

119TH CONGRESS
1ST SESSION

S. _____

To require the reinstatement of recently terminated probationary Federal employees, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Ms. ALSOBROOKS (for herself, Mr. VAN HOLLEN, Mr. WARNER, and Mr. KAINE) introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To require the reinstatement of recently terminated probationary Federal employees, 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 “Model Employee Rein-
5 statement for Ill-advised Termination Act” or the
6 “MERIT Act”.

7 **SEC. 2. DEFINITIONS.**

8 In this Act:

1 (2) **COMPETITIVE SERVICE.**—The term “com-
2 petitive service” has the meaning given the term in
3 section 2102 of title 5, United States Code.

4 (3) **COVERED SEPARATION.**—The term “covered
5 separation” means a separation from Government
6 service that is—

7 (A) an involuntary separation from Gov-
8 ernment service, other than an involuntary sep-
9 aration for retirement under section 3382 of
10 title 5, United States Code; or

11 (B) a voluntary separation from Govern-
12 ment service for compensation or other incen-
13 tives offered by the Federal Government.

14 (4) **EXCEPTED SERVICE.**—The term “excepted
15 service” has the meaning given the term in section
16 2103 of title 5, United States Code.

17 (5) **EXECUTIVE AGENCY.**—The term “Executive
18 agency” has the meaning given the term in section
19 105 of title 5, United States Code.

20 (6) **FORMER EMPLOYING AGENCY.**—With re-
21 spect to an affected probationary employee, the term
22 “former employing agency” means the Executive
23 agency from which the separation of the individual
24 made the individual an affected probationary em-
25 ployee.

1 (7) MASS TERMINATION.—The term “mass ter-
2 mination” means not less than 15 covered separa-
3 tions from service in an Executive agency during a
4 30-day period pursuant to the same or related ac-
5 tions, directives, orders, or activities by the Federal
6 Government.

7 (8) PREVIOUS FEDERAL POSITION.—The term
8 “previous Federal position” means, with respect to
9 an affected probationary employee, the position in
10 the Federal Government occupied by the affected
11 probationary employee in the former employing
12 agency immediately before becoming an affected pro-
13 bationary employee.

14 (9) SENIOR EXECUTIVE SERVICE.—The term
15 “Senior Executive Service” has the meaning given
16 the term in section 2101a of title 5, United States
17 Code.

18 **SEC. 3. REINSTATEMENT OF AFFECTED PROBATIONARY**
19 **EMPLOYEES.**

20 (a) IN GENERAL.—Each affected probationary em-
21 ployee, other than an affected probationary employee enti-
22 tled to a payment under subsection (b), is entitled, in ac-
23 cordance with this Act, to—

24 (1) an appointment to a position in the former
25 employing agency of the affected probationary em-

1 ployee that is the same or similar to the previous
2 Federal position of the affected probationary em-
3 ployee; and

4 (2) if the affected probationary employee elects
5 to accept an appointment under paragraph (1), a
6 payment in an amount equal to the amount that the
7 affected probationary employee would have been paid
8 by the former employing agency of the affected pro-
9 bationary employee during the period beginning on
10 the termination date of the affected probationary
11 employee and ending on the date on which the af-
12 fected probationary employee is so appointed ,if the
13 affected probationary employee had not become an
14 affected probationary employee.

15 (b) SUBSEQUENT FEDERAL EMPLOYMENT.—

16 (1) IN GENERAL.—Except as provided in para-
17 graph (4)—

18 (A) an affected probationary employee that
19 was appointed to a new Federal position and
20 occupies such a position as of the date of enact-
21 ment of this Act is entitled to the payment de-
22 scribed in paragraph (2); and

23 (B) an affected probationary employee that
24 was appointed to a new Federal position and

1 does not hold such a position as of the date of
2 enactment of this Act is entitled to—

3 (i) an appointment to a position in the
4 former employing agency of the affected
5 probationary employee that is the same or
6 similar to the previous Federal position of
7 the affected probationary employee; and

8 (ii) if the affected probationary em-
9 ployee elects to accept an appointment
10 under clause (i), the payment described in
11 paragraph (3).

12 (2) CURRENT FEDERAL EMPLOYEE PAYMENT
13 DESCRIBED.—The payment described in this para-
14 graph is a payment in an amount equal to the dif-
15 ference between—

16 (A) the amount that the affected proba-
17 tionary employee would have been paid by the
18 former employing agency of the affected proba-
19 tionary employee during the period beginning
20 on the termination date of the affected proba-
21 tionary employee and ending on the date of en-
22 actment of this Act; and

23 (B) the amount equal to the sum of pay
24 earned by the affected probationary employee in
25 any new Federal position to which the affected

1 probationary employee was appointed during
2 the period described in subparagraph (A).

3 (3) OTHER AFFECTED EMPLOYEE PAYMENT.—

4 The payment described in this paragraph is a pay-
5 ment in an amount equal to the sum of—

6 (A) the payment described in subpara-
7 graph (2); and

8 (B) a payment in an amount equal to the
9 amount that the affected probationary employee
10 would have been paid by the former employing
11 agency of the affected probationary employee
12 during the period beginning on the date of en-
13 actment of this Act and ending on the date on
14 which the affected probationary employee is ap-
15 pointed under paragraph (1)(B), if the affected
16 probationary employee had not become an af-
17 fected probationary employee.

18 (4) EXCEPTION.—An affected probationary em-
19 ployee is not entitled to a payment under paragraph
20 (1) if the amount of that payment is less than zero.

21 (5) NEW FEDERAL POSITION DEFINED.—In
22 this subsection, the term “new Federal position”
23 means a position in the Federal Government to
24 which an affected probationary employee is ap-

1 pointed after becoming an affected probationary em-
2 ployee.

3 (c) PAYMENT.—

4 (1) IN GENERAL.—The former employing agen-
5 cy of an affected probationary employee shall begin
6 making any payment to which that affected proba-
7 tionary employee is entitled under this section not
8 later than 90 days after the pay for each relevant
9 position is determined in accordance with section 5.

10 (2) METHOD.—A payment described in sub-
11 section (a) or (b) shall be paid in 1 lump sum.

12 (3) TAXATION.—For purposes of the Internal
13 Revenue Code of 1986, any payment to an individual
14 under subsection (a) or (b) shall be treated as wages
15 paid with respect to the employment of that indi-
16 vidual.

17 (4) PAY LIMITS.—A payment to an affected
18 probationary employee under this section shall be
19 disregarded with respect to any limit on the pay of
20 employees that is applicable to the affected proba-
21 tionary employee.

22 (5) REINSTATEMENT.—An appointment under
23 subsection (a)(1) or (b)(1)(B) to a position in the
24 competitive service shall be made without regard to

1 the provisions of subchapter I of chapter 33 of title
2 5, United States Code.

3 (d) EMPLOYMENT BENEFITS.—For the purposes of
4 this section, a position is the same or similar to a previous
5 Federal position with respect to an affected probationary
6 employee only if the employment benefits, including retire-
7 ment benefits, health insurance, and leave, available to the
8 affected probationary employee in that position match or
9 exceed the employment benefits available to the affected
10 probationary employee in the previous Federal position of
11 the affected probationary employee.

12 **SEC. 4. NOTICE AND SELECTION.**

13 (a) NOTICE.—Not later than 30 days after the date
14 of enactment of this Act, the head of each Executive agen-
15 cy shall notify each affected probationary employee for
16 which the Executive agency is the former employing agen-
17 cy of the rights of affected probationary employees under
18 this Act and the method by which the affected proba-
19 tionary employee may inform that Executive agency of the
20 acceptance or rejection an appointment in accordance with
21 subsection (b)(1).

22 (b) SELECTION.—

23 (1) IN GENERAL.—An affected probationary
24 employee entitled to an appointment under section 3
25 shall inform the former employing agency of the af-

1 fected probationary employee of the acceptance or
2 rejection of that appointment by that affected proba-
3 tionary employee not later than 30 days after receiv-
4 ing the notice required by subsection (a).

5 (2) FORFEITURE.—An affected probationary
6 employee entitled to an appointment under section 3
7 that does not inform the former employing agency of
8 the affected probationary employee in accordance
9 with paragraph (1) shall cease to be entitled to such
10 an appointment.

11 (c) AGENCY COMPLIANCE.—If an affected proba-
12 tionary employee accepts an appointment under section 3
13 and informs the former employing agency of the affected
14 probationary employee of that acceptance in accordance
15 with subsection (b), the head of the former employing
16 agency shall make that appointment not later than 30
17 days after the affected probationary employee so informs
18 the former employing agency.

19 **SEC. 5. SEPARATION TREATMENT.**

20 Each affected probationary employee is deemed to
21 have been involuntarily separated without cause from the
22 previous Federal position of the affected probationary em-
23 ployee.

1 **SEC. 6. PAYMENT DETERMINATION.**

2 (a) IN GENERAL.—For the purposes of this Act, the
3 Director of the Office of Personnel Management shall de-
4 termine the pay for a position held by an affected proba-
5 tionary employee based on such evidence of the pay of that
6 position as the affected probationary employee may pro-
7 vide, or if the Director determines sufficient evidence has
8 not been so provided to adequately determine the pay for
9 that position, the pay shall be determined by the Director
10 based on such other information as the Director deter-
11 mines appropriate.

12 (b) EMPLOYEE INFORMATION.—An affected proba-
13 tionary employee may provide evidence of the pay of a po-
14 sition to the Director of the Office of Personnel Manage-
15 ment under subsection (a) until the earlier of—

16 (1) the date that is 60 days after the date on
17 which the affected probationary employee received
18 the notice described in section 4(a); or

19 (2) the date on which the Director determines
20 the pay for those positions for the purposes of this
21 Act.

22 (c) INFORMATION SHARING.—The head of each Ex-
23 ecutive agency shall provide to the Director of the Office
24 of Personnel Management such information as the Direc-
25 tor may require to carry out this Act.

1 **SEC. 7. REPORTS.**

2 (a) MASS TERMINATION REPORT.—Not later than 60
3 days after the date of enactment of this Act, the Comp-
4 troller General of the United States shall submit to the
5 Committee on Homeland Security and Governmental Af-
6 fairs of the Senate and the Committee on Oversight and
7 Government Reform of the House of Representatives a re-
8 port on the mass terminations during the period beginning
9 on January 20, 2025, and ending on the date of enact-
10 ment of this Act, including—

11 (1) the number of employees (as defined in sec-
12 tion 2105 of title 5, United States Code) voluntarily
13 or involuntarily separated from Government service
14 as part of those mass terminations, in total and
15 disaggregated by Executive agency;

16 (2) for employees described in paragraph (1)
17 that were involuntarily separated from Government
18 service as part of those mass terminations, the rea-
19 sons provided for those involuntary separations;

20 (3) the number of affected probationary em-
21 ployees;

22 (4) recommendations for employees described in
23 paragraph (1), other than affected probationary em-
24 ployees, to which the provisions of this Act should
25 apply; and

1 (5) such other information as the Comptroller
2 General determines appropriate.

3 (b) REINSTATEMENT REPORT.—Not later than 90
4 days after the date of enactment of this Act, the Director
5 of the Office of Personnel Management shall submit to
6 Congress a report on the reinstatement of affected proba-
7 tionary employees under this Act, including the number
8 of affected probationary employees notified under section
9 4(a) and the number of affected probationary employees
10 that accepted an appointment under this Act.