 “(F) RELEVANT INFORMATION TO BE PRO-
15 VIDED.—To the maximum extent practicable,
16 the Commissioner shall provide to the Merit
17 Systems Protection Board, and to any adminis-
18 trative judge to whom an appeal under this sec-
19 tion is referred, such information and assist-
20 ance as may be necessary to ensure an appeal
21 under this paragraph is expedited.

22 “(6) RELATION TO OTHER PROVISIONS OF
23 LAW.—

24 “(A) IN GENERAL.—The authority pro-
25 vided by this subsection is in addition to, and

shall not be construed to limit or diminish, the
authority provided by—

“(i) subsections (a) and (c); and

“(ii) section 3592 or subchapter V of
chapter 75 of title 5, United States Code.

“(B) REMOVAL FROM SENIOR EXECUTIVE
SERVICE.—Section 3592(b)(1) of title 5, United
States Code, does not apply to an action to re-
move or transfer an individual under this sub-
section.

“(7) DEFINITIONS.—In this subsection:

“(A) INDIVIDUAL.—The term ‘individual’
means a career appointee (as that term is de-
fined in section 3132(a)(4) of title 5, United
States Code).

“(B) MISCONDUCT.—The term ‘mis-
conduct’ includes neglect of duty, malfeasance,
or failure to accept a directed reassignment or
to accompany a position in a transfer of func-
tion.

“(C) SENIOR EXECUTIVE POSITION.—The
term ‘senior executive position’ means a Senior
Executive Service position (as such term is de-
fined in section 3132(a)(2) of title 5, United
States Code).”.

1 (b) CONFORMING AMENDMENT.—Subsection (a) of
 2 the Internal Revenue Service Restructuring and Reform
 3 Act of 1998 is amended by striking “subsection (c)” and
 4 inserting “subsections (c) and (f)”.

5 (c) ESTABLISHMENT OF EXPEDITED REVIEW PROC-
 6 ESS.—

7 (1) IN GENERAL.—Not later than 14 days after
 8 the date of the enactment of this Act, the Merit Sys-
 9 tems Protection Board shall establish and put into
 10 effect a process to conduct expedited reviews in ac-
 11 cordance with subsection (f) of section 1203 of the
 12 Internal Revenue Service Restructuring and Reform
 13 Act of 1998, as added by this Act.

14 (2) INAPPLICABILITY OF CERTAIN REGULA-
 15 TIONS.—Section 1201.22 of title 5, Code of Federal
 16 Regulations, as in effect on the day before the date
 17 of the enactment of this Act, shall not apply to expe-
 18 dited reviews carried out under section 1203(f) of
 19 the Internal Revenue Service Restructuring and Re-
 20 form Act of 1998.

21 (3) WAIVER.—The Merit Systems Protection
 22 Board may waive any other regulation in order to
 23 provide for the expedited review required under sec-
 24 tion 1203(f) of the Internal Revenue Service Re-
 25 structuring and Reform Act of 1998.

1 (4) REVIEW BY MERIT SYSTEMS PROTECTION
2 BOARD.—Not later than 14 days after the date of
3 the enactment of this Act, the Merit Systems Pro-
4 tection Board shall submit to the Committee on Fi-
5 nance of the Senate and the Committee on Ways
6 and Means of the House of Representatives a report
7 on the actions the Board plans to take to conduct
8 expedited reviews under section 1203(f) of the Inter-
9 nal Revenue Service Restructuring and Reform Act
10 of 1998, as added by this Act. Such report shall in-
11 clude a description of the resources the Board deter-
12 mines will be necessary to conduct such reviews and
13 a description of whether any resources will be nec-
14 essary to conduct such reviews that were not avail-
15 able to the Board on the day before the date of the
16 enactment of this Act.

17 (d) TEMPORARY EXEMPTION FROM CERTAIN LIM-
18 ITATION ON INITIATION OF REMOVAL FROM SENIOR EX-
19 ECUTIVE SERVICE.—During the 120-day period beginning
20 on the date of the enactment of this Act, an action to re-
21 move an individual from the Senior Executive Service at
22 the Internal Revenue Service pursuant to section 7543 of
23 title 5, United States Code, may be initiated, notwith-
24 standing section 3592(b) of such title, or any other provi-
25 sion of law.

1 (e) CONSTRUCTION.—

2 (1) IN GENERAL.—Nothing in this section or
3 section 1203(f) of the Internal Revenue Service Re-
4 structuring and Reform Act of 1998, as added by
5 this Act, shall be construed to apply to an appeal of
6 a removal, transfer, or other personnel action that
7 was pending before the date of the enactment of this
8 Act.

9 (2) RELATION TO OTHER PROVISIONS OF
10 LAW.—With respect to the removal or transfer of an
11 individual (as that term is defined in paragraph
12 (7)(A) of section 1203(f) of the Internal Revenue
13 Service Restructuring and Reform Act of 1998) em-
14 ployed at the Internal Revenue Service, the author-
15 ity provided by such section is in addition to, and
16 shall not be construed to limit or diminish, the au-
17 thority provided by—

18 (A) subsections (a) and (c) of section 1203
19 of the Internal Revenue Service Restructuring
20 and Reform Act of 1998; and

21 (B) section 3592 or subchapter V of chap-
22 ter 75 of title 5, United States Code.

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