

114TH CONGRESS  
2D SESSION

# S. 3170

To amend title 38, United States Code, to provide for the removal or demotion of employees of the Department of Veterans Affairs based on performance or misconduct, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

JULY 12, 2016

Mr. RUBIO introduced the following bill; which was read twice and referred to the Committee on Veterans' Affairs

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## A BILL

To amend title 38, United States Code, to provide for the removal or demotion of employees of the Department of Veterans Affairs based on performance or misconduct, 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; TABLE OF CONTENTS.**

4       (a) **SHORT TITLE.**—This Act may be cited as the  
5       “VA Accountability First and Appeals Modernization Act  
6       of 2016”.

7       (b) **TABLE OF CONTENTS.**—The table of contents for  
8       this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. References to title 38, United States Code.
- Sec. 3. Removal or demotion of employees based on performance or misconduct.
- Sec. 4. Reduction of benefits for members of the Senior Executive Service within the Department of Veterans Affairs convicted of certain crimes.
- Sec. 5. Authority to recoup bonuses or awards paid to employees of Department of Veterans Affairs.
- Sec. 6. Authority to recoup relocation expenses paid to or on behalf of employees of Department of Veterans Affairs.
- Sec. 7. Senior executives: personnel actions based on performance or misconduct.
- Sec. 8. Treatment of whistleblower complaints in Department of Veterans Affairs.
- Sec. 9. Reform of rights and processes relating to appeals of decisions regarding claims for benefits under laws administered by Secretary of Veterans Affairs.
- Sec. 10. Limitation on awards and bonuses paid to senior executive employees of Department of Veterans Affairs.

1 **SEC. 2. REFERENCES TO TITLE 38, UNITED STATES CODE.**

2 Except as otherwise expressly provided, whenever in  
 3 this Act an amendment or repeal is expressed in terms  
 4 of an amendment to, or repeal of, a section or other provi-  
 5 sion, the reference shall be considered to be made to a  
 6 section or other provision of title 38, United States Code.

7 **SEC. 3. REMOVAL OR DEMOTION OF EMPLOYEES BASED ON**  
 8 **PERFORMANCE OR MISCONDUCT.**

9 (a) IN GENERAL.—Chapter 7 is amended by adding  
 10 at the end the following new section:

11 **“§ 715. Employees: removal or demotion based on**  
 12 **performance or misconduct**

13 “(a) IN GENERAL.—The Secretary may remove or  
 14 demote an individual who is an employee of the Depart-  
 15 ment if the Secretary determines the performance or mis-  
 16 conduct of the individual warrants such removal or demo-

1 tion. If the Secretary so removes or demotes such an indi-  
2 vidual, the Secretary may—

3 “(1) remove the individual from the civil service  
4 (as defined in section 2101 of title 5); or

5 “(2) demote the individual by means of—

6 “(A) a reduction in grade for which the in-  
7 dividual is qualified and that the Secretary de-  
8 termines is appropriate; or

9 “(B) a reduction in annual rate of pay  
10 that the Secretary determines is appropriate.

11 “(b) PAY OF CERTAIN DEMOTED INDIVIDUALS.—(1)  
12 Notwithstanding any other provision of law, any individual  
13 subject to a demotion under subsection (a)(2)(A) shall, be-  
14 ginning on the date of such demotion, receive the annual  
15 rate of pay applicable to such grade.

16 “(2) An individual so demoted may not be placed on  
17 administrative leave or any other category of paid leave  
18 during the period during which an appeal (if any) under  
19 this section is ongoing, and may only receive pay if the  
20 individual reports for duty. If an individual so demoted  
21 does not report for duty, such individual shall not receive  
22 any pay, awards, bonuses, incentives, allowances, differen-  
23 tials, student loan repayments, special payments, or bene-  
24 fits from the Department.

1           “(c) NOTICE TO CONGRESS.—Not later than 30 days  
2 after removing or demoting an individual under subsection  
3 (a), the Secretary shall submit to the Committee on Vet-  
4 erans’ Affairs of the Senate and the Committee on Vet-  
5 erans’ Affairs of the House of Representatives notice in  
6 writing of such removal or demotion and the reason for  
7 such removal or demotion.

8           “(d) PROCEDURE.—(1) Subsection (b) of section  
9 7513 of title 5 shall apply with respect to a removal or  
10 demotion under this section, except that the period for no-  
11 tice and response, which includes the advance notice pe-  
12 riod required by paragraph (1) of such subsection and the  
13 response period required by paragraph (2) of such sub-  
14 section, shall not exceed a total of ten calendar days.

15           “(2) The procedures under chapter 43 of title 5 shall  
16 not apply to a removal or demotion under this section.

17           “(3)(A) Subject to subparagraph (B) and subsection  
18 (e), any removal or demotion under subsection (a) may  
19 be appealed to the Merit Systems Protection Board under  
20 section 7701 of title 5.

21           “(B) An appeal under subparagraph (A) of a removal  
22 or demotion may only be made if such appeal is made not  
23 later than seven days after the date of such removal or  
24 demotion.

1       “(e) EXPEDITED REVIEW BY MERIT SYSTEMS PRO-  
2     TECTION BOARD.—(1) Upon receipt of an appeal under  
3     subsection (d)(3)(A), the Merit Systems Protection Board  
4     shall expedite any such appeal under such section and, in  
5     any such case, shall issue a decision not later than 60 days  
6     after the date of the appeal.

7       “(2) Notwithstanding section 7701(c)(1)(B) of title  
8     5, the Merit Systems Protection Board shall uphold the  
9     decision of the Secretary to remove or demote an employee  
10    under subsection (a) if the decision is supported by sub-  
11    stantial evidence.

12       “(3) The decision of the Merit Systems Protection  
13    Board under paragraph (1), and any final removal or de-  
14    motion described in paragraph (4), may be appealed to  
15    the United States Court of Appeals for the Federal Circuit  
16    pursuant to section 7703 of title 5. Any decision by such  
17    Court shall be in compliance with section 7462(f)(2) of  
18    this title.

19       “(4) In any case in which the Merit Systems Protec-  
20    tion Board cannot issue a decision in accordance with the  
21    60-day requirement under paragraph (1), the removal or  
22    demotion is final. In such a case, the Merit Systems Pro-  
23    tection Board shall, within 14 days after the date that  
24    such removal or demotion is final, submit to Congress and  
25    the Committee on Veterans’ Affairs of the Senate and the

1 Committee on Veterans' Affairs of the House of Rep-  
2 resentatives a report that explains the reasons why a deci-  
3 sion was not issued in accordance with such requirement.

4       “(5) The Merit Systems Protection Board may not  
5 stay any removal or demotion under this section.

6       “(6) During the period beginning on the date on  
7 which an individual appeals a removal from the civil serv-  
8 ice under subsection (d) and ending on the date that the  
9 Merit Systems Protection Board issues a final decision on  
10 such appeal, such individual may not receive any pay,  
11 awards, bonuses, incentives, allowances, differentials, stu-  
12 dent loan repayments, special payments, or benefits from  
13 the Department.

14       “(7) To the maximum extent practicable, the Sec-  
15 retary shall provide to the Merit Systems Protection  
16 Board such information and assistance as may be nec-  
17 essary to ensure an appeal under this subsection is expe-  
18 dited.

19       “(f) WHISTLEBLOWER PROTECTION.—(1) In the  
20 case of an individual seeking corrective action (or on be-  
21 half of whom corrective action is sought) from the Office  
22 of Special Counsel based on an alleged prohibited per-  
23 sonnel practice described in section 2302(b) of title 5, the  
24 Secretary may not remove or demote such individual

1 under subsection (a) without the approval of the Special  
2 Counsel under section 1214(f) of title 5.

3 “(2) In the case of an individual who has filed a whis-  
4 tleblower complaint, as such term is defined in section 741  
5 of this title, the Secretary may not remove or demote such  
6 individual under subsection (a) until a final decision with  
7 respect to the whistleblower complaint has been made.

8 “(g) TERMINATION OF INVESTIGATIONS BY OFFICE  
9 OF SPECIAL COUNSEL.—Notwithstanding any other provi-  
10 sion of law, the Special Counsel (established by section  
11 1211 of title 5) may terminate an investigation of a pro-  
12 hibited personnel practice alleged by an employee or  
13 former employee of the Department after the Special  
14 Counsel provides to the employee or former employee a  
15 written statement of the reasons for the termination of  
16 the investigation. Such statement may not be admissible  
17 as evidence in any judicial or administrative proceeding  
18 without the consent of such employee or former employee.

19 “(h) RELATION TO OTHER AUTHORITIES.—The au-  
20 thority provided by this section is in addition to the au-  
21 thority provided by subchapter V of chapter 74 of this  
22 title, subchapter II of chapter 75 of title 5, chapter 43  
23 of such title, and any other authority with respect to dis-  
24 ciplining an individual.

25 “(i) DEFINITIONS.—In this section:

1           “(1) The term ‘individual’ means an individual  
2 occupying a position at the Department but does not  
3 include—

4                   “(A) an individual, as that term is defined  
5 in section 713(g); or

6                   “(B) a political appointee.

7           “(2) The term ‘grade’ has the meaning given  
8 that term in section 7511(a) of title 5.

9           “(3) The term ‘misconduct’ includes neglect of  
10 duty, malfeasance, or failure to accept a directed re-  
11 assignment or to accompany a position in a transfer  
12 of function.

13           “(4) The term ‘political appointee’ means an in-  
14 dividual who is—

15                   “(A) employed in a position described  
16 under sections 5312 through 5316 of title 5  
17 (relating to the Executive Schedule);

18                   “(B) a limited term appointee, limited  
19 emergency appointee, or noncareer appointee in  
20 the Senior Executive Service, as defined under  
21 paragraphs (5), (6), and (7), respectively, of  
22 section 3132(a) of title 5; or

23                   “(C) employed in a position of a confiden-  
24 tial or policy-determining character under  
25 schedule C of subpart C of part 213 of title 5

1 of the Code of Federal Regulations (or any suc-  
 2 cessor regulation).”.

3 (b) CLERICAL AND CONFORMING AMENDMENTS.—

4 (1) CLERICAL.—The table of sections at the be-  
 5 ginning of chapter 7 is amended by inserting after  
 6 the item relating to section 713 the following new  
 7 item:

“715. Employees: removal or demotion based on performance or misconduct.”.

8 (2) CONFORMING.—Section 4303(f) of title 5,  
 9 United States Code, is amended—

10 (A) by striking “or” at the end of para-  
 11 graph (2);

12 (B) by striking the period at the end of  
 13 paragraph (3) and inserting “, or”; and

14 (C) by adding at the end the following:

15 “(4) any removal or demotion under section  
 16 715 of title 38.”.

17 **SEC. 4. REDUCTION OF BENEFITS FOR MEMBERS OF THE**  
 18 **SENIOR EXECUTIVE SERVICE WITHIN THE**  
 19 **DEPARTMENT OF VETERANS AFFAIRS CON-**  
 20 **VICTED OF CERTAIN CRIMES.**

21 (a) REDUCTION OF BENEFITS.—

22 (1) IN GENERAL.—Chapter 7 is further amend-  
 23 ed by inserting after section 715, as added by sec-  
 24 tion 3, the following new section:

1 **“§ 717. Senior executives: reduction of benefits of in-**  
2 **dividuals convicted of certain crimes**

3 “(a) REDUCTION OF ANNUITY FOR REMOVED EM-  
4 PLOYEE.—(1) The Secretary shall order that the covered  
5 service of an individual removed from a senior executive  
6 position for performance or misconduct under section 713  
7 of this title, chapter 43 or subchapter V of chapter 75  
8 of title 5, or any other provision of law shall not be taken  
9 into account for purposes of calculating an annuity with  
10 respect to such individual under chapter 83 or chapter 84  
11 of title 5, if—

12 “(A) the individual is convicted of a felony that  
13 influenced the individual’s performance while em-  
14 ployed in the senior executive position; and

15 “(B) before such order is made, the individual  
16 is afforded—

17 “(i) notice of the order and an opportunity  
18 to respond to the order; and

19 “(ii) consistent with paragraph (2), an op-  
20 portunity to appeal the order to another depart-  
21 ment or agency of the Federal Government.

22 “(2) If a final decision on an appeal made under  
23 paragraph (1)(B)(ii) is not made by the applicable depart-  
24 ment or agency of the Federal Government within 30 days  
25 after receiving such appeal, the order of the Secretary

1 under paragraph (1) shall be final and not subject to fur-  
2 ther appeal.

3       “(b) REDUCTION OF ANNUITY FOR RETIRED EM-  
4 PLOYEE.—(1) The Secretary may order that the covered  
5 service of an individual who is subject to a removal or  
6 transfer action for performance or misconduct under sec-  
7 tion 713 of this title, chapter 43 or subchapter V of chap-  
8 ter 75 of title 5, or any other provision of law but who  
9 leaves employment at the Department prior to the  
10 issuance of a final decision with respect to such action  
11 shall not be taken into account for purposes of calculating  
12 an annuity with respect to such individual under chapter  
13 83 or chapter 84 of title 5, if—

14               “(A) the individual is convicted of a felony that  
15 influenced the individual’s performance while em-  
16 ployed in the senior executive position; and

17               “(B) before such order is made, the individual  
18 is afforded—

19                       “(i) notice of the order and an opportunity  
20 to respond to the order; and

21                       “(ii) an opportunity for a hearing con-  
22 ducted by another department or agency of the  
23 Federal Government.

24       “(2) The Secretary shall make such an order not  
25 later than seven days after the date of the conclusion of

1 a hearing described in paragraph (1)(B) that determines  
2 that such order is lawful.

3 “(c) ADMINISTRATIVE REQUIREMENTS.—(1) Not  
4 later than 30 days after the Secretary issues an order  
5 under subsection (a) or (b), the Director of the Office of  
6 Personnel Management shall recalculate the annuity of the  
7 individual.

8 “(2) A decision regarding whether the covered service  
9 of an individual shall be taken into account for purposes  
10 of calculating an annuity under subsection (a) or (b) is  
11 final and may not be reviewed by any department or agen-  
12 cy or any court.

13 “(d) LUMP-SUM ANNUITY CREDIT.—Any individual  
14 with respect to whom an annuity is reduced under sub-  
15 section (a) or (b) shall be entitled to be paid so much of  
16 such individual’s lump-sum credit as is attributable to the  
17 period of covered service.

18 “(e) SPOUSE OR CHILDREN EXCEPTION.—The Sec-  
19 retary, in consultation with the Director of the Office of  
20 Personnel Management, shall prescribe regulations that  
21 may provide for the payment to the spouse or children  
22 of any individual referred to in subsection (a) or (b) of  
23 any amounts that (but for this subsection) would other-  
24 wise have been nonpayable by reason of subsection (a) or  
25 (b). Any such regulations shall be consistent with the re-

1 requirements of sections 8332(o)(5) and 8411(l)(5) of title  
2 5, as the case may be.

3 “(f) DEFINITIONS.—In this section:

4 “(1) The term ‘covered service’ means, with re-  
5 spect to an individual subject to a removal or trans-  
6 fer for performance or misconduct under section 713  
7 of this title, chapter 43 or subchapter V of chapter  
8 75 of title 5, or any other provision of law, the pe-  
9 riod of service beginning on the date that the Sec-  
10 retary determines under such applicable provision  
11 that the individual engaged in activity that gave rise  
12 to such action and ending on the date that the indi-  
13 vidual is removed or transferred from the senior ex-  
14 ecutive position or leaves employment at the Depart-  
15 ment prior to the issuance of a final decision with  
16 respect to such action, as the case may be.

17 “(2) The term ‘lump-sum credit’ has the mean-  
18 ing given such term in section 8331(8) or section  
19 8401(19) of title 5, as the case may be.

20 “(3) The term ‘senior executive position’ has  
21 the meaning given such term in section 713(g)(3) of  
22 this title.

23 “(4) The term ‘service’ has the meaning given  
24 such term in section 8331(12) or section 8401(26)  
25 of title 5, as the case may be.”.

1           (2) CLERICAL AMENDMENT.—The table of sec-  
 2           tions at the beginning of chapter 7 is further amend-  
 3           ed by inserting after the item relating to section  
 4           715, as added by section 3, the following new item:

“717. Senior executives: reduction of benefits of individuals convicted of certain  
 crimes.”.

5           (b) APPLICATION.—Section 717 of title 38, United  
 6           States Code, as added by subsection (a)(1), shall apply  
 7           to any action of removal or transfer under section 713  
 8           of title 38, United States Code, commencing on or after  
 9           the date of the enactment of this Act.

10 **SEC. 5. AUTHORITY TO RECOUP BONUSES OR AWARDS**

11                           **PAID TO EMPLOYEES OF DEPARTMENT OF**  
 12                           **VETERANS AFFAIRS.**

13           (a) IN GENERAL.—Chapter 7 is further amended by  
 14           inserting after section 717, as added by section 4, the fol-  
 15           lowing new section:

16 **“§ 719. Recoupment of bonuses or awards paid to em-**  
 17                           **ployees of Department**

18           “(a) RECOUPMENT.—Notwithstanding any other pro-  
 19           vision of law, the Secretary may issue an order directing  
 20           an employee of the Department to repay the amount, or  
 21           a portion of the amount, of any award or bonus paid to  
 22           the employee under title 5, including under chapter 45 or  
 23           53 of such title, or this title if—

1           “(1) the Secretary determines such repayment  
2           appropriate pursuant to regulations prescribed under  
3           subsection (c); and

4           “(2) before such repayment, the employee is af-  
5           forded notice and an opportunity for a hearing con-  
6           ducted by another department or agency of the Fed-  
7           eral Government.

8           “(b) REVIEW.—(1) Upon the issuance of an order by  
9           the Secretary under subsection (a), the employee shall be  
10          afforded—

11           “(A) notice of the order and an opportunity to  
12          respond to the order; and

13           “(B) consistent with paragraph (2), an oppor-  
14          tunity to appeal the order to another department or  
15          agency of the Federal Government.

16          “(2) If a final decision on an appeal made under  
17          paragraph (1)(B) is not made by the applicable depart-  
18          ment or agency of the Federal Government within 30 days  
19          after receiving such appeal, the order of the Secretary  
20          under subsection (a) shall be final and not subject to fur-  
21          ther appeal.

22          “(c) REGULATIONS.—The Secretary shall prescribe  
23          regulations to carry out this section.”.

24          (b) CLERICAL AMENDMENT.—The table of sections  
25          at the beginning of chapter 7 is further amended by insert-

1 ing after the item relating to section 717, as added by  
 2 section 4, the following new item:

“719. Recoupment of bonuses or awards paid to employees of Department.”.

3 (c) EFFECTIVE DATE.—Section 719 of title 38,  
 4 United States Code, as added by subsection (a), shall  
 5 apply with respect to an award or bonus paid by the Sec-  
 6 retary of Veterans Affairs to an employee of the Depart-  
 7 ment of Veterans Affairs on or after the date of the enact-  
 8 ment of this Act.

9 (d) CONSTRUCTION.—Nothing in this section or the  
 10 amendments made by this section may be construed to  
 11 modify the certification issued by the Office of Personnel  
 12 Management and the Office of Management and Budget  
 13 regarding the performance appraisal system of the Senior  
 14 Executive Service of the Department of Veterans Affairs.

15 **SEC. 6. AUTHORITY TO RECOUP RELOCATION EXPENSES**  
 16 **PAID TO OR ON BEHALF OF EMPLOYEES OF**  
 17 **DEPARTMENT OF VETERANS AFFAIRS.**

18 (a) IN GENERAL.—Chapter 7 is further amended by  
 19 inserting after section 719, as added by section 5, the fol-  
 20 lowing new section:

21 **“§ 721. Recoupment of relocation expenses paid on**  
 22 **behalf of employees of Department**

23 “(a) RECOUPMENT.—(1) Notwithstanding any other  
 24 provision of law, the Secretary may direct an employee of  
 25 the Department to repay the amount, or a portion of the

1 amount, paid to or on behalf of the employee for relocation  
2 expenses under title 5, including any expenses under sec-  
3 tion 5724 or 5724a of such title, or this title if—

4 “(A) the Secretary determines that—

5 “(i) the employee has committed an act of  
6 fraud, waste, or malfeasance; and

7 “(ii) such repayment is appropriate pursu-  
8 ant to regulations prescribed under subsection  
9 (c); and

10 “(B) before such repayment is ordered, the in-  
11 dividual is afforded—

12 “(i) notice of the determination of the Sec-  
13 retary and an opportunity to respond to the de-  
14 termination; and

15 “(ii) consistent with paragraph (2), an op-  
16 portunity to appeal the determination to an-  
17 other department or agency of the Federal Gov-  
18 ernment.

19 “(2) If a final decision on an appeal made under  
20 paragraph (1)(B)(ii) is not made by the applicable depart-  
21 ment or agency of the Federal Government within 30 days  
22 after receiving such appeal, the order of the Secretary  
23 under paragraph (1) shall be final and not subject to fur-  
24 ther appeal.

1       “(b) REVIEW.—A decision by the applicable depart-  
2 ment or agency of the Federal Government regarding a  
3 repayment by an employee pursuant to subsection  
4 (a)(1)(B)(ii) is final and may not be reviewed by any de-  
5 partment, agency, or court.

6       “(c) REGULATIONS.—The Secretary shall prescribe  
7 regulations to carry out this section.”.

8       (b) CLERICAL AMENDMENT.—The table of sections  
9 at the beginning of chapter 7 is further amended by insert-  
10 ing after the item relating to section 719, as added by  
11 section 5, the following new item:

“721. Recoupment of relocation expenses paid to or on behalf of employees of  
Department.”.

12       (c) EFFECTIVE DATE.—Section 721 of title 38,  
13 United States Code, as added by subsection (a), shall  
14 apply with respect to an amount paid by the Secretary  
15 of Veterans Affairs to or on behalf of an employee of the  
16 Department of Veterans Affairs for relocation expenses on  
17 or after the date of the enactment of this Act.

18       (d) CONSTRUCTION.—Nothing in this section or the  
19 amendments made by this section may be construed to  
20 modify the certification issued by the Office of Personnel  
21 Management and the Office of Management and Budget  
22 regarding the performance appraisal system of the Senior  
23 Executive Service of the Department of Veterans Affairs.

1 **SEC. 7. SENIOR EXECUTIVES: PERSONNEL ACTIONS BASED**  
 2 **ON PERFORMANCE OR MISCONDUCT.**

3 (a) EXPANSION OF COVERED PERSONNEL AC-  
 4 TIONS.—Subsection (a)(1) of section 713 is amended, in  
 5 the matter preceding subparagraph (A), by inserting after  
 6 “such removal.” the following: “If the Secretary deter-  
 7 mines that the performance or misconduct of such an indi-  
 8 vidual does not warrant removal from the Senior Execu-  
 9 tive Service position, the Secretary may suspend, rep-  
 10 rimand, or admonish the individual.”.

11 (b) REMOVAL OF APPEAL TO MERIT SYSTEMS PRO-  
 12 TECTION BOARD.—Section 713 is further amended—

13 (1) in subsection (a)—

14 (A) in paragraph (1), by striking “so re-  
 15 moves” and inserting “removes”; and

16 (B) by adding at the end the following:

17 “(3) On the date that is 5 days before taking any  
 18 personnel action against a senior executive under para-  
 19 graph (1), the Secretary shall provide the individual  
 20 with—

21 “(A) notice in writing of the proposed personnel  
 22 action, including the reasons for such action; and

23 “(B) an opportunity to respond to the proposed  
 24 personnel action within the 5-day period.”;

25 (2) in subsection (b)(2)—

1 (A) by striking “under this section” and  
2 inserting “under section 723 of this title”; and

3 (B) by striking the second sentence;

4 (3) in subsection (c)—

5 (A) by striking “30” and inserting “5”;

6 and

7 (B) by striking “and the reason for such  
8 removal or transfer” and inserting “, the rea-  
9 son for such removal or transfer, the name and  
10 position of the employee, and all charging docu-  
11 ments and evidence pertaining to such removal  
12 or transfer”;

13 (4) by striking subsections (d) and (e) and in-  
14 serting the following:

15 “(d) PROCEDURE.—(1) The procedures under title 5  
16 shall not apply to any personnel action under this section.

17 “(2) Subject to paragraph (3), a personnel action  
18 under this section—

19 “(A) may be appealed to the Senior Executive  
20 Disciplinary Appeals Board under section 723; and

21 “(B) may not be appealed to the Merit Systems  
22 Protection Board under section 7701 of title 5.

23 “(3) An appeal under paragraph (2)(A) of a per-  
24 sonnel action under this section may only be made if such  
25 appeal is made not later than seven days after the date

1 of such action. If no such appeal is made, the decision  
2 of the Secretary under this section shall be final.”;

3 (5) by redesignating subsections (f) and (g) as  
4 subsections (e) and (f), respectively; and

5 (6) in subsection (f), as redesignated by para-  
6 graph (5), by adding at the end the following:

7 “(4) The term ‘suspend’ means the placing of  
8 an individual in a temporary status without duties  
9 and pay for a period greater than 14 days.”.

10 (c) REMOVAL OF EXPEDITED PROCEDURES.—Sec-  
11 tion 707 of the Veterans Access, Choice, and Account-  
12 ability Act of 2014 (38 U.S.C. 713 note) is amended by—

13 (1) striking subsection (b); and

14 (2) redesignating subsections (c) and (d) as  
15 subsections (b) and (c), respectively.

16 (d) SENIOR EXECUTIVE DISCIPLINARY APPEALS  
17 BOARD.—Chapter 7 is further amended by inserting after  
18 section 721, as added by section 6, the following new sec-  
19 tion:

20 **“§ 723. Senior Executive Disciplinary Appeals Board**

21 “(a) IN GENERAL.—The Secretary shall from time  
22 to time appoint a board to hear appeals of any personnel  
23 action taken under section 713. Such board shall be  
24 known as the Senior Executive Disciplinary Appeals  
25 Board (in this section referred to as the ‘Board’). Each

1 Board shall consist of three employees of the Department.  
2 The Board shall have exclusive jurisdiction to review any  
3 personnel action under section 713.

4 “(b) REVIEW AND DECISION.—Upon an appeal of  
5 such a personnel action, the Board shall—

6 “(1) review all evidence provided by the Sec-  
7 retary and the appellant; and

8 “(2) issue a decision not later than 21 days  
9 after the date of the appeal.

10 “(c) HEARING.—The Board shall afford an employee  
11 appealing a personnel action an opportunity for an oral  
12 hearing. If such a hearing is held, the appellant may be  
13 represented by counsel.

14 “(d) STANDARD OF REVIEW.—The Board shall up-  
15 hold the decision of the Secretary if—

16 “(1) there is substantial evidence supporting  
17 the decision; and

18 “(2) the applicable personnel action is within  
19 the tolerable bounds of reasonableness.

20 “(e) REVERSAL BY SECRETARY.—If the Board issues  
21 a decision under this section that reverses or otherwise  
22 mitigates the applicable personnel action, the Secretary  
23 may reverse the decision of the Board. Consistent with the  
24 requirements of subsection (g), the decision of the Sec-  
25 retary under this subsection shall be final.

1       “(f) NO DECISION BY BOARD.—In any case in which  
2 the Board cannot issue a decision in accordance with the  
3 21-day requirement under subsection (b)(2), the personnel  
4 action is final.

5       “(g) APPEAL OF DECISION.—A petition to review a  
6 final order or final decision of the Secretary or the Board  
7 under this section shall be filed in the United States Court  
8 of Appeals for the Federal Circuit. Any decision by such  
9 Court shall be in compliance with section 7462(f)(2) of  
10 this title.

11       “(h) PROHIBITION ON RECEIPT OF BENEFITS.—  
12 During the period beginning on the date on which an indi-  
13 vidual appeals a removal from the civil service under sec-  
14 tion 713(d) and ending on the date that the Board or Sec-  
15 retary issues a final decision on such appeal, such indi-  
16 vidual may not receive any pay, awards, bonuses, incen-  
17 tives, allowances, differentials, student loan repayments,  
18 special payments, or benefits from the Department.”.

19       (e) TECHNICAL AND CLERICAL AMENDMENTS.—

20           (1) TECHNICAL AMENDMENT.—The section  
21 heading of section 713 is amended to read as fol-  
22 lows: “**Senior executives: personnel actions**  
23 **based on performance or misconduct**”.



1 ment disclosing, or assisting another employee to disclose,  
2 a potential violation of any law (including any regulation)  
3 or rule, or gross mismanagement, gross waste of funds,  
4 abuse of authority, or substantial and specific danger to  
5 public health and safety.

6 **“§ 742. Treatment of whistleblower complaints**

7       “(a) FILING.—(1) In addition to any other method  
8 established by law in which an employee may file a whistle-  
9 blower complaint, an employee of the Department may file  
10 a whistleblower complaint in accordance with subsection  
11 (g) with a supervisor of the employee.

12       “(2) Except as provided by subsection (d)(1), in mak-  
13 ing a whistleblower complaint under paragraph (1), an  
14 employee shall file the initial complaint with the imme-  
15 diate supervisor of the employee.

16       “(b) NOTIFICATION.—(1) Not later than four busi-  
17 ness days after the date on which a supervisor receives  
18 a whistleblower complaint by an employee under this sec-  
19 tion, the supervisor shall notify, in writing, the employee  
20 of whether the supervisor determines that there is a rea-  
21 sonable likelihood that the complaint discloses a violation  
22 of any law (including any regulation) or rule, or gross mis-  
23 management, gross waste of funds, abuse of authority, or  
24 substantial and specific danger to public health and safety.  
25 The supervisor shall retain written documentation regard-

1 ing the whistleblower complaint and shall submit to the  
2 next-level supervisor a written report on the complaint.

3       “(2) On a monthly basis, the supervisor shall submit  
4 to the appropriate director or other official who is superior  
5 to the supervisor a written report that includes the num-  
6 ber of whistleblower complaints received by the supervisor  
7 under this section during the month covered by the report,  
8 the disposition of such complaints, and any actions taken  
9 because of such complaints pursuant to subsection (c). In  
10 the case in which such a director or official carries out  
11 this paragraph, the director or official shall submit such  
12 monthly report to the supervisor of the director or official.

13       “(c) POSITIVE DETERMINATION.—If a supervisor  
14 makes a positive determination under subsection (b)(1) re-  
15 garding a whistleblower complaint of an employee, the su-  
16 pervisor shall include in the notification to the employee  
17 under such subsection the specific actions that the super-  
18 visor will take to address the complaint.

19       “(d) FILING COMPLAINT WITH NEXT-LEVEL SUPER-  
20 VISORS.—(1) If any circumstance described in paragraph  
21 (3) is met, an employee may file a whistleblower complaint  
22 in accordance with subsection (g) with the next-level su-  
23 pervisor who shall treat such complaint in accordance with  
24 this section.

1       “(2) An employee may file a whistleblower complaint  
2 with the Secretary if the employee has filed the whistle-  
3 blower complaint to each level of supervisors between the  
4 employee and the Secretary in accordance with paragraph  
5 (1).

6       “(3) A circumstance described in this paragraph are  
7 any of the following circumstances:

8           “(A) A supervisor does not make a timely de-  
9 termination under subsection (b)(1) regarding a  
10 whistleblower complaint.

11          “(B) The employee who made a whistleblower  
12 complaint determines that the supervisor did not  
13 adequately address the complaint pursuant to sub-  
14 section (c).

15          “(C) The immediate supervisor of the employee  
16 is the basis of the whistleblower complaint.

17       “(e) TRANSFER OF EMPLOYEE WHO FILES WHIS-  
18 TLEBLOWER COMPLAINT.—If a supervisor makes a posi-  
19 tive determination under subsection (b)(1) regarding a  
20 whistleblower complaint filed by an employee, the Sec-  
21 retary shall—

22           “(1) inform the employee of the ability to vol-  
23 unteer for a transfer in accordance with section  
24 3352 of title 5; and

1           “(2) give preference to the employee for such a  
2           transfer in accordance with such section.

3           “(f) PROHIBITION ON EXEMPTION.—The Secretary  
4           may not exempt any employee of the Department from  
5           being covered by this section.

6           “(g) WHISTLEBLOWER COMPLAINT FORM.—(1) A  
7           whistleblower complaint filed by an employee under sub-  
8           section (a) or (d) shall consist of the form described in  
9           paragraph (2) and any supporting materials or docu-  
10          mentation the employee determines necessary.

11          “(2) The form described in this paragraph is a form  
12          developed by the Secretary, in consultation with the Spe-  
13          cial Counsel (established by section 1211 of title 5), that  
14          includes the following:

15                 “(A) An explanation of the purpose of the whis-  
16                 tleblower complaint form.

17                 “(B) Instructions for filing a whistleblower  
18                 complaint as described in this section.

19                 “(C) An explanation that filing a whistleblower  
20                 complaint under this section does not preclude the  
21                 employee from any other method established by law  
22                 in which an employee may file a whistleblower com-  
23                 plaint.

24                 “(D) A statement directing the employee to in-  
25                 formation accessible on the Internet website of the

1 Department as described in section 745(e) of this  
2 title.

3 “(E) Fields for the employee to provide—

4 “(i) the date that the form is submitted;

5 “(ii) the name of the employee;

6 “(iii) the contact information of the em-  
7 ployee;

8 “(iv) a summary of the whistleblower com-  
9 plaint (including the option to append sup-  
10 porting documents pursuant to paragraph (1));  
11 and

12 “(v) proposed solutions to complaint.

13 “(F) Any other information or fields that the  
14 Secretary determines appropriate.

15 “(3) The Secretary, in consultation with the Special  
16 Counsel, shall develop the form described in paragraph (2)  
17 by not later than 60 days after the date of the enactment  
18 of this section.

19 **“§ 743. Adverse actions against supervisory employ-**  
20 **ees who commit prohibited personnel ac-**  
21 **tions relating to whistleblower com-**  
22 **plaints**

23 “(a) IN GENERAL.—(1) In accordance with para-  
24 graph (2), the Secretary shall carry out the following ad-  
25 verse actions against supervisory employees whom the Sec-

1   retary, an administrative judge, the Merit Systems Protec-  
2   tion Board, the Office of Special Counsel, an adjudicating  
3   body provided under a union contract, a Federal judge,  
4   or the Inspector General of the Department determines  
5   committed a prohibited personnel action described in sub-  
6   section (c):

7           “(A) With respect to the first offense, an ad-  
8           verse action that is not less than a 14-day suspen-  
9           sion and not more than removal.

10           “(B) With respect to the second offense, re-  
11           moval.

12           “(2)(A) Except as provided by subparagraph (B),  
13           and notwithstanding subsections (b) and (c) of section  
14           7513 and section 7543 of title 5, the provisions of sub-  
15           sections (d) and (e) of section 713 of this title shall apply  
16           with respect to an adverse action carried out under para-  
17           graph (1).

18           “(B) An employee who is notified of being the subject  
19           of a proposed adverse action under paragraph (1) may not  
20           be given more than five days following such notification  
21           to provide evidence to dispute such proposed adverse ac-  
22           tion. If the employee does not provide any such evidence,  
23           or if the Secretary determines that such evidence is not  
24           sufficient to reverse the determination to propose the ad-

1 verse action, the Secretary shall carry out the adverse ac-  
2 tion following such five-day period.

3 “(b) LIMITATION ON OTHER ADVERSE ACTIONS.—  
4 With respect to a prohibited personnel action described in  
5 subsection (c), if the Secretary carries out an adverse ac-  
6 tion against a supervisory employee, the Secretary may  
7 carry out an additional adverse action under this section  
8 based on the same prohibited personnel action if the total  
9 severity of the adverse actions do not exceed the level spec-  
10 ified in subsection (a).

11 “(c) PROHIBITED PERSONNEL ACTION DE-  
12 SCRIBED.—A prohibited personnel action described in this  
13 subsection is any of the following actions:

14 “(1) Taking or failing to take a personnel ac-  
15 tion in violation of section 2302 of title 5 against an  
16 employee relating to the employee—

17 “(A) filing a whistleblower complaint in ac-  
18 cordance with section 742 of this title;

19 “(B) filing a whistleblower complaint with  
20 the Inspector General of the Department, the  
21 Special Counsel, or Congress;

22 “(C) providing information or participating  
23 as a witness in an investigation of a whistle-  
24 blower complaint in accordance with section



1 retary shall include the criteria described in paragraph  
2 (2).

3 “(2) The criteria described in this subsection are the  
4 following:

5 “(A) Whether the supervisor treats whistle-  
6 blower complaints in accordance with section 742 of  
7 this title.

8 “(B) Whether the appropriate deciding official,  
9 performance review board, or performance review  
10 committee determines that the supervisor was found  
11 to have committed a prohibited personnel action de-  
12 scribed in section 743(c) of this title by an adminis-  
13 trative judge, the Merit Systems Protection Board,  
14 the Office of Special Counsel, an adjudicating body  
15 provided under a union contract, a Federal judge,  
16 or, in the case of a settlement of a whistleblower  
17 complaint (regardless of whether any fault was as-  
18 signed under such settlement), the Secretary.

19 “(b) BONUSES.—(1) The Secretary may not pay to  
20 a supervisor described in subsection (a)(2)(B) an award  
21 or bonus under this title or title 5, including under chapter  
22 45 or 53 of title 5, during the one-year period beginning  
23 on the date on which the determination was made under  
24 such subsection.

1       “(2) Notwithstanding any other provision of law, the  
2 Secretary shall issue an order directing a supervisor de-  
3 scribed in subsection (a)(2)(B) to repay the amount of any  
4 award or bonus paid under this title or title 5, including  
5 under chapter 45 or 53 of title 5, if—

6           “(A) such award or bonus was paid for per-  
7 formance during a period in which the supervisor  
8 committed a prohibited personnel action as deter-  
9 mined pursuant to such subsection (a)(2)(B);

10          “(B) the Secretary determines such repayment  
11 appropriate pursuant to regulations prescribed by  
12 the Secretary to carry out this section; and

13          “(C) before such order is made, the supervisor  
14 is afforded—

15           “(i) notice of the order and an opportunity  
16 to respond to the order; and

17           “(ii) an opportunity to appeal the order to  
18 another department or agency of the Federal  
19 Government, except that any such department  
20 or agency shall issue a final decision with re-  
21 spect to such appeal not later than the date  
22 that is 30 days after the date the department  
23 or agency received such appeal.

1 **“§ 745. Training regarding whistleblower complaints**

2       “(a) TRAINING.—The Secretary, in coordination with  
3 the Whistleblower Protection Ombudsman designated  
4 under section 3(d)(1)(C) of the Inspector General Act of  
5 1978 (5 U.S.C. App.), shall annually provide to each em-  
6 ployee of the Department training regarding whistleblower  
7 complaints, including—

8           “(1) an explanation of each method established  
9 by law in which an employee may file a whistle-  
10 blower complaint;

11           “(2) an explanation of prohibited personnel ac-  
12 tions described in section 743(c) of this title;

13           “(3) with respect to supervisors, how to treat  
14 whistleblower complaints in accordance with section  
15 742 of this title;

16           “(4) the right of the employee to petition Con-  
17 gress regarding a whistleblower complaint in accord-  
18 ance with section 7211 of title 5;

19           “(5) an explanation that the employee may not  
20 be prosecuted or reprimed against for disclosing in-  
21 formation to Congress in instances in which such  
22 disclosure is permitted by law, including under sec-  
23 tions 5701, 5705, and 7332 of this title, under sec-  
24 tion 552a of title 5 (commonly referred to as the  
25 Privacy Act), under chapter 93 of title 18, and pur-  
26 suant to regulations promulgated under section

1 264(c) of the Health Insurance Portability and Ac-  
2 countability Act of 1996 (Public Law 104–191; 42  
3 U.S.C. 1320d–2 note);

4 “(6) an explanation of the language that is re-  
5 quired to be included in all nondisclosure policies,  
6 forms, and agreements pursuant to section  
7 115(a)(1) of the Whistleblower Protection Enhance-  
8 ment Act of 2012 (Public Law 112–199; 5 U.S.C.  
9 2302 note); and

10 “(7) the right of contractors to be protected  
11 from reprisal for the disclosure of certain informa-  
12 tion under section 4705 or 4712 of title 41.

13 “(b) CERTIFICATION.—The Secretary shall annually  
14 provide training on merit system protection in a manner  
15 that the Special Counsel certifies as being satisfactory.

16 “(c) PUBLICATION.—(1) The Secretary shall publish  
17 on the Internet website of the Department, and display  
18 prominently at each facility of the Department, the rights  
19 of an employee to file a whistleblower complaint, including  
20 the information described in paragraphs (1) through (7)  
21 of subsection (a).

22 “(2) The Secretary shall publish on the Internet  
23 website of the Department the whistleblower complaint  
24 form described in section 742(g)(2) of this title.

1 **“§ 746. Notice to Congress**

2 “Not later than 30 days after the date on which the  
3 Secretary receives from the Special Counsel information  
4 relating to a whistleblower complaint pursuant to section  
5 1213 of title 5, the Secretary shall notify the Committee  
6 on Veterans’ Affairs of the Senate, the Committee on Vet-  
7 erans’ Affairs of the House of Representatives, the Com-  
8 mittee on Homeland Security and Governmental Affairs  
9 of the Senate, and the Committee on Oversight and Gov-  
10 ernment Reform of the House of Representatives of such  
11 information, including the determination made by the Spe-  
12 cial Counsel.”.

13 (b) CONFORMING AND CLERICAL AMENDMENTS.—

14 (1) CONFORMING AMENDMENT.—Chapter 7 is  
15 further amended by inserting before section 701 the  
16 following:

17 “SUBCHAPTER I—GENERAL EMPLOYEE  
18 MATTERS”.

19 (2) CLERICAL AMENDMENTS.—The table of sec-  
20 tions at the beginning of chapter 7 is amended—

21 (A) by inserting before the item relating to  
22 section 701 the following new item:

“SUBCHAPTER I—GENERAL EMPLOYEE MATTERS”;

23 and

24 (B) by adding at the end the following new  
25 items:

## “SUBCHAPTER II—WHISTLEBLOWER COMPLAINTS

- “741. Whistleblower complaint defined.  
 “742. Treatment of whistleblower complaints.  
 “743. Adverse actions against supervisory employees who commit prohibited personnel actions relating to whistleblower complaints.  
 “744. Evaluation criteria of supervisors and treatment of bonuses.  
 “745. Training regarding whistleblower complaints.  
 “746. Notice to Congress.”.

1 **SEC. 9. REFORM OF RIGHTS AND PROCESSES RELATING TO**  
 2 **APPEALS OF DECISIONS REGARDING CLAIMS**  
 3 **FOR BENEFITS UNDER LAWS ADMINISTERED**  
 4 **BY SECRETARY OF VETERANS AFFAIRS.**

5 (a) DEFINITIONS.—Section 101 is amended by add-  
 6 ing at the end the following new paragraphs:

7 “(34) The term ‘agency of original jurisdiction’  
 8 means the activity which entered the original deter-  
 9 mination with regard to a claim for benefits under  
 10 laws administered by the Secretary.

11 “(35) The term ‘relevant evidence’ means evi-  
 12 dence that tends to prove or disprove a matter in  
 13 issue.”.

14 (b) NOTICE REGARDING CLAIMS.—Section 5103(a)  
 15 is amended—

16 (1) in paragraph (1), in the first sentence, by  
 17 striking “The” and inserting “Except as provided in  
 18 paragraph (3), the”;

19 (2) in paragraph (2)(B)(i) by striking “, a  
 20 claim for reopening a prior decision on a claim, or

1 a claim for an increase in benefits;” and inserting  
2 “or a supplemental claim;”; and

3 (3) by adding at the end the following new  
4 paragraph:

5 “(3) The requirement to provide notice under para-  
6 graph (1) shall not apply with respect to a supplemental  
7 claim that is filed within the time frame set forth in sub-  
8 paragraphs (B) and (D) of section 5110(a)(2) of this  
9 title.”.

10 (c) MODIFICATION OF RULE REGARDING DIS-  
11 ALLOWED CLAIMS.—Section 5103A(f) is amended—

12 (1) by striking “reopen” and inserting “readju-  
13 dicate”; and

14 (2) by striking “material” and inserting “rel-  
15 evant”.

16 (d) MODIFICATION OF DUTY TO ASSIST CLAIM-  
17 ANTS.—

18 (1) LIMITATIONS ON DUTY.—Section 5103A(a)  
19 is amended—

20 (A) in paragraph (1), by striking “The”  
21 and inserting “Except as otherwise provided in  
22 this subsection, the”; and

23 (B) by adding at the end the following new  
24 paragraphs:

1       “(4) The Secretary’s duty to assist under paragraph  
2 (1) shall apply only to a claim, or supplemental claim, for  
3 a benefit under a law administered by the Secretary until  
4 the time that a claimant is provided notice of the decision  
5 of the agency of original jurisdiction with respect to such  
6 claim, or supplemental claim, under section 5104 of this  
7 title.

8       “(5) The Secretary’s duty to assist under paragraph  
9 (1) shall not apply to—

10           “(A) higher-level review by the agency of origi-  
11           nal jurisdiction, pursuant to section 5104B of this  
12           title; or

13           “(B) to review on appeal by the Board of Vet-  
14           erans’ Appeals.”.

15           (2) CORRECTION OF ERRORS FROM DUTY TO  
16           ASSIST.—Section 5103A is amended—

17                   (A) by redesignating subsections (e)  
18                   through (g) as subsections (f) through (h), re-  
19                   spectively; and

20                   (B) by inserting after subsection (d) the  
21                   following new subsection:

22           “(e) CORRECTION OF DUTY TO ASSIST ERRORS.—

23 (1) If, during review of the agency of original jurisdiction  
24 decision under section 5104B of this title, the higher-level  
25 reviewer identifies an error on the part of the agency of

1 original jurisdiction to satisfy its duties under this section,  
2 and that error occurred prior to the agency of original ju-  
3 risdiction decision being reviewed, unless the claim can be  
4 granted in full, the higher-level reviewer shall return the  
5 claim for correction of such error and readjudication.

6 “(2)(A) If the Board, during review on appeal of a  
7 decision of the agency of original jurisdiction, identifies  
8 an error on the part of the agency of original jurisdiction  
9 to satisfy its duties under section 5103A of this title, and  
10 that error occurred prior to the decision of the agency of  
11 original jurisdiction on appeal, unless the claim can be  
12 granted in full, the Board shall remand the claim to the  
13 agency of original jurisdiction for correction of such error  
14 and readjudication.

15 “(B) Remand for correction of an error under  
16 subparagraph (A) may include directing the agency of origi-  
17 nal jurisdiction to obtain an advisory medical opinion  
18 under section 5109 of this title.”.

19 (e) DECISIONS AND NOTICES OF DECISIONS.—Sub-  
20 section (b) of section 5104 is amended to read as follows:

21 “(b) In any case where the Secretary denies a benefit  
22 sought, the notice required by subsection (a) shall also in-  
23 clude all of the following:

24 “(1) Identification of the issues adjudicated.

1           “(2) A summary of the evidence considered by  
2 the Secretary.

3           “(3) A summary of the applicable laws and reg-  
4 ulations.

5           “(4) Identification of findings favorable to the  
6 claimant.

7           “(5) Identification of elements not satisfied  
8 leading to the denial.

9           “(6) An explanation of how to obtain or access  
10 evidence used in making the decision.

11           “(7) If applicable, identification of the criteria  
12 that must be satisfied to grant service connection or  
13 the next higher level of compensation.”.

14 (f) BINDING NATURE OF FAVORABLE FINDINGS.—

15           (1) IN GENERAL.—Chapter 51 is amended by  
16 inserting after section 5104 the following new sec-  
17 tion:

18 **“§ 5104A. Binding nature of favorable findings**

19           “Any finding favorable to the claimant as described  
20 in section 5104(b)(4) of this title shall be binding on all  
21 subsequent adjudicators within the Department, unless  
22 clear and convincing evidence is shown to the contrary to  
23 rebut such favorable finding.”.

24           (2) CLERICAL AMENDMENT.—The table of sec-  
25 tions at the beginning of chapter 51 is amended by

1 inserting after the item relating to section 5104 the  
 2 following new item:

“5104A. Binding nature of favorable findings.”.

3 (g) HIGHER-LEVEL REVIEW BY AGENCY OF ORIGI-  
 4 NAL JURISDICTION.—

5 (1) IN GENERAL.—Chapter 51, as amended by  
 6 subsection (f), is further amended by inserting after  
 7 section 5104A, as added by such subsection, the fol-  
 8 lowing new section:

9 **“§ 5104B. Higher-level review by the agency of origi-  
 10 nal jurisdiction**

11 “(a) IN GENERAL.—A claimant may request a de  
 12 novo review of the decision of the agency of original juris-  
 13 diction by a higher-level adjudicator within the agency of  
 14 original jurisdiction.

15 “(b) TIME AND MANNER OF REQUEST.—(1) A re-  
 16 quest for higher-level review by the agency of original ju-  
 17 risdiction shall be—

18 “(A) in writing in such form as the Secretary  
 19 may prescribe; and

20 “(B) made within one year of the notice of the  
 21 agency of original jurisdiction’s decision.

22 “(2) Such request may specifically indicate whether  
 23 such review is requested by a higher-level adjudicator at  
 24 the same office within the agency of original jurisdiction

1 or by an adjudicator at a different office of the agency  
2 of original jurisdiction.

3 “(c) DECISION.—Notice of a higher-level review deci-  
4 sion under this section shall be provided in writing.

5 “(d) EVIDENTIARY RECORD FOR REVIEW.—The evi-  
6 dentiary record before the higher-level reviewer shall be  
7 limited to the evidence of record in the agency of original  
8 jurisdiction decision being reviewed.”.

9 (2) CLERICAL AMENDMENT.—The table of sec-  
10 tions at the beginning of chapter 51, as amended by  
11 subsection (f), is further amended by inserting after  
12 the item relating to section 5104A, as added by such  
13 subsection, the following new item:

“5104B. Higher-level review by the agency of original jurisdiction.”.

14 (h) SUPPLEMENTAL CLAIMS.—

15 (1) IN GENERAL.—Section 5108 is amended to  
16 read as follows:

17 **“§ 5108. Supplemental claims**

18 “If new and relevant evidence is presented or secured  
19 with respect to a supplemental claim, the Secretary shall  
20 readjudicate the claim taking into consideration any evi-  
21 dence added to the record prior to the former disposition  
22 of the claim.”.

23 (2) CLERICAL AMENDMENT.—The table of sec-  
24 tions at the beginning of chapter 51 is amended by

1 striking the item relating to section 5108 and insert-  
2 ing the following new item:

“5108. Supplemental claims.”.

3 (i) REMAND OF CLAIM FOR ADVISORY MEDICAL  
4 OPINION.—Section 5109 is amended by adding at the end  
5 the following new subsection:

6 “(d) The Board of Veterans’ Appeals may remand  
7 a claim to direct the agency of original jurisdiction to ob-  
8 tain an advisory medical opinion under this section to cor-  
9 rect an error on the part of the agency of original jurisdic-  
10 tion to satisfy its duties under section 5103A of this title  
11 when such error occurred prior to the decision of the agen-  
12 cy of original jurisdiction on appeal. The remand instruc-  
13 tions set forth by the Board shall include the questions  
14 to be posed to the independent medical expert providing  
15 the advisory medical opinion.”.

16 (j) EFFECTIVE DATES OF AWARDS.—Section 5110 is  
17 amended—

18 (1) by amending subsection (a) to read as fol-  
19 lows:

20 “(a)(1) Unless specifically provided otherwise in this  
21 chapter, the effective date of an award based on an initial  
22 claim, or a supplemental claim, of compensation, depend-  
23 ency and indemnity compensation, or pension, shall be  
24 fixed in accordance with the facts found, but shall not be  
25 earlier than the date of receipt of application therefor.

1       “(2) For purposes of determining the effective date  
2 of an award under this section, the date of application  
3 shall be considered the date of the filing of the initial ap-  
4 plication for a benefit if the claim is continuously pursued  
5 by filing any of the following, either alone or in succession:

6           “(A) A request for higher-level review under  
7 section 5104B of this title on or before the date that  
8 is one year after the date on which the agency of  
9 original jurisdiction issues a decision.

10          “(B) A supplemental claim under section 5108  
11 of this title on or before the date that is one year  
12 after the date on which the agency of original juris-  
13 diction issues a decision.

14          “(C) A notice of disagreement on or before the  
15 date that is one year after the date on which the  
16 agency of original jurisdiction issues a decision.

17          “(D) A supplemental claim under section 5108  
18 of this title on or before the date that is one year  
19 after the date on which the Board of Veterans’ Ap-  
20 peals issues a decision.

21       “(3) Except as otherwise provided in this section, for  
22 supplemental claims received more than one year after the  
23 date on which the agency of original jurisdiction issued  
24 a decision or the Board of Veterans’ Appeals issued a deci-  
25 sion, the effective date shall be fixed in accordance with

1 the facts found, but shall not be earlier than the date of  
2 receipt of the supplemental claim.”; and

3 (2) in subsection (i), in the first sentence—

4 (A) by striking “reopened” and inserting  
5 “readjudicated”;

6 (B) by striking “material” and inserting  
7 “relevant”; and

8 (C) by striking “reopening” and inserting  
9 “readjudication”.

10 (k) DEFINITION OF AWARD OR INCREASED AWARD  
11 FOR PURPOSES OF PROVISIONS RELATING TO COM-  
12 MENCEMENT OF PERIOD OF PAYMENT.—Section  
13 5111(d)(1) is amended by striking “or reopened award”  
14 and inserting “award or award based on a supplemental  
15 claim”.

16 (l) MODIFICATION ON LIMITATION ON FEES ALLOW-  
17 ABLE FOR REPRESENTATION.—Section 5904(c) is amend-  
18 ed, in paragraphs (1) and (2), by striking “notice of dis-  
19 agreement is filed” both places it appears and inserting  
20 “claimant is provided notice of the agency of original juris-  
21 diction’s initial decision under section 5104 of this title”.

22 (m) MODIFICATION OF BOARD OF VETERANS’ AP-  
23 PEALS REFERRAL REQUIREMENTS AFTER ORDER FOR  
24 RECONSIDERATION OF DECISIONS.—Section 7103(b)(1)

1 is amended by striking “heard” both places it appears and  
2 inserting “decided”.

3 (n) CONFORMING AMENDMENT RELATING TO RE-  
4 ADJUDICATION BY BOARD OF VETERANS’ APPEALS.—  
5 Section 7104(b) is amended by striking “reopened” and  
6 inserting “readjudicated”.

7 (o) MODIFICATION OF RIGHTS AND PROCEDURES  
8 FOR APPEALS TO BOARD OF VETERANS’ APPEALS.—

9 (1) IN GENERAL.—Section 7105 is amended—

10 (A) in subsection (a)—

11 (i) by striking the first sentence and  
12 inserting “Appellate review shall be initi-  
13 ated by the filing of a notice of disagree-  
14 ment in the form prescribed by the Sec-  
15 retary.”; and

16 (ii) by striking “hearing and”;

17 (B) by amending subsection (b) to read as  
18 follows:

19 “(b)(1)(A) Except in the case of simultaneously con-  
20 tested claims, notice of disagreement shall be filed within  
21 one year from the date of the mailing of notice of the deci-  
22 sion of the agency of original jurisdiction pursuant to sec-  
23 tion 5104, 5104B, or 5108 of this title.

1       “(B) A notice of disagreement postmarked before the  
2 expiration of the one-year period shall be accepted as time-  
3 ly filed.

4       “(C) A question as to timeliness or adequacy of the  
5 notice of disagreement shall be decided by the Board.

6       “(2)(A) Notices of disagreement shall be in writing,  
7 shall set out specific allegations of error of fact or law,  
8 and may be filed by the claimant, the claimant’s legal  
9 guardian, or such accredited representative, attorney, or  
10 authorized agent as may be selected by the claimant or  
11 legal guardian.

12       “(B) Not more than one recognized organization, at-  
13 torney, or agent may be recognized at any one time in  
14 the prosecution of a claim.

15       “(C) Notices of disagreement shall be filed with the  
16 Board.

17       “(3)(A) The notice of disagreement shall indicate  
18 whether the claimant requests—

19               “(i) a hearing before the Board;

20               “(ii) an opportunity to submit additional evi-  
21 dence without a hearing before the Board; or

22               “(iii) a review by the Board without a hearing  
23 or submission of additional evidence.

1 “(B) If the claimant does not expressly request a  
2 hearing before the Board in the notice of disagreement,  
3 no hearing before the Board may be held.”;

4 (C) by amending subsection (c) to read as  
5 follows:

6 “(c) If no notice of disagreement is filed in accord-  
7 ance with this chapter within the prescribed period, the  
8 action or decision of the agency of original jurisdiction  
9 shall become final and the claim may not thereafter be  
10 readjudicated or allowed, except as may otherwise be pro-  
11 vided by section 5104B or 5108 of this title or such regu-  
12 lations as the Secretary may promulgate that are con-  
13 sistent with this title.”;

14 (D) by striking subsection (d) and insert-  
15 ing the following new subsection (d):

16 “(d) The Board of Veterans’ Appeals may dismiss  
17 any appeal which fails to allege specific error of fact or  
18 law in the decision being appealed.”;

19 (E) by striking subsection (e); and

20 (F) in the section heading, by striking  
21 “**notice of disagreement and**”.

22 (2) CLERICAL AMENDMENT.—The table of sec-  
23 tions at the beginning of chapter 71 is amended by  
24 striking the item relating to section 7105 and insert-  
25 ing the following new item:

“7105. Filing of appeal.”.

1 (p) MODIFICATION OF PROCEDURES AND REQUIRE-  
2 MENTS FOR SIMULTANEOUSLY CONTESTED CLAIMS.—

3 Subsection (b) of section 7105A is amended to read as  
4 follows:

5 “(b)(1) The substance of the notice of disagreement  
6 shall be communicated to the other party or parties in in-  
7 terest and a period of thirty days shall be allowed for filing  
8 a brief or argument in response thereto.

9 “(2) Such notice shall be forwarded to the last known  
10 address of record of the parties concerned, and such action  
11 shall constitute sufficient evidence of notice.”.

12 (q) REPEAL OF PROCEDURES FOR ADMINISTRATIVE  
13 APPEALS.—

14 (1) IN GENERAL.—Chapter 71 is amended by  
15 striking section 7106.

16 (2) CLERICAL AMENDMENT.—The table of sec-  
17 tions at the beginning of chapter 71 is amended by  
18 striking the item relating to section 7106.

19 (r) MODIFICATIONS RELATING TO APPEALS: DOCK-  
20 ETS; HEARINGS.—Section 7107 is amended to read as fol-  
21 lows:

22 **“§ 7107. Appeals: dockets; hearings**

23 “(a) DOCKETS.—(1) The Board shall maintain two  
24 separate dockets as follows:

1           “(A) A non-hearing option docket shall be  
2 maintained for cases in which no Board hearing is  
3 requested and no additional evidence will be sub-  
4 mitted.

5           “(B) A separate and distinct hearing option  
6 docket shall be maintained for cases in which a  
7 Board hearing is requested in the notice of disagree-  
8 ment or in which no Board hearing is requested, but  
9 the appellant requests, in the notice of disagreement,  
10 an opportunity to submit additional evidence.

11          “(2) Except as provided in subsection (b), each case  
12 before the Board will be decided in regular order according  
13 to its respective place on the Board’s non-hearing option  
14 docket or the hearing option docket.

15          “(b) **ADVANCEMENT ON THE DOCKET.**—(1) A case  
16 on either the Board’s non-hearing option docket or hear-  
17 ing option docket may, for cause shown, be advanced on  
18 motion for earlier consideration and determination.

19          “(2) Any such motion shall set forth succinctly the  
20 grounds upon which the motion is based.

21          “(3) Such a motion may be granted only—

22               “(A) if the case involves interpretation of law of  
23 general application affecting other claims;

24               “(B) if the appellant is seriously ill or is under  
25 severe financial hardship; or

1           “(C) for other sufficient cause shown.

2           “(c) MANNER AND SCHEDULING OF HEARINGS FOR  
3 CASES ON BOARD HEARING OPTION DOCKET.—(1) For  
4 cases on the Board hearing option docket in which a hear-  
5 ing is requested in the notice of disagreement, the Board  
6 shall notify the appellant whether a Board hearing will  
7 be held—

8           “(A) at its principal location, or

9           “(B) by picture and voice transmission at a fa-  
10          cility of the Department where the Secretary has  
11          provided suitable facilities and equipment to conduct  
12          such hearings.

13          “(2)(A) Upon notification of a Board hearing at the  
14 Board’s principal location as described in subparagraph  
15 (A) of paragraph (1), the appellant may alternatively re-  
16 quest a hearing as described in subparagraph (B) of such  
17 paragraph. If so requested, the Board shall grant such re-  
18 quest.

19          “(B) Upon notification of a Board hearing by picture  
20 and voice transmission as described in subparagraph (B)  
21 of paragraph (1), the appellant may alternatively request  
22 a hearing as described in subparagraph (A) of such para-  
23 graph. If so requested, the Board shall grant such request.

1       “(d) SCREENING OF CASES.—Nothing in this section  
2 shall be construed to preclude the screening of cases for  
3 purposes of—

4           “(1) determining the adequacy of the record for  
5 decisional purposes; or

6           “(2) the development, or attempted develop-  
7 ment, of a record found to be inadequate for  
8 decisional purposes.”.

9       (s) REPEAL OF AUTHORITY FOR INDEPENDENT  
10 MEDICAL OPINIONS.—

11           (1) IN GENERAL.—Chapter 71 is amended by  
12 striking section 7109.

13           (2) CLERICAL AMENDMENT.—The table of sec-  
14 tions at the beginning of chapter 71 is amended by  
15 striking the item relating to section 7109.

16       (t) MODIFICATION OF STANDARD FOR REVIEW OF  
17 DECISIONS ON GROUNDS OF CLEAR AND UNMISTAKABLE  
18 ERROR.—Section 7111(e) is amended by striking “, with-  
19 out referral to any adjudicative or hearing official acting  
20 on behalf of the Secretary”.

21       (u) EVIDENTIARY RECORD BEFORE BOARD OF VET-  
22 ERANS’ APPEALS.—

23           (1) IN GENERAL.—Chapter 71 is amended by  
24 adding at the end the following new section:

1 **“§ 7113. Evidentiary record before the Board of Vet-**  
2 **erans’ Appeals**

3 “(a) NON-HEARING OPTION DOCKET.—For cases in  
4 which a hearing before the Board of Veterans’ Appeals  
5 is not requested in the notice of disagreement, the evi-  
6 dentiary record before the Board shall be limited to the  
7 evidence of record at the time of the decision of the agency  
8 of original jurisdiction on appeal.

9 “(b) HEARING OPTION DOCKET.—(1)(A) Except as  
10 provided in subparagraph (B), for cases on the hearing  
11 option docket in which a hearing is requested in the notice  
12 of disagreement, the evidentiary record before the Board  
13 shall be limited to the evidence of record at the time of  
14 the decision of the agency of original jurisdiction on ap-  
15 peal.

16 “(B) The evidentiary record before the Board for  
17 cases on the hearing option docket in which a hearing is  
18 requested, shall include each of the following, which the  
19 Board shall consider in the first instance:

20 “(i) Evidence submitted by the appellant and  
21 his or her representative, if any, at the Board hear-  
22 ing.

23 “(ii) Evidence submitted by the appellant and  
24 his or her representative, if any, within 90 days fol-  
25 lowing the Board hearing.

1       “(2)(A) Except as provided in subparagraph (B), for  
 2 cases on the hearing option docket in which a hearing is  
 3 not requested in the notice of disagreement, the evi-  
 4 dentiary record before the Board shall be limited to the  
 5 evidence considered by the agency of original jurisdiction  
 6 in the decision on appeal.

7       “(B) The evidentiary record before the Board for  
 8 cases on the hearing option docket in which a hearing is  
 9 not requested, shall include each of the following, which  
 10 the Board shall consider in the first instance:

11           “(i) Evidence submitted by the appellant and  
 12 his or her representative, if any, with the notice of  
 13 disagreement.

14           “(ii) Evidence submitted by the appellant and  
 15 his or her representative, if any, within 90 days fol-  
 16 lowing receipt of the notice of disagreement.”.

17       (2) CLERICAL AMENDMENT.—The table of sec-  
 18 tions at the beginning of chapter 71 is amended by  
 19 inserting after the item relating to section 7112 the  
 20 following new item:

“7113. Evidentiary record before the Board of Veterans’ Appeals.”.

21 **SEC. 10. LIMITATION ON AWARDS AND BONUSES PAID TO**  
 22 **SENIOR EXECUTIVE EMPLOYEES OF DEPART-**  
 23 **MENT OF VETERANS AFFAIRS.**

24       Section 705 of the Veterans Access, Choice, and Ac-  
 25 countability Act of 2014 (Public Law 113–146; 38 U.S.C.

1 703 note) is amended by striking the period at the end  
2 and inserting the following: “, except that during each of  
3 fiscal years 2017 through 2021, no award or bonus may  
4 be paid to any employee of the Department of Veterans  
5 Affairs who is a member of the Senior Executive Service.”.

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