

113TH CONGRESS  
1ST SESSION

# H. R. 2879

To provide limitations on bonuses for Federal employees during sequestration, to provide for investigative leave requirements for members of the Senior Executive Service, to establish certain procedures for conducting in-person or telephonic interactions by Executive branch employees with individuals, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 31, 2013

Ms. JENKINS (for herself, Mr. MEADOWS, and Mr. KELLY of Pennsylvania) introduced the following bill; which was referred to the Committee on Oversight and Government Reform, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To provide limitations on bonuses for Federal employees during sequestration, to provide for investigative leave requirements for members of the Senior Executive Service, to establish certain procedures for conducting in-person or telephonic interactions by Executive branch employees with individuals, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) **SHORT TITLE.**—This Act may be cited as the  
3 “Stop Government Abuse Act”.

4 (b) **TABLE OF CONTENTS.**—The table of contents is  
5 as follows:

Sec. 1. Short title; table of contents.

**TITLE I—COMMON SENSE IN COMPENSATION**

Sec. 101. Definitions.  
Sec. 102. Limitations.  
Sec. 103. Regulations.

**TITLE II—GOVERNMENT EMPLOYEE ACCOUNTABILITY**

Sec. 201. Suspension for 14 days or less for Senior Executive Service employ-  
ees.  
Sec. 202. Investigative leave and termination authority for Senior Executive  
Service employees.  
Sec. 203. Suspension of Senior Executive Service employees.  
Sec. 204. Misappropriation of funds amendments.

**TITLE III—CITIZEN EMPOWERMENT**

Sec. 301. Amendments.

6 **TITLE I—COMMON SENSE IN**  
7 **COMPENSATION**

8 **SEC. 101. DEFINITIONS.**

9 For purposes of this title—

10 (1) the term “employee” means an employee  
11 (as defined by section 2105(a) of title 5, United  
12 States Code) holding a position in or under an Exec-  
13 utive agency;

14 (2) the term “Executive agency” has the mean-  
15 ing given such term by section 105 of title 5, United  
16 States Code;

1           (3) the term “discretionary monetary payment”  
2 means—

3           (A) any award or other monetary payment  
4 under chapter 45, or section 5753 or 5754, of  
5 title 5, United States Code; and

6           (B) any step-increase under section 5336  
7 of title 5, United States Code;

8           (4) the term “covered compensation”, as used  
9 with respect to an employee in connection with any  
10 period, means the sum of—

11           (A) the basic pay, and

12           (B) any discretionary monetary payments  
13 (excluding basic pay),  
14 payable to such employee during such period;

15           (5) the term “basic pay” means basic pay for  
16 service as an employee; and

17           (6) the term “sequestration period” means a  
18 period beginning on the first day of a fiscal year in  
19 which a sequestration order with respect to discre-  
20 tionary spending or direct spending is issued under  
21 section 251A or section 254 of the Balanced Budget  
22 and Emergency Deficit Control Act of 1985 and  
23 ending on the last day of the fiscal year to which the  
24 sequestration order applies.

1 **SEC. 102. LIMITATIONS.**

2 (a) IN GENERAL.—Notwithstanding any other provi-  
3 sion of law—

4 (1) no discretionary monetary payment may be  
5 made to an employee during any sequestration pe-  
6 riod to the extent that such payment would cause in  
7 a fiscal year the total covered compensation of such  
8 employee for such fiscal year to exceed 105 percent  
9 of the total amount of basic pay payable to such in-  
10 dividual (before the application of any step-increase  
11 in such fiscal year under section 5336 of title 5,  
12 United States Code) for such fiscal year; and

13 (2) except as provided in subsection (b), during  
14 any sequestration period, an agency may not pay a  
15 performance award under section 5384 of title 5,  
16 United States Code, to the extent that such payment  
17 would cause the number of employees in the agency  
18 receiving such award during such period to exceed  
19 33 percent of the total number of employees in the  
20 agency eligible to receive such award during such pe-  
21 riod.

22 (b) WAIVERS.—For the purposes of any sequestra-  
23 tion period—

24 (1) the head of any agency may, subject to ap-  
25 proval by the Director of the Office of Personnel

1 Management, waive the requirements of subsection  
2 (a)(2); and

3 (2) the head of any agency may waive the re-  
4 quirements of subsection (a)(1) with respect to any  
5 employee if the requirements of such subsection  
6 would violate the terms of a collective bargaining  
7 agreement covering such employee, except that this  
8 paragraph shall not apply to any employee covered  
9 by a collective bargaining agreement that is renewed  
10 on or after the date of enactment of this title.

11 (c) NOTIFICATION.—In the case of an agency for  
12 which the Director of the Office of Personnel Management  
13 grants a waiver under subsection (b)(1), the agency shall  
14 notify the Committee on Oversight and Government Re-  
15 form of the House of Representatives and the Committee  
16 on Homeland Security and Governmental Affairs of the  
17 Senate of the percentage of career appointees receiving  
18 performance awards under section 5384 of title 5, United  
19 States Code, and the dollar amount of each performance  
20 award.

21 (d) APPLICATION.—This section shall apply to any  
22 discretionary monetary payment or performance award  
23 under section 5384 of title 5, United States Code, made  
24 on or after the date of enactment of this title.

1 **SEC. 103. REGULATIONS.**

2 The Office of Personnel Management may prescribe  
3 regulations to carry out this title.

4 **TITLE II—GOVERNMENT**  
5 **EMPLOYEE ACCOUNTABILITY**

6 **SEC. 201. SUSPENSION FOR 14 DAYS OR LESS FOR SENIOR**  
7 **EXECUTIVE SERVICE EMPLOYEES.**

8 Paragraph (1) of section 7501 of title 5, United  
9 States Code, is amended to read as follows:

10 “(1) ‘employee’ means—

11 “(A) an individual in the competitive serv-  
12 ice who is not serving a probationary or trial  
13 period under an initial appointment or who has  
14 completed 1 year of current continuous employ-  
15 ment in the same or similar positions under  
16 other than a temporary appointment limited to  
17 1 year or less; or

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

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

22 “(ii) was covered by the provisions of  
23 subchapter II of this chapter immediately  
24 before appointment to the Senior Executive  
25 Service;”.

1 **SEC. 202. INVESTIGATIVE LEAVE AND TERMINATION AU-**  
2 **THORITY FOR SENIOR EXECUTIVE SERVICE**  
3 **EMPLOYEES.**

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

7 “SUBCHAPTER VI—INVESTIGATIVE LEAVE FOR  
8 SENIOR EXECUTIVE SERVICE EMPLOYEES

9 “§ 7551. Definitions

10 “For the purposes of this subchapter—

11 “(1) ‘employee’ has the meaning given such  
12 term in section 7541; and

13 “(2) ‘investigative leave’ means a temporary ab-  
14 sence without duty for disciplinary reasons, of a pe-  
15 riod not greater than 90 days.

16 “§ 7552. Actions covered

17 “This subchapter applies to investigative leave.

18 “§ 7553. Cause and procedure

19 “(a)(1) Under regulations prescribed by the Office of  
20 Personnel Management, an agency may place an employee  
21 on investigative leave, without loss of pay and without  
22 charge to annual or sick leave, only for misconduct, ne-  
23 glect of duty, malfeasance, or misappropriation of funds.

24 “(2) If an agency determines, as prescribed in regula-  
25 tion by the Office of Personnel Management, that such  
26 employee’s conduct is flagrant and that such employee in-

1 tentionally engaged in such conduct, the agency may place  
2 such employee on investigative leave under this subchapter  
3 without pay.

4 “(b)(1) At the end of each 45-day period during a  
5 period of investigative leave implemented under this sec-  
6 tion, the relevant agency shall review the investigation into  
7 the employee with respect to the misconduct, neglect of  
8 duty, malfeasance, or misappropriation of funds.

9 “(2) Not later than 5 business days after the end of  
10 each such 45-day period, the agency shall submit a report  
11 describing such review to the Committee on Oversight and  
12 Government Reform of the House of Representatives and  
13 the Committee on Homeland Security and Governmental  
14 Affairs of the Senate.

15 “(3) At the end of a period of investigative leave im-  
16 plemented under this section, the agency shall—

17 “(A) remove an employee placed on investiga-  
18 tive leave under this section;

19 “(B) suspend such employee without pay; or

20 “(C) reinstate or restore such employee to duty.

21 “(4) The agency may extend the period of investiga-  
22 tive leave with respect to an action under this subchapter  
23 for an additional period not to exceed 90 days.

1       “(c) An employee against whom an action covered by  
2 this subchapter is proposed is entitled to, before being  
3 placed on investigative leave under this section—

4               “(1) at least 30 days’ advance written notice,  
5 stating specific reasons for the proposed action, un-  
6 less—

7                       “(A) there is reasonable cause to believe  
8 that the employee has committed a crime for  
9 which a sentence of imprisonment can be im-  
10 posed; or

11                       “(B) the agency determines, as prescribed  
12 in regulation by the Office of Personnel Man-  
13 agement, that the employee’s conduct with re-  
14 spect to which an action covered by this sub-  
15 chapter is proposed is flagrant and that such  
16 employee intentionally engaged in such conduct;

17               “(2) a reasonable time, but not less than 7  
18 days, to answer orally and in writing and to furnish  
19 affidavits and other documentary evidence in sup-  
20 port of the answer;

21               “(3) be represented by an attorney or other  
22 representative; and

23               “(4) a written decision and specific reasons  
24 therefor at the earliest practicable date.

1       “(d) An agency may provide, by regulation, for a  
2 hearing which may be in lieu of or in addition to the op-  
3 portunity to answer provided under subsection (c)(2).

4       “(e) An employee against whom an action is taken  
5 under this section is entitled to appeal to the Merit Sys-  
6 tems Protection Board under section 7701.

7       “(f) Copies of the notice of proposed action, the an-  
8 swer of the employee when written, and a summary there-  
9 of when made orally, the notice of decision and reasons  
10 therefor, and any order effecting an action covered by this  
11 subchapter, together with any supporting material, shall  
12 be maintained by the agency and shall be furnished to the  
13 Merit Systems Protection Board upon its request and to  
14 the employee affected upon the employee’s request.

15       “SUBCHAPTER VII—REMOVAL OF SENIOR  
16               EXECUTIVE SERVICE EMPLOYEES

17       “§ 7561. **Definition**

18       “For purposes of this subchapter, the term ‘em-  
19 ployee’ has the meaning given such term in section 7541.

20       “§ 7562. **Removal of Senior Executive Service employ-**  
21               **ees**

22       “(a) Notwithstanding any other provision of law and  
23 consistent with the requirements of subsection (b), the  
24 head of an agency may remove an employee for serious

1 neglect of duty, misappropriation of funds, or malfeasance  
2 if the head of the agency—

3 “(1) determines that the employee knowingly  
4 acted in a manner that endangers the interest of the  
5 agency mission;

6 “(2) considers the removal to be necessary or  
7 advisable in the interests of the United States; and

8 “(3) determines that the procedures prescribed  
9 in other provisions of law that authorize the removal  
10 of such employee cannot be invoked in a manner  
11 that the head of an agency considers consistent with  
12 the efficiency of the Government.

13 “(b) An employee may not be removed under this sec-  
14 tion—

15 “(1) on any basis that would be prohibited  
16 under—

17 “(A) any provision of law referred to in  
18 section 2302(b)(1); or

19 “(B) paragraphs (8) or (9) of section  
20 2302(b); or

21 “(2) on any basis, described in paragraph (1),  
22 as to which any administrative or judicial pro-  
23 ceeding—

24 “(A) has been commenced by or on behalf  
25 of such employee; and

1                   “(B) is pending.

2           “(c) An employee removed under this section shall be  
3 notified of the reasons for such removal. Within 30 days  
4 after the notification, the employee is entitled to submit  
5 to the official designated by the head of the agency state-  
6 ments or affidavits to show why the employee should be  
7 restored to duty. If such statements and affidavits are  
8 submitted, the head of the agency shall provide a written  
9 response, and may restore the employee’s employment if  
10 the head of the agency chooses.

11           “(d) Whenever the head of the agency removes an  
12 employee under the authority of this section, the head of  
13 the agency shall notify Congress of such termination, and  
14 the specific reasons for the action.

15           “(e) An employee against whom an action is taken  
16 under this section is entitled to appeal to the Merit Sys-  
17 tems Protection Board under section 7701 of this title.

18           “(f) Copies of the notice of proposed action, the an-  
19 swer of the employee when written, and a summary there-  
20 of when made orally, the notice of decision and reasons  
21 therefor, and any order effecting an action covered by this  
22 subchapter, together with any supporting material, shall  
23 be maintained by the agency and shall be furnished to the  
24 Merit Systems Protection Board upon its request and to  
25 the employee affected upon the employee’s request.

1 “(g) A removal under this section does not affect the  
 2 right of the employee affected to seek or accept employ-  
 3 ment with any other department or agency of the United  
 4 States if that employee is declared eligible for such em-  
 5 ployment by the Director of the Office of Personnel Man-  
 6 agement.

7 “(h) The authority of the head of the agency under  
 8 this section may not be delegated.”.

9 (b) CLERICAL AMENDMENT.—The table of sections  
 10 at the beginning of chapter 75 of title 5, United States  
 11 Code, is amended by adding after the item relating to sec-  
 12 tion 7543 the following:

“SUBCHAPTER VI—INVESTIGATIVE LEAVE FOR SENIOR EXECUTIVE SERVICE  
 EMPLOYEES

“7551. Definitions.

“7552. Actions covered.

“7553. Cause and procedure.

“SUBCHAPTER VII—REMOVAL OF SENIOR EXECUTIVE SERVICE EMPLOYEES

“7561. Definition.

“7562. Removal of Senior Executive Service employees.”.

13 **SEC. 203. SUSPENSION OF SENIOR EXECUTIVE SERVICE EM-**  
 14 **PLOYEES.**

15 Section 7543 of title 5, United States Code, is  
 16 amended—

17 (1) in subsection (a), by inserting “misappro-  
 18 priation of funds,” after “malfeasance,”; and

19 (2) in subsection (b), by amending paragraph  
 20 (1) to read as follows:

1           “(1) at least 30 days’ advance written notice,  
2           stating specific reasons for the proposed action, un-  
3           less—

4                   “(A) there is reasonable cause to believe  
5                   that the employee has committed a crime for  
6                   which a sentence of imprisonment can be im-  
7                   posed; or

8                   “(B) the agency determines, as prescribed  
9                   in regulation by the Office of Personnel Man-  
10                  agement, that the employee’s conduct with re-  
11                  spect to which an action covered by this sub-  
12                  chapter is proposed is flagrant and that such  
13                  employee intentionally engaged in such con-  
14                  duct;”.

15 **SEC. 204. MISAPPROPRIATION OF FUNDS AMENDMENTS.**

16           (a) REINSTATEMENT IN THE SENIOR EXECUTIVE  
17 SERVICE.—Section 3593 of title 5, United States Code,  
18 is amended—

19                   (1) in subsection (a)(2), by inserting “mis-  
20                   appropriation of funds,” after “malfeasance,”; and

21                   (2) in subsection (b), by striking “or malfea-  
22                   sance” and inserting “malfeasance, or misappropria-  
23                   tion of funds”.

24           (b) PLACEMENT IN OTHER PERSONNEL SYSTEMS.—  
25 Section 3594(a) of title 5, United States Code, is amended

1 by striking “or malfeasance” and inserting “malfeasance,  
2 or misappropriation of funds”.

3 **TITLE III—CITIZEN**  
4 **EMPOWERMENT**

5 **SEC. 301. AMENDMENTS.**

6 (a) IN GENERAL.—Part III of title 5, United States  
7 Code, is amended by inserting after chapter 79 the fol-  
8 lowing:

9 **“CHAPTER 79A—SERVICES TO MEMBERS**  
10 **OF THE PUBLIC**

“Sec.

“7921. Procedure for in-person and telephonic interactions conducted by Execu-  
tive Branch employees.

11 **“§ 7921. Procedure for in-person and telephonic inter-**  
12 **actions conducted by Executive Branch**  
13 **employees**

14 “(a) PURPOSE.—The purpose of this section is to en-  
15 sure that individuals have the right to record in-person  
16 and telephonic interactions with Executive agency employ-  
17 ees and to ensure that individuals who are the target of  
18 enforcement actions conducted by Executive agency em-  
19 ployees are notified of such right.

20 “(b) DEFINITIONS.—For purposes of this section—

21 “(1) the term ‘telephonic’ means by telephone  
22 or other similar electronic device; and

23 “(2) the term ‘employee’ means an employee of  
24 an Executive agency.

1       “(c) CONSENT OF EXECUTIVE AGENCY EMPLOY-  
2 EES.—Participation by an employee, acting in an official  
3 capacity, in an in-person or telephonic interaction shall  
4 constitute consent by the employee to a recording of that  
5 interaction by any participant in the interaction.

6       “(d) NOTICE OF RIGHTS WHEN FEDERAL EMPLOY-  
7 EES ENGAGED IN CERTAIN ACTIONS.—A notice of an in-  
8 dividual’s right to record conversations with employees  
9 shall be included in any written material provided by an  
10 Executive agency to the individual concerning an audit,  
11 investigation, inspection, or enforcement action that could  
12 result in the imposition of a fine, forfeiture of property,  
13 civil monetary penalty, or criminal penalty against, or the  
14 collection of an unpaid tax, fine, or penalty from, such  
15 individual or a business owned or operated by such indi-  
16 vidual.

17       “(e) OFFICIAL REPRESENTATIVE.—Any person who  
18 is permitted to represent before an Executive agency an  
19 individual under this section shall receive the same notice  
20 as required under subsection (d) with respect to such indi-  
21 vidual.

22       “(f) NO CAUSE OF ACTION.—This section does not  
23 create any express or implied private right of action.

24       “(g) DISCIPLINARY ACTION.—An employee who vio-  
25 lates this section shall be subject to appropriate discipli-

1 nary action in accordance with otherwise applicable provi-  
2 sions of law.

3 “(h) PUBLIC INFORMATION CONCERNING RIGHT TO  
4 RECORD.—

5 “(1) POSTING ON AGENCY WEB SITES.—Within  
6 180 days after the date of the enactment of this sec-  
7 tion, each Executive agency shall post prominently  
8 on its Web site information explaining the right of  
9 individuals to record interactions with employees.

10 “(2) OMB GUIDANCE.—Within 90 days after  
11 the date of the enactment of this section, the Office  
12 of Management and Budget shall issue guidance to  
13 Executive agencies concerning implementation of  
14 paragraph (1).”.

15 (b) CLERICAL AMENDMENT.—The analysis for part  
16 III of title 5, United States Code, is amended by inserting  
17 after the item relating to chapter 79 the following:

“79A. Services to members of the public ..... 7921”.

