Schrader
Schweikert
Scott (VA)
Scott, Austin
Scott, David
Sensenbrenner
Serrano
Sessions
Sewell (AL)
Sherman
Shimkus
Shuster
Simpson
Sinema
Sires
Slaughter
Smith (MO)
Smith (NE)
Smith (NJ)
Smith (TX)
Smith (WA)
Speier
Stefanik
Stewart
Stivers
Stutzman
Swalwell (CA)
Takano
Thompson (CA)
Thompson (MS)
Thompson (PA)
Thornberry
Tiberi
Tipton
Titus
Tonko
Torres
Trott
Tsongas
Turner
Upton
Valadao
Van Hollen
Vargas
Veasey
Vela
Velázquez
Visclosky
Wagner
Walberg
Walden
Walker
Walorski
Walters, Mimi
Walz
Wasserman Schultz
Waters, Maxine
Watson Coleman
Weber (TX)
Webster (FL)
Welch
Wenstrup
Westerman
Whitfield
Williams
Wilson (FL)
Wilson (SC)
Wittman
Womack
Woodall
Yarmuth
Yoder
Yoho
Young (AK)
Young (IA)
Young (IN)
Zeldin
Zinke

NAYS—2

Amash
Massie

NOT VOTING—9

Bost
Buchanan
Delaney
Hastings
Katko
Nadler
Nugent
Takai
Westmoreland

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. DOLD) (during the vote). There are 2 minutes remaining.

□ 1615

Messrs. TAKANO and GROTHMAN changed their vote from ''nay'' to ''yea.''

So (two-thirds being in the affirmative) the rules were suspended and the bill, as amended, was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

□ 1615

REPORT ON H.R. 5634, DEPARTMENT OF HOMELAND SECURITY APPROPRIATIONS ACT, 2017

Mr. CARTER of Texas from the Committee on Appropriations, submitted a privileged report (Rept. No. 114–668) on the bill (H.R. 5634) making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2017, and for other purposes, which was referred to the Union Calendar and ordered to be printed.

The SPEAKER pro tempore. Pursuant to clause 1, rule XXI, all points of order are reserved on the bill.

VENEZUELA DEFENSE OF HUMAN RIGHTS AND CIVIL SOCIETY EXTENSION ACT OF 2016

Ms. ROS-LEHTINEN. Mr. Speaker, I ask unanimous consent that the Committee on Foreign Affairs and the Committee on the Judiciary be discharged from further consideration of the bill (S. 2845) to extend the termination of sanctions with respect to Venezuela under the Venezuela Defense of Human Rights and Civil Society Act of 2014, and ask for its immediate consideration in the House.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from Florida?

There was no objection.

The text of the bill is as follows:

S. 2845

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Venezuela Defense of Human Rights and Civil Society Extension Act of 2016''.

SEC. 2. EXTENSION OF TERMINATION OF SANCTIONS WITH RESPECT TO VENEZUELA.

Section 5(e) of the Venezuela Defense of Human Rights and Civil Society Act of 2014 (Public Law 113–278; 50 U.S.C. 1701 note) is amended by striking ''December 31, 2016'' and inserting ''December 31, 2019''.

The bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

EXPRESSING CONDOLENCES FOR THE KILLING OF THE BRITISH MEMBER OF PARLIAMENT (MP) JO COX

Ms. ROS-LEHTINEN. Mr. Speaker, I ask unanimous consent that the Committee on Foreign Affairs be discharged from further consideration of House Resolution 806, and ask for its immediate consideration in the House.

The Clerk read the title of the resolution.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from Florida?

There was no objection.

The text of the resolution is as follows:

H. RES. 806

Whereas, on June 16, 2016, British Member of Parliament Helen Joanne ''Jo'' Cox while traveling to meet with constituents in Birstall was attacked and sustained fatal injuries in an abhorrent act of terrorism;

Whereas as a result of these injuries Cox passed away at the age of 41;

Whereas Cox was a faithful servant who dedicated her life to helping those in need through a lifetime of advocacy and work for humanitarian causes;

Whereas Cox was a faithful public servant who dedicated her life to serving the British people and expanded protections for some of the world's most vulnerable populations, especially refugees;

Whereas she was the first in her family to graduate from a university, Pembroke College at Cambridge, where she received a degree in social and political studies;

Whereas Cox had just been elected in May 2015 for her first term as a Member of the Parliament for Bateley & Spen;

Whereas when Cox was elected to Parliament she said that she had achieved her ''dream'';

Whereas at the time of her death, Cox was about to meet with her constituents;

Whereas President Barack Obama described Cox as ''an effective public servant for her beloved Yorkshire'' and made clear that ''countless women, children and refugees around the world live with more dignity and home because they knew Jo Cox and were touched by her work on their behalf'';

Whereas British Prime Minister David Cameron described Cox as ''a voice of compassion, whose irrepressible spirit and boundless energy lit up the lives of all who knew her and saved the lives of many she never, ever met'';

Whereas Cox was nominated as a Young Global Leader by the Davos World Economic Forum in 2009;

Whereas Cox described herself as a ''mum, proud Yorkshire lass, boat dweller, mountain climber and former aid worker'';

Whereas Cox truly sought to improve her community through public service;

Whereas the British Parliament was recalled to pay tribute to Cox and flags were flown at half-staff over the Prime Minister's residence, Number 10 Downing Street;

Whereas the loss of innocent lives due to political violence in the United Kingdom is a threat to the United States and democratic governments across the world; and

Whereas Cox leaves behind her husband, Brendan, and two children, Cuillin and Leijla: Now, therefore, be it

Resolved, That the House of Representatives—

(1) condemns in the strongest terms the killing of Member of Parliament Jo Cox on June 16, 2016;

(2) condemns in the strongest terms acts of terrorism;

(3) expresses its deepest sympathies to the Cox family for their loss; and

(4) stands with the British Parliament and the British people during this profound moment of sadness.

The resolution was agreed to.

A motion to reconsider was laid on the table.

FEDERAL INFORMATION SYSTEMS SAFEGUARDS ACT OF 2016

GENERAL LEAVE

Mr. CHAFFETZ. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous materials on H.R. 4361.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Utah?

There was no objection.

The SPEAKER pro tempore. Pursuant to House Resolution 803 and rule XVIII, the Chair declares the House in the Committee of the Whole House on the state of the Union for the consideration of the bill, H.R. 4361.

The Chair appoints the gentleman from Illinois (Mr. HULTGREN) to preside over the Committee of the Whole.

□ 1621

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the state of the Union for the consideration of the bill (H.R. 4361) to amend section 3554 of title 44, United States Code, to provide for enhanced security of Federal information systems, and for other purposes, with Mr. HULTGREN in the chair.

The Clerk read the title of the bill.

The CHAIR. Pursuant to the rule, the bill is considered read the first time.

The gentleman from Utah (Mr. CHAFFETZ) and the gentleman from Maryland (Mr. CUMMINGS) each will control 30 minutes.

The Chair recognizes the gentleman from Utah.

Mr. CHAFFETZ. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, we are here to consider H.R. 4361, the Government Reform and Improvement Act of 2016.

As amended, the bill combines seven good-government bills, each of which have been reported by the Committee on Oversight and Government Reform, and I look forward to hearing from some of the bill's sponsors as we move this package today.

Broadly speaking, these bills address three key issues: enhancing Federal information technology security, modernizing the Federal workforce, and addressing Federal regulatory burdens.

The first topic, enhancing IT security, is addressed through the first title of the bill and is a cause championed by Representative GARY PALMER, also the sponsor of the underlying bill that is under consideration now.

Specifically, title I of the bill addresses a Federal Labor Relations Authority determination that was based on an incorrect interpretation of the Federal Information Security Management Act, or what is widely referred to as FISMA.

The ruling permits Federal employee unions to delay agencies from implementing timely and necessary cybersecurity protections, like blocking access to potentially dangerous Web sites, until the agencies first negotiate with the unions over the changes.

The second topic, Federal workforce modernization, is covered by titles II, III, IV, and V of the legislation.

Title II includes the text of H.R. 901, a bill introduced by Representative MARK MEADOWS of North Carolina, and requires the Office of Management and Budget to issue guidelines to prohibit access to explicit Web sites from Federal Government computers, unless such access is necessary for investigative purposes.

It is kind of ridiculous that we have to legislate this, but it is such a pervasive problem in our work on the Oversight and Government Reform Committee, this is a vital bill that is in that package. We have heard numerous examples of this problem. One individual, for instance, Mr. Chairman, was at the EPA, the Environmental Protection Agency, and was identified by the inspector general there. This person was watching 2 to 6 hours per day of explicit material—otherwise known as pornography—on the clock and paid for by the American taxpayer.

Title III includes the text of H.R. 3032, a bill introduced by Representative KEN BUCK to lengthen the probationary period for Federal employees to 2 years after training is completed. Currently, Federal employees have a probationary period of just 1 year, which often does not give managers sufficient time to evaluate on-the-job performance.

Title IV includes the text of H.R. 4358, a bill introduced by Representative TIM WALBERG. It will modernize the Senior Executive Service, also known as the SES, the elite administrators within the Federal Government.

Specifically, the bill will increase the probationary period for SES members to 2 years and make SES members subject to the same suspension authorities for misconduct that are already applied to other civil service employees.

Additionally, agencies will be able to remove SES employees for ''such cause as would promote the efficiency of the service.'' So what we are trying to do is provide more efficiency, and this is an appropriate bill.

Title V includes the text of H.R. 3023, a bill introduced by Representative DENNIS ROSS of Florida to require the Office of Personnel Management to release an annual report on the use of official time by agencies. Official time is when Federal employees perform representational work for a union in lieu of normally assigned work. I think it is appropriate that we have some more specificity for Congress to understand what is happening here.

The third topic, addressing regulatory burdens is covered by the final two titles of the bill, title VI and title VII. Title VI includes the text of H.R. 4612, a bill introduced by Representative TIM WALBERG of Michigan to prohibit agencies from proposing or finalizing rules in the period between the day of a Presidential election and the inauguration day of a new President.

This provision will address a recurring problem where sitting Presidents of both parties will rush through the regulations at the end of the term which have been come to be known as midnight regulations. To counter the problem of midnight regulations, every President since Ronald Reagan who has taken over from the opposite party has issued an immediate regulatory moratorium to pause the regulatory process until it can be reviewed. Rather than forcing incoming Presidents to handle a torrent of new regulations advanced by an outgoing President, the bill would allow new Presidents to move forward on regulations they deem appropriate.

Mr. Chairman, title VII includes the text of H.R. 4921, a bill introduced by Representative MARK WALKER, also of North Carolina, to require the Internal Revenue Service to mirror what the agency requires of taxpayers in its own recordkeeping requirements.

Imagine that—the IRS has to live under the same standards that they make the American people live under.

Specifically, the IRS requires taxpayers to keep their tax year information for 3 years after filing. This bill does the same.

A lot of good bills are wrapped into this package. I urge our Members to support it.

Mr. Chairman, I reserve the balance of my time.

Mr. CUMMINGS. Mr. Chairman, I yield myself such time as I may consume.

I rise in strong opposition to this legislation, which is yet another Republican assault on Federal employees and the Obama administration.

Some Members claim this is a good-government bill. That is simply not true. This legislation is a mishmash of several bills that would damage employee rights, weaken public health and safety, and do little, if anything, to advance government reform.

Although there are many troublesome provisions, I will focus on the more harmful parts of the legislation.

First, this bill would allow agency heads to fire senior executives with little notice. A senior executive would be allowed to appeal an agency decision only after removal. The agency decision would be deemed final if an administrative law judge failed to issue a decision within 21 days. This could bind an executive to an agency's decision by default rather than by judgment on the merits of his or her case. That is simply unfair.

Almost identical provisions were included in a law enacted in 2014 affecting the Department of Veterans Affairs. Not surprisingly, they are being challenged on constitutional grounds in the Federal circuit court of appeals. The Department of Justice has acknowledged some of the constitutional infirmities by choosing not to defend some of these provisions.

This bill also would lengthen the probationary period for new employees from 1 year to 2 years. By this extended probationary period, these workers essentially would be at-will employees. They would have minimal due process rights if they are unfairly fired, and they would have minimal appeal rights if unwarranted disciplinary action is taken against them.

□ 1630

I understand that this legislation is intended to provide agencies with more authority to root out so-called bad apples from the Federal workforce. However, I do not believe the solution to getting rid of a few bad apples is to attack the due process rights of millions of hardworking, dedicated Federal employees who serve the American people honorably every single day.

These provisions would also endanger whistleblowers and make employees more vulnerable to retaliation for reporting waste, fraud, and abuse. History has shown why these due process protections are so necessary.

I would like to read from a report issued by the Merit Systems Protection Board in 2015:

''Due process is there for the whistleblower, the employee who belongs to the 'wrong' political party, the reservist whose periods of military service are inconvenient to the boss, the scapegoat, and the person who has been misjudged based on faulty information. Due process is a constitutional requirement and a small price to pay to ensure the American people receive a merit-based civil service rather than a corrupt spoils system.''

We must remember that Congress put in place these due process protections to eliminate this spoils system. Now by trying to move Federal employees back to being at-will employees, our Republican colleagues would be returning us to that broken and dangerous system.

Another misguided provision in this bill would block the President from finalizing significant regulations during the last months of his term, even if those regulations have been in the works for an extended period of time. Blocking agencies from finalizing rules they had been working on for years just because it is the end of a President's term is not good policy and it is certainly not good governing.

I include in the RECORD a letter from the American Association for Justice, dated February 29, 2016, and a letter from the Coalition for Sensible Safeguards, dated March 1, 2016.

AMERICAN ASSOCIATION FOR JUSTICE,
February 29, 2016.

Re The Midnight Rule Relief Act of 2016 (H.R. 4612).

Hon. ELIJAH CUMMINGS,
Committee on Oversight and Government Reform,
House of Representatives, Washington, DC.

DEAR RANKING MEMBER CUMMINGS: AAJ urges members of the committee to oppose the Midnight Rule Relief Act of 2016 (H.R. 4612) which would impose a moratorium on any new proposed or final major regulations during the final months of this and future presidential administrations.

This misguided bill would jeopardize crucial public protections by blocking regulations based on timing alone. It presumes the regulations which are proposed or finalized during the so-called ''midnight'' rulemaking period are rushed and inadequately vetted. Yet many of the regulations which this moratorium would apply to have been in the regulatory process for years. These regulations were delegated by Congress to agencies in order to protect children from toxic toys, families from tainted food, and consumers from financial exploitation.

Furthermore, the need to ban such regulations has not been demonstrated. The Administrative Conference of the United States (ACUS) conducted an extensive study of regulations finalized near the end of previous presidential terms and found that found that the majority of the rules are either routine matters or tasks that were initiated before the Presidential transition period or the result of deadlines outside the agency's control (such as year-end statutory or court-ordered deadlines).

It is also important to consider the varied regulations which could be impacted by this moratorium. One example is the pending Centers for Medicare and Medicaid (CMS) regulation on long term care that contains important protections for nursing home residents. This regulation could also offer nursing home residents protection from forced arbitration clauses. This rulemaking is scheduled to be finalized in the fall and has been on the CMS' regulatory agenda for three years. There is no reasonable basis to prevent CMS from implementing important protections for nursing home residents.

This moratorium could impact a number of meaningful regulations aimed at improving the health, safety and welfare of the American people. Yet the need for such a drastic action is not supported. Under the guise of attacking the regulatory actions of the Obama Administration, this bill guts effective public health and safety measures and should not be tolerated.

AAJ urges members of the committee to vote no on H.R. 4612, the Midnight Rule Relief Act of 2016.

Sincerely,

LINDA A. LIPSEN,
Chief Executive Officer,
American Association for Justice.

COALITION FOR
SENSIBLE SAFEGUARDS,
March 1, 2016.

Re Midnight Rule Relief Act of 2016 (H.R. 4612).

Hon. JASON CHAFFETZ,
Chairman, House of Representatives, Oversight & Government Reform Committee, Washington, DC.

Hon. ELIJAH CUMMINGS,
Ranking Member, House of Representatives, Oversight & Government Reform Committee, Washington, DC.

The Coalition for Sensible Safeguards (CSS), which includes more than 150 diverse labor, consumer, public health, food safety, financial reform, faith, environmental and scientific integrity groups representing millions of Americans, urges members of the committee to oppose the Midnight Rule Relief Act of 2016 (H.R. 4612) which would impose a blanket moratorium on any new proposed or final major regulations during the final months of this and future presidential administrations.

This bill would jeopardize public protections affecting public health and safety and the environment that often are years, if not decades, in the making. Worse, it would exempt attempts in the final days of an administration, through rulemaking, to ''undo'' or weaken existing regulations.

The proposed legislation is based on a fatally flawed premise: that regulations proposed or finalized during the so-called ''midnight'' rulemaking period—the period following the election and before the inauguration of the new president—are rushed and inadequately vetted.

In fact, the very opposite is true. There are currently dozens of public health and safety regulations that have been in the regulatory process for years or decades, including many that date from the Obama Administration's first term or implement laws passed in the first term. Indeed many regulations predate this Administration entirely. Many of these regulations were mandated by Congress and have missed rulemaking deadlines prescribed by Congress. Referring to regulations that have been under consideration by federal agencies for years, and in some instances decades, as ''rushed'' simply is not true.

A small sampling of long-delayed regulations that could be blocked by this moratorium illustrates the harmful impact of the bill.

The pending Occupational Safety and Health Administration regulation protecting workers from exposure to the toxic carcinogen silica has been in the regulatory process for nearly twenty years and the current silica standard dates from 1971.

Critical pipeline safety regulations have yet to be completed under the 2011 Pipeline Safety Act, an issue of urgent bipartisan concern given recent pipeline ruptures and leaks.

The Food and Drug Administration has yet to implement regulations under the 2009 Tobacco Control Act to safeguard the public and particularly young people, from new and potentially dangerous tobacco products such as electronic cigarettes.

Approximately a quarter of required rulemakings under the Dodd-Frank Wall Street Reform Act have yet to be implemented over five and a half years after the law was enacted and nearly eight years since the financial crash. Among those rules are important measures to bring transparency to bank executive compensation and limits on excessive speculation that drive up energy prices for consumers.

The Interior Department has yet to finalize the ''blowout preventer'' rule that was a primary factor in leading to the massive British Petroleum oil spill in the Gulf almost six years ago.

Prominent administrative law experts have concluded that the concerns regarding these regulations are not borne out by the evidence. For example, in 2012 the Administrative Conference of the United States (ACUS) conducted an extensive study of regulations finalized near the end of previous presidential terms and found that many ''midnight regulations'' either were ''relatively routine matters not implicating new policy initiatives by incumbent administrations,'' or ''the result of finishing tasks that were initiated before the Presidential transition period or the result of deadlines outside the agency's control (such as year-end statutory or court-ordered deadlines).'' In the end, ACUS concluded, ''the perception of midnight rulemaking as an unseemly practice is worse than the reality.''

As the ACUS study points out, there is little to no empirical evidence supporting claims that regulations finalized near the end of presidential terms were rushed or did not involve diligent compliance with mandated rulemaking procedures. In fact, it is likely that compliance with the current and too lengthy regulatory process prevents agencies from finalizing new regulations efficiently, and thus earlier in presidential terms.

This is because many of the regulations that Congress intended to provide the greatest benefits to the public's health, safety, financial security, and the environment currently take several years, decades in some instances, for agencies to implement due to the extensive and, in many cases, redundant procedural and analytical requirements that comprise the rulemaking process. Indeed, CSS maintains that the inherent inefficiency of the current regulatory process, leading to a broken system of regulatory delays and paralysis across agencies, is the primary area in most of need of urgent attention and reform by this Committee.

Making matters worse, H.R. 4612 establishes a flagrant and unjustifiable double-standard in the regulatory process by exempting deregulatory rules from the moratorium, thereby prioritizing deregulation over pro-protection measures. The practical effect of this exemption is to ensure that the legislation will only apply to administrations that favor pro-regulatory measures and thus creating a permanent loophole for administrations that favor deregulatory measures. This one-sided application betrays foundational administrative law principles that require regulatory procedural mandates to apply to both deregulatory and pro-regulatory actions in a neutral and fair fashion.

Taking the claims of ''midnight regulation'' critics at face value, there is simply no principled basis for allowing deregulatory measures to be ''rushed'' through the process without ''adequate vetting'' while at the same time preventing agencies finalizing and implementing public protections by falsely claiming that they did not receive adequate consideration.

This Administration ends on January 20, 2017. It is incumbent on them to do their constitutional duty to implement the laws of Congress until that date.

CSS urges members of the committee to reject both the Midnight Rule Relief Act of 2016 (H.R. 4612) and false and misleading rhetoric that bears no reality to the real

problems of excessive and systemic delay in the regulatory process.

Sincerely,

ROBERT WEISSMAN,
President, Public Citizen, Chair, Coalition for Sensible Safeguards.

Mr. CUMMINGS. The letter from the American Association from Justice states:

''This misguided bill would jeopardize crucial public protections by blocking regulations based on timing alone. It presumes the regulations which are proposed or finalized during the so-called 'midnight' rulemaking period are rushed and inadequately vetted. Yet many of the regulations which this moratorium would apply to have been in the regulatory process for years.''

Contrary to what our Republican colleagues may believe, the President is a President until January 20, 2017, according to the Constitution. Just as the Republicans are wrong for blocking the President's Supreme Court nominee in his last year of his term, this provision is also wrong, it is awfully wrong, for attempting to curtail the authority of a President of the United States to protect the interests of the American people.

I urge my colleagues to join me in opposing H.R. 4361.

I reserve the balance of my time.

Mr. CHAFFETZ. Mr. Chairman, I yield 5 minutes to the gentleman from Alabama (Mr. PALMER), the sponsor of the bill under consideration today.

Mr. PALMER. Mr. Chairman, the Federal Government's most important responsibility is to protect this Nation and our citizens, particularly when it comes to defending against cyber attacks.

In June and July of last year, 2015, the Office of Personnel Management announced the largest government data breach in history. The personally identifiable information of over 22 million Americans was compromised, including background investigation and fingerprint data.

The national security impact of the OPM data breach will resonate for decades.

Under the Federal Information Security Management Act, or FISMA, the head of each agency is responsible for securing its information systems from unauthorized access and other threats posed to our Nation's security and economic vitality.

But under a mistaken interpretation of FISMA, the Federal Labor Relations Authority determined Federal employee unions can block agencies from taking action to implement cybersecurity protections against direct risks until the agencies first negotiate on them.

Mr. Chairman, the security of Americans' data is nonnegotiable and should not be eligible for bargaining. Securing hundreds of millions of Americans' data and millions of Federal employees' data is more important than the convenience of a few Federal employees in using government computer systems for personal use.

This bill ensures that the head of a Federal agency does not just have the responsibility to swiftly secure the agency's networks, but also has the authority to do so, and without having to go through collective bargaining.

The next time a Federal agency acts in the interest of securing Americans' data, the head of the agency should be confident the action will not be challenged because the agency did not engage in bargaining over cybersecurity.

I believe this is an important step that we can take to empower Federal agencies to act quickly to secure agency networks and protect Americans from cyber attacks.

I urge my colleagues to support this bill.

Mr. CUMMINGS. Mr. Chairman, I yield 3 minutes to the gentleman from Pennsylvania (Mr. CARTWRIGHT).

Mr. CARTWRIGHT. Mr. Chairman, I thank the ranking member from Maryland.

Mr. Chairman, I rise today in opposition to another attempt by Republicans to undermine due process protections, prevent the President from finalizing rules during his last months in office, and override collective bargaining rights for Federal employees.

In fact, this bill, H.R. 4361, eliminates the ability of agencies to issue rules toward the end of a President's term, assuming some kind of shoddy rulemaking to finalize a rule before a President's term is up. This kind of assumption is wrong. There is nothing shoddy going on. The Administrative Conference of the United States found most end-of-term rules related to routine matters or were issued in response to deadlines outside of the agency's control.

This is nothing more than another effort to reverse the will of the American people when they reelected President Obama in 2012 by impairing the ability of our government to function in the last months of his term.

Additionally, H.R. 4361 is like Christmas in July for those opposed to the labor rights of our fellow Americans, including anti-family provisions and provisions of dubious constitutionality.

Specifically, this bill exempts from collective bargaining requirements any action taken by an agency head to limit, restrict, or prohibit access to a Web site that the agency head determines presents a security risk to the agency's IT systems.

In practice, this would erode collective bargaining rights by excluding ''any impact or implementation'' of such an action from collective bargaining requirements, such as reasonable accommodations to allow an employee to communicate with family members or schools.

H.R. 4361 also subjects the members of our Senior Executive Service to the political whims of Presidents by stripping them of their ability to appeal their termination after a decision by an administrative law judge.

The Department of Justice has declined to defend the constitutionality of similar provisions before the court of appeals for the Federal circuit.

H.R. 4361 should have no place in our American laws. I strongly urge my colleagues to keep it that way.

Mr. CHAFFETZ. Mr. Chairman, I yield 3 minutes to the gentleman from Michigan (Mr. WALBERG), who has been integral in making this bill a reality. I thank him for his hard work in championing these efforts.

Mr. WALBERG. Mr. Chairman, I thank the chairman.

Mr. Chairman, I am not sure what bill my friends on the other side are talking about, but I am glad to be talking about a great bill that my friend, the gentleman from Alabama (Mr. PALMER), has introduced. I appreciate his work on the Oversight and Government Reform Committee to craft H.R. 4361, the Government Reform and Improvement Act of 2016. It includes a series of good government reforms that will provide more accountability and transparency to Federal bureaucracy that is sorely lacking each.

I am proud the legislation includes two of my bills: the Senior Executive Service Accountability Act and the Midnight Rule Relief Act. The Senior Executive Service Accountability Act brings much-needed reform and gives agencies commonsense tools to hold senior leaders more accountable for their taxpayer-funded work.

Specifically, the bill ensures employee performance is measured, eliminates loopholes that allow reprimanded officials from keeping perks like executive pay, and expedites the removal process for individuals who have been found to have engaged in misconduct.

To be clear, there are many in the Federal workforce, including senior executives, who are hardworking public servants. We thank them for their hard work. However, as we have seen repeatedly in hearings before our committee, there are also bad actors who have grossly abused their position, and the Senior Executive Service Accountability Act is an important step towards holding these bad actors accountable and restoring public trust.

The underlying bill also contains the Midnight Rule Relief Act. It establishes a moratorium period between the Presidential election and the inauguration on regulations that result in major costs or price increases for consumers and small businesses.

Pushing costly regulations at the last minute has been an issue with previous administrations of both political parties. The Midnight Rule Relief Act will hold the current and future outgoing administrations in check to ensure small businesses in Michigan and across the country aren't faced with a surprise onslaught of excessive regulations that stifle wages, job creation, and economic growth.

I want to, again, commend the work of Mr. PALMER and the Oversight and Government Reform Committee for

their great work to ensure a more accountable and transparent Federal Government.

I urge my colleagues to support H.R. 4361.

Mr. CUMMINGS. Mr. Chairman, I yield 2 minutes to the gentlewoman from Michigan (Mrs. LAWRENCE).

Mrs. LAWRENCE. Mr. Chairman, I thank Ranking Member CUMMINGS.

Mr. Chairman, I rise today in strong opposition to H.R. 4361.

Clearly, my colleagues on the other side have good intentions, but they need to be informed and corrected and understanding. I served 30 years as a Federal employee. During that time, I served as an EEO investigator. I looked at actions that were made against Federal employees that were not in compliance. I understand the undue burden that this legislation will put on Federal workers and labor organizations. H.R. 4361 combines proposals attacking Federal employees with regulatory measures, many of which hinder the performance of one of our Nation's largest workforces.

When we considered this legislation in committee, I offered an amendment to strike the provisions in title III of H.R. 3023, and require each employing agency to make an affirmative decision in writing near the end of an employee's probationary period stating that the individual's performance is acceptable, which the Office of Personnel Management considers a best practice in managing the performance of employees.

Mr. Chairman, instead of debating legislation that would undermine due process provisions, we should be looking at how we can protect our citizens through commonsense gun control legislation and maintain access to affordable health care for all Americans.

Mr. CHAFFETZ. Mr. Chairman, I yield 3 minutes to the gentleman from North Carolina (Mr. WALKER), who has poured his heart and soul into this. I am glad that he is participating and joining us here today.

□ 1645

Mr. WALKER. I thank the chairman, and I thank my distinguished colleague from Alabama for working so diligently on this piece of legislation.

Mr. Chair, I rise in support of my bill, H.R. 4921, the Ditto Act. The Ditto Act is not just about ensuring that the Internal Revenue Service properly maintains its records; it is also about holding the government and the powerful to the same standards to which they hold American citizens.

This bill states that, if the IRS requires American citizens to maintain their tax records, then the IRS also has to maintain any record for at least 3 years.

Currently, the IRS requests or recommends American citizens maintain certain records or tax information for the ''just in case.'' Essentially, the IRS says that American citizens have to hold on to their information for years at a time in the event that the IRS may request information to audit us, to investigate us, or to take some similar action. However, current investigations and congressional hearings show that the IRS does not hold itself to the same standards, and it does not properly maintain its own records.

This unequal enforcement of the law is part of a bigger problem. Continued and recent events, as we have seen recently, point to the fact that government agencies, such as the IRS, attempt to play by different rules than the rest of us.

The Ditto Act is another step in ensuring that government bureaucrats are held to the same standards as all Americans. If the IRS insists that we maintain our records, then the IRS should have to play by the same rules and be held similarly accountable for the same information.

That is why I have introduced this simple piece of legislation. This bill provides a level playing field. It tells American citizens that their government is operating under the same set of rules that it requires all of us to operate under. I hope my colleagues will join me in supporting this effort.

Mr. CUMMINGS. Mr. Chair, I yield 3 minutes to the gentlewoman from the Virgin Islands (Ms. PLASKETT).

Ms. PLASKETT. Mr. Chair, I rise in opposition to H.R. 4361, which is yet another Republican attack on the Federal workforce and labor organizations.

This bill is, essentially, an attempt to micromanage the government. The bill is a collection of measures that undermine due process protections, that prevent the Obama administration from finalizing rules during its last 2 months in office, and that override collective bargaining rights for Federal employees.

The bill would bar most regulations from being finalized by, virtually, every Federal department or agency during the last 2 months of the Obama administration, regardless of when they were proposed or how long they have been in the rulemaking process. Additionally, H.R. 4361 exempts from civil service collective bargaining requirements any agency action limiting access to any Web site the agency determines presents a current or a possible future security weakness to its information systems.

The bill's language is unnecessary because current law already authorizes Federal agencies to ''ensure that all personnel are held accountable for complying with the agency-wide information security program.''

In practice, this provision could allow agencies to cut off Federal employees' ability to communicate with childcare providers or to get information on a weather emergency in the event of their children's schools closing early, with there being no opportunity to negotiate alternative arrangements. The provision could also be selectively invoked to block access to the official Web sites of Federal unions.

Under current law, there is no right to bargain over the substance of agency information systems decisions, only over appropriate arrangements in the event that those decisions create an adverse impact on employees. In addition, agencies can take any action without bargaining in advance if there is an emergency. Agencies currently have broad authority in this area, making any additional limitation on employees' ability to have a voice in their working environments unnecessary.

Further burdening Federal workers, H.R. 4361 would extend the probationary period for newly hired General Schedule employees from 1 year to 2 years. For positions requiring formal training, the 2-year time period would only commence after the required formal training. This is unnecessary as the current 1-year probationary period allows sufficient time for agency management to assess and determine whether an employee is suitable for most positions and is capable of performing his duties.

In the Statement of Administration Policy, the President's senior advisers stated that they would recommend he veto this bill.

As I said before, this bill is, essentially, an attempt to micromanage the government, which is not this body's purpose, and we should get on with the business of what Congress is supposed to do.

Mr. CHAFFETZ. Mr. Chair, I yield 3 minutes to the gentleman from Colorado (Mr. BUCK).

Mr. BUCK. I thank the gentleman for the opportunity to speak on this important legislation.

Mr. Chair, our Federal Government relies on the contributions of civil servants to run Federal agencies and to faithfully execute our laws. We place significant responsibility into the hands of these executive branch employees. Others still are placed in senior management roles where the impacts of their performance and competency are felt throughout the agencies and by those citizens who interact with them. We expect Federal employees to run the government efficiently and fairly; so we should treat them the same way. That is what this bill does.

When a typical employee is hired for the civil service, he begins in a probationary period, during which time the employee can be relieved of his duties if he fails to perform well. After the probationary period, the employee receives greater protection from being fired, even if he is underperforming. This bill extends the probationary period of employees in both the competitive civil service and the Senior Executive Service from 1 year to 2 years. If the employee requires training or licensing, the probationary period begins when training and licensing are complete.

This extended probationary period gives us time to assess the skills of government employees. If an employee

isn't up to the task he or she has been assigned, it is unfair to everyone else who is working hard or competently in that agency to retain the underperforming individual. Moreover, the morale of Federal agencies depends on their having strong teams with strong employees. Anyone who has run an office knows that one bad apple can drag the whole team down.

That is why this bill is so important. We need strong teams working in the Federal Government, and our current Federal employees deserve competent team members. Only then will our bureaucracy be more efficient and better able to serve the American taxpayer, because, ultimately, taxpayers pay the salaries of our Federal employees. For the sake of the taxpayer, we must create a culture of accountability and fairness in our Federal hiring practices.

I urge my colleagues to support this commonsense legislation.

Mr. CUMMINGS. Mr. Chair, I reserve the balance of my time.

Mr. PALMER. Mr. Chair, I yield 3 minutes to the gentleman from Georgia (Mr. JODY B. HICE).

Mr. JODY B. HICE of Georgia. I commend my colleague from Alabama for introducing this legislation, which contains a number of bills from the Oversight and Government Reform Committee.

Mr. Chair, H.R. 4361 contains several excellent provisions to increase transparency, to enhance oversight, and to restore good governance.

One of the areas of particular importance to me is the language that requires the Office of Personnel Management to submit to Congress reports on the use of ''official time'' by Federal employees.

For those who are unfamiliar with official time, it is the practice by which Federal employees are paid by taxpayers to conduct union business, while on the clock, instead of performing the normal activities and duties of the agencies for which they work. Official time allows Federal employees who are with the unions to collectively bargain with their agencies, to arbitrate grievances, and to even organize or carry out internal union activities, all while being paid by the taxpayer.

It is staggering to me how much official time is used. Over 3 million man-hours each year are spent on activities that have nothing to do with government business. From 1998 to 2012, which is the last period of time that we have of reliable data, the use of official time has grown by over a million man-hours per year while the number of Federal employees who are represented by unions has actually decreased during that period of time.

In fact, there are several Federal agencies that have many employees who do nothing but union activity business in spite of the fact that they were hired for something else. For example, the VA and the IRS have over 200 employees each who operate exclusively on official time. Many of these employees are extremely well paid. The Department of Transportation, for example, has 35 employees with an average salary of $138,000 who give 100 percent of their time to union activity rather than to that for which they were hired.

For a point of reference, Mr. Chair, the mean household income in my district is, approximately, $62,000 a year. Official time, essentially, means that American taxpayers are being forced to subsidize the union activities of Federal employees. Federal employee union members pay union dues, and the taxpayers should not be required to foot the bill.

There is an unfortunate lack of reporting on this issue, and it is, ultimately, unclear exactly how much official time is being used by Federal employees. Here in Congress, we are sometimes forced to rely upon year-old GAO reports and existing FOIA requests.

That is why the OPM reporting that is required under this legislation is critical. Personally, I am opposed to official time altogether, but at least we can agree that reporting is necessary for all of us.

I urge the support of H.R. 4361.

Mr. CUMMINGS. Mr. Chair, I reserve the balance of my time.

Mr. PALMER. Mr. Chair, I yield 2 minutes to the gentleman from Florida (Mr. ROSS).

Mr. ROSS. I thank my colleague from Alabama for this legislation and for this opportunity.

Mr. Chair, I rise in support of H.R. 4361, the Government Reform and Improvement Act of 2016, and in support of my legislation that is included in this package, which requires the Office of Personnel Management to submit an annual report to Congress that details the use of official time by Federal employees.

''Official time'' is defined as any period of time that is used by a Federal employee to perform representational or consultative functions and during which the employee would otherwise be in a duty status. Essentially, this allows Federal employees to perform union activities during their official workdays.

As the former chair of the Oversight and Government Reform Subcommittee on the Federal Workforce, U.S. Postal Service and Labor Policy, I learned firsthand that OPM has very little accountability for the use of official time. In fact, the OPM last reported about the use of official time in the year 2012, which was 4 years ago.

My bill would require the OPM to submit a detailed report annually to Congress on the use of official time by Federal employees, outlining specific types of activities or purposes for which this time was granted. For example, in 2012, Federal employees spent, roughly, 3.4 million hours conducting union business while on duty. This came at a cost of $157 million to the taxpayer. The taxpayers have a vested right to know.

At a time when our country is more than $19 trillion in debt, we need to ensure that we are better accounting for the use of taxpayer dollars. This legislation will bring greater transparency to the activities union officials are conducting while being paid by the American taxpayer.

I thank Chairman CHAFFETZ and my colleague from Georgia (Mr. JODY B. HICE) for their support on the Oversight and Government Reform Committee.

Mr. CUMMINGS. Mr. Chair, I yield 3 minutes to the gentlewoman from Texas (Ms. JACKSON LEE).

Ms. JACKSON LEE. I thank the chairman so very much.

To the manager of the bill on the floor, my good friend who is representing the majority, I think not one of us can cite an example in which a Federal employee is not engaged in serving this Nation.

Mr. Chair, over the last couple of months, our focus has been on the Transportation Security Officers. As I traveled back to Washington and as I interacted with my constituents, many were concerned about airport travel and the enhancement of security. I saw TSO officers—government workers—on the front lines. We see them all the time as they serve this Nation—from homeland security to, certainly, those who are working in the health areas now as we face the epidemic of Zika.

In many places, Federal employees stand in the gap by serving us. We look forward to bright young people who are graduating from college and who are seeking service in the Federal army, if you will, of civilian workers who serve their Nation.

I can only say that this legislation, H.R. 4361, disappoints me, because, first of all, title III would double the probationary period for Federal employees, unlike in the private sector, from 1 to 2 years. Federal employees would be at will. They wouldn't have benefits, and they wouldn't be protected. That is not, certainly, an enticing recruitment for young, bright college graduates.

Another form of the lack of due process is in title IV, which would allow senior agency executives to be removed, almost immediately, with their having only minimal appeal rights. Executives would have only 7 days to file appeals.

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Mr. Chairman, what are we saying to those who we call upon for the front lines of serving in America—our EPA employees, our Forest Rangers, they are all over—we are saying that that kind of experience is to be discarded. It sadly disturbs me.

Lastly, I have never heard of this. I sit on the Judiciary Committee, and I wonder how title VI would reduce, in the end of a President's term, his or her right to be able to argue for regulations that would enhance the American people.

Let me say to you that we are facing another uphill battle because right now we are trying to pass no fly, no buy and to close the loophole to save lives. It is interesting how we are dealing with a bill that takes away due process rights, but yet we cannot find a compromise, whose opposition is based upon we are denying an individual due process.

Well, I tell you I am looking forward to us being able to vote on the gun legislation of no fly, no buy. I know it very well because I had a no fly for foreign terrorists. We work on these issues in Homeland Security.

So if I look at an employment bill that is taking away due process rights, I am asking for us to come back, give them their rights by not supporting this legislation and, as well, giving our rights to the minority to vote on legitimate bills that will save lives; no fly, no buy, and closing the gun show loophole. I have seen the blood, the death that has come about from gun violence. It is time to vote to save lives.

Mr. PALMER. Mr. Chairman, I reserve the balance of my time.

Mr. CUMMINGS. Mr. Chairman, I yield 2 minutes to the distinguished lady from the District of Columbia (Ms. NORTON).

Ms. NORTON. Mr. Chairman, it is a mystery to me why we would want to move forward with this bill. I will have amendments to strike portions of this bill later. I just want to speak to a couple of the reasons.

The extension of the probationary period, for example, may not raise constitutional issues. A GAO report was done and indicated that the problem was not with length of the probationary period, but with the use of the probationary period; that supervisors simply weren't using it, and that many of them didn't even know when the probationary period ends.

So why would we want to lengthen the probationary period?

I am not sure who that helps. Does it help the employee or does it help the agency?

In any case, depending, as I do, on an objective source, this section is unnecessary.

To cite another section, the termination of an employee in the SES is an absolutely bad way to deal with somebody who is not making it as a manager, but was good enough to be promoted to the SES. We have invested millions of dollars in an employee by the time that employee gets to be a top SES employee and gets promoted to manager. It won't be the first time that somebody has been an excellent employee, but when he got to managing whole divisions, he was not good.

Why get rid of that employee instead of demoting that employee, as is now done?

Finally, this bill is replete with due process problems. For example, it expedites the removal and appeals process and takes it away entirely in some instances. This bill reeks of constitutional infirmities. It should not be passed.

You will find Members on our side who want to sit down and improve the process and are ready to do so.

Mr. PALMER. Mr. Chairman, I would like to make the gentleman from Maryland (Mr. CUMMINGS) aware that I have no further speakers and I am prepared to close.

I reserve the balance of my time.

Mr. CUMMINGS. Mr. Chairman, how much time do I have remaining?

The CHAIR. The gentleman from Maryland has 11½ minutes remaining.

Mr. CUMMINGS. Mr. Chairman, I yield myself such time as I may consume.

In closing, I cannot emphasize strongly enough how unnecessary, damaging, and constitutionally defective this legislation is.

You know, as Ms. JACKSON LEE was speaking, Mr. Chairman, I could not help but think about a young lady that I met at NIH a few years ago when the government was shut down. I was talking to her, and I was asking her about her job. And one of the things she said was that she was very, very upset.

And I said: ''Well, are you upset that you are going to possibly lose money? Or are you upset that you are going to have problems?''

She said: ''No, I am not so upset about losing my job because I can always find a job.'' She said: ''The thing I am upset about is that if the government shuts down, that means that there are all kinds of research that is going to be stopped and we won't be able to see the breakthroughs that I thought we would be able to see.''

My point is that there are so many Federal employees, just like the ones who work for us, who come to work every day and they have dedicated their lives to giving to the public. In other words, it is about the business of feeding their souls.

So often what happens, I have noticed, is we have a way of not treating them right all the time. And I have been a fierce defender of the public employee and the Federal employee because I realize that they are the backbone of this Nation.

Yet, when we look at the negative consequences of this legislation, they are truly terrible. The bill would reduce due process protections for new Federal employees and senior executives, enable whistleblower retaliation. And whistleblower retaliation is something that our committee has fought and tried to make clear that we would not tolerate under any circumstances, and I am pleased to say that that has always been something that both sides of the aisle has been adamant about, and we should be.

This legislation would bar the President from issuing rules to protect health and safety during his last months in office. Whether it was President Obama or any other President, I want our President to serve out every second of his term and I want him or her to be able to accomplish the things that the American people elected them to do right down to the very last second.

Another thing that it does, it erodes collective bargaining rights. It requires duplicative and burdensome reporting by the Office of Personnel Management and agencies. It imposes unnecessary guidelines regarding computer usage. And it requires the IRS to establish an arbitrary recordkeeping system.

I would like to remind our colleagues that the Federal circuit court of appeals is reviewing the constitutionality of nearly identical provisions in the Veterans Access, Choice, and Accountability Act enacted in 2014. And the Department of Justice has decided not to defend the constitutionality of some of these provisions before the Federal circuit court.

Before I conclude, I want to underscore my disapproval of this bill's unjustified interference with President Obama's authority to issue regulations that are critical to ensuring the safety of the American people.

I would like to quote from a March 1, 2016, letter sent to the Oversight and Government Reform Committee in opposition to title 6, and it says:

''Taking the claims of 'midnight regulation' critics at face value, there is simply no principled basis for allowing deregulatory measures to be rushed through the process without 'adequate vetting' while at the same time preventing agencies finalizing and implementing public protections by falsely claiming that they did not receive adequate consideration. This Administration ends on January 20, 2017. It is incumbent upon them to do their constitutional duty to implement the laws of the Congress until that date.''

Mr. Chairman, I yield back the balance of my time.

Mr. PALMER. Mr. Chairman, I yield myself the balance of my time. First of all, I thank my colleagues who have spoken in support of this legislation and say that this is sensible and responsible legislation to increase Federal agencies' ability to protect their data systems and, thus, increase the protections offered every Federal employee.

This bill also increases accountability for Federal employees, and it requires the IRS to adhere to the same recordkeeping requirements that it imposes on every taxpayer.

Finally, Mr. Chairman, this bill would end the practice of subjecting Americans to a barrage of regulations imposed by an outgoing administration that can no longer be held accountable.

I urge adoption of the bill.

I yield back the balance of my time.

The CHAIR. All time for general debate has expired.

Pursuant to the rule, the bill shall be considered for amendment under the 5-minute rule.

In lieu of the amendment in the nature of a substitute recommended by the Committee on Oversight and Government Reform, printed in the bill, it shall be in order to consider as an

original bill for the purpose of amendment under the 5-minute rule, an amendment in the nature of a substitute consisting of the text of Rules Committee Print 114–59. That amendment in the nature of a substitute shall be considered as read.

The text of the amendment in the nature of a substitute is as follows:

H.R. 4361

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SEC. 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Government Reform and Improvement Act of 2016''.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—FEDERAL INFORMATION SYSTEMS SAFEGUARDS

Sec. 101. Agency discretion to secure information technology and information systems.

TITLE II—ELIMINATING PORNOGRAPHY FROM AGENCIES

Sec. 201. Prohibition on accessing pornographic web sites from federal computers.

TITLE III—EXTENSION OF PROBATIONARY PERIOD FOR CAREER EMPLOYEES

Sec. 301. Extension of probationary period for positions within the competitive service.

Sec. 302. Appeals from adverse actions.

TITLE IV—SENIOR EXECUTIVE SERVICE ACCOUNTABILITY

Sec. 401. Biennial justification of Senior Executive Service positions.

Sec. 402. Extension of probationary period for career appointees.

Sec. 403. Modification of pay retention for career appointees removed for under performance.

Sec. 404. Advanced establishment of performance requirements under Senior Executive Service performance appraisal systems.

Sec. 405. Amendments with respect to adverse actions against career appointees.

Sec. 406. Mandatory leave for career appointees subject to removal.

Sec. 407. Expedited removal of career appointees for performance or misconduct.

Sec. 408. Mandatory reassignment of career appointees.

TITLE V—OPM REPORT ON OFFICIAL TIME

Sec. 501. Reporting requirement.

TITLE VI—MIDNIGHT RULE RELIEF

Sec. 601. Moratorium on midnight rules.

Sec. 602. Special rule on statutory, regulatory, and judicial deadlines.

Sec. 603. Exception.

Sec. 604. Judicial review.

Sec. 605. Definitions.

TITLE VII—REQUIREMENT TO MAINTAIN RECORDS

Sec. 701. Requirement to maintain records.

TITLE I—FEDERAL INFORMATION SYSTEMS SAFEGUARDS

SEC. 101. AGENCY DISCRETION TO SECURE INFORMATION TECHNOLOGY AND INFORMATION SYSTEMS.

(a) IN GENERAL.—In carrying out section 3554 of title 44, United States Code, any action taken by the head of an agency that is necessary to limit, restrict, or prohibit access to any website the head of the agency determines to present a current or future security weakness or risk to the information technology or information system under the control of the agency, and any impact or implementation of such action, shall not be subject to chapter 71 of title 5, United States Code.

(b) DEFINITIONS.—In this section—

(1) the terms ''agency'' and ''information system'' have the meanings given the terms in section 3502 of title 44, United States Code; and

(2) the term ''information technology'' has the meaning given the term in section 3552 of title 44, United States Code.

TITLE II—ELIMINATING PORNOGRAPHY FROM AGENCIES

SEC. 201. PROHIBITION ON ACCESSING PORNOGRAPHIC WEB SITES FROM FEDERAL COMPUTERS.

(a) PROHIBITION.—Except as provided in subsection (b), not later than 90 days after the date of the enactment of this Act, the Director of the Office of Management and Budget shall issue guidelines that prohibit the access of a pornographic or other explicit web site from a Federal computer.

(b) EXCEPTION.—The prohibition described in subsection (a) shall not apply to any Federal computer that is used for an investigative purpose that requires accessing a pornographic web site.

TITLE III—EXTENSION OF PROBATIONARY PERIOD FOR CAREER EMPLOYEES

SEC. 301. EXTENSION OF PROBATIONARY PERIOD FOR POSITIONS WITHIN THE COMPETITIVE SERVICE.

(a) IN GENERAL.—Section 3321 of title 5, United States Code, is amended—

(1) in subsection (a), by striking ''The President'' and inserting ''Subject to subsections (c) and (d), the President'';

(2) by redesignating subsection (c) as subsection (e); and

(3) by inserting after subsection (b) the following:

''(c)(1) Except as provided in paragraph (2), the length of a probationary period established under paragraph (1) or (2) of subsection (a) shall be—

''(A) with respect to any position that requires formal training, a period of 2 years beginning on the date that such formal training is completed;

''(B) with respect to any position that requires a license, a period of 2 years beginning on the date that such license is granted; and

''(C) with respect to any position not covered by subparagraph (A) or (B), not less than 2 years.

''(2) The length of a probationary period established under paragraph (1) or (2) of subsection (a) in the case of a preference eligible shall be not longer than—

''(A) if the appointment (as referred to in subsection (a)(1)) or the initial appointment (as referred to in subsection (a)(2)) is to a position that exists on the effective date of this subsection, the length of the probationary period which applies to such position as of such effective date; or

''(B) if the appointment (as referred to in subsection (a)(1)) or the initial appointment (as referred to in subsection (a)(2)) is to a position that does not exist on the effective date of this subsection, such length of time as the President may establish, consistent with the purposes of this subparagraph.

''(3) In paragraph (1)—

''(A) the term 'formal training' means, with respect to any position, a training program required by law, rule, or regulation, or otherwise required by the employing agency, to be completed by the employee before the employee is able to successfully execute the duties of the applicable position; and

''(B) the term 'license' means a license, certification, or other grant of permission to engage in a particular activity.

''(d) The head of each agency shall, in the administration of this section, take appropriate measures to ensure that—

''(1) any announcement of a vacant position within such agency and any offer of appointment made to any individual with respect to any such position shall clearly state the terms and conditions of the probationary period applicable to such position;

''(2) any individual who is required to complete a probationary period under this section shall receive timely notice of the performance and other requirements which must be met in order to successfully complete the probationary period; and

''(3) upon successful completion of a probationary period under this section, certification to that effect shall be made, supported by a brief statement of the basis for that certification, in such form and manner as the President may by regulation prescribe.''.

(b) TECHNICAL AMENDMENT.—Section 3321(e) of title 5, United States Code (as so redesignated by subsection (a)(2)) is amended by striking ''Subsections (a) and (b)'' and inserting ''Subsections (a) through (d)''.

(c) EFFECTIVE DATE.—This section and the amendments made by this section—

(1) shall take effect 180 days after the date of enactment of this Act; and

(2) shall apply in the case of any appointment (as referred to in section 3321(a)(1) of title 5, United States Code) and any initial appointment (as referred to in section 3321(a)(2) of such title) taking effect on or after the date on which this section takes effect.

SEC. 302. APPEALS FROM ADVERSE ACTIONS.

(a) SUBCHAPTER I OF CHAPTER 75 OF TITLE 5.—Section 7501(1) of title 5, United States Code, is amended—

(1) by striking ''1 year'' the first place it appears and inserting ''not less than 2 years''; and

(2) by striking ''1 year'' the second place it appears and inserting ''2 years''.

(b) SUBCHAPTER II OF CHAPTER 75 OF TITLE 5.—Section 7511(a)(1) of title 5, United States Code, is amended—

(1) in subparagraph (A)(ii), by striking ''1 year'' the first place it appears and inserting ''not less than 2 years''; and

(2) in subparagraph (C)(ii), by striking ''2 years'' the first place it appears and inserting ''not less than 2 years''.

(c) EFFECTIVE DATE.—The amendments made by subsections (a) and (b)—

(1) shall take effect 180 days after the date of enactment of this Act; and

(2) shall apply in the case of any individual whose period of continuous service (as referred to in the provision of law amended by paragraph (1) or (2) of subsection (b), as the case may be) commences on or after the date on which this section takes effect.

TITLE IV—SENIOR EXECUTIVE SERVICE ACCOUNTABILITY

SEC. 401. BIENNIAL JUSTIFICATION OF SENIOR EXECUTIVE SERVICE POSITIONS.

Section 3133(a)(2) of title 5, United States Code, is amended by inserting after ''positions'' the following: '', with a justification for each position (by title and organizational location) and the specific result expected from each position, including the impact of such result on the agency mission,''.

SEC. 402. EXTENSION OF PROBATIONARY PERIOD FOR CAREER APPOINTEES.

(a) IN GENERAL.—Section 3393(d) of title 5, United States Code, is amended by striking ''1-year'' and inserting ''2-year''.

(b) CONFORMING AMENDMENT.—Section 3592(a)(1) of such title is amended by striking ''1-year'' and inserting ''2-year''.

SEC. 403. MODIFICATION OF PAY RETENTION FOR CAREER APPOINTEES REMOVED FOR UNDER PERFORMANCE.

Section 3594(c)(1)(B) of title 5, United States Code, is amended to read as follows:

''(B)(i) any career appointee placed under subsection (a) or (b)(2) of this section shall be entitled to receive basic pay at the highest of—

''(I) the rate of basic pay in effect for the position in which placed;

''(II) the rate of basic pay in effect at the time of the placement for the position the career appointee held in the civil service immediately before being appointed to the Senior Executive Service; or

''(III) the rate of basic pay in effect for the career appointee immediately before being placed under subsection (a) or (b) of this section; and

''(ii) any career appointee placed under subsection (b)(1) of this section shall be entitled to receive basic pay at the rate of basic pay in effect for the position in which placed; and''.

SEC. 404. ADVANCED ESTABLISHMENT OF PERFORMANCE REQUIREMENTS UNDER SENIOR EXECUTIVE SERVICE PERFORMANCE APPRAISAL SYSTEMS.

Section 4312(b)(1) of title 5, United States Code, is amended—

(1) by striking ''on or'' and inserting ''not later than 30 calendar days''; and

(2) by inserting ''in writing'' after ''communicated''.

SEC. 405. AMENDMENTS WITH RESPECT TO ADVERSE ACTIONS AGAINST CAREER APPOINTEES.

(a) SUSPENSION FOR 14 DAYS OR LESS FOR SENIOR EXECUTIVE SERVICE EMPLOYEE.—Paragraph (1) of Section 7501 of title 5, United States Code, is amended to read as follows:

''(1) 'employee' means—

''(A) an individual in the competitive service who is not serving a probationary period or trial period under an initial appointment or who has completed 1 year of current continuous employment in the same or similar positions under other than a temporary appointment limited to 1 year or less; or

''(B) a career appointee in the Senior Executive Service who—

''(i) has completed the probationary period prescribed under section 3393(d); or

''(ii) was covered by the provisions of subchapter II of this chapter immediately before appointment to the Senior Executive Service; and''.

(b) MODIFICATION OF CAUSE AND PROCEDURE FOR SUSPENSION AND TERMINATION.—

(1) IN GENERAL.—Section 7543 of title 5, United States Code, is amended—

(A) in subsection (a), by striking ''misconduct,'' and inserting ''such cause as would promote the efficiency of the service, misconduct,''; and

(B) in subsection (b)(1), by striking ''30'' and inserting ''15''.

(2) CONFORMING AMENDMENTS.—Subchapter V of chapter 35 of title 5, United States Code, is amended—

(A) in section 3593—

(i) in subsection (a)(2), by striking ''misconduct,'' and inserting ''such cause as would promote the efficiency of the service, misconduct,''; and

(ii) in subsection (b), by striking ''misconduct,'' and inserting ''such cause as would promote the efficiency of the service, misconduct,''; and

(B) in section 3594(a), by striking ''misconduct,'' and inserting ''such cause as would promote the efficiency of the service, misconduct,''.

SEC. 406. MANDATORY LEAVE FOR CAREER APPOINTEES SUBJECT TO REMOVAL.

(a) IN GENERAL.—Subchapter II of chapter 63 of title 5, United States Code, is amended by adding at the end the following:

''§ 6330. Mandatory leave for Senior Executive Service career appointees subject to removal

''(a) In this section—

''(1) the term 'employee' means an employee (as that term is defined in section 7541(1)) who has received written notice of removal from the civil service under subchapter V of chapter 75; and

''(2) the term 'mandatory leave' means, with respect to an employee, an absence with pay but without duty during which such employee—

''(A) shall be charged accrued annual leave for the period of such absence; and

''(B) may not accrue any annual leave under section 6303 for the period of such absence.

''(b) Under regulations prescribed by the Office of Personnel Management, an agency may place an employee on mandatory leave for misconduct, neglect of duty, malfeasance, or such cause as would promote the efficiency of the service.

''(c) If an agency determines that an employee should be placed on mandatory leave under subsection (b), such leave shall begin no earlier than the date on which the employee received written notice of a removal under subchapter V of chapter 75.

''(d) If a final order or decision is issued in favor of such employee with respect to removal under subchapter V of chapter 75 by the agency, the Merit Systems Protection Board, or the United States Court of Appeals for the Federal Circuit, any annual leave that is charged to an employee by operation of this section shall be restored to the applicable leave account of such employee.''.

(b) CLERICAL AMENDMENT.—The table of sections of chapter 63 of title 5, United States Code, is amended by adding after the item relating to section 6328 the following new item:

''6330. Mandatory leave for Senior Executive Service career appointees subject to removal.''.

(c) REGULATIONS.—Not later than 6 months after the date of enactment of this Act, the Director of the Office of Personnel Management shall prescribe regulations with respect to the leave provided by the amendment in subsection (a).

SEC. 407. EXPEDITED REMOVAL OF CAREER APPOINTEES FOR PERFORMANCE OR MISCONDUCT.

(a) IN GENERAL.—Chapter 75 of title 5, United States Code, is amended by adding at the end the following:

''SUBCHAPTER VI—SENIOR EXECUTIVE SERVICE: EXPEDITED REMOVAL

''§ 7551. Definitions

''In this subchapter—

''(1) the term 'employee' has the meaning given such term in section 7541(1), but does not include any career appointee in the Senior Executive Service within the Department of Veterans Affairs; and

''(2) the term 'misconduct' includes neglect of duty, malfeasance, or failure to accept a directed reassignment or to accompany a position in a transfer of function.

''§ 7552. Actions covered

''This subchapter applies to a removal from the civil service or a transfer from the Senior Executive Service, but does not apply to an action initiated under section 1215, to a removal under section 3592 or 3595, to a suspension under section 7503, to a suspension or removal under section 7532, to a suspension or removal under section 7542, or to a suspension or removal under section 713 of title 38.

''§ 7553. Cause and procedure

''(a)(1) Under regulations prescribed by the Office of Personnel Management, the head of an agency may remove an employee of the agency from the Senior Executive Service if the head determines that the performance or misconduct of the individual warrants such removal. If the head so removes such an individual, the head may—

''(A) remove the individual from the civil service; or

''(B) in the case of an employee described in paragraph (2), transfer the employee from the Senior Executive Service to a General Schedule position at any grade of the General Schedule for which the employee is qualified and that the head determines is appropriate.

''(2) An employee described in this paragraph is an individual who—

''(A) previously occupied a permanent position within the competitive service;

''(B) previously occupied a permanent position within the excepted service; or

''(C) prior to employment as a career appointee at the agency, did not occupy any position within the Federal Government.

''(3) An employee against whom an action is proposed under paragraph (1) is entitled to 5 days' advance written notice.

''(b)(1) Notwithstanding any other provision of law, including section 3594, any employee transferred to a General Schedule position under subsection (a)(1)(B) shall, beginning on the date of such transfer, receive the annual rate of pay applicable to such position.

''(2) An employee so transferred may not be placed on administrative leave or any other category of paid leave during the period during which an appeal (if any) under this section is ongoing, and may only receive pay if the individual reports for duty. If an employee so transferred does not report for duty, such employee shall not receive pay or other benefits pursuant to section 7554(e).

''(c) Not later than 30 days after removing or transferring an employee under subsection (a), the applicable head of the agency shall submit to Congress notice in writing of such removal or transfer and the reason for such removal or transfer.

''(d) Section 3592(b)(1) does not apply to an action to remove or transfer an employee under this section.

''(e) Subject to the requirements of section 7554, an employee may appeal a removal or transfer under subsection (a) to the Merit Systems Protection Board under section 7701, but only if such appeal is made not later than seven days after the date of such removal or transfer.

''§ 7554. Expedited review of appeal

''(a) Upon receipt of an appeal under section 7553(d), the Merit Systems Protection Board shall refer such appeal to an administrative judge pursuant to section 7701(b)(1). The administrative judge shall—

''(1) expedite any such appeal under such section; and

''(2) in any such case, issue a decision not later than 21 days after the date of the appeal.

''(b) Notwithstanding any other provision of law, including section 7703, the decision of an administrative judge under subsection (a) shall be final and shall not be subject to any further appeal.

''(c) In any case in which the administrative judge cannot issue a decision in accordance with the 21-day requirement under subsection (a)(2), the removal or transfer is final. In such a case, the Merit Systems Protection Board shall, within 14 days after the date that such removal or transfer is final, submit to Congress a report that explains the reasons why a decision was not issued in accordance with such requirement.

''(d) The Merit Systems Protection Board or administrative judge may not stay any removal or transfer under this section.

''(e) During the period beginning on the date on which an employee appeals a removal from the civil service under section 7553(d) and ending on the date that the administrative judge issues a final decision on such appeal, such employee may not receive any pay, awards, bonuses, incentives, allowances, differentials, student loan repayments, special payments, or benefits.''.

(b) APPLICATION.—

(1) IN GENERAL.—Subchapter VI of chapter 75 of title 5, United States Code, as added by subsection (a), shall not apply to any personnel action against a career appointee (as that term is defined in section 3132(a)(4) of title 5, United

States Code) that was commenced before the date of enactment of this Act.

(2) RELATION TO OTHER AUTHORITIES.—The authority provided by such subchapter is in addition to the authority provided under section 3592 or subchapter V of chapter 75 of title 5, United States Code.

(c) TECHNICAL AMENDMENTS.—

(1) TITLE 5.—Title 5, United States Code, is amended—

(A) in section 3592(b)(2)—

(i) by striking ''or'' at the end of subparagraph (A);

(ii) by striking the period at the end of subparagraph (B) and inserting ''; or''; and

(iii) by adding at the end the following:

''(C) any removal under subchapter VI of this title or section 713 of title 38.'';

(B) in section 3393(g), by striking ''1215,, 3592, 3595, 7532, or 7543 of this title'' and inserting ''1215, 3592, 3595, 7532, 7543, or 7553 of this title or section 713 of title 38''; and

(C) in section 7542, by striking ''or to a removal under section 3592 or 3595 of this title'' and inserting ''to a removal under section 3592 or 3595 of this title, to a suspension under section 7503, to a removal or transfer under section 7553, or a removal or transfer under section 713 of title 38''.

(2) TITLE 38.—Section 713(f)(1) of title 38, United States Code, is amended by striking ''or subchapter V'' and inserting '', chapter 43, or subchapters V and VI''.

(d) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 75 of title 5, United States Code, is amended by adding after the item relating to section 7543 the following:

''SUBCHAPTER VI—SENIOR EXECUTIVE SERVICE: EXPEDITED REMOVAL

''7551. Definitions.

''7552. Actions covered.

''7553. Cause and procedure.

''7554. Expedited review of appeal.''.

SEC. 408. MANDATORY REASSIGNMENT OF CAREER APPOINTEES.

(a) IN GENERAL.—Section 3395(a) of title 5, United States Code, is amended by adding at the end the following:

''(3)(A) Consistent with the requirements of paragraphs (1) and (2), at least once every five years beginning on the date that a career appointee is initially appointed to the Senior Executive Service, each career appointee at an agency shall be reassigned to another Senior Executive Service position at the agency at a different geographic location that does not include the supervision of the same agency personnel or programs.

''(B) The head of an agency may waive the requirement under subparagraph (A) for any career appointee if the head submits notice of the waiver and an explanation of the reasons for the waiver to the Committee on Oversight and Government Reform of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate.''.

(b) CONFORMING AMENDMENT.—Section 3395(a)(1)(A) of title 5, United States Code, is amended by striking ''paragraph (2)'' and inserting ''paragraphs (2) and (3)''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect 90 days after the date of enactment of this Act.

TITLE V—OPM REPORT ON OFFICIAL TIME

SEC. 501. REPORTING REQUIREMENT.

(a) IN GENERAL.—Section 7131 of title 5, United States Code, is amended by adding at the end the following:

''(e)(1)(A) Not later than March 31 of each calendar year, the Office of Personnel Management, in consultation with the Office of Management and Budget, shall submit to each House of Congress a report on the operation of this section during the fiscal year last ending before the start of such calendar year.

''(B) Not later than December 31 of each calendar year, each agency (as defined by section 7103(a)(3)) shall furnish to the Office of Personnel Management the information which such Office requires, with respect to such agency, for purposes of the report which is next due under subparagraph (A).

''(2) Each report by the Office of Personnel Management under this subsection shall include, with respect to the fiscal year described in paragraph (1)(A), at least the following information:

''(A) The total amount of official time granted to employees.

''(B) The average amount of official time expended per bargaining unit employee.

''(C) The specific types of activities or purposes for which official time was granted, and the impact which the granting of such official time for such activities or purposes had on agency operations.

''(D) The total number of employees to whom official time was granted, and, of that total, the number who were not engaged in any activities or purposes except activities or purposes involving the use of official time.

''(E) The total amount of compensation (including fringe benefits) afforded to employees in connection with activities or purposes for which they were granted official time.

''(F) A description of any room or space designated at the agency (or its subcomponent) where official time activities will be conducted, including the square footage of any such room or space.

''(3) All information included in a report by the Office of Personnel Management under this subsection with respect to a fiscal year—

''(A) shall be shown both agency-by-agency and for all agencies; and

''(B) shall be accompanied by the corresponding information (submitted by the Office in its report under this subsection) for the fiscal year before the fiscal year to which such report pertains, together with appropriate comparisons and analyses.

''(4) For purposes of this subsection, the term 'official time' means any period of time, regardless of agency nomenclature—

''(A) which may be granted to an employee under this chapter (including a collective bargaining agreement entered into under this chapter) to perform representational or consultative functions; and

''(B) during which the employee would otherwise be in a duty status.''.

(b) APPLICABILITY.—The amendment made by subsection (a) shall be effective beginning with the report which, under the provisions of such amendment, is first required to be submitted by the Office of Personnel Management to each House of Congress by a date which occurs at least 6 months after the date of the enactment of this Act.

TITLE VI—MIDNIGHT RULE RELIEF

SEC. 601. MORATORIUM ON MIDNIGHT RULES.

Except as provided under sections 603 and 604, during the moratorium period, an agency may not propose or adopt any midnight rule unless the Administrator finds the midnight rule will not result in any of the following:

(1) An annual effect on the economy of $100,000,000 or more.

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

(3) Significant adverse effects on competition, employment, wages, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

(4) A significant economic impact on a substantial number of small entities.

SEC. 602. SPECIAL RULE ON STATUTORY, REGULATORY, AND JUDICIAL DEADLINES.

(a) IN GENERAL.—Section 602 shall not apply with respect to any midnight rule required by statute, other regulation, or judicial order to be proposed or adopted by a deadline that—

(1) was established before the beginning of the moratorium period; and

(2) occurs during the moratorium period.

(b) PUBLICATION OF DEADLINES.—Not later than 30 days after the beginning of a moratorium period, the Administrator shall identify and publish in the Federal Register a list of midnight rules covered by subsection (a).

SEC. 603. EXCEPTION.

(a) EMERGENCY EXCEPTION.—Section 602 shall not apply to a midnight rule if the President determines by Executive order that the midnight rule is—

(1) necessary because of an emergency;

(2) necessary for the enforcement of criminal laws;

(3) necessary for the national security of the United States; or

(4) issued pursuant to any statute implementing an international trade agreement.

(b) DEREGULATORY EXCEPTION.—Section 602 shall not apply to a midnight rule that the Administrator finds is limited to repealing an existing rule and certifies such finding in writing. The certification shall be published in the Federal Register.

SEC. 604. JUDICIAL REVIEW.

Any person or entity subject to the any midnight rule promulgated in violation of this title is entitled to judicial review.

SEC. 605. DEFINITIONS.

In this title:

(1) ADMINISTRATOR.—The term ''Administrator'' means the Administrator of the Office of Information and Regulatory Affairs within the Office of Management and Budget.

(2) AGENCY.—The term ''agency'' has the meaning given that term under section 551 of title 5, United States Code, except such term does not include—

(A) the Federal Election Commission;

(B) the Board of Governors of the Federal Reserve System;

(C) the Federal Deposit Insurance Corporation; or

(D) the United States Postal Service.

(3) DEADLINE.—The term ''deadline'' means any date certain for fulfilling any obligation or exercising any authority established by or under any Federal statute or rule, or by or under any court order implementing any Federal statute, regulation, or rule.

(4) EMERGENCY.—The term ''emergency'' means a declaration by the President of a state of emergency.

(5) MIDNIGHT RULE.—The term ''midnight rule'' means a rule proposed or adopted during the moratorium period.

(6) MORATORIUM PERIOD.—The term ''moratorium period'' means the day after the day referred to in section 1 of title 3, United States Code, through January 20 of the following year, in which a President is not serving a consecutive term.

(7) RULE.—The term ''rule'' has the meaning given that term under section 551 of title 5, United States Code.

(8) SMALL ENTITY.—The term ''small entity'' has the meaning given the term ''small business'' under section 601 of title 5, United States Code.

TITLE VII—REQUIREMENT TO MAINTAIN RECORDS

SEC. 701. REQUIREMENT TO MAINTAIN RECORDS.

(a) AMENDMENT.—Chapter 31 of title 44, United States Code, is amended by adding at the end the following new section:

''§3108. Requirement to maintain records

''(a) IN GENERAL.—If the Internal Revenue Service obtains a preserved record, the Internal Revenue Service shall preserve for not less than 3 years from the date on which the record was obtained—

''(1) the preserved record or a copy of the preserved record; and

''(2) all records related to the preserved record.

''(b) PRESERVED RECORD DEFINED.—In this section, the term 'preserved record' means any record that is maintained by a person other than the Federal Government pursuant to a rule, guidance, or other directive from the Internal Revenue Service that requires or recommends the person maintain records for a particular period of time on a particular matter.

''(c) RULE OF CONSTRUCTION.—Nothing in this section shall be construed as—

''(1) limiting the preservation of a preserved record for a longer period of time than is required by this section; or

''(2) shortening the period of time a preserved record is otherwise required to be maintained.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 31 of title 44, United States Code, is amended by adding at the end the following new item:

''3108. Requirement to maintain records.''.

(c) EFFECTIVE DATE; APPLICABILITY.—The amendments made by this section shall take effect as of the date of the enactment of this Act and shall apply with respect to any preserved record (as such term is defined in section 3108(b) of title 44, United States Code, as added by subsection (a)) obtained on or after the effective date.

The CHAIR. No amendment to that amendment in the nature of a substitute shall be in order except those printed in the House Report 114–666. Each such amendment may be offered only in the order printed in the report, by a Member designated in the report, shall be considered as read, shall be debatable for the time specified in the report equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for division of the question.

AMENDMENT NO. 1 OFFERED BY MR. PALMER

The CHAIR. It is now in order to consider amendment No. 1 printed in House Report 114–666.

Mr. PALMER. Mr. Chairman, I have an amendment at the desk.

The CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Page 25, line 4, strike ''sections 603 and 604'' and insert ''sections 602 and 603''.

Page 25, line 22, strike ''Section 602'' and insert ''Section 601''.

Page 26, line 9, strike ''Section 602'' and insert ''Section 601''.

Page 26, line 19, strike ''Section 602'' and insert ''Section 601''.

The CHAIR. Pursuant to House Resolution 803, the gentleman from Alabama (Mr. PALMER) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Alabama.

Mr. PALMER. Mr. Chairman, this amendment makes technical changes to the bill to reflect the text of H.R. 4612, the Midnight Rule Relief Act of 2016, as it was reported out of committee.

Mr. Chairman, my manager's amendment simply makes a few technical and conforming changes to this important legislation. The amendment corrects a technical error in the language of title VI, and it also fixes references to several other sections within the bill, to reflect the obvious intent of the bill text.

Mr. Chairman, I support this amendment and I urge my colleagues to vote in favor of it.

I reserve the balance of my time.

Mr. CUMMINGS. Mr. Chairman, I claim the time in opposition to the amendment.

The CHAIR. The gentleman from Maryland is recognized for 5 minutes.

Mr. CUMMINGS. Mr. Chairman, we have reviewed the Palmer amendment and find that it only makes technical changes to the bill, so I will not oppose it. However, it does nothing to improve the bill, which I will continue to oppose.

I yield back the balance of my time.

Mr. PALMER. Mr. Chairman, I yield back the balance of my time.

The CHAIR. The question is on the amendment offered by the gentleman from Alabama (Mr. PALMER).

The amendment was agreed to.

AMENDMENT NO. 2 OFFERED BY MR. POSEY

The CHAIR. It is now in order to consider amendment No. 2 printed in House Report 114–666.

Mr. POSEY. Mr. Chairman, I have an amendment at the desk.

The CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Page 2, after line 13, insert the following new subsection:

(b) INFORMATION SECURITY PROTOCOL.—An agency employee acting in the official capacity of the employee (other than the head of the agency) may not establish, operate, maintain, or otherwise permit the use of information technology that is not certified by the appropriate Federal entity responsible for information security within the agency (either the Director of the Office of Management and Budget, the head of the agency, the Secretary of Homeland Security, or the Chief Information Officer of the agency, as applicable) as in compliance with the established information security policies, procedures, and programs.

Page 2, line 14, strike ''(b)'' and insert ''(c)''.

The CHAIR. Pursuant to House Resolution 803, the gentleman from Florida (Mr. POSEY) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Florida.

MODIFICATION TO AMENDMENT OFFERED BY MR. POSEY

Mr. POSEY. Mr. Chairman, I ask unanimous consent that amendment No. 2 in House Report 114–666 be modified by the form I have placed at the desk.

The CHAIR. The Clerk will report the modification.

The Clerk read as follows:

Modification to amendment offered by Mr. POSEY:

Page 1, line 3, strike ''(other than the head of the agency)''.

Page 1, beginning on line 6, strike ''within the agency''.

The CHAIR. Is there objection to the request of the gentleman from Florida?

There was no objection.

The CHAIR. The amendment is modified.

Mr. POSEY. Mr. Chairman, I rise in support of a genuine opportunity for us to learn from the failures of former executive officials.

This amendment will codify a practice of security, accountability, and good government, which is already a policy at many of our Federal agencies today.

Quite simply, it will prohibit Federal employees from using private, unsecure email servers to conduct official government business in the future. This would ensure that the time and taxpayer money invested in the security of sensitive information will not be undermined by carelessness or misunderstandings.

By passing this amendment, we will significantly improve the security of our government IT.

It only takes one individual, one click of the mouse, on an insecure or unsecure system, to open the door to bad actors who seek to harm our Nation. By restricting the use of unsecure IT systems, we will empower Federal employees to hold each other accountable and take special care to conduct official business responsibly.

I urge support of the amendment.

I reserve the balance of my time.

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Mr. CUMMINGS. Mr. Chairman, I claim the time in opposition to the amendment but do not oppose it, as modified by Representative POSEY.

The CHAIR. Without objection, the gentleman from Maryland is recognized for 5 minutes.

There was no objection.

Mr. CUMMINGS. Mr. Chair, it is not clear what this amendment does or what it is intended to do. I agree that there should be accountability for IT security, but we have had no hearings or other discussion on this issue. The Federal Information Security Management Act already ensures that senior agency personnel take responsibility for ensuring the agency systems are secure.

Unfortunately, the amendment does nothing to address the larger underlying problem with the bill, which would simply trample on Federal employees' due process protections and block the President from issuing critical regulatory protections at the end of his term.

Mr. Chairman, I yield back the balance of my time.

Mr. POSEY. Mr. Chairman, it is vital that the former Secretary of State's use of an unsecure email server does not send a message to other Federal employees that this is acceptable, that this manner of handling sensitive information and conducting government business is appropriate. We cannot let another top executive completely trample the trust of the American people and potentially endanger American lives by mishandling sensitive intelligence.

This amendment is really simple. It is a responsible step towards protecting

Federal IT systems and ensuring Americans of the transparency and security that they want and that they deserve.

Mr. Chairman, I urge passage of the amendment.

I yield back the balance of my time.

The CHAIR. The question is on the amendment, as modified, offered by the gentleman from Florida (Mr. POSEY).

The amendment, as modified, was agreed to.

AMENDMENT NO. 3 OFFERED BY MS. NORTON

The CHAIR. It is now in order to consider amendment No. 3 printed in House Report 114–666.

Ms. NORTON. Mr. Chairman, I have an amendment at the desk.

The CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Strike sections 402, 405(b), 406, 407, and 408.

The CHAIR. Pursuant to House Resolution 803, the gentlewoman from the District of Columbia (Ms. NORTON) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentlewoman from the District of Columbia.

Ms. NORTON. Mr. Chairman, I yield myself such time as I may consume.

My amendment would strike sections 402, 405(b), 406, 407, and 408. While some reforms to the Senior Executive Service may well be necessary, these sections go too far because they roll back significant due process rights for Federal employees and raise potential constitutional issues.

Section 402, which lengthens the probationary period for SES employees from 1 year to 2 years, is unnecessary. There is no evidence to indicate that such a provision will help agencies deal with poor performers in the workplace. In fact, a Federal 2015 GAO report found that agencies are already using probationary periods but could be using them more effectively. Of the 3,500 Federal employees who were dismissed in 2013, the majority were dismissed during the probationary period. Instead of extending this period, we should be looking at ways to improve its use by agencies and increasing congressional oversight to ensure that the Federal workforce is operating at its best.

Section 405(b) is similarly problematic. This section would allow an agency to remove an SES employee from civil service entirely for poor performance. Under current law, poor-performing employees, instead, are initially downgraded to a GS position, a level at which they could perform very well. Even if they were poor performers at the SES level, they would not have been promoted in the first place if they had not achieved good records, but may not be good managers. This section also shortens the notice period from 30 days to 15, making it extremely difficult for affected employees to exercise their due process rights.

Section 406 represents a serious constitutional issue by giving agencies the authority to place an SES employee on mandatory leave, forcing these employees to use their own accrued leave. This violates basic constitutional principles, as it is likely a taking of a vested property right or it is a suspension that triggers due process rights. This mandatory leave provision has little chance of withstanding constitutional scrutiny and should be struck.

Section 407 further represents an attack on Federal employees' due process rights. This provision expedites the removal and appeals process and adopts provisions of other Federal law that is currently being challenged in the Federal circuit.

In a Statement of Administration Policy in opposition to this bill, the White House has said that the President will veto it if it comes across his desk, at least in part because this section ''would raise significant constitutional concerns under the Appointments Clause and the Due Process Clause.'' It is unlikely that this section could withstand constitutional scrutiny and also should be struck now.

Section 408 requires reassignment of SES employees to different geographical locations, which is arbitrary, inflexible, and ignores the needs of individual agencies. This provision is unnecessary, given that the President signed an executive order in November 2015 that would strengthen the Senior Executive Service by requiring agency heads to develop a 2-year plan for increasing the mobility of SES employees.

We may need reform legislation to deal with poor performers, Mr. Chairman, but we cannot do so by rolling back due process rights and protections for Federal employees who, unlike private employees, are protected by the Constitution of the United States. I urge my colleagues to vote in favor of my amendment.

Mr. Chairman, I reserve the balance of my time.

Mr. PALMER. Mr. Chairman, I claim the time in opposition to the amendment.

The CHAIR. The gentleman from Alabama is recognized for 5 minutes.

Mr. PALMER. Mr. Chairman, I rise in opposition to the proposed amendment of the gentlewoman from the District of Columbia.

Her amendment would eliminate provisions in the Government Reform and Improvement Act that deal with holding members of the Senior Executive Service, or SES, accountable.

For example, the amendment would strike section 402 of the bill, which extends the probationary period for individuals appointed to the SES from 1 to 2 years. Extending the probationary period allows Federal agencies to ensure that senior executives they hire are suitable for the job they hold. After the probationary period ends, it becomes much harder to remove an SES employee not suited for the position. It is in the best interests of the American people that the members of the SES be fully vetted before their appointments become final.

I should also note that section 1105 of the FY 2016 National Defense Authorization Act established a 2-year probationary period for new civilian hires at the Department of Defense. This good government reform is already in place at one of the largest Federal agencies, and we should extend it to the rest of the Federal Government as well.

The amendment in question would also strip provisions that allow SES appointees to be removed for such cause as would promote the efficiency of the service and to be suspended without pay for less than 2 weeks for misconduct. These rules already apply to the vast majority of the Federal civil service, and they should apply to SES appointees as well.

In addition, the gentlewoman's amendment would eliminate a portion of the bill that gives agency heads authority to place on mandatory annual leave SES appointees facing removal for misconduct and prohibits the accumulation of additional leave during this period. It would also eliminate a provision that gives agency heads the authority to seek removal or transfer of senior executives based on poor performance or misconduct, and that would provide an expedited appeal process for the aggrieved employee.

The American people deserve an accountable Senior Executive Service that plays by the same rules as other Federal civil service workers. They also deserve an SES staffed with highly qualified employees who can be efficient and effective in their jobs.

Mr. Chairman, I urge my colleagues to reject the gentlewoman's amendment.

I reserve the balance of my time.

Ms. NORTON. Mr. Chairman, I remind the gentleman that SES employees already have fewer rights than other employees because they are management and that we have invested millions of dollars in them. We have gotten them into the SES, a very competitive service, in the first place, so this off-with-your-head approach punishes the American people who may have perfectly fine employees at the SES level. But, for example, to indicate one of my amendments might downgrade them rather than getting rid of them, there are other provisions here that would doubtlessly not survive constitutional scrutiny.

Mr. Chairman, I urge the adoption of my amendment.

I yield back the balance of my time.

Mr. PALMER. Mr. Chairman, I yield back the balance of my time.

The CHAIR. The question is on the amendment offered by the gentlewoman from the District of Columbia (Ms. NORTON).

The question was taken; and the Chair announced that the noes appeared to have it.

Ms. NORTON. Mr. Chairman, I demand a recorded vote.

The CHAIR. Pursuant to clause 6 of rule XVIII, further proceedings on the

amendment offered by the gentlewoman from the District of Columbia will be postponed.

The Chair understands that amendment No. 4 will not be offered.

AMENDMENT NO. 5 OFFERED BY MRS. WATSON COLEMAN

The CHAIR. It is now in order to consider amendment No. 5 printed in House Report 114–666.

Mrs. WATSON COLEMAN. Mr. Chairman, I have an amendment at the desk.

The CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Page 26, after line 23, insert the following new subsection:

(c) REGULATORY FLEXIBILITY AGENDA EXCEPTION.—Section 601 shall not apply to a midnight rule that is published in the regulatory flexibility agenda pursuant to section 602 of title 5, United States Code, and that has been included in the Unified Regulatory Agenda submitted pursuant to Executive Order 12886 (5 U.S.C. 601 note; relating to regulatory planning and review) for at least one year.

The CHAIR. Pursuant to House Resolution 803, the gentlewoman from New Jersey (Mrs. WATSON COLEMAN) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentlewoman from New Jersey.

Mrs. WATSON COLEMAN. Mr. Chairman, I yield myself such time as I may consume.

I rise to offer an amendment that would exempt from the bill's moratorium any rule that an agency has included in its regulatory plan for at least a year.

Some proponents have said that the moratorium on rulemaking is intended to address rules that have been rushed through the process. My amendment would address that concern by keeping in place the proposed moratorium on the rules that have truly been rushed. However, it would allow rules that have been under consideration for at least a year to move forward.

During the time between election day and Inauguration Day, the executive branch cannot take a break from fulfilling its constitutional and statutory responsibilities. Just as this Congress will meet to pass legislation in November and December of this year, the executive branch must be allowed to continue doing its job of implementing crucial regulations to protect the environment and our constituents' health and safety.

For example, the Pipeline and Hazardous Materials Safety Administration has been working to implement crucial pipeline safety regulations since 2011, with extensive input from numerous groups. Just last month, this Congress passed the PIPES Act, which included provisions reflecting our bipartisan concern that these pipeline safety rules need to be implemented soon to protect our constituents from the dangers of pipeline leaks.

Without my amendment, certain pipeline safety rules could have to be delayed until a new administration, even though these rules have been under consideration for years, leaving the public safety at risk. In order to ensure important rules like these can be finalized, I urge my colleagues to adopt my amendment.

Mr. Chairman, I reserve the balance of my time.

Mr. PALMER. Mr. Chairman, I claim the time in opposition to the gentlewoman's amendment.

The CHAIR. The gentleman from Alabama is recognized for 5 minutes.

Mr. PALMER. Mr. Chairman, the amendment fundamentally misunderstands the purpose of this bill. It creates a loophole in the moratorium period for midnight regulations. The bill establishes a regulation moratorium period between election day and the start of a new President's term to allow a new administration to start with a clean slate.

This amendment would undermine that principle by allowing outgoing Presidents to simply put a marker down a year before the end of the term to circumvent the moratorium entirely. Further, pushing regulations out the door at the last minute reduces the effectiveness of regulatory review at the Office of Information and Regulatory Affairs regardless of whether the public is aware that an agency is working on the regulation.

The unified regulatory agenda, while very important for notice and transparency, does not provide details on the regulation or the expected impact on the economy and small businesses. Simply notifying the public that an agency is considering regulating in a particular area is insufficient to ensure that regulatory analysis at the agency and at OIRA has been thoroughly evaluated. Agencies can simply wait until the start of the next President's term to issue regulations, giving everyone more time to make sure they have gotten it right.

Mr. Chairman, I oppose this amendment, and I urge my colleagues to vote against it.

I reserve the balance of my time.

□ 1730

Mrs. WATSON COLEMAN. Mr. Chairman, I yield 1 minute to the gentleman from Maryland (Mr. CUMMINGS).

Mr. CUMMINGS. Mr. Chair, may I inquire how much time is remaining?

The CHAIR. The gentlewoman from New Jersey has 3 minutes remaining.

Mr. CUMMINGS. Mr. Chairman, I support this amendment offered by one of the freshman stars of the Oversight and Government Reform Committee, Representative BONNIE WATSON COLEMAN.

This amendment would exempt from the bill rulemakings that agencies have included in their regulatory plans for a year or more. Agencies are required to submit to OMB twice a year a plan for rulemakings they plan to pursue. OMB publishes those plans twice a year as part of what is called the Unified Agenda.

This amendment would still block any rule an agency tries to rush through the process. This amendment would not, however, block rules that have been through the proper procedures just because they happen to be finalized during the last months of the administration.

This amendment allows the focus to be on true so-called midnight regulations. If those rules are truly the target of this bill, then the House should adopt this amendment.

Mr. PALMER. Mr. Chairman, I reserve the balance of my time.

Mrs. WATSON COLEMAN. Mr. Chairman, how much time is remaining?

The CHAIR. The gentlewoman from New Jersey has 2 minutes remaining.

Mrs. WATSON COLEMAN. Mr. Chairman, it is unfortunate that, yet again, some in this Congress refuse to accept that a President's term is a full 4 years long.

Passing this legislation would unnecessarily impose new restrictions on the ability of Presidents to finish the work of their administration.

Adopting my amendment would help ensure that well-vetted, necessary regulations to protect health and safety are not blocked, while not undermining the stated purpose of this bill.

Accordingly, I urge my colleagues to adopt it.

Mr. Chair, I yield back the balance of my time.

Mr. PALMER. Mr. Chairman, I yield back the balance of my time.

The CHAIR. The question is on the amendment offered by the gentlewoman from New Jersey (Mrs. WATSON COLEMAN).

The question was taken; and the Chair announced that the noes appeared to have it.

Mrs. WATSON COLEMAN. Mr. Chairman, I demand a recorded vote.

The CHAIR. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentlewoman from New Jersey will be postponed.

Mr. PALMER. Mr. Chair, I move that the Committee do now rise.

The motion was agreed to.

Accordingly, the Committee rose; and the Speaker pro tempore (Mrs. LUMMIS) having assumed the chair, Mr. HULTGREN, Chair of the Committee of the Whole House on the state of the Union, reported that that Committee, having had under consideration the bill (H.R. 4361) to amend section 3554 of title 44, United States Code, to provide for enhanced security of Federal information systems, and for other purposes, had come to no resolution thereon.

FINANCIAL SERVICES AND GENERAL GOVERNMENT APPROPRIATIONS ACT, 2017

GENERAL LEAVE

Mr. CRENSHAW. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to