

AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 559
OFFERED BY MR. MITCHELL OF MICHIGAN

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

2 (a) **SHORT TITLE.**—This Act may be cited as the
3 “Modern Employment Reform, Improvement, and Trans-
4 formation Act of 2018” or the “MERIT Act of 2018”.

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

- Sec. 1. Short title; table of contents.
- Sec. 2. Termination of authority for chapter 43 performance-based actions.
- Sec. 3. Adverse actions based on performance or conduct.
- Sec. 4. Prohibition on grieving adverse actions and reductions in force.
- Sec. 5. Actions against senior executives for performance or conduct.
- Sec. 6. Modification of procedures for furlough.
- Sec. 7. Reduction of annuity of employee convicted of a felony for which an adverse action is or would have been taken.
- Sec. 8. Authority to recoup bonuses or awards paid to employees.
- Sec. 9. Extension of probationary period for positions within the Senior Executive Service.
- Sec. 10. Extension of probationary period for employees in the competitive service.
- Sec. 11. Application.

7 SEC. 2. TERMINATION OF AUTHORITY FOR CHAPTER 43
8 PERFORMANCE-BASED ACTIONS.

9 (a) **REPEAL.**—Section 4303 of title 5, United States
10 Code, is hereby repealed, and the authority under that sec-

1 tion with respect to a reduction in grade or removal of
2 a Federal employee covered by that section is terminated.

3 (b) APPLICATION.—Subsection (a) shall not apply to
4 any performance-based action under such section 4303
5 commenced before the effective date provided in section
6 11.

7 (c) CONFORMING AMENDMENTS.—Title 5, United
8 States Code, is amended—

9 (1) in section 4302(c)(6), by striking “but only
10 after an opportunity to demonstrate acceptable per-
11 formance”; and

12 (2) in section 7512, by striking subparagraph
13 (D) and redesignating subparagraphs (E) and (F)
14 as subparagraphs (D) and (E), respectively.

15 **SEC. 3. ADVERSE ACTIONS BASED ON PERFORMANCE OR**
16 **CONDUCT.**

17 (a) IN GENERAL.—Section 7513 of title 5, United
18 States Code, is amended—

19 (1) in subsection (b)—

20 (A) in paragraph (1), by striking “at least
21 30 days’ advance written notice” and inserting
22 “written notice 15 business days in advance”;

23 (B) in paragraph (2), by striking “but not
24 less than 7 days” and inserting “but not more
25 than seven business days”; and

1 (C) in paragraph (4), by striking “at the
2 earliest practicable date”;

3 (2) by amending subsection (c) to read as fol-
4 lows:

5 “(c) An agency shall issue the decision 15 business
6 days after the agency provides notice, to the maximum ex-
7 tent practicable, including a file containing all the evidence
8 in support of the proposed action under subsection (b)(1),
9 to the employee affected.”;

10 (3) in subsection (d), by inserting before the pe-
11 riod the following: “, but only if such appeal is made
12 not later than ten business days after the effective
13 date of the action”; and

14 (4) in subsection (e), by striking “and to the
15 employee affected upon the employee’s request” and
16 adding at the end after the period the following:
17 “Upon the affected employee’s request, copies of the
18 documents described in the previous sentence shall
19 be furnished to the employee, to the extent those
20 documents were not provided pursuant to subsection
21 (c).”.

22 (b) DISCIPLINE OF SUPERVISORS BASED ON RETAL-
23 LATION AGAINST WHISTLEBLOWERS.—Section
24 7515(b)(2)(B) of title 5, United States Code, is amend-
25 ed—

1 (1) in clause (i), by striking “not later than 14
2 days” and inserting “not more than seven business
3 days”; and

4 (2) in clause (ii), by striking “14-day period”
5 and inserting “seven-day period”.

6 (c) APPLICATION.—The amendments made by sub-
7 sections (a) and (b) shall not apply to any action under
8 section 7513 or 7515 of title 5, United States Code, as
9 amended by such subsections, respectively, commenced be-
10 fore the effective date provided in section 11.

11 **SEC. 4. PROHIBITION ON GRIEVING ADVERSE ACTIONS**
12 **AND REDUCTIONS IN FORCE.**

13 Section 7121 of title 5, United States Code, is
14 amended—

15 (1) in subsection (a)(1), by striking “the settle-
16 ment of”;

17 (2) in subsection (c)—

18 (A) by redesignating paragraphs (1)
19 through (5) as paragraphs (5) through (9), re-
20 spectively; and

21 (B) by inserting before paragraph (5), as
22 redesignated by subparagraph (A), the fol-
23 lowing:

24 “(1) an adverse action under subchapter II of
25 chapter 75;

1 “(2) a furlough of more than 30 days by a re-
2 duction in force action under subchapter I of chap-
3 ter 35;

4 “(3) a separation by a reduction in force action
5 under subchapter I of chapter 35;

6 “(4) a demotion by a reduction in force action
7 under subchapter I of chapter 35;”;

8 (3) in subsection (e)—

9 (A) in paragraph (1)—

10 (i) by striking “(1) Matters” and all
11 that follows through “but not both.”; and

12 (ii) in the second sentence, by striking
13 “Similar matters” and inserting “Matters
14 similar to those covered under subchapter
15 II of chapter 75”; and

16 (B) by striking paragraph (2);

17 (4) in subsection (f)—

18 (A) by striking the first sentence; and

19 (B) in the second sentence, by striking “In
20 matters similar to those covered under sections
21 4303 and 7512 of this title” and inserting
22 “Matters similar to those covered under sub-
23 chapter II of chapter 75”; and

24 (5) in paragraph 4 of subsection (g)—

1 (A) by striking subparagraph (A) and re-
2 designating subparagraphs (B) and (C) as sub-
3 paragraphs (A) and (B), respectively;

4 (B) in subparagraph (A), as redesignated
5 by subparagraph (A), by striking “paragraph
6 (3)(B)” and inserting “paragraph (3)(A)”; and

7 (C) in subparagraph (B), as so redesign-
8 ated, by striking “paragraph (3)(C)” and in-
9 serting “paragraph (3)(B)”.

10 **SEC. 5. ACTIONS AGAINST SENIOR EXECUTIVES FOR PER-**
11 **FORMANCE OR CONDUCT.**

12 (a) REPEAL OF PAY RETENTION FOR CAREER AP-
13 PPOINTEES REMOVED FROM THE SENIOR EXECUTIVE
14 SERVICE.—Section 3594(c)(1)(B) of title 5, United States
15 Code, is amended to read as follows:

16 “(B)(i) any career appointee placed under sub-
17 section (a) or (b)(2) of this section shall be entitled
18 to receive basic pay at the highest of—

19 “(I) the rate of basic pay in effect for the
20 position in which placed;

21 “(II) the rate of basic pay in effect at the
22 time of the placement for the position the ca-
23 reer appointee held in the civil service imme-
24 diately before being appointed to the Senior Ex-
25 ecutive Service; or

1 “(III) the rate of basic pay in effect for
2 the career appointee immediately before being
3 placed under subsection (a) or (b) of this sec-
4 tion; and

5 “(ii) any career appointee placed under sub-
6 section (b)(1) of this section shall be entitled to re-
7 ceive basic pay at the rate of basic pay in effect for
8 the position in which placed; and”.

9 (b) APPRAISAL SYSTEM REQUIREMENTS.—Section
10 4314(b) of title 5, United States Code, is amended—

11 (1) in paragraph (3), by adding at the end be-
12 fore the semicolon the following: “or, as warranted,
13 from the civil service” ; and

14 (2) in paragraph (4), by adding at the end be-
15 fore the semicolon the following: “or, as warranted,
16 from the civil service”.

17 (c) SUSPENSION FOR 14 DAYS OR LESS.—Paragraph
18 (1) of section 7501 of title 5, United States Code, is
19 amended to read as follows:

20 “(1) ‘employee’ means—

21 “(A) an individual in the competitive serv-
22 vice who is not serving a probationary period or,
23 except as provided in section 1599e of title 10,
24 trial period under an initial appointment or who
25 has completed 1 year of current continuous em-

1 ployment in the same or similar positions under
2 other than a temporary appointment limited to
3 1 year or less; or

4 “(B) a career appointee in the Senior Ex-
5 ecutive Service who—

6 “(i) has completed the probationary
7 period prescribed under section 3393(d); or

8 “(ii) was covered by the provisions of
9 subchapter II of this chapter immediately
10 before appointment to the Senior Executive
11 Service; and”.

12 (d) MODIFICATION OF CAUSE AND PROCEDURE FOR
13 SUSPENSION AND TERMINATION.—Section 7543 of title
14 5, United States Code, is amended—

15 (1) by striking subsections (a), (b), and (c) and
16 inserting the following:

17 “(a) Under regulations prescribed by the Office of
18 Personnel Management, an agency may take an action
19 covered by this subchapter against an employee only for
20 such cause as would promote the efficiency of the service.

21 “(b) An employee against whom an action is proposed
22 is entitled to—

23 “(1) written notice 15 business days in advance,
24 unless there is reasonable cause to believe the em-
25 ployee has committed a crime for which a sentence

1 of imprisonment can be imposed, stating specific
2 reasons for the proposed action;

3 “(2) a reasonable time, but not greater than
4 seven business days, to answer orally and in writing
5 and to furnish affidavits and other documentary evi-
6 dence in support of the answer;

7 “(3) be represented by an attorney or other
8 representative; and

9 “(4) a written decision and the specific reasons
10 therefor.

11 “(c) An agency shall issue the decision 15 business
12 days after the agency provides notice, to the maximum ex-
13 tent practicable, including a file containing all the evidence
14 in support of the proposed action, to the employee af-
15 fected.”;

16 (2) in subsection (d), by inserting before the pe-
17 riod the following: “, but only if such appeal is made
18 not later than 10 business days after the effective
19 date of the action”; and

20 (3) in subsection (e), by striking “and to the
21 employee affected upon the employee’s request” and
22 adding at the end after the period the following:
23 “Upon the affected employee’s request, copies of the
24 documents described in the previous sentence shall
25 be furnished to the employee, to the extent those

1 documents were not provided pursuant to subsection
2 (e).”.

3 (e) CONFORMING AMENDMENTS.—Title 5, United
4 States Code, is amended—

5 (1) in section 3592(b)(2)(B), by striking “any
6 disciplinary action” and inserting “any action under
7 section 7543”;

8 (2) in section 3593(a)(2), by striking “mis-
9 conduct, neglect of duty, malfeasance,” and insert-
10 ing “a removal under section 7543”;

11 (3) in section 3594, by adding at the end the
12 following:

13 “(d) This section shall not apply to any career ap-
14 pointee who is subject to a personnel action under sub-
15 chapter V of chapter 75.”; and

16 (4) in section 7542, by striking “or to a re-
17 moval under section 3592 or” and inserting the fol-
18 lowing: “to a removal from the Senior Executive
19 Service under section 3592 of this title, or to a re-
20 duction in force or a transfer of function as defined
21 in subsections (d) and (e) of section”.

22 (f) APPLICATION.—The amendments made by this
23 section shall not apply to any personnel action under sub-
24 chapter V of chapter 75 of title 5, United States Code,

1 commenced before the effective date provided in section
2 11.

3 **SEC. 6. MODIFICATION OF PROCEDURES FOR FURLOUGH.**

4 (a) FURLOUGH OF 14 DAYS OR LESS; EMERGENCY
5 FURLOUGH.—Subchapter I of chapter 75 of title 5,
6 United States Code, is amended—

7 (1) in section 7501, as amended by section
8 5(c)—

9 (A) by striking “and” at the end of para-
10 graph (1);

11 (B) by striking the period at the end of
12 paragraph (2) and inserting a semicolon; and

13 (C) by adding after paragraph (2) the fol-
14 lowing:

15 “(3) ‘emergency furlough’ means a furlough
16 due to a lapse in appropriations; and

17 “(4) ‘furlough’ has the meaning given that term
18 in section 7511(a)(5).”;

19 (2) in section 7502, by striking “This sub-
20 chapter” and all that follows through “this title.”
21 and inserting the following:

22 “This subchapter applies to—

23 “(1) a suspension for 14 days or less, but does
24 not apply to a suspension under section 7521 or
25 7532 or any action initiated under section 1215;

1 other documentary evidence in support of the
2 answer;

3 “(iii) to be represented by an attorney or
4 other representative; and

5 “(iv) a written decision and specific rea-
6 sons therefor at the earliest practicable date;
7 and

8 “(C) the materials that shall be furnished to
9 furloughed employees and the Merit Systems Protec-
10 tion Board upon request of such an employee or the
11 Board.

12 “(b) An employee may be subject to emergency fur-
13 lough. Under regulations prescribed by the Office of Per-
14 sonnel Management, any employee subject to emergency
15 furlough shall be afforded notice explaining the reasons
16 for the emergency furlough. If the notice cannot be pro-
17 vided in advance of the emergency furlough, notice shall
18 be provided as soon as reasonably practicable. No other
19 procedures, including those provided under subsection (a)
20 or any other provision of this title, shall be available to
21 any employee subject to emergency furlough under this
22 section.

23 “(c) For purposes of this section, the term ‘employee’
24 means any employee described under section
25 7501(1)(A).”.

1 (b) FURLOUGH OF MORE THAN 14 DAYS.—Sub-
2 chapter II of chapter 75 of title 5, United States Code,
3 is amended—

4 (1) in section 7511(a)(5), by inserting before
5 the period the following: “, but does not include an
6 emergency furlough as defined in section 7501 of
7 title 5”;

8 (2) in section 7512, as amended by section
9 2(c)(2)—

10 (A) in paragraph (5), by striking “a fur-
11 lough of 30 days or less” and inserting “a fur-
12 lough of more than 14 days but less than 31
13 days”; and

14 (B) in subparagraph (D), as redesignated
15 by section 2(c)(2), by striking “or” at the end;

16 (C) in subparagraph (E), as so redesign-
17 ated, by striking the period at the end and in-
18 serting “; or”; and

19 (D) by adding at the end the following:

20 “(F) an emergency furlough action under sec-
21 tion 7504.”;

22 (3) in section 7513(a), by striking “an action
23 covered by this subchapter” and inserting “an action
24 described in paragraphs (1) through (4) of section
25 7512”; and

1 (4) by inserting after section 7515 the fol-
2 lowing:

3 **“§ 7516. Furlough cause and procedure**

4 “(a) An employee may be furloughed for such cause
5 as will promote the efficiency of the service. An employee
6 furloughed under this section is entitled to the procedures
7 established under the regulations promulgated under sub-
8 section (b).

9 “(b) Not later than 180 days after the date of the
10 enactment of this section, the Office of Personnel Manage-
11 ment shall promulgate regulations providing for—

12 “(1) the circumstances under which an em-
13 ployee may be furloughed under this section;

14 “(2) the procedures provided under section
15 7513 to the extent appropriate and practicable
16 under the circumstances of the furlough; and

17 “(3) the materials that shall be furnished to
18 furloughed employees and the Merit Systems Protec-
19 tion Board upon request of such an employee or the
20 Board.

21 “(c) An employee against whom a furlough action is
22 taken under this section is entitled to appeal to the Merit
23 Systems Protection Board under section 7701, but only
24 if such appeal is made not later than 10 business days
25 after the effective date of the action.”.

1 (c) ADMINISTRATIVE LAW JUDGES.—Section
2 7521(b) of title 5, United States Code, is amended—

3 (1) in subparagraph (B), by striking “or” at
4 the end;

5 (2) in subparagraph (C), by striking the period
6 at the end and inserting “; or”; and

7 (3) by adding at the end the following:

8 “(D) an emergency furlough action under sec-
9 tion 7504.”.

10 (d) TECHNICAL AMENDMENTS.—

11 (1) SECTION 7503.—The heading of section
12 7503 of title 5, United States Code, is amended by
13 striking “**Cause and procedure**” and inserting
14 “**Suspension cause and procedure**”.

15 (2) SECTION 7513.—The heading of section
16 7513 of such title is amended by striking “**Cause**
17 **and procedure**” and inserting “**Cause and**
18 **procedure for actions other than fur-**
19 **lough**”.

20 (e) CLERICAL AMENDMENTS.—

21 (1) SUBCHAPTER I OF CHAPTER 75 OF TITLE
22 5.—The table of sections for subchapter I of chapter
23 75 of title 5, United States Code, is amended by
24 striking the items relating to sections 7503 and
25 7504 and inserting the following new items:

“7503. Suspension cause and procedure.

“7504. Furlough and emergency furlough cause and procedure.

“7505. Regulations.”.

1 (2) SUBCHAPTER II OF CHAPTER 75 OF TITLE
2 5.—The table of sections for subchapter II of chap-
3 ter 75 of such title is amended—

4 (A) by striking the item relating to section
5 7513 and inserting the following new item:

“7513. Cause and procedure for actions other than furlough.”; and

6 (B) by adding after the item relating to
7 section 7515 the following new item:

“7516. Furlough cause and procedure.”.

8 (f) APPLICATION.—Notwithstanding section 11, the
9 amendments made by this section shall take effect on the
10 sooner of—

11 (1) 180 days after the date of the enactment of
12 this Act; or

13 (2) the date the Office of Personnel Manage-
14 ment promulgates regulations as provided under sec-
15 tions 7504 and 7516 of title 5, United States Code,
16 as added by this section.

1 **SEC. 7. REDUCTION OF ANNUITY OF EMPLOYEE CON-**
2 **VICTED OF A FELONY FOR WHICH AN AD-**
3 **VERSE ACTION IS OR WOULD HAVE BEEN**
4 **TAKEN.**

5 (a) REDUCTION OF ANNUITY OF EMPLOYEE CON-
6 VICTED OF A FELONY FOR WHICH AN ADVERSE ACTION
7 IS TAKEN.—

8 (1) IN GENERAL.—Subchapter II of chapter 83
9 of title 5, United States Code, is amended by adding
10 at the end the following:

11 **“§ 8323. Reduction of benefits of employees convicted**
12 **of certain crimes**

13 “(a) REDUCTION OF ANNUITY.—

14 “(1) IN GENERAL.—The felonious service of a
15 covered individual shall not be taken into account
16 for purposes of calculating an annuity with respect
17 to such individual under subchapter III of this chap-
18 ter or chapter 84 if—

19 “(A) the covered individual is finally con-
20 victed of a felony; and

21 “(B) the head of the agency at which the
22 individual was employed determines that the
23 conviction was based on the acts or omissions
24 of the covered individual that—

1 “(i) were taken or not taken in the
2 performance of the covered individual’s of-
3 ficial duties at the agency; and

4 “(ii) are sufficient to support a re-
5 moval action under section 7513, 7543, or
6 any other provision of law against the cov-
7 ered individual.

8 “(2) PROCEDURES.—A covered individual
9 against whom a determination is made under para-
10 graph (1) shall be afforded—

11 “(A) notice of the determination 15 busi-
12 ness days in advance of a final order under
13 paragraph (3); and

14 “(B) an opportunity to respond to the de-
15 termination by not later than ten business days
16 following receipt of such notice.

17 “(3) FINAL ORDER.—The head of the agency
18 shall issue a final order to carry out paragraph
19 (1)—

20 “(A) in the case of a covered individual
21 who responds under paragraph (2)(B), five
22 business days after receiving the response from
23 the covered individual, to the maximum extent
24 practicable; or

1 “(B) in the case of a covered individual
2 who does not so respond, 15 business days after
3 the date the head of the agency provided notice
4 to the individual under paragraph (2)(A), to the
5 maximum extent practicable.

6 “(4) APPEAL.—Any covered individual with re-
7 spect to whom an annuity is to be reduced under
8 this subsection may appeal the final order under
9 paragraph (3) to the Merit Systems Protection
10 Board pursuant to such regulations as the Board
11 may prescribe for purposes of this subsection. An
12 appeal may not be made under this paragraph later
13 than that date that is 10 business days after the
14 date an order is issued under paragraph (3).

15 “(b) ADMINISTRATIVE REQUIREMENTS.—

16 “(1) IN GENERAL.—Not later than 30 business
17 days after the date that the head of an agency issues
18 a final order under subsection (a) or a final decision
19 of the Merit Systems Protection Board is rendered
20 (as the case may be) with respect to an individual,
21 the applicable employing agency shall amend the
22 covered individual’s retirement records to reflect the
23 period of service that is no longer creditable by oper-
24 ation of this section and transmit the amended

1 records to the Director of the Office of Personnel
2 Management.

3 “(2) ANNUITANTS.—With respect to any cov-
4 ered individual who is an annuitant on the date a
5 final order is so issued, the Director of the Office of
6 Personnel Management shall, not later than 30 busi-
7 ness days after the receipt of amended retirement
8 records from an agency under paragraph (1), recal-
9 culate such annuity.

10 “(c) LUMP-SUM ANNUITY CREDIT.—Any covered in-
11 dividual with respect to whom an annuity is reduced under
12 subsection (a) shall be entitled to be paid so much of such
13 individual’s lump-sum credit as is attributable to the pe-
14 riod of felonious service.

15 “(d) SPOUSE EXCEPTION.—The spouse of any cov-
16 ered individual referred to in subsection (a) shall be eligi-
17 ble for spousal annuity benefits that, but for subsection
18 (a), would otherwise have been payable if the Attorney
19 General of the United States or the attorney general of
20 any state, territory, or the District of Columbia deter-
21 mines that the spouse fully cooperated with authorities in
22 the conduct of a criminal investigation and subsequent
23 prosecution of the individual which resulted in such benefit
24 reduction.

1 “(e) APPLICATION.—Nothing in this section shall be
2 construed to effect or otherwise mitigate the application
3 of any other section in this subchapter.

4 “(f) DEFINITIONS.—In this section—

5 “(1) the term ‘covered individual’ means—

6 “(A) an individual who was an employee
7 (as that term is defined in section 2105) re-
8 moved from a position in the civil service for
9 performance or misconduct under section 7513,
10 7543, or any other provision of law; or

11 “(B) an individual who—

12 “(i) was an employee (as that term is
13 defined in section 2105) subject to a re-
14 moval action for performance or mis-
15 conduct under section 7513, 7543, or any
16 other provision of law; and

17 “(ii) who leaves employment at the
18 agency prior to the issuance of a final deci-
19 sion with respect to such action;

20 “(2) the term ‘felonious service’ means, with re-
21 spect to a covered individual, the period of service—

22 “(A) beginning on the date that the head
23 of the agency determines that the individual
24 commenced engaging in the acts or omissions

1 that gave rise to the removal action or proposed
2 removal action; and

3 “(B) ending on the date that is the earlier
4 of—

5 “(i) the date that the individual is re-
6 moved from or leaves a position at the
7 agency; or

8 “(ii) the date that the individual
9 ceases engaging in the acts or omissions
10 that gave rise to the removal action or pro-
11 posed removal action;

12 “(2) the term ‘finally convicted’ and ‘final con-
13 viction’ refers to a conviction of a felony—

14 “(A) that has not been appealed and is no
15 longer appealable because the time for taking
16 an appeal has expired; or

17 “(B) that has been appealed and the ap-
18 peals process for which is completed;

19 “(3) the term ‘lump-sum credit’ has the mean-
20 ing given that term in section 8331(8) or 8401(19)
21 (as the case may be); and

22 “(4) the term ‘service’ has the meaning given
23 that term under section 8331(12) or 8401(26) (as
24 the case may be).”.

1 (2) CLERICAL AMENDMENT.—The table of sec-
2 tions for Subchapter II of chapter 83 of title 5,
3 United States Code, is amended by adding after the
4 item relating to section 8322 the following new item:

“8323. Reduction of benefits of employees convicted of certain crimes.”.

5 (b) APPLICATION.—Section 8323 of title 5, United
6 States Code, as added by subsection (a), shall apply to
7 acts or omissions described in subsection (a)(1)(B) of such
8 section occurring after the date of the enactment of this
9 Act.

10 (c) REGULATIONS.—The Office of Personnel Man-
11 agement may prescribe regulations to carry out the pur-
12 poses of this section and the amendments made by this
13 section.

14 **SEC. 8. AUTHORITY TO RECOUP BONUSES OR AWARDS**
15 **PAID TO EMPLOYEES.**

16 (a) AUTHORITY.—

17 (1) IN GENERAL.—Chapter 45 of title 5, United
18 States Code, is amended by adding at the end the
19 following:

20 **“SUBCHAPTER IV—REPAYMENT OF BONUSES**
21 **OR AWARDS**
22 **“§ 4531. Recoupment of bonuses or awards paid to**
23 **employees**

24 “(a) IN GENERAL.—Notwithstanding any other pro-
25 vision of law, and except as provided in subsection (c),

1 the head of an agency may issue an order directing an
2 employee or former employee of the agency to repay the
3 amount, or a portion of the amount, of any award or
4 bonus paid to the employee under this title, including
5 under this chapter and sections 5384, 5753, or 5754, if—

6 “(1) the head determines by clear and con-
7 vincing evidence that the employee or former em-
8 ployee engaged in misconduct or unsatisfactory per-
9 formance prior to payment of the award or bonus,
10 and that such award or bonus would not have been
11 paid, in whole or in part, had the misconduct or un-
12 satisfactory performance been known by the agency
13 prior to payment; and

14 “(2) before such repayment, the employee or
15 former employee is afforded—

16 “(A) notice of the determination 15 busi-
17 ness days in advance of a final order under this
18 subsection; and

19 “(B) an opportunity to respond to the pro-
20 posed order by not later than ten business days
21 after the receipt of such notice; and

22 “(3) the head issues the order—

23 “(A) in the case of a proposed order to
24 which an employee or former employee responds
25 under paragraph (2)(B), five business days

1 after receiving the response of the employee or
2 former employee (as the case may be), to the
3 maximum extent practicable; or

4 “(B) in the case of a proposed order to
5 which an employee or former employee does not
6 respond, 15 business days after the agency
7 head provides notice to the employee or former
8 employee (as the case may be) under paragraph
9 (2)(A), to the maximum extent practicable.

10 “(b) RECRUITMENT, RELOCATION, OR RETENTION
11 BONUS.—

12 “(1) IN GENERAL.—In addition to ordering an
13 employee to repay any payments received under a
14 service agreement under subsection (a), the head of
15 an agency shall terminate a recruitment, relocation,
16 or retention service agreement and make no further
17 recruitment, relocation, or retention bonus payments
18 under such agreement.

19 “(2) APPLICATION.—A bonus repayment order
20 or a termination or withholding of a bonus payment
21 under this subsection shall supersede any other
22 bonus payment or repayment requirement estab-
23 lished by law or regulation.

24 “(c) OFFICE OF SPECIAL COUNSEL FILING.—With
25 respect to any case where the employee or former em-

1 ployee has filed a claim with the Office of Special Counsel,
2 an agency seeking repayment of any bonus or award shall
3 provide the Office with notice of intent to seek repayment,
4 and such repayment order shall not be effective unless and
5 until such action is approved by the Office.

6 “(d) APPEAL.—Upon the issuance of an order by an
7 agency head under subsection (a) with respect to an em-
8 ployee or former employee, the employee or former em-
9 ployee (as the case may be) shall have an opportunity to
10 appeal the order to the Merit Systems Protection Board
11 under section 7701 if the appeal if filed no later than ten
12 business days after the date of such issuance.”.

13 (2) CLERICAL AMENDMENT.—The table of sec-
14 tions for chapter 45 of title 5, United States Code,
15 is amended by adding after the item relating to sec-
16 tion 4523 the following:

“SUBCHAPTER IV—REPAYMENT OF BONUSES OR AWARDS

“4531. Recoupment of bonuses or awards paid to employees.”.

17 (b) OTHER BONUSES OR AWARDS.—

18 (1) IN GENERAL.—Notwithstanding any other
19 provision of law, a bonus or award to an employee
20 (as that term is defined in section 2105 of title 5,
21 United States Code) that is similar to a bonus or
22 award covered by section 4531 of such title shall be
23 subject to the requirements in such section 4531.
24 The head of the applicable agency shall ensure that

1 such section 4531 shall apply to employees of that
2 agency.

3 (2) APPLICATION.—An employee covered by
4 such section 4531 by operation of paragraph (1)
5 may not appeal any decision regarding a bonus
6 under that section or such paragraph to the Merit
7 Systems Protection Board if the employee is not oth-
8 erwise authorized by law to appeal to the Board.

9 (c) SERVICE AGREEMENTS.—

10 (1) IN GENERAL.—The Director of the Office of
11 Personnel Management shall direct each agency (as
12 that term is defined in section 4501(1) of title 5,
13 United States Code) to incorporate into service
14 agreements entered into after the date of the enact-
15 ment of this Act under sections 5753 and 5754 of
16 such title terms addressing the conditions under
17 which the agreement and bonus payments shall be
18 terminated and employees may be required to repay
19 bonus payments under such section 4531.

20 (2) CONFORMING AMENDMENTS.—Subchapter
21 IV of chapter 57 of title 5, United States Code, is
22 amended—

23 (A) in section 5753(c)(2)(A)—

24 (i) by striking “and” at the end of
25 clause (iii);

1 (ii) by redesignating clause (iv) as
2 clause (v); and

3 (iii) by inserting after clause (iii) the
4 following:

5 “(iv) notwithstanding any additional bonus
6 payment and service agreement termination re-
7 quirements in this subsection, the conditions
8 under which—

9 “(I) the agreement and bonus pay-
10 ments shall be terminated under section
11 4531; and

12 “(II) the employee may be required to
13 repay bonus payments under such section
14 during or after the completion of the serv-
15 ice period;” and

16 (B) in section 5754(d)—

17 (i) in paragraph (2)(A)—

18 (I) by striking “and” at the end
19 of clause (iii);

20 (II) by redesignating clause (iv)
21 as clause (v); and

22 (III) by inserting after clause
23 (iii) the following:

24 “(iv) notwithstanding any additional bonus
25 payment and service agreement termination re-

1 quirements in this subsection, the conditions
2 under which—

3 “(I) the agreement and bonus pay-
4 ments shall be terminated under section
5 4531; and

6 “(II) the employee may be required to
7 repay bonus payments under such section
8 during or after the completion of the serv-
9 ice period;”;

10 (ii) by striking paragraph (3); and

11 (iii) by redesignating paragraph (4) as
12 paragraph (3).

13 (d) REGULATIONS.—Not later than one year after the
14 date of the enactment of this Act, the Director of the Of-
15 fice of Personnel Management shall issue such regulations
16 as are necessary to carry out section 4531 of title 5,
17 United States Code, as added by subsection (a).

18 (e) EFFECTIVE DATE.—Section 4531 of title 5,
19 United States Code, as added by subsection (a), shall
20 apply with respect to an award or bonus authorized by
21 an agency to an employee of the agency on or after the
22 effective date provided in section 11.

1 **SEC. 9. EXTENSION OF PROBATIONARY PERIOD FOR POSI-**
2 **TIONS WITHIN THE SENIOR EXECUTIVE**
3 **SERVICE.**

4 (a) IN GENERAL.—Section 3393(d) of title 5, United
5 States Code, is amended by striking “1-year” and insert-
6 ing “2-year”.

7 (b) CONFORMING AMENDMENT.—Section 3592(a)(1)
8 of such title is amended by striking “1-year” and inserting
9 “2-year”.

10 (c) APPLICATION.—The amendments made by this
11 section shall apply in the case of any individual initially
12 appointed as a career appointee under section 3393 of title
13 5, United States Code, on or after the date on which this
14 section takes effect.

15 **SEC. 10. EXTENSION OF PROBATIONARY PERIOD FOR EM-**
16 **PLOYEES IN THE COMPETITIVE SERVICE.**

17 (a) EXTENSION OF PROBATIONARY PERIOD.—

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

20 (A) in subsection (a), by striking “The
21 President” and inserting “Subject to sub-
22 sections (c) and (d), the President”;

23 (B) by redesignating subsection (c) as sub-
24 section (e); and

25 (C) by inserting after subsection (b) the
26 following:

1 “(c)(1) The length of a probationary period estab-
2 lished under paragraph (1) or (2) of subsection (a) shall—

3 “(A) with respect to any position that requires
4 formal training, begin on the date of the appoint-
5 ment to the position and end on the date that is 2
6 years after the date on which such formal training
7 is completed;

8 “(B) with respect to any position that requires
9 a license, begin on the date of the appointment to
10 the position and end on the date that is 2 years
11 after the date of the appointment or the date on
12 which such license is granted, whichever is later; and

13 “(C) with respect to any position not covered by
14 subparagraph (A) or (B), be a period of 2 years be-
15 ginning on the date of the appointment to the posi-
16 tion.

17 “(2) In paragraph (1)—

18 “(A) the term ‘formal training’ means, with re-
19 spect to any position, a training program required
20 by law, rule, or regulation, or otherwise required by
21 the employing agency, to be completed by the em-
22 ployee before the employee is able to successfully
23 execute the duties of the applicable position; and

1 “(B) the term ‘license’ means a license, certifi-
2 cation, or other grant of permission to engage in a
3 particular activity.

4 “(d) The head of each agency shall, in the adminis-
5 tration of this section, take appropriate measures to en-
6 sure that—

7 “(1) any announcement of a vacant position
8 and any offer of appointment made to any individual
9 with respect to any such position clearly states the
10 terms and conditions of any applicable probationary
11 period, including any formal training period and any
12 license requirement;

13 “(2) any individual who is required to complete
14 a probationary period under this section receives
15 timely notice of any requirements, including per-
16 formance requirements, that must be met in order to
17 satisfactorily complete such period;

18 “(3) any supervisor or manager of an individual
19 who is required to complete a probationary period
20 under this section receives periodic notifications of
21 the end date of such period not later than 1 year,
22 6 months, 3 months, and 30 days before such end
23 date; and

24 “(4) if the head decides to retain an individual
25 after the completion of a probationary period under

1 this section, the head submits a certification to that
2 effect, supported by a brief statement of the basis
3 for the certification, in such form and manner as the
4 President may by regulation prescribe.”.

5 (2) TECHNICAL AMENDMENT.—Section 3321(e)
6 of title 5, United States Code (as so redesignated by
7 subsection (a)(2)), is amended by striking “Sub-
8 sections (a) and (b)” and inserting “Subsections (a)
9 through (d)”.

10 (3) APPLICATION.—This subsection and the
11 amendments made by this subsection shall apply in
12 the case of any appointment (as referred to in sec-
13 tion 3321(a)(1) of title 5, United States Code) and
14 any initial appointment (as referred to in section
15 3321(a)(2) of such title) taking effect on or after
16 the date on which this subsection takes effect.—

17 (b) ADVERSE ACTIONS.—

18 (1) SUBCHAPTER I OF CHAPTER 75 OF TITLE
19 5.—Section 7501(1) of title 5, United States Code,
20 as amended by section 5(c) and 6(a)(1), is further
21 amended—

22 (A) by striking “or, except” and inserting
23 “and, except”; and

24 (B) by striking “1 year of current” and in-
25 serting “2 years of current”.

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

4 (A) in subparagraph (A)(i) by striking “;
5 or” and inserting “; and”;

6 (B) in subparagraph (A)(ii), by striking “1
7 year” the first place it appears and inserting “2
8 years”;

9 (C) in subparagraph (B) by striking “1
10 year” and inserting “2 years”; and

11 (D) in subparagraph (C)(i), by striking “;
12 or” and inserting “; and”.

13 (3) APPLICATION.—The amendments made by
14 paragraphs (1) and (2) shall apply in the case of
15 any individual whose period of continuous service (as
16 referred to in the provision of law amended by sub-
17 paragraph (A) or (B) of paragraph (2), as the case
18 may be) commences on or after the date on which
19 this subsection takes effect.

20 (c) REGULATIONS.—The Office of Personnel Man-
21 agement may prescribe regulations to carry out the pur-
22 poses of this section and the amendments made by this
23 section.

1 **SEC. 11. APPLICATION.**

2 (a) **EFFECTIVE DATE.**—Unless otherwise specifically
3 provided for in this Act, the amendments made by this
4 Act shall take effect on the date that is 1 year after the
5 date of the enactment of this Act.

6 (b) **COLLECTIVE BARGAINING AGREEMENTS.**—Not-
7 withstanding any other provision of law, the procedures
8 established or amended by this Act shall supersede any
9 collective bargaining agreement to the extent that such
10 agreement is inconsistent with such procedures.

11 (c) **DEFINITION OF BUSINESS DAY.**—For purposes
12 of carrying out this Act and the amendments made by this
13 Act, the term “business day” means any day other than
14 a Saturday, Sunday, or legal public holiday under section
15 6103(a) of title 5, United States Code.

