

115TH CONGRESS
2D SESSION

S. 3199

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

JULY 12, 2018

Mr. BURR (for himself, Mr. GRASSLEY, Mr. HELLER, Mr. ISAKSON, Mr. SCOTT, and Mr. ENZI) 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 2018”.

1 **SEC. 2. AUTHORITY TO REMOVE OR TRANSFER SENIOR IRS**
 2 **EXECUTIVES WHO FAIL IN THEIR PERFORM-**
 3 **ANCE OR ENGAGE IN SERIOUS 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 7 days after the
21 date of such removal or transfer.

22 “(5) EXPEDITED REVIEW BY ADMINISTRATIVE
23 LAW 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 law judge pursuant to
3 section 7701(b)(1) of title 5, United States
4 Code. The administrative law judge shall expe-
5 dite any such appeal under such section and, in
6 any such case, shall issue a decision not later
7 than 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 law judge under
12 subparagraph (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 law judge
16 cannot issue a decision in accordance with the
17 21-day requirement under subparagraph (A),
18 the removal or transfer is final. In such a case,
19 the Merit Systems Protection Board shall, with-
20 in 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 law judge may not stay
4 any 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 law judge issues a final
10 decision on such appeal, such individual may
11 not receive any pay, awards, bonuses, incen-
12 tives, allowances, differentials, student loan re-
13 payments, 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 law judge to whom an appeal under this
19 section 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

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

3 “(i) subsections (a) and (c); and

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

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

11 “(7) DEFINITIONS.—For purposes of this sub-
 12 section:

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

17 “(B) MISCONDUCT.—

18 “(i) IN GENERAL.—Subject to clause
 19 (ii), the term ‘misconduct’ includes neglect
 20 of duty, malfeasance, or failure to accept a
 21 directed reassignment or to accompany a
 22 position in a transfer of function.

23 “(ii) EXCEPTION.—The term ‘mis-
 24 conduct’ shall not include any act or omis-
 25 sion described in subsection (b).

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

6 (b) ESTABLISHMENT OF EXPEDITED REVIEW PROC-
 7 ESS.—

8 (1) IN GENERAL.—Not later than 60 days after
 9 the date of the enactment of this Act, the Merit Sys-
 10 tems Protection Board shall establish and put into
 11 effect a process to conduct expedited reviews in ac-
 12 cordance with subsection (f) of section 1203 of the
 13 Internal Revenue Service Restructuring and Reform
 14 Act of 1998, as added by this Act.

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

20 (3) WAIVER.—The Merit Systems Protection
 21 Board may waive any other regulation in order to
 22 provide for the expedited review required under such
 23 section 1203(f).

24 (4) REVIEW BY MERIT SYSTEMS PROTECTION
 25 BOARD.—Not later than 30 days after the date of

1 the enactment of this Act, the Merit Systems Pro-
2 tection Board shall submit to the committees de-
3 scribed in paragraph (3) of such section 1203(f) a
4 report on the actions the Board plans to take to con-
5 duct expedited reviews under such section. Such re-
6 port shall include a description of the resources the
7 Board determines will be necessary to conduct such
8 reviews and a description of whether any resources
9 will be necessary to conduct such reviews that were
10 not available to the Board on the day before the
11 date of the enactment of this Act.

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

21 (d) CONSTRUCTION.—Nothing in this section or sec-
22 tion 1203(f) of the Internal Revenue Service Restruc-
23 turing and Reform Act of 1998, as added by this Act, shall
24 be construed to apply to an appeal of a removal, transfer,

1 or other personnel action that was pending before the date
2 of the enactment of this Act.

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