

ENSURING INTEGRITY IN THE IRS WORKFORCE ACT OF
2018

JUNE 28, 2018.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed

Mr. BRADY of Texas, from the Committee on Ways and Means,
submitted the following

R E P O R T

[To accompany H.R. 3500]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 3500) to amend the Internal Revenue Code of 1986 to prohibit the Commissioner of the Internal Revenue Service from rehiring any employee of the Internal Revenue Service who was involuntarily separated from service for misconduct, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The Committee on Ways and Means, to whom was referred the bill (H.R. 3500) to amend the Internal Revenue Code of 1986 to prohibit the Internal Revenue Service from rehiring an employee who was removed for misconduct or whose employment was terminated for cause, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:
Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Ensuring Integrity in the IRS Workforce Act of 2018”.

SEC. 2. PROHIBITION ON REHIRING ANY EMPLOYEE OF THE INTERNAL REVENUE SERVICE WHO WAS INVOLUNTARILY SEPARATED FROM SERVICE FOR MISCONDUCT.

(a) IN GENERAL.—Section 7804 of the Internal Revenue Code of 1986 is amended by adding at the end the following new subsection:

“(d) PROHIBITION ON REHIRING EMPLOYEES INVOLUNTARILY SEPARATED.—The Commissioner may not hire any individual previously employed by the Commissioner who was removed for misconduct under this subchapter or chapter 43 or chapter 75 of title 5, United States Code, or whose employment was terminated under section 1203 of the Internal Revenue Service Restructuring and Reform Act of 1998 (26 U.S.C. 7804 note).”

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to the hiring of employees after the date of the enactment of this Act.

SEC. 3. NO ADDITIONAL FUNDS AUTHORIZED.

No additional funds are authorized to carry out the requirements of this Act and the amendments made by this Act. Such requirements shall be carried out using amounts otherwise authorized.

I. SUMMARY AND BACKGROUND

A. PURPOSE AND SUMMARY

The bill, H.R. 3500, as reported by the Committee on Ways and Means, amends the Internal Revenue Code of 1986 (the Code) to prohibit the Internal Revenue Service (IRS) from rehiring any individual, previously employed by the agency, who was removed for misconduct or was involuntarily separated for cause.

B. BACKGROUND AND NEED FOR LEGISLATION

In February 2015, the Treasury Inspector General for Tax Administration (TIGTA) reported that the IRS was repeatedly rehiring former employees with well-documented conduct or performance issues.¹ In July 2017, TIGTA issued a second report confirming again that the IRS was still rehiring employees with significant conduct issues, such as unauthorized access of taxpayer accounts and falsification of official documents.² Both reports identified hundreds of former employees who were rehired by the IRS despite past misconduct. American taxpayers have a right to expect that IRS employees will be held to a high standard of conduct, especially when they have access to sensitive taxpayer information. Rehiring employees who were fired for misconduct puts taxpayers and the IRS at increased risk for future problems. H.R. 3500 limits that risk by preventing the IRS from rehiring employees who have abused their positions and have had their employment with the agency terminated.

¹ Inspector General for Tax Administration, Department of the Treasury, *Additional Consideration of Prior Conduct and Performance Issues is Needed When Hiring Former Employees* (TIGTA 2015-10-006), December 30, 2014, available at <https://www.treasury.gov/tigta/auditreports/2015reports/201510006fr.pdf>.

² Inspector General for Tax Administration, Department of the Treasury, *The Internal Revenue Service Continues to Rehire Former Employees with Conduct and Performance Issues* (TIGTA 2017-10-035), July 24, 2017, available at <https://www.treasury.gov/tigta/auditreports/2017reports/201710035fr.pdf>.

C. LEGISLATIVE HISTORY

Background

H.R. 3500 was introduced on July 27, 2017, and was referred to the Committee on Ways and Means.

Committee action

The Committee on Ways and Means marked up H.R. 3500, the “Ensuring Integrity in the IRS Workforce Act of 2018,” on June 21, 2018, and ordered the bill, as amended, favorably reported (with a quorum being present).

Committee hearings

The need for improved IRS hiring practices and employee conduct was discussed at an Oversight Subcommittee hearing on the 2015 Tax Filing Season, April 22, 2015.

II. EXPLANATION OF THE BILL

A. PROHIBITION ON REHIRING ANY EMPLOYEE OF THE INTERNAL REVENUE SERVICE WHO WAS INVOLUNTARILY SEPARATED FROM SERVICE FOR MISCONDUCT (SEC. 2 OF THE BILL AND SEC. 7804 OF THE CODE)

PRESENT LAW

Employees of the IRS are subject to rules governing Federal employment generally³ as well as rules of conduct specific to the Department of the Treasury and the IRS. Standards of Ethical Conduct for Employees of the Executive Branch are supplemented by additional rules applicable to employees of the Department of the Treasury.⁴

The Code⁵ provides that the Commissioner of the IRS has such duties and powers as prescribed by the Secretary. Unless otherwise specified by the Secretary, such duties and powers include the power to administer, manage, conduct, direct, and supervise the execution and application of the internal revenue laws or related statutes and tax conventions to which the United States is a party, and to recommend to the President a candidate for Chief Counsel (and recommend the removal of the Chief Counsel). Unless otherwise specified by the Secretary, the Commissioner is authorized to employ such persons as the Commissioner deems proper for the administration and enforcement of the internal revenue laws and is required to issue all necessary directions, instructions, orders, and rules applicable to such persons,⁶ including determination and designation of posts of duty.

The IRS Restructuring and Reform Act of 1998 (the “IRS Reform Act”)⁷ requires the IRS to terminate an employee for certain prov-

³Part III of Title 5 of the United States Code prescribes rules for Federal employment, including employment, retention, and management and employee issues.

⁴Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. 735. 5 CFR 3101, Supplemental Standards of Ethical Conduct for Employees of the Department of the Treasury; 31 CFR Part 0, Department of the Treasury Employee Rules of Conduct.

⁵Sec. 7803(a).

⁶Sec. 7804.

⁷Pub. L. No. 105–206, sec. 1203(b), July 22, 1998, as amended by Pub. L. No. 108–357, title VIII, sec. 881(d), Oct. 22, 2004, and Pub. L. No. 114–113, div. Q, title IV, sec. 407(a), Dec. 18, 2015.

en violations committed by the employee in connection with the performance of official duties. The violations include: (1) willful failure to obtain the required approval signatures on documents authorizing the seizure of a taxpayer's home, personal belongings, or business assets; (2) providing a false statement under oath material to a matter involving a taxpayer; (3) with respect to a taxpayer, taxpayer representative, or other IRS employee, the violation of any right under the U.S. Constitution, or any civil right established under titles VI or VII of the Civil Rights Act of 1964, title IX of the Educational Amendments of 1972, the Age Discrimination in Employment Act of 1967, the Age Discrimination Act of 1975, sections 501 or 504 of the Rehabilitation Act of 1973 and title I of the Americans with Disabilities Act of 1990; (4) falsifying or destroying documents to conceal mistakes made by any employee with respect to a matter involving a taxpayer or a taxpayer representative; (5) assault or battery on a taxpayer or other IRS employee, but only if there is a criminal conviction or a final judgment by a court in a civil case, with respect to the assault or battery; (6) violations of the Internal Revenue Code, Treasury Regulations, or policies of the IRS (including the Internal Revenue Manual) for the purpose of retaliating against or harassing a taxpayer or other IRS employee; (7) willful misuse of section 6103 for the purpose of concealing data from a Congressional inquiry; (8) willful failure to file any tax return required under the Code on or before the due date (including extensions) unless failure is due to reasonable cause; (9) willful understatement of Federal tax liability, unless such understatement is due to reasonable cause; and (10) performing, delaying, or failing to perform (or threatening to perform, delay, or fail to perform) any official action (including any audit) with respect to a taxpayer for the purpose of extracting personal gain or benefit or for a political purpose.

The IRS Reform Act provides non-delegable authority to the Commissioner to determine that factors exist, that, in the Commissioner's sole discretion, mitigate against terminating the employee. The IRS Reform Act also provides that the Commissioner, in his sole discretion, may establish a procedure to determine whether an individual should be referred for such a determination by the Commissioner. The Treasury Inspector General for Tax Administration ("TIGTA") is required to track employee terminations and terminations that would have occurred had the Commissioner not determined that there were mitigation factors and include such information in the annual report to Congress.

REASONS FOR CHANGE

The TIGTA reported in 2015 that the IRS had rehired 141 former employees who had previously been dismissed involuntarily for cause.⁸ In 2017, the TIGTA reported a similar finding that the IRS had rehired more than 300 former employees with substantiated employment issues.⁹ The types of misconduct that led to the

⁸ Inspector General for Tax Administration, Department of the Treasury, *Additional Consideration of Prior Conduct and Performance Issues is Needed When Hiring Former Employees* (TIGTA 2015-10-006), December 30, 2014, available at <https://www.treasury.gov/tigta/auditreports/2015reports/201510006fr.pdf>.

⁹ Inspector General for Tax Administration, Department of the Treasury, *The Internal Revenue Service Continues to Rehire Former Employees with Conduct and Performance Issues*

involuntary dismissals included willful failure to file tax returns, unauthorized access to confidential tax information, falsification of official forms, abuse of leave, and other violations of IRS policies. The Committee believes that rehiring persons who were fired for such misconduct is improper and poses a serious risk to the confidentiality of the information entrusted to the IRS and erodes trust in the IRS. In order to restore trust in the integrity of IRS employees, and hold the IRS officials accountable for their hiring practices, it is necessary to ban rehiring persons who were dismissed for cause.

EXPLANATION OF PROVISION

The IRS may not hire any individual previously employed by the IRS who was involuntarily separated due to misconduct under subchapter A of Chapter 80 of the Code, under chapters 43 or 75 of title 5 of the United States Code, or under section 1203 of the IRS Reform Act.

No additional funds are authorized to carry out the requirements of the provision.

EFFECTIVE DATE

The provision is effective with respect to the hiring of employees after the date of enactment.

III. VOTES OF THE COMMITTEE

In compliance with clause 3(b) of rule XIII of the House of Representatives, the following statement is made concerning the vote of the Committee on Ways and Means during the markup consideration of H.R. 3500, the “Ensuring Integrity in the IRS Workforce Act of 2018,” on June 21, 2018.

The bill, H.R. 3500, as amended, was ordered favorably reported to the House of Representatives by a voice vote (with a quorum being present).

IV. BUDGET EFFECTS OF THE BILL

A. COMMITTEE ESTIMATE OF BUDGETARY EFFECTS

In compliance with clause 3(d) of rule XIII of the Rules of the House of Representatives, the following statement is made concerning the effects on the budget of the bill, H.R. 3500, as reported.

The bill, as reported, is estimated to have a negligible effect on Federal fiscal year budget receipts for the period 2018–2028.

Pursuant to clause 8 of rule XIII of the Rules of the House of Representatives, the following statement is made by the Joint Committee on Taxation with respect to the provisions of the bill amending the Internal Revenue Code of 1986: The gross budgetary effect (before incorporating macroeconomic effects) in any fiscal year is less than 0.25 percent of the current projected gross domestic product of the United States for that fiscal year; therefore, the bill is not “major legislation” for purposes of requiring that the estimate

(TIGTA 2017–10–035), July 24, 2017, available at <https://www.treasury.gov/tigta/auditreports/2017reports/201710035fr.pdf>.

include the budgetary effects of changes in economic output, employment, capital stock and other macroeconomic variables.

B. STATEMENT REGARDING NEW BUDGET AUTHORITY AND TAX EXPENDITURES BUDGET AUTHORITY

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee states that the bill involves no new or increased budget authority. The Committee further states that the bill involves no new tax expenditure.

C. COST ESTIMATE PREPARED BY THE CONGRESSIONAL BUDGET OFFICE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, requiring a cost estimate prepared by the CBO, the following statement by CBO is provided.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 25, 2018.

Hon. KEVIN BRADY,
*Chairman, Committee on Ways and Means,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3500, the Ensuring Integrity in the IRS Workforce Act of 2017.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Matthew Pickford.

Sincerely,

KEITH HALL,
Director.

Enclosure.

H.R. 3500—Ensuring Integrity in the IRS Workforce Act of 2017

H.R. 3500 would amend federal law to prohibit the Internal Revenue Service (IRS) from re-hiring employees who were fired for misconduct. CBO estimates that implementing H.R. 3500 would not have a significant cost over the next five years because it would not change the agency's current employment procedures. The staff of the Joint Committee on Taxation (JCT) estimate that enacting H.R. 3500 would affect revenues over the 2018–2028 period; therefore, pay-as-you-go procedures apply. However those effects would be negligible. Enacting the bill would not affect direct spending.

According to the IRS, H.R. 3500 largely would codify the agency's current policies and practices. As recommended by the Treasury Inspector General for Tax Administration, the IRS now considers prior conduct and performance issues in the hiring process.

CBO estimates that enacting H.R. 3500 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2029.

JCT has determined that H.R. 3500 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

The CBO staff contact for this estimate is Matthew Pickford. The estimate was reviewed by Theresa Gullo, Assistant Director for Budget Analysis.

V. OTHER MATTERS TO BE DISCUSSED UNDER THE RULES OF THE HOUSE

A. COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated into the description portions of this report.

B. STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

With respect to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee advises that the bill contains no measure that authorizes funding, so no statement of general performance goals and objectives for which any measure authorizes funding is required.

C. INFORMATION RELATING TO UNFUNDED MANDATES

This information is provided in accordance with section 423 of the Unfunded Mandates Reform Act of 1995 (Pub. L. No. 104-4). The Committee has determined that the bill does not contain Federal mandates on the private sector. The Committee has determined that the bill does not impose a Federal intergovernmental mandate on State, local, or tribal governments.

D. APPLICABILITY OF HOUSE RULE XXI 5(b)

Rule XXI 5(b) of the Rules of the House of Representatives provides, in part, that “A bill or joint resolution, amendment, or conference report carrying a Federal income tax rate increase may not be considered as passed or agreed to unless so determined by a vote of not less than three-fifths of the Members voting, a quorum being present.” The Committee has carefully reviewed the bill and states that the bill does not involve any Federal income tax rate increases within the meaning of the rule.

E. TAX COMPLEXITY ANALYSIS

Section 4022(b) of the Internal Revenue Service Restructuring and Reform Act of 1998 (“IRS Reform Act”) requires the staff of the Joint Committee on Taxation (in consultation with the Internal Revenue Service and the Treasury Department) to provide a tax complexity analysis. The complexity analysis is required for all legislation reported by the Senate Committee on Finance, the House Committee on Ways and Means, or any committee of conference if the legislation includes a provision that directly or indirectly amends the Internal Revenue Code of 1986 and has widespread applicability to individuals or small businesses.

Pursuant to clause 3(h)(1) of rule XIII of the Rules of the House of Representatives, the staff of the Joint Committee on Taxation

has determined that a complexity analysis is not required under section 4022(b) of the IRS Reform Act because the bill contains no provisions that amend the Internal Revenue Code of 1986 and that have “widespread applicability” to individuals or small businesses, within the meaning of the rule.

F. CONGRESSIONAL EARMARKS, LIMITED TAX BENEFITS, AND
LIMITED TARIFF BENEFITS

With respect to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee has carefully reviewed the provisions of the bill and states that the provisions of the bill do not contain any congressional earmarks, limited tax benefits, or limited tariff benefits within the meaning of the rule.

G. DUPLICATION OF FEDERAL PROGRAMS

In compliance with Sec. 3(c)(5) of rule XIII of the Rules of the House of Representatives, the Committee states that no provision of the bill establishes or reauthorizes: (1) a program of the Federal Government known to be duplicative of another Federal program, (2) a program included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or (3) a program related to a program identified in the most recent Catalog of Federal Domestic Assistance, published pursuant to section 6104 of title 31, United States Code.

H. DISCLOSURE OF DIRECTED RULE MAKINGS

In compliance with Sec. 3(i) of H. Res. 5 (115th Congress), the following statement is made concerning directed rule makings: The Committee advises that the bill requires no directed rule makings within the meaning of such section.

**VI. CHANGES IN EXISTING LAW MADE BY THE BILL, AS
REPORTED**

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic and existing law in which no change is proposed is shown in roman):

INTERNAL REVENUE CODE OF 1986

* * * * *

Subtitle F—Procedure and Administration

* * * * *

CHAPTER 80—GENERAL RULES

* * * * *

Subchapter A—Application of Internal Revenue Laws

* * * * *

SEC. 7804. OTHER PERSONNEL.

(a) APPOINTMENT AND SUPERVISION.—Unless otherwise prescribed by the Secretary, the Commissioner of Internal Revenue is authorized to employ such number of persons as the Commissioner deems proper for the administration and enforcement of the internal revenue laws, and the Commissioner shall issue all necessary directions, instructions, orders, and rules applicable to such persons.

(b) POSTS OF DUTY OF EMPLOYEES IN FIELD SERVICE OR TRAVELING.—Unless otherwise prescribed by the Secretary—

(1) DESIGNATION OF POST OF DUTY.—The Commissioner shall determine and designate the posts of duty of all such persons engaged in field work or traveling on official business outside of the District of Columbia.

(2) DETAIL OF PERSONNEL FROM FIELD SERVICE.—The Commissioner may order any such person engaged in field work to duty in the District of Columbia, for such periods as the Commissioner may prescribe, and to any designated post of duty outside the District of Columbia upon the completion of such duty.

(c) DELINQUENT INTERNAL REVENUE OFFICERS AND EMPLOYEES.—If any officer or employee of the Treasury Department acting in connection with the internal revenue laws fails to account for and pay over any amount of money or property collected or received by him in connection with the internal revenue laws, the Secretary shall issue notice and demand to such officer or employee for payment of the amount which he failed to account for and pay over, and, upon failure to pay the amount demanded within the time specified in such notice, the amount so demanded shall be deemed imposed upon such officer or employee and assessed upon the date of such notice and demand, and the provisions of chapter 64 and all other provisions of law relating to the collection of assessed taxes shall be applicable in respect of such amount.

(d) PROHIBITION ON REHIRING EMPLOYEES INVOLUNTARILY SEPARATED.—*The Commissioner may not hire any individual previously employed by the Commissioner who was removed for misconduct under this subchapter or chapter 43 or chapter 75 of title 5, United States Code, or whose employment was terminated under section*

*1203 of the Internal Revenue Service Restructuring and Reform Act
of 1998 (26 U.S.C. 7804 note).*

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