

115TH CONGRESS
1ST SESSION

S. 152

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 SENATE OF THE UNITED STATES

JANUARY 17, 2017

Mr. RUBIO (for himself, Mr. MCCAIN, and Mr. TOOMEY) introduced the following bill; which was read twice and referred to the Committee on Veterans' Affairs

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”.

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. 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.

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—

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

11 and

12 (2) by inserting after section 713 the following
 13 new section 715:

14 **“§ 715. Employees: removal or demotion based on**
 15 **performance or misconduct**

16 “(a) IN GENERAL.—The Secretary may remove or
 17 demote an individual who is an employee of the Depart-

1 ment if the Secretary determines the performance or mis-
 2 conduct of the individual warrants such removal or demo-
 3 tion. If the Secretary so removes or demotes such an indi-
 4 vidual, the Secretary may—

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

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

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

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

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

19 “(2) An individual demoted as described in paragraph
 20 (1) may not be placed on administrative leave or any other
 21 category of paid leave during the period during which an
 22 appeal (if any) under this section is ongoing, and may only
 23 receive pay if the individual reports for duty. If an indi-
 24 vidual so demoted does not report for duty, such individual
 25 shall not receive any pay, awards, bonuses, incentives, al-

1 lowances, differentials, student loan repayments, special
2 payments, or benefits from the Department.

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

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

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

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

23 “(B) An appeal under subparagraph (A) of a removal
24 or demotion may only be made if such appeal is made not

1 later than seven days after the date of such removal or
2 demotion.

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

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

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

21 “(4) In any case in which the Merit Systems Protec-
22 tion Board cannot issue a decision in accordance with the
23 60-day requirement under paragraph (1), the removal or
24 demotion is final. In such a case, the Merit Systems Pro-
25 tection Board shall, within 14 days after the date that

1 such removal or demotion is final, submit to Congress and
2 the Committee on Veterans' Affairs of the Senate and the
3 Committee on Veterans' Affairs of the House of Rep-
4 resentatives a report that explains the reasons why a deci-
5 sion was not issued in accordance with such requirement.

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

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

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

21 “(f) WHISTLEBLOWER PROTECTION.—(1) In the
22 case of an individual seeking corrective action (or on be-
23 half of whom corrective action is sought) from the Office
24 of Special Counsel based on an alleged prohibited per-
25 sonnel practice described in section 2302(b) of title 5, the

1 Secretary may not remove or demote such individual
 2 under subsection (a) without the approval of the Special
 3 Counsel under section 1214(f) of title 5.

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

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

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

1 “(i) DEFINITIONS.—In this section:

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

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

7 “(B) a political appointee.

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

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

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

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

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

24 “(C) employed in a position of a confiden-
25 tial or policy-determining character under

1 schedule C of subpart C of part 213 of title 5
 2 of the Code of Federal Regulations (or any suc-
 3 cessor regulation).”.

4 (b) CLERICAL AND CONFORMING AMENDMENTS.—

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

7 (A) by striking the item relating to section
 8 715 and inserting the following new item:

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

9 and

10 (B) by inserting after the item relating to
 11 section 715 the following new item:

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

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

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

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

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

19 “(4) any removal or demotion under section
 20 715 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 section 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 forded 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
22 subparagraph (A) may include directing the agency of origi-
23 nal jurisdiction to obtain an advisory medical opinion
24 under 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 in-
 22 serting after section 5104 the following new section:

23 **“§ 5104A. Binding nature of favorable findings**

24 “Any finding favorable to the claimant as described
 25 in section 5104(b)(4) of this title shall be binding on all

1 subsequent adjudicators within the Department, unless
 2 clear and convincing evidence is shown to the contrary to
 3 rebut such favorable finding.”.

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

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

8 (g) HIGHER-LEVEL REVIEW BY AGENCY OF ORIGI-
 9 NAL JURISDICTION.—

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

14 **“§ 5104B. Higher-level review by the agency of origi-
 15 nal jurisdiction**

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

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

23 “(A) in writing in such form as the Secretary
 24 may prescribe; and

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

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

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

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

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

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

19 (h) SUPPLEMENTAL CLAIMS.—

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

22 **“§ 5108. Supplemental claims**

23 “If new and relevant evidence is presented or secured
24 with respect to a supplemental claim, the Secretary shall
25 readjudicate the claim taking into consideration any evi-

1 dence added to the record prior to the former disposition
2 of the claim.”.

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

“5108. Supplemental claims.”.

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

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

20 (j) EFFECTIVE DATES OF AWARDS.—Section 5110 is
21 amended—

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

24 “(a)(1) Unless specifically provided otherwise in this
25 chapter, the effective date of an award based on an initial

1 claim, or a supplemental claim, of compensation, depend-
2 ency and indemnity compensation, or pension, shall be
3 fixed in accordance with the facts found, but shall not be
4 earlier than the date of receipt of application therefor.

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

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

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

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

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

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

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

9 (A) by striking “reopened” and inserting
 10 “readjudicated”;

11 (B) by striking “material” and inserting
 12 “relevant”; and

13 (C) by striking “reopening” and inserting
 14 “readjudication”.

15 (k) DEFINITION OF AWARD OR INCREASED AWARD
 16 FOR PURPOSES OF PROVISIONS RELATING TO COM-
 17 MENCEMENT OF PERIOD OF PAYMENT.—Section
 18 5111(d)(1) is amended by striking “or reopened award”
 19 and inserting “award or award based on a supplemental
 20 claim”.

21 (l) MODIFICATION ON LIMITATION ON FEES ALLOW-
 22 ABLE FOR REPRESENTATION.—Section 5904(c) is amend-
 23 ed, in paragraphs (1) and (2), by striking “notice of dis-
 24 agreement is filed” both places it appears and inserting

1 “claimant is provided notice of the agency of original juris-
 2 diction’s initial decision under section 5104 of this title”.

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

8 (n) CONFORMING AMENDMENT RELATING TO RE-
 9 ADJUDICATION BY BOARD OF VETERANS’ APPEALS.—
 10 Section 7104(b) is amended by striking “reopened” and
 11 inserting “readjudicated”.

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

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

15 (A) in subsection (a)—

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

21 (ii) by striking “hearing and”;

22 (B) by amending subsection (b) to read as
 23 follows:

24 “(b)(1)(A) Except in the case of simultaneously con-
 25 tested claims, notice of disagreement shall be filed within

1 one year from the date of the mailing of notice of the deci-
 2 sion of the agency of original jurisdiction pursuant to sec-
 3 tion 5104, 5104B, or 5108 of this title.

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

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

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

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

18 “(C) Notices of disagreement shall be filed with the
 19 Board.

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

22 “(i) a hearing before the Board;

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

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

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

6 (C) by amending subsection (c) to read as
7 follows:

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

16 (D) by striking subsection (d) and insert-
17 ing the following new subsection (d):

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

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

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

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

1 striking the item relating to section 7105 and insert-
 2 ing the following new item:

“7105. Filing of appeal.”.

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

5 Subsection (b) of section 7105A is amended to read as
 6 follows:

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

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

14 (q) REPEAL OF PROCEDURES FOR ADMINISTRATIVE
 15 APPEALS.—

16 (1) IN GENERAL.—Chapter 71 is amended by
 17 striking section 7106.

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 7106.

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

1 **“§ 7107. Appeals: dockets; hearings**

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

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

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

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

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

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

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

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

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

3 “(C) for other sufficient cause shown.

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

10 “(A) at its principal location, or

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

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

21 “(B) Upon notification of a Board hearing by picture
22 and voice transmission as described in subparagraph (B)
23 of paragraph (1), the appellant may alternatively request
24 a hearing as described in subparagraph (A) of such para-
25 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 (3) CONFORMING AMENDMENT.—Section
 17 5701(b)(1) is amended by striking “or 7109”.

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

23 (u) EVIDENTIARY RECORD BEFORE BOARD OF VET-
 24 ERANS’ APPEALS.—

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

3 **“§ 7113. Evidentiary record before the Board of Vet-**
4 **erans’ Appeals**

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

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

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

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

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

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

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

14 “(i) Evidence submitted by the appellant and
15 his or her representative, if any, with the notice of
16 disagreement.

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

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

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

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

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

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

10 (2) by redesignating subsection (b) as sub-
 11 section (c); and

12 (3) by inserting after subsection (a) the fol-
 13 lowing new subsection (b):

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

○