

115TH CONGRESS  
1ST SESSION

# H. R. 611

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.

---

## IN THE HOUSE OF REPRESENTATIVES

JANUARY 23, 2017

Mr. LAMBORN introduced the following bill; which was referred to the Committee on Veterans' Affairs, and in addition to the Committee on Oversight and Government Reform, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

---

## 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 2017”.

1 (b) TABLE OF CONTENTS.—The table of contents for  
 2 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. Expansion of personnel actions for senior executives based on performance or misconduct and establishment of Senior Executive Disciplinary Appeals Board.
- Sec. 8. Reform of rights and processes relating to appeals of decisions regarding claims for benefits under laws administered by Secretary of Veterans Affairs.
- Sec. 9. Limitation on awards and bonuses paid to senior executive employees of Department of Veterans Affairs.

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

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

9 **SEC. 3. REMOVAL OR DEMOTION OF EMPLOYEES BASED ON**  
 10 **PERFORMANCE OR MISCONDUCT.**

11 (a) IN GENERAL.—Chapter 7 is amended—

12 (1) by redesignating section 715 as section 725;

13 and

14 (2) by inserting after section 713 the following

15 new section 715:

1 **“§ 715. Employees: removal or demotion based on**  
2 **performance or misconduct**

3 “(a) IN GENERAL.—The Secretary may remove or  
4 demote an individual who is an employee of the Depart-  
5 ment if the Secretary determines the performance or mis-  
6 conduct of the individual warrants such removal or demo-  
7 tion. If the Secretary so removes or demotes such an indi-  
8 vidual, the Secretary may—

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

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

12 “(A) a reduction in grade for which the in-  
13 dividual is qualified and that the Secretary de-  
14 termines is appropriate; or

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

17 “(b) PAY OF CERTAIN DEMOTED INDIVIDUALS.—(1)  
18 Notwithstanding any other provision of law, any individual  
19 subject to a demotion by a reduction in grade under sub-  
20 section (a)(2)(A) shall, beginning on the date of such de-  
21 motion, receive the annual rate of pay applicable to such  
22 grade.

23 “(2) An individual demoted as described in paragraph  
24 (1) may not be placed on administrative leave or any other  
25 category of paid leave during the period during which an  
26 appeal (if any) under this section is ongoing, and may only

1 receive pay if the individual reports for duty. If an indi-  
2 vidual so demoted does not report for duty, such individual  
3 shall not receive any pay, awards, bonuses, incentives, al-  
4 lowances, differentials, student loan repayments, special  
5 payments, or benefits from the Department.

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

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

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

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

1           “(B) An appeal under subparagraph (A) of a removal  
2 or demotion may only be made if such appeal is made not  
3 later than seven days after the date of such removal or  
4 demotion.

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

11           “(2) Notwithstanding section 7701(c)(1)(B) of title  
12 5, the Merit Systems Protection Board shall uphold the  
13 decision of the Secretary to remove or demote an employee  
14 under subsection (a) if the decision is supported by sub-  
15 stantial evidence.

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

23           “(4) In any case in which the Merit Systems Protec-  
24 tion Board cannot issue a decision in accordance with the  
25 60-day requirement under paragraph (1), the removal or

1 demotion is final. In such a case, the Merit Systems Pro-  
2 tection Board shall, within 14 days after the date that  
3 such removal or demotion is final, submit to Congress and  
4 the Committee on Veterans' Affairs of the Senate and the  
5 Committee on Veterans' Affairs of the House of Rep-  
6 resentatives a report that explains the reasons why a deci-  
7 sion was not issued in accordance with such requirement.

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

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

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

23       “(f) WHISTLEBLOWER PROTECTION.—(1) In the  
24 case of an individual seeking corrective action (or on be-  
25 half of whom corrective action is sought) from the Office

1 of Special Counsel based on an alleged prohibited per-  
2 sonnel practice described in section 2302(b) of title 5, the  
3 Secretary may not remove or demote such individual  
4 under subsection (a) without the approval of the Special  
5 Counsel under section 1214(f) of title 5.

6 “(2) In the case of an individual who has filed a whis-  
7 tleblower complaint, as such term is defined in section 731  
8 of this title, the Secretary may not remove or demote such  
9 individual under subsection (a) until a final decision with  
10 respect to the whistleblower complaint has been made.

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

22 “(h) RELATION TO OTHER AUTHORITIES.—The au-  
23 thority provided by this section is in addition to the au-  
24 thority provided by subchapter V of chapter 74 of this  
25 title, subchapter II of chapter 75 of title 5, chapter 43

1 of such title, and any other authority with respect to dis-  
2 ciplining an individual.

3 “(i) DEFINITIONS.—In this section:

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

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

9 “(B) a political appointee.

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

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

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

18 “(A) employed in a position described  
19 under sections 5312 through 5316 of title 5  
20 (relating to the Executive Schedule);

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



1           “(C) employed in a position of a confiden-  
2           tial or policy-determining character under  
3           schedule C of subpart C of part 213 of title 5  
4           of the Code of Federal Regulations (or any suc-  
5           cessor regulation).”.

6           (b) CLERICAL AND CONFORMING AMENDMENTS.—

7           (1) CLERICAL.—The table of sections at the be-  
8           ginning of chapter 7 is amended—

9                   (A) by striking the item relating to section  
10                  715 and inserting the following new item:

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

11                  and

12                   (B) by inserting after the item relating to  
13                  section 715 the following new item:

          “725. Congressional testimony by employees: treatment as official duty.”.

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

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

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

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

21                  “(4) any removal or demotion under section  
22                  715 of title 38.”.

1 **SEC. 4. REDUCTION OF BENEFITS FOR MEMBERS OF THE**  
2 **SENIOR EXECUTIVE SERVICE WITHIN THE**  
3 **DEPARTMENT OF VETERANS AFFAIRS CON-**  
4 **VICTED OF CERTAIN CRIMES.**

5 (a) REDUCTION OF BENEFITS.—

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

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

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

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

23 “(B) before such order is made, the individual  
24 is afforded—

25 “(i) notice of the order and an opportunity  
26 to respond to the order; and

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

4           “(2) If a final decision on an appeal made under  
5           paragraph (1)(B)(ii) is not made by the applicable depart-  
6           ment or agency of the Federal Government within 30 days  
7           after receiving such appeal, the order of the Secretary  
8           under paragraph (1) shall be final and not subject to fur-  
9           ther appeal.

10          “(b) REDUCTION OF ANNUITY FOR RETIRED EM-  
11          PLOYEE.—(1) The Secretary may order that the covered  
12          service of an individual who is subject to a removal or  
13          transfer action for performance or misconduct under sec-  
14          tion 713 of this title, chapter 43 or subchapter V of chap-  
15          ter 75 of title 5, or any other provision of law but who  
16          leaves employment at the Department prior to the  
17          issuance of a final decision with respect to such action  
18          shall not be taken into account for purposes of calculating  
19          an annuity with respect to such individual under chapter  
20          83 or chapter 84 of title 5, if—

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

24                 “(B) before such order is made, the individual  
25                 is afforded—

1           “(i) notice of the order and an opportunity  
2           to respond to the order; and

3           “(ii) an opportunity for a hearing con-  
4           ducted by another department or agency of the  
5           Federal Government.

6           “(2) The Secretary shall make such an order not  
7           later than seven days after the date of the conclusion of  
8           a hearing described in paragraph (1)(B) that determines  
9           that such order is lawful.

10          “(c) ADMINISTRATIVE REQUIREMENTS.—(1) Not  
11          later than 30 days after the Secretary issues an order  
12          under subsection (a) or (b), the Director of the Office of  
13          Personnel Management shall recalculate the annuity of the  
14          individual.

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

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

1       “(e) SPOUSE OR CHILDREN EXCEPTION.—The Sec-  
2 retary, in consultation with the Director of the Office of  
3 Personnel Management, shall prescribe regulations that  
4 may provide for the payment to the spouse or children  
5 of any individual referred to in subsection (a) or (b) of  
6 any amounts that (but for this subsection) would other-  
7 wise have been nonpayable by reason of subsection (a) or  
8 (b). Any such regulations shall be consistent with the re-  
9 quirements of sections 8332(o)(5) and 8411(l)(5) of title  
10 5, as the case may be.

11       “(f) DEFINITIONS.—In this section:

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

1           “(2) The term ‘lump-sum credit’ has the mean-  
2           ing given such term in section 8331(8) or section  
3           8401(19) of title 5, as the case may be.

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

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

10           (2) CLERICAL AMENDMENT.—The table of sec-  
11           tions at the beginning of chapter 7 is further amend-  
12           ed by inserting after the item relating to section  
13           715, as added by section 3, the following new item:

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

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

19           **SEC. 5. AUTHORITY TO RECOUP BONUSES OR AWARDS**  
20                               **PAID TO EMPLOYEES OF DEPARTMENT OF**  
21                               **VETERANS AFFAIRS.**

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

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

3 “(a) RECOUPMENT.—Notwithstanding any other pro-  
4 vision of law, the Secretary may issue an order directing  
5 an employee of the Department to repay the amount, or  
6 a portion of the amount, of any award or bonus paid to  
7 the employee under title 5, including under chapter 45 or  
8 53 of such title, or this title if—

9 “(1) the Secretary determines such repayment  
10 appropriate pursuant to regulations prescribed under  
11 subsection (c); and

12 “(2) before such repayment, the employee is af-  
13 farded notice and an opportunity for a hearing con-  
14 ducted by another department or agency of the Fed-  
15 eral Government.

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

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

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

24 “(2) If a final decision on an appeal made under  
25 paragraph (1)(B) is not made by the applicable depart-  
26 ment or agency of the Federal Government within 30 days

1 after receiving such appeal, the order of the Secretary  
2 under subsection (a) shall be final and not subject to fur-  
3 ther appeal.

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

6 (b) CLERICAL AMENDMENT.—The table of sections  
7 at the beginning of chapter 7 is further amended by insert-  
8 ing after the item relating to section 717, as added by  
9 section 4, the following new item:

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

10 (c) EFFECTIVE DATE.—Section 719 of title 38,  
11 United States Code, as added by subsection (a), shall  
12 apply with respect to an award or bonus paid by the Sec-  
13 retary of Veterans Affairs to an employee of the Depart-  
14 ment of Veterans Affairs on or after the date of the enact-  
15 ment of this Act.

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



1 **SEC. 6. AUTHORITY TO RECOUP RELOCATION EXPENSES**  
2 **PAID TO OR ON BEHALF OF EMPLOYEES OF**  
3 **DEPARTMENT OF VETERANS AFFAIRS.**

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

7 **“§ 721. Recoupment of relocation expenses paid on**  
8 **behalf of employees of Department**

9 “(a) RECOUPMENT.—(1) Notwithstanding any other  
10 provision of law, the Secretary may direct an employee of  
11 the Department to repay the amount, or a portion of the  
12 amount, paid to or on behalf of the employee for relocation  
13 expenses under title 5, including any expenses under sec-  
14 tion 5724 or 5724a of such title, or this title if—

15 “(A) the Secretary determines that—

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

18 “(ii) such repayment is appropriate pursu-  
19 ant to regulations prescribed under subsection  
20 (c); and

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

23 “(i) notice of the determination of the Sec-  
24 retary and an opportunity to respond to the de-  
25 termination; and

1           “(ii) consistent with paragraph (2), an op-  
2           portunity to appeal the determination to an-  
3           other department or agency of the Federal Gov-  
4           ernment.

5           “(2) If a final decision on an appeal made under  
6           paragraph (1)(B)(ii) is not made by the applicable depart-  
7           ment or agency of the Federal Government within 30 days  
8           after receiving such appeal, the order of the Secretary  
9           under paragraph (1) shall be final and not subject to fur-  
10          ther appeal.

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

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

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

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

22          (c) EFFECTIVE DATE.—Section 721 of title 38,  
23          United States Code, as added by subsection (a), shall  
24          apply with respect to an amount paid by the Secretary

1 of Veterans Affairs to or on behalf of an employee of the  
 2 Department of Veterans Affairs for relocation expenses on  
 3 or after the date of the enactment of this Act.

4 (d) CONSTRUCTION.—Nothing in this section or the  
 5 amendments made by this section may be construed to  
 6 modify the certification issued by the Office of Personnel  
 7 Management and the Office of Management and Budget  
 8 regarding the performance appraisal system of the Senior  
 9 Executive Service of the Department of Veterans Affairs.

10 **SEC. 7. EXPANSION OF PERSONNEL ACTIONS FOR SENIOR**  
 11 **EXECUTIVES BASED ON PERFORMANCE OR**  
 12 **MISCONDUCT AND ESTABLISHMENT OF SEN-**  
 13 **IOR EXECUTIVE DISCIPLINARY APPEALS**  
 14 **BOARD.**

15 (a) EXPANSION OF COVERED PERSONNEL AC-  
 16 TIONS.—Subsection (a)(1) of section 713 is amended, in  
 17 the matter preceding subparagraph (A), by inserting after  
 18 “such removal.” the following: “If the Secretary deter-  
 19 mines that the performance or misconduct of such an indi-  
 20 vidual does not warrant removal from the senior executive  
 21 service position, the Secretary may suspend, reprimand,  
 22 or admonish the individual.”.

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

25 (1) in subsection (a)—

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

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

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

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

10 “(B) an opportunity to respond to the proposed  
11 personnel action within the five-day period.”;

12 (2) in subsection (b)(2)—

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

15 (B) by striking the second sentence;

16 (3) in subsection (c)—

17 (A) by striking “30” and inserting “five”;

18 and

19 (B) by striking “and the reason for such  
20 removal or transfer” and inserting “, the rea-  
21 son for such removal or transfer, the name and  
22 position of the individual, and all charging doc-  
23 uments and evidence pertaining to such removal  
24 or transfer”;

1           (4) by striking subsections (d) and (e) and in-  
2           serting the following:

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

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

7           “(A) may be appealed to the Senior Executive  
8           Disciplinary Appeals Board under section 723 of  
9           this title; and

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

12           “(3) An appeal under paragraph (2)(A) of a per-  
13           sonnel action under this section may only be made if such  
14           appeal is made not later than seven days after the date  
15           of such action. If no such appeal is made, the decision  
16           of the Secretary under this section shall be final.”;

17           (5) by redesignating subsections (f) and (g) as  
18           subsections (e) and (f), respectively; and

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

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

24           (c) REMOVAL OF EXPEDITED PROCEDURES.—Sec-  
25           tion 707 of the Veterans Access, Choice, and Account-

1 ability Act of 2014 (Public Law 113–146; 38 U.S.C. 713  
2 note) is amended—

3 (1) by striking subsection (b); and

4 (2) by redesignating subsections (c) and (d) as  
5 subsections (b) and (c), respectively.

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

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

11 “(a) IN GENERAL.—The Secretary shall from time  
12 to time appoint a board to hear appeals of any personnel  
13 action taken under section 713 of this title. Such board  
14 shall be known as the Senior Executive Disciplinary Ap-  
15 peals Board (in this section referred to as the ‘Board’).  
16 Each Board shall consist of three employees of the De-  
17 partment. The Board shall have exclusive jurisdiction to  
18 review any personnel action under section 713.

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

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

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

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

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

7                 “(1) there is substantial evidence supporting  
8 the decision; and

9                 “(2) the applicable personnel action is within  
10 the tolerable bounds of reasonableness.

11           “(e) REVERSAL BY SECRETARY.—If the Board issues  
12 a decision under this section that reverses or otherwise  
13 mitigates the applicable personnel action, the Secretary  
14 may reverse the decision of the Board. Consistent with the  
15 requirements of subsection (g), the decision of the Sec-  
16 retary under this subsection shall be final.

17           “(f) NO DECISION BY BOARD.—In any case in which  
18 the Board cannot issue a decision in accordance with the  
19 21-day requirement under subsection (b)(2), the personnel  
20 action is final.

21           “(g) APPEAL OF DECISION.—A petition to review a  
22 final order or final decision of the Secretary or the Board  
23 under this section shall be filed in the United States Court  
24 of Appeals for the Federal Circuit. Any decision by such

1 Court shall be in compliance with section 7462(f)(2) of  
2 this title.

3 “(h) PROHIBITION ON RECEIPT OF BENEFITS.—  
4 During the period beginning on the date on which an indi-  
5 vidual appeals a removal from the civil service under sec-  
6 tion 713(d) of this title and ending on the date that the  
7 Board or Secretary issues a final decision on such appeal,  
8 such individual may not receive any pay, awards, bonuses,  
9 incentives, allowances, differentials, student loan repay-  
10 ments, special payments, or benefits from the Depart-  
11 ment.”.

12 (e) TECHNICAL AND CLERICAL AMENDMENTS.—

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

17 (2) CLERICAL AMENDMENTS.—The table of sec-  
18 tions at the beginning of chapter 7 is further amend-  
19 ed—

20 (A) by striking the item relating to section  
21 713 and inserting the following new item:

“713. Senior executives: personnel actions based on performance or mis-  
conduct.”;

22 and



1 (B) by inserting after the item relating to  
2 section 721 the following new item:

“723. Senior Executive Disciplinary Appeals Board.”.

3 (f) **RULE OF CONSTRUCTION.**—Nothing in this sec-  
4 tion or section 723 of title 38, United States Code, as  
5 added by subsection (d), shall be construed to apply to  
6 an appeal of a removal, transfer, or other personnel action  
7 that was pending before the date of the enactment of this  
8 Act.

9 **SEC. 8. REFORM OF RIGHTS AND PROCESSES RELATING TO**  
10 **APPEALS OF DECISIONS REGARDING CLAIMS**  
11 **FOR BENEFITS UNDER LAWS ADMINISTERED**  
12 **BY SECRETARY OF VETERANS AFFAIRS.**

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

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

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

22 (b) **NOTICE REGARDING CLAIMS.**—Section 5103(a)  
23 is amended—

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

4           (2) in paragraph (2)(B)(i) by striking “, a  
5           claim for reopening a prior decision on a claim, or  
6           a claim for an increase in benefits;” and inserting  
7           “or a supplemental claim;”; and

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

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

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

17           (1) by striking “reopen” and inserting “readju-  
18           dicate”; and

19           (2) by striking “material” and inserting “rel-  
20           evant”.

21          (d) MODIFICATION OF DUTY TO ASSIST CLAIM-  
22 ANTS.—

23           (1) LIMITATIONS ON DUTY.—Section 5103A(a)  
24           is amended—

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

4 (B) by adding at the end the following new  
5 paragraphs:

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

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

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

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

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

22 (A) by redesignating subsections (e)  
23 through (g) as subsections (f) through (h), re-  
24 spectively; and

1 (B) by inserting after subsection (d) the  
2 following new subsection:

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

4 (1) If, during review of the agency of original jurisdiction  
5 decision under section 5104B of this title, the higher-level  
6 reviewer identifies an error on the part of the agency of  
7 original jurisdiction to satisfy its duties under this section,  
8 and that error occurred prior to the agency of original ju-  
9 risdiction decision being reviewed, unless the claim can be  
10 granted in full, the higher-level reviewer shall return the  
11 claim for correction of such error and readjudication.

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

21 “(B) Remand for correction of an error under sub-  
22 paragraph (A) may include directing the agency of original  
23 jurisdiction to obtain an advisory medical opinion under  
24 section 5109 of this title.”.

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

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

6 “(1) Identification of the issues adjudicated.

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

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

11 “(4) Identification of findings favorable to the  
12 claimant.

13 “(5) Identification of elements not satisfied  
14 leading to the denial.

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

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

20 (f) BINDING NATURE OF FAVORABLE FINDINGS.—

21 (1) IN GENERAL.—Chapter 51 is amended by  
22 inserting after section 5104 the following new sec-  
23 tion:

1 **“§ 5104A. Binding nature of favorable findings**

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

7 (2) CLERICAL AMENDMENT.—The table of sec-  
8 tions at the beginning of chapter 51 is amended by  
9 inserting after the item relating to section 5104 the  
10 following new item:

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

11 (g) HIGHER-LEVEL REVIEW BY AGENCY OF ORIGI-  
12 NAL JURISDICTION.—

13 (1) IN GENERAL.—Chapter 51, as amended by  
14 subsection (f), is further amended by inserting after  
15 section 5104A, as added by such subsection, the fol-  
16 lowing new section:

17 **“§ 5104B. Higher-level review by the agency of origi-  
18 nal jurisdiction**

19 “(a) IN GENERAL.—A claimant may request a de  
20 novo review of the decision of the agency of original juris-  
21 diction by a higher-level adjudicator within the agency of  
22 original jurisdiction.

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

1           “(A) in writing in such form as the Secretary  
2           may prescribe; and

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

5           “(2) Such request may specifically indicate whether  
6           such review is requested by a higher-level adjudicator at  
7           the same office within the agency of original jurisdiction  
8           or by an adjudicator at a different office of the agency  
9           of original jurisdiction.

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

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

16                 (2) CLERICAL AMENDMENT.—The table of sec-  
17          tions at the beginning of chapter 51, as amended by  
18          subsection (f), is further amended by inserting after  
19          the item relating to section 5104A, as added by such  
20          subsection, the following new item:

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

21          (h) SUPPLEMENTAL CLAIMS.—

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

1 **“§ 5108. Supplemental claims**

2 “If new and relevant evidence is presented or secured  
3 with respect to a supplemental claim, the Secretary shall  
4 readjudicate the claim taking into consideration any evi-  
5 dence added to the record prior to the former disposition  
6 of the claim.”.

7 (2) CLERICAL AMENDMENT.—The table of sec-  
8 tions at the beginning of chapter 51 is amended by  
9 striking the item relating to section 5108 and insert-  
10 ing the following new item:

“5108. Supplemental claims.”.

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

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

24 (j) EFFECTIVE DATES OF AWARDS.—Section 5110 is  
25 amended—



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

3           “(a)(1) Unless specifically provided otherwise in this  
4 chapter, the effective date of an award based on an initial  
5 claim, or a supplemental claim, of compensation, depend-  
6 ency and indemnity compensation, or pension, shall be  
7 fixed in accordance with the facts found, but shall not be  
8 earlier than the date of receipt of application therefor.

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

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

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

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

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

5           “(3) Except as otherwise provided in this section, for  
6           supplemental claims received more than one year after the  
7           date on which the agency of original jurisdiction issued  
8           a decision or the Board of Veterans’ Appeals issued a deci-  
9           sion, the effective date shall be fixed in accordance with  
10          the facts found, but shall not be earlier than the date of  
11          receipt of the supplemental claim.”; and

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

13                   (A) by striking “reopened” and inserting  
14                   “readjudicated”;

15                   (B) by striking “material” and inserting  
16                   “relevant”; and

17                   (C) by striking “reopening” and inserting  
18                   “readjudication”.

19          (k) DEFINITION OF AWARD OR INCREASED AWARD  
20          FOR PURPOSES OF PROVISIONS RELATING TO COM-  
21          MENCEMENT OF PERIOD OF PAYMENT.—Section  
22          5111(d)(1) is amended by striking “or reopened award”  
23          and inserting “award or award based on a supplemental  
24          claim”.

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

7           (m) MODIFICATION OF BOARD OF VETERANS’ AP-  
8 PEALS REFERRAL REQUIREMENTS AFTER ORDER FOR  
9 RECONSIDERATION OF DECISIONS.—Section 7103(b)(1)  
10 is amended by striking “heard” both places it appears and  
11 inserting “decided”.

12           (n) CONFORMING AMENDMENT RELATING TO RE-  
13 ADJUDICATION BY BOARD OF VETERANS’ APPEALS.—  
14 Section 7104(b) is amended by striking “reopened” and  
15 inserting “readjudicated”.

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

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

19                       (A) in subsection (a)—

20                               (i) by striking the first sentence and  
21                               inserting “Appellate review shall be initi-  
22                               ated by the filing of a notice of disagree-  
23                               ment in the form prescribed by the Sec-  
24                               retary.”; and

25                               (ii) by striking “hearing and”;

1 (B) by amending subsection (b) to read as  
2 follows:

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

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

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

13 “(2)(A) Notices of disagreement shall be in writing,  
14 shall set out specific allegations of error of fact or law,  
15 and may be filed by the claimant, the claimant’s legal  
16 guardian, or such accredited representative, attorney, or  
17 authorized agent as may be selected by the claimant or  
18 legal guardian.

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

22 “(C) Notices of disagreement shall be filed with the  
23 Board.

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

1           “(i) a hearing before the Board;

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

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

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

9                       (C) by amending subsection (c) to read as  
10           follows:

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

19                       (D) by striking subsection (d) and insert-  
20           ing the following new subsection (d):

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

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

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

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

“7105. Filing of appeal.”.

7 (p) MODIFICATION OF PROCEDURES AND REQUIRE-  
8 MENTS FOR SIMULTANEOUSLY CONTESTED CLAIMS.—  
9 Subsection (b) of section 7105A is amended to read as  
10 follows:

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

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

18 (q) REPEAL OF PROCEDURES FOR ADMINISTRATIVE  
19 APPEALS.—

20 (1) IN GENERAL.—Chapter 71 is amended by  
21 striking section 7106.

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 7106.

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

4 **“§ 7107. Appeals: dockets; hearings**

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

7 “(A) A non-hearing option docket shall be  
8 maintained for cases in which no Board hearing is  
9 requested and no additional evidence will be sub-  
10 mitted.

11 “(B) A separate and distinct hearing option  
12 docket shall be maintained for cases in which a  
13 Board hearing is requested in the notice of disagree-  
14 ment or in which no Board hearing is requested, but  
15 the appellant requests, in the notice of disagreement,  
16 an opportunity to submit additional evidence.

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

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

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

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

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

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

8           “(C) for other sufficient cause shown.

9       “(c) MANNER AND SCHEDULING OF HEARINGS FOR  
10 CASES ON BOARD HEARING OPTION DOCKET.—(1) For  
11 cases on the Board hearing option docket in which a hear-  
12 ing is requested in the notice of disagreement, the Board  
13 shall notify the appellant whether a Board hearing will  
14 be held—

15           “(A) at its principal location, or

16           “(B) by picture and voice transmission at a fa-  
17 cility of the Department where the Secretary has  
18 provided suitable facilities and equipment to conduct  
19 such hearings.

20       “(2)(A) Upon notification of a Board hearing at the  
21 Board’s principal location as described in subparagraph  
22 (A) of paragraph (1), the appellant may alternatively re-  
23 quest a hearing as described in subparagraph (B) of such  
24 paragraph. If so requested, the Board shall grant such re-  
25 quest.



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

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

9               “(1) determining the adequacy of the record for  
10       decisional purposes; or

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

14       (s) REPEAL OF AUTHORITY FOR INDEPENDENT  
15 MEDICAL OPINIONS.—

16               (1) IN GENERAL.—Chapter 71 is amended by  
17       striking section 7109.

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

21               (3) CONFORMING AMENDMENT.—Section  
22       5701(b)(1) is amended by striking “or 7109”.

23       (t) MODIFICATION OF STANDARD FOR REVIEW OF  
24 DECISIONS ON GROUNDS OF CLEAR AND UNMISTAKABLE  
25 ERROR.—Section 7111(e) is amended by striking “, with-

1 out referral to any adjudicative or hearing official acting  
2 on behalf of the Secretary”.

3 (u) EVIDENTIARY RECORD BEFORE BOARD OF VET-  
4 ERANS’ APPEALS.—

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

7 **“§ 7113. Evidentiary record before the Board of Vet-**  
8 **erans’ Appeals**

9 “(a) NON-HEARING OPTION DOCKET.—For cases in  
10 which a hearing before the Board of Veterans’ Appeals  
11 is not requested in the notice of disagreement, the evi-  
12 dentiary record before the Board shall be limited to the  
13 evidence of record at the time of the decision of the agency  
14 of original jurisdiction on appeal.

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

22 “(B) The evidentiary record before the Board for  
23 cases on the hearing option docket in which a hearing is  
24 requested, shall include each of the following, which the  
25 Board shall consider in the first instance:

1           “(i) Evidence submitted by the appellant and  
2           his or her representative, if any, at the Board hear-  
3           ing.

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

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

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

17                 “(i) Evidence submitted by the appellant and  
18                 his or her representative, if any, with the notice of  
19                 disagreement.

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

23                 (2) CLERICAL AMENDMENT.—The table of sec-  
24                 tions at the beginning of chapter 71 is amended by

1 inserting after the item relating to section 7112 the  
2 following new item:

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

3 **SEC. 9. LIMITATION ON AWARDS AND BONUSES PAID TO**  
4 **SENIOR EXECUTIVE EMPLOYEES OF DEPART-**  
5 **MENT OF VETERANS AFFAIRS.**

6 Section 705 of the Veterans Access, Choice, and Ac-  
7 countability Act of 2014 (Public Law 113–146; 38 U.S.C.  
8 703 note) is amended—

9 (1) in subsection (a), by striking “The Sec-  
10 retary” and inserting “Except as provided in sub-  
11 section (b), the Secretary”;

12 (2) by redesignating subsection (b) as sub-  
13 section (c); and

14 (3) by inserting after subsection (a) the fol-  
15 lowing new subsection (b):

16 “(b) PROHIBITION ON AWARDS AND BONUSES FOR  
17 SENIOR EXECUTIVE EMPLOYEES.—During each of fiscal  
18 years 2017 through 2021, no award or bonus may be paid  
19 to any employee of the Department of Veterans Affairs  
20 who is employed in a Senior Executive Service position,  
21 as that term is defined in section 3132(a)(2) of title 5.”.

○