

114TH CONGRESS
1ST SESSION

H. R. 3909

To amend the Veterans Access, Choice, and Accountability Act of 2014 to expand the Veterans Choice Program, 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

NOVEMBER 3, 2015

Mr. GUINTA 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 the Veterans Access, Choice, and Accountability Act of 2014 to expand the Veterans Choice Program, 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Veterans Health and
3 Accountability Act”.

4 **SEC. 2. EXPANSION OF VETERANS CHOICE PROGRAM.**

5 (a) REMOVAL OF GEOGRAPHIC AND WAIT-TIME RE-
6 QUIREMENTS.—Subsection (b) of section 101 of the Vet-
7 erans Access, Choice, and Accountability Act of 2014 (38
8 U.S.C. 1701 note) is amended to read as follows:

9 “(b) ELIGIBLE VETERANS.—A veteran is an eligible
10 veteran for purposes of this section if the veteran is en-
11 rolled in the patient enrollment system of the Department
12 of Veterans Affairs established and operated under section
13 1705 of title 38, United States Code, including any such
14 veteran who has not received hospital care or medical serv-
15 ices from the Department and has contacted the Depart-
16 ment seeking an initial appointment from the Department
17 for the receipt of such care or services.”.

18 (b) CHOICE OF PROVIDER.—Such section is amend-
19 ed—

20 (1) in subsection (a)—

21 (A) by striking paragraph (2); and

22 (B) by redesignating paragraph (3) as
23 paragraph (2); and

24 (2) by striking subsection (c) and inserting the
25 following new subsection (c):

1 “(c) CHOICE OF PROVIDER.—An eligible veteran who
2 receives hospital care or medical services under this sec-
3 tion may select a provider of such care or services from
4 among the entities specified in paragraph (1)(B) that are
5 accessible to the veteran.”.

6 (c) CONFORMING AMENDMENTS.—Such section is
7 further amended—

8 (1) in subsection (f)(1), by striking “subsection
9 (b)(1)” and inserting “subsection (b)”;

10 (2) in subsection (g)—

11 (A) in paragraph (1), by striking “sub-
12 section (b)(1)(B)” and inserting “subsection
13 (b)”;

14 (B) in paragraph (3), by striking “under
15 subparagraph (B), (C), or (D) of subsection
16 (b)(2)”;

17 (3) in subsection (q)(2)(A)—

18 (A) by striking “, disaggregated by—” and
19 inserting a period; and

20 (B) by striking clauses (i) through (iv).

21 (d) INCREASED TRANSPARENCY.—The Secretary of
22 Veterans Affairs shall annually testify before each of the
23 Committee on Veterans’ Affairs of the House of Rep-
24 resentatives and the Committee on Veterans’ Affairs of
25 the Senate on the health care furnished to veterans by

1 the Department of Veterans Affairs. Such testimony shall
2 include a full progress report on the Veterans Choice Pro-
3 gram established by section 101 of the Veterans Access,
4 Choice, and Accountability Act of 2014 (38 U.S.C. 1701
5 note), including the number of veterans participating in
6 such program.

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

9 (a) IN GENERAL.—Chapter 7 of title 38, United
10 States Code, is amended by adding at the end the fol-
11 lowing new section:

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

14 “(a) IN GENERAL.—The Secretary may remove or
15 demote an individual who is an employee of the Depart-
16 ment if the Secretary determines the performance or mis-
17 conduct of the individual warrants such removal or demo-
18 tion. If the Secretary so removes or demotes such an indi-
19 vidual, the Secretary may—

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

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

23 “(A) a reduction in grade for which the in-
24 dividual is qualified and that the Secretary de-
25 termines is appropriate; or

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

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

8 “(2) An individual so demoted may not be placed on
9 administrative leave or any other category of paid leave
10 during the period during which an appeal (if any) under
11 this section is ongoing, and may only receive pay if the
12 individual reports for duty. If an individual so demoted
13 does not report for duty, such individual shall not receive
14 pay or other benefits pursuant to subsection (e)(5).

15 “(c) NOTICE TO CONGRESS.—Not later than 30 days
16 after removing or demoting an individual under subsection
17 (a), the Secretary shall submit to the Committees on Vet-
18 erans’ Affairs of the Senate and the House of Representa-
19 tives notice in writing of such removal or demotion and
20 the reason for such removal or demotion.

21 “(d) PROCEDURE.—(1) The procedures under section
22 7513(b) of title 5 and chapter 43 of such title shall not
23 apply to a removal or demotion under this section.

24 “(2)(A) Subject to subparagraph (B) and subsection
25 (e), any removal or demotion under subsection (a) may

1 be appealed to the Merit Systems Protection Board under
2 section 7701 of title 5.

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

7 “(e) EXPEDITED REVIEW BY ADMINISTRATIVE
8 JUDGE.—(1) Upon receipt of an appeal under subsection
9 (d)(2)(A), the Merit Systems Protection Board shall refer
10 such appeal to an administrative judge pursuant to section
11 7701(b)(1) of title 5. The administrative judge shall expe-
12 dite any such appeal under such section and, in any such
13 case, shall issue a decision not later than 45 days after
14 the date of the appeal.

15 “(2) Notwithstanding any other provision of law, in-
16 cluding section 7703 of title 5, the decision of an adminis-
17 trative judge under paragraph (1) shall be final and shall
18 not be subject to any further appeal.

19 “(3) In any case in which the administrative judge
20 cannot issue a decision in accordance with the 45-day re-
21 quirement under paragraph (1), the removal or demotion
22 is final. In such a case, the Merit Systems Protection
23 Board shall, within 14 days after the date that such re-
24 moval or demotion is final, submit to Congress and the
25 Committees on Veterans’ Affairs of the Senate and the

1 House of Representatives a report that explains the rea-
2 sons why a decision was not issued in accordance with
3 such requirement.

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

7 “(5) During the period beginning on the date on
8 which an individual appeals a removal from the civil serv-
9 ice under subsection (d) and ending on the date that the
10 administrative judge issues a final decision on such appeal,
11 such individual may not receive any pay, awards, bonuses,
12 incentives, allowances, differentials, student loan repay-
13 ments, special payments, or benefits.

14 “(6) To the maximum extent practicable, the Sec-
15 retary shall provide to the Merit Systems Protection
16 Board, and to any administrative judge to whom an appeal
17 under this section is referred, such information and assist-
18 ance as may be necessary to ensure an appeal under this
19 subsection is expedited.

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

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

3 “(2) In the case of an individual who has filed a whis-
4 tleblower complaint, as such term is defined in section 731
5 of this title, the Secretary may not remove or demote such
6 individual under subsection (a) until the central whistle-
7 blower office under section 732(h) of this title has made
8 a final decision with respect to the whistleblower com-
9 plaint.

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

21 “(h) RELATION TO TITLE 5.—The authority provided
22 by this section is in addition to the authority provided by
23 subchapter II of chapter 75 of title 5 and chapter 43 of
24 such title.

25 “(i) DEFINITIONS.—In this section:

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

4 “(A) an individual, as that term is defined
5 in section 713(g)(1); or

6 “(B) a political appointee.

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

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

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

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

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

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

1 schedule C of subpart C of part 213 of title 5
2 of the Code of Federal Regulations.”.

3 (b) CLERICAL AND CONFORMING AMENDMENTS.—

4 (1) CLERICAL.—The table of sections at the be-
5 ginning of such chapter is amended by adding at the
6 end the following new item:

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

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

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

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

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

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

16 **SEC. 4. REQUIRED PROBATIONARY PERIOD FOR NEW EM-**
17 **PLOYEES OF DEPARTMENT OF VETERANS AF-**
18 **FAIRS.**

19 (a) PROBATIONARY PERIOD.—

20 (1) IN GENERAL.—Chapter 7 of title 38, United
21 States Code, as amended by section 2, is further
22 amended by adding at the end the following new sec-
23 tion:

1 **“§ 717. Probationary period for employees**

2 “(a) IN GENERAL.—Notwithstanding sections 3321
3 and 3393(d) of title 5, the appointment of a covered em-
4 ployee shall become final only after such employee has
5 served a probationary period of 18 months. The Secretary
6 may extend a probationary period under this subsection
7 at the discretion of the Secretary.

8 “(b) COVERED EMPLOYEE.—In this section, the term
9 ‘covered employee’—

10 “(1) means any individual—

11 “(A) appointed to a permanent position
12 within the competitive service at the Depart-
13 ment; or

14 “(B) appointed as a career appointee (as
15 that term is defined in section 3132(a)(4) of
16 title 5) within the Senior Executive Service at
17 the Department; and

18 “(2) does not include any individual with a pro-
19 bationary period prescribed by section 7403 of this
20 title.

21 “(c) PERMANENT HIRES.—Upon the expiration of a
22 covered employee’s probationary period under subsection
23 (a), the supervisor of the employee shall determine wheth-
24 er the appointment becomes final based on regulations
25 prescribed for such purpose by the Secretary.”.

1 (2) CLERICAL AND CONFORMING AMEND-
2 MENTS.—

3 (A) CLERICAL.—The table of sections at
4 the beginning of such chapter, as amended by
5 section 2, is further amended by adding at the
6 end the following new item:

“717. Probationary period for employees.”.

7 (B) CONFORMING.—Title 5, United States
8 Code, is amended—

9 (i) in section 3321(e)—

10 (I) by striking “Service or” and
11 inserting “Service,”; and

12 (II) by inserting at the end be-
13 fore the period the following: “, or
14 any individual covered by section 717
15 of title 38”; and

16 (ii) in section 3393(d), by adding at
17 the end after the period the following:
18 “The preceding sentence shall not apply to
19 any individual covered by section 717 of
20 title 38.”.

21 (b) APPLICATION.—Section 717 of title 38, United
22 States Code, as added by subsection (a)(1), shall apply
23 to any covered employee (as that term is defined in sub-
24 section (b) of such section 717, as so added) appointed
25 after the date of the enactment of this Act.

1 **SEC. 5. TREATMENT OF WHISTLEBLOWER COMPLAINTS IN**
2 **DEPARTMENT OF VETERANS AFFAIRS.**

3 (a) IN GENERAL.—Chapter 7 of title 38, United
4 States Code, is further amended by adding at the end the
5 following new subchapter:

6 “SUBCHAPTER II—WHISTLEBLOWER
7 COMPLAINTS

8 **“§ 731. Whistleblower complaint defined**

9 “In this subchapter, the term ‘whistleblower com-
10 plaint’ means a complaint by an employee of the Depart-
11 ment disclosing, or assisting another employee to disclose,
12 a potential violation of any law, rule, or regulation, or
13 gross mismanagement, gross waste of funds, abuse of au-
14 thority, or substantial and specific danger to public health
15 and safety.

16 **“§ 732. Treatment of whistleblower complaints**

17 “(a) FILING.—(1) In addition to any other method
18 established by law in which an employee may file a whistle-
19 blower complaint, an employee of the Department may file
20 a whistleblower complaint in accordance with subsection
21 (g) with a supervisor of the employee.

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

1 “(b) NOTIFICATION.—(1) Not later than four busi-
2 ness days after the date on which a supervisor receives
3 a whistleblower complaint by an employee under this sec-
4 tion, the supervisor shall notify, in writing, the employee
5 of whether the supervisor determines that there is a rea-
6 sonable likelihood that the complaint discloses a violation
7 of any law, rule, or regulation, or gross mismanagement,
8 gross waste of funds, abuse of authority, or substantial
9 and specific danger to public health and safety. The super-
10 visor shall retain written documentation regarding the
11 whistleblower complaint and shall submit to the next-level
12 supervisor and the central whistleblower office described
13 in subsection (h) a written report on the complaint.

14 “(2) On a monthly basis, the supervisor shall submit
15 to the appropriate director or other official who is superior
16 to the supervisor a written report that includes the num-
17 ber of whistleblower complaints received by the supervisor
18 under this section during the month covered by the report,
19 the disposition of such complaints, and any actions taken
20 because of such complaints pursuant to subsection (c). In
21 the case in which such a director or official carries out
22 this paragraph, the director or official shall submit such
23 monthly report to the supervisor of the director or official
24 and to the central whistleblower office described in sub-
25 section (h).

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

7 “(d) FILING COMPLAINT WITH NEXT-LEVEL SUPER-
8 VISORS.—(1) If any circumstance described in paragraph
9 (3) is met, an employee may file a whistleblower complaint
10 in accordance with subsection (g) with the next-level su-
11 pervisor who shall treat such complaint in accordance with
12 this section.

13 “(2) An employee may file a whistleblower complaint
14 with the Secretary if the employee has filed the whistle-
15 blower complaint to each level of supervisors between the
16 employee and the Secretary in accordance with paragraph
17 (1).

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

20 “(A) A supervisor does not make a timely de-
21 termination under subsection (b)(1) regarding a
22 whistleblower complaint.

23 “(B) The employee who made a whistleblower
24 complaint determines that the supervisor did not

1 adequately address the complaint pursuant to sub-
2 section (c).

3 “(C) The immediate supervisor of the employee
4 is the basis of the whistleblower complaint.

5 “(e) TRANSFER OF EMPLOYEE WHO FILES WHIS-
6 TLEBLOWER COMPLAINT.—If a supervisor makes a posi-
7 tive determination under subsection (b)(1) regarding a
8 whistleblower complaint filed by an employee, the Sec-
9 retary shall—

10 “(1) inform the employee of the ability to vol-
11 unteer for a transfer in accordance with section
12 3352 of title 5; and

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

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

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

23 “(2) The form described in this paragraph is a form
24 developed by the Secretary, in consultation with the Spe-
25 cial Counsel, that includes the following:

1 “(A) An explanation of the purpose of the whis-
2 tleblower complaint form.

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

5 “(C) An explanation that filing a whistleblower
6 complaint under this section does not preclude the
7 employee from any other method established by law
8 in which an employee may file a whistleblower com-
9 plaint.

10 “(D) A statement directing the employee to in-
11 formation accessible on the Internet website of the
12 Department as described in section 735(c).

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

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

15 “(ii) the name of the employee;

16 “(iii) the contact information of the em-
17 ployee;

18 “(iv) a summary of the whistleblower com-
19 plaint (including the option to append sup-
20 porting documents pursuant to paragraph (1));

21 and

22 “(v) proposed solutions to complaint.

23 “(F) Any other information or fields that the
24 Secretary determines appropriate.

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

5 “(h) CENTRAL WHISTLEBLOWER OFFICE.—(1) The
6 Secretary shall ensure that the central whistleblower of-
7 fice—

8 “(A) is not an element of the Office of the Gen-
9 eral Counsel;

10 “(B) is not headed by an official who reports to
11 the General Counsel;

12 “(C) does not provide, or receive from, the Gen-
13 eral Counsel any information regarding a whistle-
14 blower complaint except pursuant to an action re-
15 garding the complaint before an administrative body
16 or court; and

17 “(D) does not provide advice to the General
18 Counsel.

19 “(2) The central whistleblower office shall be respon-
20 sible for investigating all whistleblower complaints of the
21 Department, regardless of whether such complaints are
22 made by or against an employee who is not a member of
23 the Senior Executive Service.

1 “(3) The Secretary shall ensure that the central whis-
2 tleblower office maintains a toll-free hotline to any-
3 mously receive whistleblower complaints.

4 “(4) In this subsection, the term ‘central whistle-
5 blower office’ means the Office of Accountability Review
6 or a successor office that is established or designated by
7 the Secretary to investigate whistleblower complaints filed
8 under this section or any other method established by law.

9 **“§ 733. Adverse actions against supervisory employ-**
10 **ees who commit prohibited personnel ac-**
11 **tions relating to whistleblower com-**
12 **plaints**

13 “(a) IN GENERAL.—(1) In accordance with para-
14 graph (2), the Secretary shall carry out the following ad-
15 verse actions against supervisory employees whom the Sec-
16 retary, an administrative judge, the Merit Systems Protec-
17 tion Board, the Office of Special Counsel, an adjudicating
18 body provided under a union contract, a Federal judge,
19 or the Inspector General of the Department determines
20 committed a prohibited personnel action described in sub-
21 section (c):

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

1 “(B) With respect to the second offense, re-
2 moval.

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

9 “(B) An employee who is notified of being the subject
10 of a proposed adverse action under paragraph (1) may not
11 be given more than five days following such notification
12 to provide evidence to dispute such proposed adverse ac-
13 tion. If the employee does not provide any such evidence,
14 or if the Secretary determines that such evidence is not
15 sufficient to reverse the determination to propose the ad-
16 verse action, the Secretary shall carry out the adverse ac-
17 tion following such five-day period.

18 “(b) LIMITATION ON OTHER ADVERSE ACTIONS.—
19 With respect to a prohibited personnel action described in
20 subsection (c), if the Secretary carries out an adverse ac-
21 tion against a supervisory employee, the Secretary may
22 carry out an additional adverse action under this section
23 based on the same prohibited personnel action if the total
24 severity of the adverse actions do not exceed the level spec-
25 ified in subsection (a).

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

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

7 “(A) filing a whistleblower complaint in ac-
8 cordance with section 732 of this title;

9 “(B) filing a whistleblower complaint with
10 the Inspector General of the Department, the
11 Special Counsel, or Congress;

12 “(C) providing information or participating
13 as a witness in an investigation of a whistle-
14 blower complaint in accordance with section
15 732 or with the Inspector General of the De-
16 partment, the Special Counsel, or Congress;

17 “(D) participating in an audit or investiga-
18 tion by the Comptroller General of the United
19 States;

20 “(E) refusing to perform an action that is
21 unlawful or prohibited by the Department; or

22 “(F) engaging in communications that are
23 related to the duties of the position or are oth-
24 erwise protected.

1 “(2) Preventing or restricting an employee from
2 making an action described in any of subparagraphs
3 (A) through (F) of paragraph (1).

4 “(3) Conducting a peer review or opening a re-
5 taliatory investigation relating to an activity of an
6 employee that is protected by section 2302 of title
7 5.

8 “(4) Requesting a contractor to carry out an
9 action that is prohibited by section 4705(b) or sec-
10 tion 4712(a)(1) of title 41, as the case may be.

11 **“§ 734. Evaluation criteria of supervisors and treat-
12 ment of bonuses**

13 “(a) EVALUATION CRITERIA.—(1) In evaluating the
14 performance of supervisors of the Department, the Sec-
15 retary shall include the criteria described in paragraph
16 (2).

17 “(2) The criteria described in this subsection are the
18 following:

19 “(A) Whether the supervisor treats whistle-
20 blower complaints in accordance with section 732.

21 “(B) Whether the appropriate deciding official,
22 performance review board, or performance review
23 committee determines that the supervisor was found
24 to have committed a prohibited personnel action de-
25 scribed in section 733(b) by an administrative judge,

1 the Merit Systems Protection Board, the Office of
2 Special Counsel, an adjudicating body provided
3 under a union contract, a Federal judge, or, in the
4 case of a settlement of a whistleblower complaint
5 (regardless of whether any fault was assigned under
6 such settlement), the Secretary.

7 “(b) BONUSES.—(1) The Secretary may not pay to
8 a supervisor described in subsection (a)(2)(B) an award
9 or bonus under this title or title 5, including under chapter
10 45 or 53 of such title, during the one-year period begin-
11 ning on the date on which the determination was made
12 under such subsection.

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

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

22 “(B) the Secretary determines such repayment
23 appropriate pursuant to regulations prescribed by
24 the Secretary to carry out this section; and

1 “(C) the supervisor is afforded notice and an
2 opportunity for a hearing before making such repay-
3 ment.

4 **“§ 735. Training regarding whistleblower complaints**

5 “(a) TRAINING.—The Secretary, in coordination with
6 the Whistleblower Protection Ombudsman designated
7 under section 3(d)(1)(C) of the Inspector General Act of
8 1978 (5 U.S.C. App.), shall annually provide to each em-
9 ployee of the Department training regarding whistleblower
10 complaints, including—

11 “(1) an explanation of each method established
12 by law in which an employee may file a whistle-
13 blower complaint;

14 “(2) an explanation of prohibited personnel ac-
15 tions described by section 733(c) of this title;

16 “(3) with respect to supervisors, how to treat
17 whistleblower complaints in accordance with section
18 732 of this title;

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

22 “(5) an explanation that the employee may not
23 be prosecuted or reprimed against for disclosing in-
24 formation to Congress in instances where such dis-
25 closure is permitted by law, including under sections

1 5701, 5705, and 7732 of this title, under section
2 552a of title 5 (commonly referred to as the Privacy
3 Act), under chapter 93 of title 18, and pursuant to
4 regulations promulgated under section 264(c) of the
5 Health Insurance Portability and Accountability Act
6 of 1996 (Public Law 104–191);

7 “(6) an explanation of the language that is re-
8 quired to be included in all nondisclosure policies,
9 forms, and agreements pursuant to section
10 115(a)(1) of the Whistleblower Protection Enhance-
11 ment Act of 2012 (5 U.S.C. 2302 note); and

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

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

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

1 “(2) The Secretary shall publish on the Internet
2 website of the Department, the whistleblower complaint
3 form described in section 732(g)(2).

4 **“§ 736. Reports to Congress**

5 “(a) ANNUAL REPORTS.—The Secretary shall annu-
6 ally submit to the Committees on Veterans’ Affairs of the
7 House of Representatives and the Senate, the Committee
8 on Oversight and Government Reform of the House of
9 Representatives, and the Committee on Homeland Secu-
10 rity and Governmental Affairs of the Senate a report that
11 includes—

12 “(1) with respect to whistleblower complaints
13 filed under section 732 during the year covered by
14 the report—

15 “(A) the number of such complaints filed;

16 “(B) the disposition of such complaints;

17 and

18 “(C) the ways in which the Secretary ad-
19 dressed such complaints in which a positive de-
20 termination was made by a supervisor under
21 subsection (b)(1) of such section;

22 “(2) the number of whistleblower complaints
23 filed during the year covered by the report that are
24 not included under paragraph (1), including—

1 “(A) the method in which such complaints
2 were filed;

3 “(B) the disposition of such complaints;
4 and

5 “(C) the ways in which the Secretary ad-
6 dressed such complaints; and

7 “(3) with respect to disclosures made by a con-
8 tractor under section 4705 or 4712 of title 41—

9 “(A) the number of complaints relating to
10 such disclosures that were investigated by the
11 Inspector General of the Department of Vet-
12 erans Affairs during the year covered by the re-
13 port;

14 “(B) the disposition of such complaints;
15 and

16 “(C) the ways in which the Secretary ad-
17 dressed such complaints.

18 “(b) NOTICE OF OFFICE OF SPECIAL COUNSEL DE-
19 TERMINATIONS.—Not later than 30 days after the date
20 on which the Secretary receives from the Special Counsel
21 information relating to a whistleblower complaint pursu-
22 ant to section 1213 of title 5, the Secretary shall notify
23 the Committees on Veterans’ Affairs of the House of Rep-
24 resentatives and the Senate, the Committee on Oversight
25 and Government Reform of the House of Representatives,

1 and the Committee on Homeland Security and Govern-
 2 mental Affairs of the Senate of such information, includ-
 3 ing the determination made by the Special Counsel.”.

4 (b) CONFORMING AND CLERICAL AMENDMENTS.—

5 (1) CONFORMING AMENDMENT.—Such chapter
 6 is further amended by inserting before section 701
 7 the following:

8 “SUBCHAPTER I—GENERAL EMPLOYEE
 9 MATTERS”.

10 (2) CLERICAL AMENDMENTS.—The table of sec-
 11 tions at the beginning of such chapter is amended—

12 (A) by inserting before the item relating to
 13 section 701 the following new item:

“SUBCHAPTER I—GENERAL EMPLOYEE MATTERS”;

14 and

15 (B) by adding at the end the following new
 16 items:

“SUBCHAPTER II—WHISTLEBLOWER COMPLAINTS

“731. Whistleblower complaint defined.

“732. Treatment of whistleblower complaints.

“733. Adverse actions against supervisory employees who commit prohibited
 personnel actions relating to whistleblower complaints.

“734. Evaluation criteria of supervisors and treatment of bonuses.

“735. Training regarding whistleblower complaints.

“736. Reports to Congress.”.

1 **SEC. 6. REFORM OF PERFORMANCE APPRAISAL SYSTEM**
2 **FOR SENIOR EXECUTIVE SERVICE EMPLOY-**
3 **EES OF THE DEPARTMENT OF VETERANS AF-**
4 **FAIRS.**

5 (a) PERFORMANCE APPRAISAL SYSTEM.—

6 (1) IN GENERAL.—Chapter 7 of title 38, United
7 States Code, is further amended by inserting after
8 section 717, as added by section 3, the following new
9 section:

10 **“§ 719. Senior executives: performance appraisal**

11 “(a) PERFORMANCE APPRAISAL SYSTEM.—(1) The
12 performance appraisal system for individuals employed in
13 senior executive positions in the Department required by
14 section 4312 of title 5 shall provide, in addition to the
15 requirements of such section, for five annual summary rat-
16 ings of levels of performance as follows:

17 “(A) One outstanding level.

18 “(B) One exceeds fully successful level.

19 “(C) One fully successful level.

20 “(D) One minimally satisfactory level.

21 “(E) One unsatisfactory level.

22 “(2) The following limitations apply to the rating of
23 the performance of such individuals:

24 “(A) For any year, not more than 10 percent
25 of such individuals who receive a performance rating

1 during that year may receive the outstanding level
2 under paragraph (1)(A).

3 “(B) For any year, not more than 20 percent
4 of such individuals who receive a performance rating
5 during that year may receive the exceeds fully suc-
6 cessful level under paragraph (1)(B).

7 “(3) In evaluating the performance of an individual
8 under the performance appraisal system, the Secretary
9 shall take into consideration—

10 “(A) any complaint or report (including any
11 pending or published report) submitted by the In-
12 spector General of the Department, the Comptroller
13 General of the United States, the Equal Employ-
14 ment Opportunity Commission, or any other appro-
15 priate person or entity, related to any facility or pro-
16 gram managed by the individual, as determined by
17 the Secretary;

18 “(B) efforts made by the individual to maintain
19 high levels of satisfaction and commitment among
20 the employees supervised by the individual; and

21 “(C) the criteria described in section 734(a)(2)
22 of this title.

23 “(b) CHANGE OF POSITION.—(1) At least once every
24 five years, the Secretary shall reassign each individual em-
25 ployed in a senior executive position to a position at a dif-

1 ferent location that does not include the supervision of the
2 same personnel or programs. The Secretary shall make
3 such reassignments on a rolling basis based on the date
4 on which an individual was originally assigned to a posi-
5 tion.

6 “(2) The Secretary may waive the requirement under
7 paragraph (1) for any such individual, if the Secretary
8 submits to the Committees on Veterans’ Affairs of the
9 Senate and the House of Representatives notice of the
10 waiver and an explanation of the reasons for the waiver.

11 “(c) REPORT.—Not later than March 1 of each year,
12 the Secretary shall submit to the Committees on Veterans’
13 Affairs and Homeland Security and Governmental Affairs
14 of the Senate and the Committees on Veterans’ Affairs
15 and Oversight and Government Reform of the House of
16 Representatives a report on the performance appraisal
17 system of the Department under subsection (a). Each such
18 report shall include, for the year preceding the year during
19 which the report is submitted, each of the following:

20 “(1) All documentation concerning each of the
21 following for each individual employed in a senior
22 executive position in the Department:

23 “(A) The initial performance appraisal.

24 “(B) The higher level review, if requested.

1 “(C) The recommendations of the perform-
2 ance review board.

3 “(D) The final summary review.

4 “(E) The number of initial performance
5 ratings raised as a result of the recommenda-
6 tions of the performance review board.

7 “(F) The number of initial performance
8 ratings lowered as a result of the recommenda-
9 tions of the performance review board.

10 “(G) Any adverse action taken against any
11 such individual who receives a performance rat-
12 ing of less than fully successful.

13 “(2) The review of the Inspector General of the
14 Department of the information described in subpara-
15 graphs (A) through (D) of paragraph (1).

16 “(3) A summary of the documentation provided
17 under paragraph (1).

18 “(d) DEFINITION OF SENIOR EXECUTIVE POSI-
19 TION.—In this section, the term ‘senior executive position’
20 has the meaning given that term in section 713(g)(3) of
21 this title.”.

22 (2) CLERICAL AMENDMENT.—The table of sec-
23 tions at the beginning of such chapter, as amended
24 by section 3, is further amended by inserting after

1 the item relating to section 717 the following new
2 item:

“719. Senior executives: performance appraisal.”.

3 (3) CONFORMING AMENDMENT.—Section
4 4312(b) of title 5, United States Code, is amend-
5 ed—

6 (A) in paragraph (2), by striking “and” at
7 the end;

8 (B) in paragraph (3), by striking the pe-
9 riod at the end and inserting “; and”; and

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

11 “(4) that, in the case of the Department of Vet-
12 erans Affairs, the performance appraisal system
13 meets the requirements of section 719 of title 38.”.

14 (b) REVIEW OF SES MANAGEMENT TRAINING.—

15 (1) REVIEW.—Not later than 180 days after
16 the date of the enactment of this Act, the Secretary
17 of Veterans Affairs shall enter into a contract with
18 a nongovernmental entity to review the management
19 training program for individuals employed in senior
20 executive positions (as such term is defined in sec-
21 tion 713(g)(3) of title 38, United States Code) of
22 the Department of Veterans Affairs that is being
23 provided as of the date of the enactment of this Act.
24 Such review shall include a comparison of the train-
25 ing provided by the Department of Veterans Affairs

1 to the management training provided for senior ex-
2 cutives of other Federal departments and agencies
3 and to the management training provided to senior
4 executives in the private sector. The contract shall
5 provide that the nongovernmental entity must com-
6 plete and submit to the Secretary a report con-
7 taining the findings and conclusions of the review by
8 not later than 180 days after the date on which the
9 Secretary and the nongovernmental entity enter into
10 the contract.

11 (2) REPORT TO CONGRESS.—Not later than 60
12 days after the date on which the Secretary receives
13 the report under paragraph (1), the Secretary shall
14 submit to the Committees on Veterans’ Affairs of
15 the Senate and the House of Representatives the re-
16 port together with a plan for carrying out the rec-
17 ommendations contained in the report.

18 **SEC. 7. LIMITATION ON AWARDS AND BONUSES PAID TO**
19 **EMPLOYEES OF DEPARTMENT OF VETERANS**
20 **AFFAIRS.**

21 Section 705 of the Veterans Access, Choice, and Ac-
22 countability Act of 2014 (Public Law 113–146; 38 U.S.C.
23 703 note) is amended to read as follows:

1 **“SEC. 705. LIMITATION ON AWARDS AND BONUSES PAID TO**
2 **EMPLOYEES OF DEPARTMENT OF VETERANS**
3 **AFFAIRS.**

4 “The Secretary of Veterans Affairs shall ensure that
5 the aggregate amount of awards and bonuses paid by the
6 Secretary in a fiscal year under chapter 45 or 53 of title
7 5, United States Code, or any other awards or bonuses
8 authorized under such title or title 38, United States
9 Code, does not exceed the following amounts:

10 “(1) With respect to each of fiscal years 2016
11 through 2018, \$300,000,000.

12 “(2) With respect to each of fiscal years 2019
13 through 2024, \$360,000,000.”.

○