

115TH CONGRESS
2D SESSION

H. R. 1132

IN THE SENATE OF THE UNITED STATES

MARCH 7, 2018

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

AN ACT

To amend title 5, United States Code, to provide for a 2-year prohibition on employment in a career civil service position for any former political appointee, 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 “Political Appointee
3 Burrowing Prevention Act”.

4 **SEC. 2. LIMITATION ON EMPLOYMENT OF POLITICAL AP-**
5 **POINTEES IN CAREER CIVIL SERVICE POSI-**
6 **TIONS.**

7 (a) IN GENERAL.—Subchapter I of chapter 31 of title
8 5, United States Code, is amended by adding at the end
9 the following:

10 **“§ 3115. Employment of political appointees**

11 “(a) APPOINTMENT APPROVAL REQUIRED.—

12 “(1) IN GENERAL.—The head of an agency may
13 not appoint any individual described in paragraph
14 (5) to a career position within the agency without
15 receiving prior written approval from the Associate
16 Director of Merit Systems Accountability and Com-
17 pliance, consistent with the requirements of this sub-
18 section.

19 “(2) REQUEST.—The head of an agency shall
20 submit a request to the Associate Director to ap-
21 prove the appointment of any individual described in
22 paragraph (5) to a career position. Any such request
23 shall include certification by the head of the agency
24 to the Associate Director that the appointment is
25 necessary for the agency to meet its mission.

1 “(3) REVIEW AND DETERMINATION.—The As-
2 sociate Director shall review any request received
3 pursuant to paragraph (2) and deny any such re-
4 quest unless the Associate Director determines that
5 the appointment process with respect to the request
6 was fair, open, and free from political influence. If
7 the Associate Director makes that determination,
8 the Associate Director may approve the request.

9 “(4) NOTIFICATION TO CONGRESS.—With re-
10 spect to any request approved under paragraph (3),
11 the Associate Director shall, not less than five days
12 before the date the Associate Director provides ap-
13 proval to the head of the requesting agency, provide
14 to the Committee on Oversight and Government Re-
15 form of the House of Representatives and the Com-
16 mittee on Homeland Security and Governmental Af-
17 fairs of the Senate the agency certification under
18 paragraph (2) and the agency head’s rationale for
19 that certification.

20 “(5) COVERED INDIVIDUALS.—An individual
21 described in this paragraph is—

22 “(A) a political appointee;

23 “(B) a former political appointee who held
24 any political position during the 5-year period

1 before the date of the request described in para-
2 graph (2); or

3 “(C) at the discretion of the Director of
4 the Office of Personnel Management, a former
5 political appointee who held any political posi-
6 tion before the five-year period described in
7 subparagraph (B).

8 “(b) RESTRICTION ON APPOINTMENT.—

9 “(1) IN GENERAL.—Notwithstanding any other
10 law, rule, or regulation, during the 2-year period fol-
11 lowing the date a political appointee leaves or de-
12 parts from a political position, such appointee may
13 not be appointed to any career position in the civil
14 service.

15 “(2) EXCEPTION.—Paragraph (1) shall not
16 apply to a political appointee who has not personally
17 and substantially participated in any particular mat-
18 ter while employed in a political position.

19 “(c) APPLICATION.—Nothing in this section shall be
20 construed to restrict the appointment of an individual who
21 is—

22 “(1) entitled to reinstatement under section
23 3593(b); or

24 “(2) eligible for reinstatement under section
25 3593(a).

1 “(d) DEFINITIONS.—In this section—

2 “(1) the term ‘agency’ has the meaning given
3 the term ‘Executive agency’ in section 105;

4 “(2) the term ‘Associate Director’ means the
5 Associate Director of Merit Systems Accountability
6 and Compliance at the Office of Personnel Manage-
7 ment;

8 “(3) the term ‘political appointee’ means an in-
9 dividual serving in an appointment of any duration
10 to a political position;

11 “(4) the term ‘political position’ means—

12 “(A) a position with respect to which ap-
13 pointment is made—

14 “(i) by the President; or

15 “(ii) by the President, by and with the
16 advice and consent of the Senate;

17 “(B) a position which has been excepted
18 from the competitive service by reason of its
19 confidential, policy-determining, policy-making,
20 or policy-advocating character;

21 “(C) a position described under sections
22 5312 through 5316 (relating to the Executive
23 Schedule); and

1 “(D) a general position in the Senior Exec-
2 utive Service during such time as it is filled
3 by—

4 “(i) a noncareer appointee, as defined
5 in paragraph (7) of section 3132(a); or

6 “(ii) a limited term appointee or lim-
7 ited emergency appointee, as defined in
8 paragraphs (5) and (6) of section 3132(a),
9 who is serving under a political appoint-
10 ment.

11 “(5) the term ‘career position’ means—

12 “(A) a position in the competitive service
13 filled by career or career-conditional appoint-
14 ment;

15 “(B) a position in the excepted service
16 filled by an appointment of equivalent tenure as
17 a position described in subparagraph (A);

18 “(C) a career reserved position, as defined
19 in paragraph (8) of section 3132(a), in the Sen-
20 ior Executive Service; or

21 “(D) a general position in the Senior Exec-
22 utive Service when filled by a career appointee,
23 as defined in section 3132(a)(4);

24 “(6) the term ‘participated’ means an action
25 taken as an officer or employee through decision, ap-

1 proval, disapproval, recommendation, the rendering
2 of advice, investigation, or other such action; and

3 “(7) the term ‘particular matter’ includes any
4 investigation, application, request for a ruling or de-
5 termination, rulemaking, contract, controversy,
6 claim, charge, accusation, arrest, or judicial or other
7 proceeding.”.

8 (b) CLERICAL AMENDMENT.—The table of sections
9 of chapter 31 of title 5, United States Code, is amended
10 by adding after the item relating to section 3114 the fol-
11 lowing:

 “3115. Employment of political appointees.”.

12 (c) APPLICATION.—

13 (1) APPOINTMENT REQUESTS.—Section
14 3115(a) of title 5, United States Code, as added by
15 subsection (a), shall apply to any appointment or re-
16 quest for appointment described in such section sub-
17 mitted to the Associate Director of Merit Systems
18 Accountability and Compliance after the date of en-
19 actment of this Act.

20 (2) LIMITATION ON APPOINTMENTS.—Section
21 3115(b) of title 5, United States Code, as added by
22 subsection (a), shall apply to any individual who
23 leaves or departs from a political position (as that
24 term is defined in section 3115(c)(2) of such title,

1 as added by such subsection) after the date of enact-
2 ment of this Act.

3 (d) REGULATIONS REQUIRED.—The Director of the
4 Office of Personnel Management shall issue regulations
5 necessary to carry out this Act. Such regulations shall in-
6 clude guidance on the definition of the term “personally
7 and substantially participated in a particular matter” in
8 section 3115(b)(2) of title 5, United States Code, as added
9 by subsection (a), consistent with section 2641.201 of title
10 5, Code of Federal Regulations.

Passed the House of Representatives March 6,
2018.

Attest:

KAREN L. HAAS,
Clerk.