

116TH CONGRESS
1ST SESSION

S. 896

To amend the Ethics in Government Act of 1978 to provide for reform in the operations of the Office of Government Ethics, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 27, 2019

Mr. BLUMENTHAL (for himself, Ms. HIRONO, Ms. KLOBUCHAR, Mr. UDALL, Mr. WHITEHOUSE, and Ms. DUCKWORTH) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

A BILL

To amend the Ethics in Government Act of 1978 to provide for reform in the operations of the Office of Government Ethics, 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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Executive Branch
5 Comprehensive Ethics Enforcement Act”.

6 **SEC. 2. TENURE OF THE DIRECTOR OF THE OFFICE OF**
7 **GOVERNMENT ETHICS.**

8 Section 401(b) of the Ethics in Government Act of
9 1978 (5 U.S.C. App.) is amended—

1 (1) by inserting after the first sentence the fol-
 2 lowing: “The Director shall be subject to removal
 3 only for inefficiency, neglect of duty, or malfeasance
 4 in office.”; and

5 (2) by adding at the end the following: “The
 6 Director may continue to serve beyond the expira-
 7 tion of the term until a successor is appointed and
 8 has qualified, except that the Director may not con-
 9 tinue to serve for more than 1 year after the date
 10 on which the term would otherwise expire under this
 11 subsection.”.

12 **SEC. 3. DUTIES OF DIRECTOR OF THE OFFICE OF GOVERN-**
 13 **MENT ETHICS.**

14 (a) DUTIES GENERALLY.—

15 (1) IN GENERAL.—Section 402(b) of the Ethics
 16 in Government Act of 1978 (5 U.S.C. App.) is
 17 amended—

18 (A) in paragraph (1)—

19 (i) by striking “developing, in con-
 20 sultation with the Attorney General and
 21 the Office of Personnel Management,” and
 22 inserting “(A) developing”;

23 (ii) by striking “title II” and inserting
 24 “title I”;

1 (iii) by adding “and” after the semi-
2 colon; and

3 (iv) by adding at the end the fol-
4 lowing:

5 “(B) before promulgating rules or regulations
6 under subparagraph (A), consulting with the Attor-
7 ney General;”;

8 (B) by striking paragraph (2) and insert-
9 ing the following:

10 “(2) providing mandatory education and train-
11 ing programs for agency ethics counselors and other
12 responsible officials, which may be delegated to each
13 agency or the Counsel to the President, as deter-
14 mined appropriate by the Director;”;

15 (C) by redesignating paragraph (14) as
16 paragraph (3) and transferring such paragraph,
17 as so redesignated, to after paragraph (2);

18 (D) by redesignating paragraph (3) (relat-
19 ing to monitoring and investigating compliance)
20 and paragraphs (4) through (13) as paragraphs
21 (4) through (14), respectively;

22 (E) in paragraph (3), as redesignated and
23 transferred by subparagraph (C) of this para-
24 graph, by striking “and” at the end;

1 (F) in paragraph (4), as so redesignated,
2 by striking “title II” and inserting “title I”;

3 (G) in paragraph (5), as so redesignated—

4 (i) by striking “violations of applicable
5 conflict of interest laws or regulations”
6 and inserting “conflicts of interest or other
7 ethics issues”;

8 (ii) by striking “recommending” and
9 inserting “directing”; and

10 (iii) by striking “ethical problems”
11 and inserting “ethics issues”;

12 (H) in paragraph (7), as so redesignated,
13 by striking “ethical problems” and inserting
14 “ethics issues”;

15 (I) in paragraph (8), as so redesignated—

16 (i) by striking “, when requested,”;
17 and

18 (ii) by striking “conflict of interest
19 problems” and inserting “conflicts of inter-
20 est and other ethics issues”;

21 (J) in paragraph (10), as so redesignated,
22 by inserting “, except that the Director may not
23 order the President to take corrective action”
24 before the semicolon;

1 (K) in paragraph (12), as so redesignated,
2 by striking “conflict of interest laws” and in-
3 sserting “laws, rules, and regulations relating to
4 conflicts of interest and other ethics issues”;

5 (L) in paragraph (13), as so redesign-
6 nated—

7 (i) by striking “evaluating” and in-
8 sserting “promulgating”;

9 (ii) by striking “the need for”; and

10 (iii) by striking “conflict of interest
11 and ethical problems” and inserting “con-
12 flicts of interest and other ethics issues”;

13 (M) in paragraph (14), as so redesign-
14 nated—

15 (i) by striking “violations of the con-
16 flict of interest laws” and inserting “con-
17 flicts of interest and other ethics issues”;
18 and

19 (ii) by striking “, as required by sec-
20 tion 535 of title 28, United States Code”;

21 (N) in paragraph (15)—

22 (i) by striking “title II” and inserting
23 “title I”; and

24 (ii) by striking the period at the end
25 and inserting a semicolon; and

1 (O) by adding at the end the following:

2 “(16) determining whether employees of an
3 agency have violated this Act and issuing appropriate administrative penalties;

4
5 “(17) directing and providing final approval,
6 when determined appropriate by the Director, for
7 agency ethics counselors and other responsible officials regarding the resolution of conflicts of interest
8 and other ethics issues under the purview of this Act
9 in individual cases; and
10

11 “(18) reviewing and, when determined appropriate by the Director, approving any recusals because of, exemptions from, or waivers of the laws,
12 rules, and regulations relating to conflicts of interest
13 and other ethics issues and making approved
14 recusals, exemptions, and waivers publicly available.”.

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18 (2) TECHNICAL AND CONFORMING AMENDMENTS.—
19

20 (A) Section 402(e) of the Ethics in Government Act of 1978 (5 U.S.C. App.) is amended,
21 in the matter preceding paragraph (1), by
22 striking “subsection (b)(10)” and inserting
23 “subsection (b)(11)”.
24

1 (B) Section 402(f) of the Ethics in Gov-
2 ernment Act of 1978 (5 U.S.C. App.) is amend-
3 ed by striking “subsection (b)(9)” each place it
4 appears and inserting “subsection (b)(10)”.

5 (b) WRITTEN PROCEDURES.—Section 402(d)(1) of
6 the Ethics in Government Act of 1978 (5 U.S.C. App.)
7 is amended—

8 (1) by striking “, by the exercise of any author-
9 ity otherwise available to the Director under this
10 title,”; and

11 (2) by striking “the agency is”.

12 (c) CORRECTIVE ACTION.—Section 402(f) of the Eth-
13 ics in Government Act of 1978 (5 U.S.C. App.) is amend-
14 ed—

15 (1) in paragraph (1)—

16 (A) in subparagraph (A)—

17 (i) in clause (i)—

18 (I) by inserting “(or, with respect
19 to the President, recommend)” after
20 “order” the first place it appears; and

21 (II) by striking “of such agency”;

22 and

23 (ii) in clause (ii), by inserting “(or,
24 with respect to the President, rec-
25 ommend)” after “order”; and

1 (B) in subparagraph (B), by striking “no-
2 tify the President” and all that follows through
3 “may provide)” and inserting “determine that a
4 violation of this Act has occurred and (except
5 with respect to the President) issue appropriate
6 administrative or legal remedies as prescribed
7 in paragraph (2)”;

8 (2) in paragraph (2)—

9 (A) in subparagraph (A)—

10 (i) in clause (ii)(II)—

11 (I) by striking “shall notify the
12 President in writing”;

13 (II) by striking “such action;”
14 and inserting “such action—”; and

15 (III) by adding at the end the
16 following:

17 “(aa) shall notify the President in
18 writing; and

19 “(bb) may conduct a formal investiga-
20 tion and hearing in accordance to the pro-
21 cedures described in subparagraph (B);
22 and”;

23 (ii) in clause (iii)—

1 (I) in the matter preceding sub-
2 clause (I), by inserting “or has vio-
3 lated” after “is violating”; and

4 (II) by striking subclause (II)
5 and inserting the following:

6 “(II) shall, if the officer or employee has
7 not complied with the order under subclause (I)
8 within a reasonable period of time—

9 “(aa) if the officer or employee is the
10 head of an agency, notify the President
11 and Congress of the officer’s or employee’s
12 noncompliance; and

13 “(bb) in the case of any other officer
14 or employee, order, in writing, that the
15 head of the officer’s or employee’s agency
16 take appropriate disciplinary action, in-
17 cluding reprimand, suspension, demotion,
18 or dismissal against the officer or em-
19 ployee.”; and

20 (iii) by striking clause (iv); and

21 (B) in subparagraph (B)—

22 (i) in clause (i)—

23 (I) by inserting “(I)” before “In
24 order to”;

1 (II) by striking “(iii) or (iv)”;

2 and

3 (III) by adding at the end the

4 following:

5 “(II)(aa) In conducting an investigation, the Director
6 may require by subpoena—

7 “(AA) the production of information, docu-
8 ments, reports, answers, records, accounts, papers,
9 and other data in any medium and other documen-
10 tary evidence; and

11 “(BB) a witness to appear at a time or place
12 stated in the subpoena before an individual author-
13 ized to take depositions to be used in the courts of
14 the United States, to give full and true answers to
15 written interrogatories and cross-interrogatories as
16 may be submitted with the application, or to be oral-
17 ly examined or cross-examined on the subject of the
18 claim.

19 “(bb) In the case of a refusal to obey a subpoena
20 of the Director under item (aa), the subpoena may be en-
21 forced by order of any appropriate United States district
22 court.

23 “(cc) The Director may secure directly from any
24 agency information necessary to enable the Director to
25 carry out this Act. Upon request of the Director, the head

1 of such agency (except in the case of the President) shall
 2 furnish that information to the Director.”;

3 (ii) in clause (ii)(I)—

4 (I) by striking “Subject to clause
 5 (iv) of this subparagraph, before” and
 6 inserting “Before”; and

7 (II) by striking “subparagraphs
 8 (A) (iii) or (iv)” and inserting “sub-
 9 paragraph (A)(iii)”;

10 (iii) in clause (iii), by striking “Sub-
 11 ject to clause (iv) of this subparagraph, be-
 12 fore” and inserting “Before”; and

13 (iv) in clause (iv)—

14 (I) by striking “title 2” and in-
 15 sserting “title I”; and

16 (II) by striking “section 206”
 17 and inserting “section 104”;

18 (3) in paragraph (4), by striking “(iv),”; and

19 (4) by striking paragraph (5) and inserting the
 20 following:

21 “(5)(A) The Office of Government Ethics shall be the
 22 central repository, by maintaining data or referencing data
 23 by internet link that is maintained by agencies or other-
 24 wise made publicly available, of all laws, rules and regula-
 25 tions relating to conflicts of interest and other ethics

1 issues, recusals, waivers, and exemptions of such laws,
2 rules, and regulations, ethics advisory opinions, ethics
3 agreements of senior executive branch personnel and em-
4 ployee certificates of divestiture, financial disclosure re-
5 ports as required under title I of this Act, compliance re-
6 views, enforcement actions, and any other public records
7 concerning conflicts of interest and other ethics issues for
8 the executive branch required by law.

9 “(B) All financial disclosure reports and records re-
10 lating to conflicts of interest and other ethics issues deter-
11 mined to be public information by the Director or by law
12 shall be made available to the public—

13 “(i)(I) by a link to such information if publicly
14 available on a website other than the website of the
15 Office of Government Ethics; or

16 “(II) at no charge on the website of the Office
17 of Government Ethics in a searchable, sortable, and
18 downloadable format; and

19 “(ii) subject to a reasonable fee, for reproduc-
20 tion of paper documents at the Office of Government
21 Ethics.”.

22 (d) DEFINITIONS.—Title IV of the Ethics in Govern-
23 ment Act of 1978 (5 U.S.C. App.) is amended by adding
24 at the end the following:

1 “SEC. 409. DEFINITIONS.—For purposes of this
2 title—

3 “(1) the term ‘agency’ includes the Executive
4 Office of the President;

5 “(2) the term ‘officer or employee’ includes any
6 individual occupying a position, providing any offi-
7 cial services, or acting in an advisory capacity in the
8 White House or the Executive Office of the Presi-
9 dent, regardless of whether the individual receives
10 pay; and

11 “(3) the term ‘head of an agency’ includes the
12 President or a designee of the President, for pur-
13 poses of applying this title to the White House and
14 the Executive Office of the President.”.

15 (e) SUBMISSION OF INFORMATION AND VIEWS.—Sec-
16 tion 402 of the Ethics in Government Act of 1978 (5
17 U.S.C. App.) is amended by adding at the end the fol-
18 lowing:

19 “(g)(1) Upon request by any committee or sub-
20 committee of Congress, the Director shall provide to Con-
21 gress, by report, testimony, or otherwise, information and
22 the views of the Director on functions, responsibilities, or
23 other matters relating to the Office of Government Ethics.

24 “(2) The Director shall not be required to obtain the
25 prior approval, comment, or review of any officer or agen-

1 cy of the United States, including the Office of Manage-
2 ment and Budget, before submitting to Congress, or any
3 committee or subcommittee thereof, any information, re-
4 ports, recommendations, testimony, or comments, if such
5 submissions include a statement indicating that the views
6 expressed therein are those of the Director and do not nec-
7 essarily represent the views of the President.

8 “(3) Information and views provided to Congress
9 under paragraph (1) shall be transmitted concurrently to
10 the President and any other appropriate executive agen-
11 cy.”.

12 **SEC. 4. AGENCY ETHICS OFFICIALS TRAINING AND DUTIES.**

13 Section 403 of the Ethics in Government Act of 1978
14 (5 U.S.C. App) is amended by adding at the end the fol-
15 lowing:

16 “(c)(1) All designated agency ethics officials and al-
17 ternate designated agency ethics officials shall register
18 with, and report to, the Director and with the appointing
19 authority of the official.

20 “(2) The Director shall provide ethics education and
21 training to all designated and alternate designated agency
22 ethics officials in a time and manner deemed appropriate
23 by the Director.

24 “(3) The Director shall have final authority over the
25 designee of the President for purposes of this title and

1 all designated and alternate designated agency ethics offi-
2 cials and other ethics counselors in the executive branch
3 in the interpretation and implementation of all rules and
4 regulations relating to conflict of interest and other ethics
5 issues promulgated by the President or the Director.”.

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