

H.R. 4361, the Government Reform and Improvement Act of 2016

**Section-by-Section**

*Section 1. Short title; Table of contents.*

Designates the bill as the Government Reform and Improvement Act of 2016 and displays the table of contents.

**Title I – Federal Information Systems Safeguards**

*Section 101. Agency Discretion to Secure Information Technology and Information Systems.*

Provides that any action by the head of an agency to block access to a website for various cybersecurity-related purposes shall not be subject to collective bargaining.

**Title II – Elimination of Pornography from Agencies**

*Section 201. Prohibition on Accessing Pornographic Web Sites from Federal Computers.*

Requires the Director of the Office of Management and Budget to create guidelines not later than 90 days after the date of enactment that prohibit access to pornographic or explicit web sites from a Federal computer.

Provides an exception to the prohibition for investigative purposes.

**Title III – Extension of Probationary Period for Career Employees**

*Section 301. Extension of Probationary Period for Positions within the Competitive Service.*

Establishes that the length of a probationary period, before an appointment in the competitive service becomes final, and initial appointment as a supervisor or manager becomes final, shall not be less than a period of two years. For positions that require formal training or completion of a license, the two year probationary period begins on the date formal training is completed or a license is granted.

Provides the probationary period for a an appointment or initial appointment to a position that exists on the effective date of this bill, shall be the probationary period that was in effect prior to the effective date of this bill. For a preference eligible with an appointment or initial appointment to a position that does not exist on the effective date of this bill, the probationary period shall be length of time as the President establishes consistent with the purposes of this bill.

Defines “formal training” as any position that requires a training program by law, rule, regulation, or agency requirement.

Defines “license” as a license, certification or other grant of permission to engage in a particular activity.

Ensures that agencies include in vacancy announcements, and offers of appointment, the terms and conditions of the probationary period. Also, ensures that agencies provide individuals, who are required to complete probationary periods, timely notice of the requirements to successfully complete the probationary period, and that agencies provide certification that the probationary period was successfully completed.

*Section 302. Appeals from Adverse Actions.*

Amends 5 U.S.C. §7501(a) from one year to two years to establish when an employee becomes entitled to appeal adverse actions.

**Title IV – Senior Executive Service Accountability**

*Section 401. Biennial Justification of Senior Executive Service Positions.*

Requires agencies to provide written justification to the Office of Personnel Management for each requested Senior Executive Service (SES) position, including existing positions.

*Section 402. Extension of Probationary Period for Career Appointees.*

Extends the probationary period for individuals appointed to the SES, from one to two years.

*Section 403. Modification of Pay Retention for Career Appointees Removed for Under Performance.*

Eliminates the provision in current law which allows an individual removed from the SES for performance to retain his or her SES pay if appointed to a civil service position.

*Section 404. Advanced Establishment of Performance Requirements Under Senior Executive Service Performance Appraisal Systems.*

Requires that SES employees must receive performance requirements in writing no less than 30 days before the start of an appraisal period.

*Section 405. Amendments with Respect to Adverse Actions Against Career Appointees.*

Makes SES employees subject to suspensions (without pay) of less than two weeks in the same manner as other civil service workers. Gives agencies authority to remove SES employees for “such cause as would promote the efficiency of the service” – the standard that currently applies to other civil services workers. Reduces the requirement for agencies to give senior executives advance written notice of termination or suspension for more than 14 days from a minimum of 30 days to not less than 15 days.

*Section 406. Mandatory Leave for Career Appointees Subject to Removal.*

Gives agency heads authority to place on mandatory annual leave SES employees facing removal for misconduct, and prohibits the accumulation of additional annual leave during this period. Annual leave would be restored to the SES employee if the agency, Merit Systems Protection Board (MSPB), or court found in the employee's favor during the appeals process.

*Section 407. Expedited Removal of Career Appointees for Performance or Misconduct.*

Provides authority for heads of agencies to seek removal or transfer senior executives based on poor performance or misconduct, with an abbreviated process for an expedited appeal. Requires agency heads to notify Congress within 30 days after removing or transferring an employee and the reason for the removal or transfer. An employee may appeal a termination or transfer notice to the MSPB within seven days of receiving notice. Upon receipt of an appeal, an administrative judge has 21 days to issue a decision. If an administrative judge cannot issue a decision, the decision to terminate or transfer will be final, and the MSPB must submit a report to Congress explaining why a decision was not issued. An employee may not receive pay during the appeals process.

*Section 408. Mandatory Reassignment of Career Appointees.*

Requires that at least once every five years, an SES will be reassigned to another SES position. Gives the head of each agency the authority to waive the requirement, provided the agency head submits a waiver to the relevant House and Senate committees of jurisdiction, explaining the reason for the waiver.

**Title V – OPM Report on Official Time**

*Section 501. Reporting Requirement.*

Requires the Office of Personnel Management, in consultation with the Office of Management and Budget, to annually report to each House of Congress on the use of "official time" by Federal employees. Official time is time spent by Federal employees performing representational work for a bargaining unit in lieu of their regularly assigned work, as provided under 5 U.S.C §7131.

The report must include information on the total amount of official time granted, the average amount of official time expended per bargaining unit employee and the specific types of activities for which official time was used, such as mid-term negotiations, dispute resolution, or general labor-management-relations, and the impact of official time on agency operations. OPM must also report on the number of agency employees who are on 100 percent official time, the total amount of compensation (including fringe benefits) afforded to employees in connection with official time activities, and any room or space designated at the agency where official time activities will be conducted.

Reports from OPM are due March 31 following the reportable fiscal year and must include the report from the previous fiscal year for comparison purposes.

## **Title VI – Midnight Rule Relief**

### *Section 601. Moratorium on Midnight Rules.*

States that an agency may not propose or finalize any midnight rule during the moratorium period unless the Administrator of the Office of Information and Regulatory Affairs finds that 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; or
- (3) Significant adverse effects on competition, employment, 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.

### *Section 602. Special Rule on Statutory, Regulatory, and Judicial Deadlines*

Exempts major rules that are to be proposed or finalized during the moratorium period pursuant to a pre-existing statutory or judicial deadline.

Requires the Administrator to publish the deadline(s) in the *Federal Register* no later than 30 days.

### *Section 603. Exceptions.*

Provides that an agency may propose or finalize a midnight rule if the President determines that it is necessary in the event of an emergency.

Provides that an agency may propose or finalize a midnight rule if the Administrator determines that the midnight rule is deregulatory in nature.

### *Section 604. Judicial Review.*

Provides for judicial review of any midnight rule promulgated in violation of the Act.

### *Section 605. Definitions.*

Defines “Administrator” as the Administrator of the Office of Information and Regulatory Affairs within the Office of Management and Budget.

Defines “agency” to include executive branch and independent agencies; however, it exempts the Federal Election Commission, the Federal Reserve, the Federal Deposit Insurance Corporation, and the United States Postal Service.

Defines “deadline” as any date certain for fulfilling any obligation or exercising any authority established by or under any Federal statute or rule.

This section defines emergency as a declaration of a state of emergency by the President.

Defines “midnight rule” as any agency statement of general applicability and future effect, issued during the moratorium period that is intended to have the force and effect of law and is designed to implement, interpret, or prescribe law or policy, or to describe the procedure or practice of an agency.

Defines the “moratorium period” as the day after Election Day through January 20.

Defines “rule” as any agency statement of general applicability and future effect, issued during the moratorium period that is intended to have the force and effect of law and is designed to implement, interpret, or prescribe law or policy, or to describe the procedure or practice of an agency.

Defines “small entity” as defined in section 601 of title 5, having the same meaning as “small business,” “small organization,” and “small governmental jurisdiction.”

## **Title VII – Requirement to Maintain Records**

### *Section 701. Requirement to Maintain Records.*

Amends chapter 31 of title 44 to require the Internal Revenue Services (IRS) to maintain any preserved record it obtains for at least three years. The IRS must also maintain any record related to the preserved record.

Defines a “preserved record” as any record maintained by a person other than the government pursuant to a rule, guidance, or other directive of the IRS that requires or recommends a person maintain a record for a period of time.

Makes clear that nothing in this legislation shall be construed to limit the preservation of a preserved record for more than three years, or shorten the period of time a preserved record is otherwise required to be maintained.

The amendments shall take effect on the date of enactment of this Act.