

Union Calendar No. 325

115TH CONGRESS
1ST SESSION

H. R. 1132

[Report No. 115–439]

To amend title 5, United States Code, to provide for a 2-year prohibition on employment in a career civil service position for any former political appointee, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 16, 2017

Mr. BUCK (for himself, Mr. TED LIEU of California, and Mr. POLIS) introduced the following bill; which was referred to the Committee on Oversight and Government Reform

DECEMBER 5, 2017

Additional sponsor: Mr. SESSIONS

DECEMBER 5, 2017

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on February 16, 2017]

A BILL

To amend title 5, United States Code, to provide for a 2-year prohibition on employment in a career civil service position for any former political appointee, 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,*

3 **SECTION 1. SHORT TITLE.**

4 *This Act may be cited as the “Political Appointee Bur-*
 5 *rowing Prevention Act”.*

6 **SEC. 2. LIMITATION ON EMPLOYMENT OF POLITICAL AP-**
 7 **POINTEES IN CAREER CIVIL SERVICE POSI-**
 8 **TIONS.**

9 *(a) IN GENERAL.—Subchapter I of chapter 31 of title*
 10 *5, United States Code, is amended by adding at the end*
 11 *the following:*

12 **“§ 3115. Employment of political appointees**

13 *“(a) APPOINTMENT APPROVAL REQUIRED.—*

14 *“(1) IN GENERAL.—An individual described in*
 15 *paragraph (4) may not be appointed to a career posi-*
 16 *tion without receiving prior written approval from*
 17 *the Director of the Office of Personnel Management*
 18 *with respect to such appointment, consistent with the*
 19 *requirements of this subsection.*

20 *“(2) AGENCY APPOINTMENT REQUEST.—The*
 21 *head of an agency shall submit a request to the Direc-*
 22 *tor to approve the appointment of any individual de-*
 23 *scribed in paragraph (4) to a career position. Any*
 24 *such request shall include certification by the agency*

1 *head to the Director that the appointment is critical*
2 *for the agency to meet its mission.*

3 “(3) *OPM REVIEW.*—*The Director shall review*
4 *any request received pursuant to paragraph (2)*
5 *and—*

6 “(A) *with respect to any such request,*
7 *may—*

8 “(i) *approve the request if the Director*
9 *determines that the appointment process*
10 *with respect to the request was fair, open,*
11 *and free from political influence; or*

12 “(ii) *deny the request if—*

13 “(I) *the Director fails to make the*
14 *determination under clause (i); or*

15 “(II) *determines that the agency*
16 *certification under paragraph (2) is*
17 *unreasonable; and*

18 “(B) *with respect to a request approved*
19 *under subparagraph (A)(i), shall, not less than*
20 *five days before the date of approval, provide to*
21 *the Committee on Oversight and Government Re-*
22 *form of the House of Representatives and the*
23 *Committee on Homeland Security and Govern-*
24 *mental Affairs of the Senate the agency certifi-*

1 *cation and the Director’s rationale for concur-*
2 *ring with that certification.*

3 “(4) *COVERED INDIVIDUALS.*—*An individual de-*
4 *scribed in this paragraph is—*

5 “(A) *a political appointee;*

6 “(B) *a former political appointee who held*
7 *any political position during the five-year period*
8 *before the date of the request described in para-*
9 *graph (2); or*

10 “(C) *at the discretion of the Director, a*
11 *former political appointee who held any political*
12 *position before the five-year period described in*
13 *subparagraph (B).*

14 “(b) *RESTRICTION ON APPOINTMENT.*—

15 “(1) *IN GENERAL.*—*Notwithstanding any other*
16 *law, rule, or regulation, during the 2-year period fol-*
17 *lowing the date a political appointee separates from*
18 *a political position, such appointee may not be ap-*
19 *pointed to any career position in the civil service.*

20 “(2) *EXCEPTION.*—*Paragraph (1) shall not*
21 *apply to a political appointee who has not personally*
22 *and substantially participated in any particular*
23 *matter while employed in a political position.*

1 “(c) *APPLICATION.*—*Nothing in this section shall be*
2 *construed to restrict the appointment of an individual who*
3 *is—*

4 “(1) *entitled to reinstatement under section*
5 *3593(b); or*

6 “(2) *eligible for reinstatement under section*
7 *3593(a).*

8 “(d) *DEFINITIONS.*—*In this section—*

9 “(1) *the term ‘agency’ has the meaning given the*
10 *term ‘Executive agency’ in section 105;*

11 “(2) *the term ‘political appointee’ means an in-*
12 *dividual serving in an appointment of any duration*
13 *to a political position;*

14 “(3) *the term ‘political position’ means—*

15 “(A) *a position which has been excepted*
16 *from the competitive service by reason of its con-*
17 *fidential, policy-determining, policy-making, or*
18 *policy-advocating character;*

19 “(B) *a position described under sections*
20 *5312 through 5316 (relating to the Executive*
21 *Schedule); and*

22 “(C) *a general position in the Senior Exec-*
23 *utive Service during such time as it is filled*
24 *by—*

1 “(i) a noncareer appointee, as defined
2 in paragraph (7) of section 3132(a); or

3 “(ii) a limited term appointee or lim-
4 ited emergency appointee, as defined in
5 paragraphs (5) and (6) of section 3132(a),
6 who is serving under a political appoint-
7 ment.

8 “(4) the term ‘career position’ means—

9 “(A) a position in the competitive service
10 filled by career or career-conditional appoint-
11 ment;

12 “(B) a position in the excepted service filled
13 by an appointment of equivalent tenure as a po-
14 sition described in subparagraph (A);

15 “(C) a career reserved position, as defined
16 in paragraph (8) of section 3132(a), in the Sen-
17 ior Executive Service; or

18 “(D) a general position in the Senior Exec-
19 utive Service when filled by a career appointee,
20 as defined in section 3132(a)(4);

21 “(5) the term ‘participated’ means an action
22 taken as an officer or employee through decision, ap-
23 proval, disapproval, recommendation, the rendering
24 of advice, investigation, or other such action; and

1 “(6) the term ‘particular matter’ includes any
 2 investigation, application, request for a ruling or de-
 3 termination, rulemaking, contract, controversy, claim,
 4 charge, accusation, arrest, or judicial or other pro-
 5 ceeding.”.

6 (b) *CLERICAL AMENDMENT.*—The table of sections of
 7 chapter 31 of title 5, United States Code, is amended by
 8 adding after the item relating to section 3114 the following:

 “3115. *Employment of political appointees.*”.

9 (c) *APPLICATION.*—

10 (1) *APPOINTMENT REQUESTS.*—Section 3115(a)
 11 of title 5, United States Code, as added by subsection
 12 (a), shall apply to any appointment or request for
 13 appointment described in such section submitted to
 14 the Office of Personnel Management after the date of
 15 enactment of this Act.

16 (2) *LIMITATION ON APPOINTMENTS.*—Section
 17 3115(b) of title 5, United States Code, as added by
 18 subsection (a), shall apply to any individual who sep-
 19 arates from a political position (as that term is de-
 20 fined in section 3115(c)(2) of such title, as added by
 21 such subsection) after the date of enactment of this
 22 Act.

23 (d) *REGULATIONS REQUIRED.*—The Director of the Of-
 24 fice of Personnel Management shall issue regulations nec-
 25 essary to carry out this Act, including regulations to define

1 *the term “personally and substantially participated” as*
2 *such term is used in section 3115(b)(2) of title 5, United*
3 *States Code, as added by subsection (a).*

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