



H.R. 4361: Federal Information Systems Safeguards Act of 2016 (Palmer, R-AL)

CONTACT: [Rebekah Armstrong](mailto:Rebekah.Armstrong@house.gov), 202-226-0678

FLOOR SCHEDULE:

July 6, 2016 under a structured rule that makes five amendments in order.

TOPLINE SUMMARY:

[H.R. 4361](#) combines several bills to enhance the security of federal information systems, increase accountability within the senior executive service, provide oversight on official time, and prohibit the administration from issuing midnight rules.

COST:

The Congressional Budget Office (CBO) has not provided an updated score for H.R. 4361.

An [original CBO analysis](#) only estimated the costs of Title I of this bill, which addresses the safeguarding of federal information systems.

CONSERVATIVE CONCERNS:

- **Expand the Size and Scope of the Federal Government?** No.
- **Encroach into State or Local Authority?** No.
- **Delegate Any Legislative Authority to the Executive Branch?** No.
- **Contain Earmarks/Limited Tax Benefits/Limited Tariff Benefits?** No.

DETAILED SUMMARY AND ANALYSIS:

Federal Information Systems Safeguards

This section would provide for enhanced security of federal information systems by ensuring federal agencies take timely and appropriate action to limit, restrict, or prohibit employee access to any website the head of the agency determines to present a security weakness or risk. This denial of access could be implemented without first providing an opportunity for collective bargaining on the actions.

Eliminating Pornography from Agencies

This section is similar H.R. 901, introduced by Representative Meadows, and would direct the Office of Management and Budget to issue guidelines that prohibit accessing pornographic websites from government computers.

There have been several cases of government employees being found watching pornography or storing pornography on government issued computers. For example, in 2013, it was discovered an employee at

the Environmental Protection Agency was viewing pornography for two to six hours every day while at work. According to the [committee report](#), in 2010 the Office of the Inspector General at the Securities and Exchange Commission released a report summarizing 33 cases in which an employee, including senior employees, used their work computer to view pornography.

Extension of Probationary Period for Career Employees

This section would mandate that any position that requires formal training to have a probationary period that begins two years after the completion of formal training or for a position that requires a license, two years after the license is granted. For all other positions, a probationary period would be established for at least two years. Individuals who are required to complete a probationary period would receive notice of the performance requirements that must be met. In addition, upon successful completion of a probationary period, a certification would be made.

This section is similar to H.R. 3023 introduced by Representative Buck. Read the committee report for that bill, [here](#).

Senior Executive Service (SES) Accountability

This section would increase accountability within the Senior Executive Service, and is similar to H.R. 4358 introduced by Representative Walberg. A biennial written justification from the Office of Personnel Management (OPM) would be required for each requested SES position, and it would extend the probationary period for career appointees from one-year to two-years. This section would require SES employees to be given performance requirements in writing no less than 30 days before the start of appraisal period. It would eliminate the provision in current law that allows individuals who are removed from the SES for performance reasons to retain their pay if transferred to a civil service position. Agency heads would be given the authority to place SES employees facing removal for misconduct on mandatory annual leave. Finally, agency heads could seek the expedited removal or transfer of SES employees due to misconduct or poor performance.

OPM Report on Official Time

Similar to [H.R. 4392](#) introduced by Representative Ross, this bill would direct OPM to submit to Congress relating to the use of official time by federal employees. Official time covers time spent by federal employees on union activity during regular working hours. OPM must disclose the average amount of official time expended per bargaining unit employee, the specific types of activities for which the official time was granted.

Midnight Rule Relief

This section would prohibit the administration from proposing or adopting any midnight rules that result in an annual effect of the economy of \$100,000,000 or more, create a major cost increase or prices for consumers, local and state government or geographic region, or create significant adverse effects on employment and wages. Exceptions to this prohibition would be made due to an emergency, enforcement of criminal law, or necessary for national security.

This section is similar to [H.R. 4612](#) introduced by Representative Walberg.

Requirement to Maintain Records

This section would require the Internal Revenue Service (IRS) to keep for at least three years any preserved records requested. A preserved record is any record maintained by a person, other than the federal government, due to rule or guidance by the IRS. Currently, taxpayers are required to maintain documents that support their income, deductions or credits shown on a tax record for a specified amount of time deemed by the IRS. While the IRS enforces these rules on taxpayers, the IRS internal policy regarding maintaining records is much less stringent. Record keeping at the IRS has been at the center of

numerous Congressional investigations, and this bill section would ensure the IRS does not prematurely destroy documents.

This section is [similar](#) to H.R. 4921 introduced by Representative Walker.

AMENDMENTS MADE IN ORDER:

[Amendment #6 \(Palmer, R-AL\)](#): This manager's amendment makes technical and conforming changes to the bill.

[Amendment #5 \(Posey, R-FL\)](#): The amendment would prohibit federal employees, when acting in their official capacity, from establishing or operating information technology not certified by the agency's Chief Information Officer.

[Amendment #1 \(Norton, D-DC\)](#): This amendment strikes that hold SES to higher accountability standards. This includes sections that extend probationary periods, modifies suspension and termination procedures, and forced mandatory leave provisions.

[Amendment #2 \(Watson Coleman, D-NJ\)](#): This amendment strikes the requirement in the OPM report on official time that requires the description of a room or space where official time activities are conducted.

[Amendment #3 \(Watson Coleman, D-NJ\)](#): This amendment would exempt rules that have been included in the Unified Regulatory Agenda for at least one year from the midnight rule prohibition.

COMMITTEE ACTION:

This bill was introduced by Representative Palmer and referred to the House Committee on Oversight and Government Reform. The committee held a mark-up and it was ordered to be reported out as amended by a vote of 21-16.

ADMINISTRATION POSITION:

No Statement of Administration Policy is available at this time.

CONSTITUTIONAL AUTHORITY:

According to the sponsor, Congress has the power to enact this legislation pursuant to the following: Article I, Section 8, Clause 18: The Congress shall have Power To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by the Constitution in the Government of the United States, or in any Department or Officer thereof. (Also known as the "Necessary and Proper clause").