



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

July 5, 2016  
(House Rules)

## STATEMENT OF ADMINISTRATION POLICY

### H.R. 4361 - Federal Information Systems Safeguards Act of 2016

(Rep. Palmer, R-AL, and one cosponsor)

The Administration is strongly committed to upholding the highest accountability standards for Federal agencies and the Federal workforce, including strict standards to ensure that employees act in the best interests of the American people, and we appreciate the Congress' attention to government reform and oversight efforts. However, certain sections of this legislation would weaken the rights of Federal employees, and be impractical and administratively burdensome to implement. They would also have harmful unintended consequences, while failing to address the issues they are designed to solve and while raising serious constitutional concerns. Because of this, the Administration strongly opposes H.R. 4361 as considered by the Rules Committee.

The Administration believes that the approach to accountability in certain provisions of the legislation is misguided. For example, H.R. 4361 would require expedited removal procedures for agency senior executives that would raise significant constitutional concerns under the Appointments Clause and the Due Process Clause. These procedures impose a time-constricted case review and appeal process that would permit administrative judges who are not appointed in a constitutionally appropriate manner to render removal decisions, would make those decisions final if the administrative judges fail to act within 21 days, and would deny any review of the decisions of the administrative judges by the Merit Systems Protection Board. These procedures are substantially the same as those in section 707 of the Veterans Access, Choice, and Accountability Act of 2014, which the Department of Justice notified the Congress in May of this year could not be defended against constitutional challenge. These provisions would significantly alter and diminish important rights and protections that are available to the vast majority of other employees across the government and that are essential to safeguarding employees' rights. Moreover, these provisions would hamper the Federal government's efforts to attract and retain top talent committed to serving in the Senior Executive Service.

The requirements for mandatory senior executive reassignment would be problematic to implement as written, and duplicative of existing efforts. Under a December 2015 Executive Order, "*Strengthening the Senior Executive Service*," agencies are already required to develop and implement a senior executive rotation plan. The Executive Order provides a more productive approach that considers the agencies' talent and succession management plans, as well as the executive's individual development plan.

The bill would require the Office of Personnel Management (OPM) to report on the use of union official time across the Executive Branch on matters not currently covered in existing OPM reporting. The additional requirements are subjective and virtually impossible to measure. These additional, burdensome requirements would have to be manually gathered for approximately 2,000 local bargaining units across the Executive Branch, making it challenging, if not impossible, to meet the statutory deadlines established by the bill.

In addition to objectionable personnel policy provisions, this bill would set policy that would undermine existing government-wide cybersecurity and records management policies. Amending individual agency records management practices is unnecessary and would set a problematic precedent, as the Federal Records Act already provides clear, transparent, and effective requirements for managing Federal records.

Finally, the "Midnight Rule" provisions in this bill would infringe on the powers of the President to faithfully execute the laws in the final months of the term. They would arbitrarily prohibit the issuance of key rules and thus prevent the implementation of laws passed by the Congress through otherwise lawful, well-justified, and beneficial regulations, and would also subject the rulemaking process to additional, unnecessary judicial review provisions.

If the President were presented with H.R. 4361, his senior advisors would recommend he veto the bill.

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