

# Congress of the United States

## House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5074  
MINORITY (202) 225-5051

<http://oversight.house.gov>

### Opening Statement Ranking Member Elijah E. Cummings

**H.R. 4182, Ensuring a Qualified Civil Service Act of 2017**

**November 2, 2017**

Mr. Chairman, I believe that this Committee's consideration of the EQUALS Act is premature and raises significant concerns.

This legislation appears to be a solution in search of a problem. This Committee has not yet examined whether there is a problem. We have not held hearings to look at the impact of the current one-year probationary period or the extension of that period to two years for Department of Defense personnel. We have not seen any evidence that federal agencies need a blanket one-year extension of the probationary period for *every* federal job.

The Committee also has not determined whether a longer probationary period would improve the ability of agencies to deal with poor performers or further their missions.

My Republican colleagues may cite the two-year probationary period for Department of Defense civilian employees enacted in last year's National Defense Authorization Act as precedent for this bill. However, they should know that the Defense Department did not request that change or otherwise indicate a need for it. More to the point, this Committee has not held any hearings on the actual impact of that change, which undermines due process rights, harms whistleblower rights, and could hurt recruitment and retention.

This legislation raises the same concerns. It would double the time during which federal employees have limited due process and appeal rights as probationary employees. During this time, they may be fired without 30 days' notice. They have limited rights to an attorney or representative, and they generally cannot appeal their removal. This is one step closer to some Members' dangerous dream of making federal workers at-will employees.

Due process protections are necessary to protect against arbitrary agency actions, including retaliation against whistleblowers. This Committee should be aware of the very real danger that unchecked agency action can have on whistleblowers.

For example, the Committee has examined incidents involving significant retaliation against whistleblowers at the U.S. Secret Service. According to a 2013 Department of Homeland Security Inspector General report, and I quote, “supervisors and employees described the [U.S. Secret Service] as a small and competitive agency, which can make fear of retaliation or alienation an issue.” The Inspector General also noted in an employee survey it conducted as part of the 2013 report, 44% of respondents felt they could not report misconduct without fear of retaliation.

Given the critical function that whistleblowers serve in shining a light on waste, fraud, and abuse, and the reliance this Committee has upon whistleblowers in conducting oversight, we should not approve legislation that would result in more whistleblower retaliation at federal agencies.

GAO recently looked at the issue of probationary periods and cautioned that an extension of the probationary period would only be beneficial, quote, “if an agency had effective performance management practices in place and it used the extra time for the purpose intended.”

Before damaging due process and whistleblower rights, we should first determine whether an extension of the probationary period is needed and, if so, whether it is appropriate for all federal service occupations or only certain occupations.

---

Contact: Jennifer Werner, Communications Director, (202) 226-5181.