

114TH CONGRESS
2D SESSION

H. R. 5620

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

JULY 5, 2016

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

A BILL

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

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

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

1 (b) TABLE OF CONTENTS.—The table of contents for
2 this Act is as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

17 “(2) An individual so demoted may not be placed on
18 administrative leave or any other category of paid leave
19 during the period during which an appeal (if any) under
20 this section is ongoing, and may only receive pay if the
21 individual reports for duty. If an individual so demoted
22 does not report for duty, such individual shall not receive
23 pay or other benefits pursuant to subsection (e)(5).

24 “(c) NOTICE TO CONGRESS.—Not later than 30 days
25 after removing or demoting an individual under subsection

1 (a), the Secretary shall submit to the Committees on Vet-
2 erans' Affairs of the Senate and House of Representatives
3 notice in writing of such removal or demotion and the rea-
4 son for such removal or demotion.

5 “(d) PROCEDURE.—(1) Subsection (b) of section
6 7513 of title 5 shall apply with respect to a removal or
7 a demotion under this section, except that the period for
8 notice and response, which includes the advance notice pe-
9 riod required by paragraph (1) of such subsection and the
10 response period required by paragraph (2) of such sub-
11 section, shall not exceed a total of ten calendar days.

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

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

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

22 “(e) EXPEDITED REVIEW BY MSPB.—(1) Upon re-
23 ceipt of an appeal under subsection (d)(3)(A), the Merit
24 Systems Protection Board shall expedite any such appeal
25 under such section and, in any such case, shall issue a

1 decision not later than 60 days after the date of the ap-
2 peal.

3 “(2) Notwithstanding section 7701(c)(1)(B) of title
4 5, the Merit Systems Protection Board shall uphold the
5 decision of the Secretary to remove or demote an employee
6 under subsection (a) if the decision is supported by sub-
7 stantial evidence.

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

15 “(4) In any case in which the Merit Systems Protec-
16 tion Board cannot issue a decision in accordance with the
17 60-day requirement under paragraph (1), the removal or
18 demotion is final. In such a case, the Merit Systems Pro-
19 tection Board shall, within 14 days after the date that
20 such removal or demotion is final, submit to Congress and
21 the Committees on Veterans’ Affairs of the Senate and
22 House of Representatives a report that explains the rea-
23 sons why a decision was not issued in accordance with
24 such requirement.

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

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

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

15 “(f) WHISTLEBLOWER PROTECTION.—(1) In the
16 case of an individual seeking corrective action (or on be-
17 half of whom corrective action is sought) from the Office
18 of Special Counsel based on an alleged prohibited per-
19 sonnel practice described in section 2302(b) of title 5, the
20 Secretary may not remove or demote such individual
21 under subsection (a) without the approval of the Special
22 Counsel under section 1214(f) of title 5.

23 “(2) In the case of an individual who has filed a whis-
24 tleblower complaint, as such term is defined in section 741
25 of this title, the Secretary may not remove or demote such

1 individual under subsection (a) until a final decision with
2 respect to the whistleblower complaint has been made.

3 “(g) TERMINATION OF INVESTIGATIONS BY OFFICE
4 OF SPECIAL COUNSEL.—Notwithstanding any other provi-
5 sion of law, the Special Counsel (established by section
6 1211 of title 5) may terminate an investigation of a pro-
7 hibited personnel practice alleged by an employee or
8 former employee of the Department after the Special
9 Counsel provides to the employee or former employee a
10 written statement of the reasons for the termination of
11 the investigation. Such statement may not be admissible
12 as evidence in any judicial or administrative proceeding
13 without the consent of such employee or former employee.

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

20 “(i) DEFINITIONS.—In this section:

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

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

1 “(B) a political appointee.

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

4 “(3) The term ‘misconduct’ includes neglect of
5 duty, malfeasance, or failure to accept a directed re-
6 assignment or to accompany a position in a transfer
7 of function.

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

10 “(A) employed in a position described
11 under sections 5312 through 5316 of title 5
12 (relating to the Executive Schedule);

13 “(B) a limited term appointee, limited
14 emergency appointee, or noncareer appointee in
15 the Senior Executive Service, as defined under
16 paragraphs (5), (6), and (7), respectively, of
17 section 3132(a) of title 5; or

18 “(C) employed in a position of a confiden-
19 tial or policy-determining character under
20 schedule C of subpart C of part 213 of title 5
21 of the Code of Federal Regulations.”.

22 (b) CLERICAL AND CONFORMING AMENDMENTS.—

23 (1) CLERICAL.—The table of sections at the be-
24 ginning of chapter 7 is amended by inserting after

1 the item relating to section 713 the following new
2 item:

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

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

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

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

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

10 “(4) any removal or demotion under section
11 715 of title 38.”.

12 **SEC. 4. REDUCTION OF BENEFITS FOR MEMBERS OF THE**
13 **SENIOR EXECUTIVE SERVICE WITHIN THE**
14 **DEPARTMENT OF VETERANS AFFAIRS CON-**
15 **VICTED OF CERTAIN CRIMES.**

16 (a) REDUCTION OF BENEFITS.—

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

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

22 “(a) REDUCTION OF ANNUITY FOR REMOVED EM-
23 PLOYEE.—(1) The Secretary shall order that the covered
24 service of an individual removed from a senior executive
25 position for performance or misconduct under section 713

1 of this title, chapter 43 or subchapter V of chapter 75
2 of title 5, or any other provision of law shall not be taken
3 into account for purposes of calculating an annuity with
4 respect to such individual under chapter 83 or chapter 84
5 of title 5, if—

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

9 “(B) before such order is made, the individual
10 is afforded—

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

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

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

22 “(b) REDUCTION OF ANNUITY FOR RETIRED EM-
23 PLOYEE.—(1) The Secretary may order that the covered
24 service of an individual who is subject to a removal or
25 transfer action for performance or misconduct under sec-

1 tion 713 of this title, chapter 43 or subchapter V of chap-
2 ter 75 of title 5, or any other provision of law but who
3 leaves employment at the Department prior to the
4 issuance of a final decision with respect to such action
5 shall not be taken into account for purposes of calculating
6 an annuity with respect to such individual under chapter
7 83 or chapter 84 of title 5, if—

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

11 “(B) before such order is made, the individual
12 is afforded notice and an opportunity for a hearing
13 conducted by another department or agency of the
14 Federal Government.

15 “(2) The Secretary shall make such an order not
16 later than seven days after the date of the conclusion of
17 a hearing referred to in paragraph (1)(B) that determines
18 that such order is lawful.

19 “(c) ADMINISTRATIVE REQUIREMENTS.—(1) Not
20 later than 30 days after the Secretary issues an order
21 under subsection (a) or (b), the Director of the Office of
22 Personnel Management shall recalculate the annuity of the
23 individual.

24 “(2) A decision regarding whether the covered service
25 of an individual shall be taken into account for purposes

1 of calculating an annuity under subsection (a) or (b) is
2 final and may not be reviewed by any department or agen-
3 cy or any court.

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

9 “(e) SPOUSE OR CHILDREN EXCEPTION.—The Sec-
10 retary, in consultation with the Office of Personnel Man-
11 agement, shall prescribe regulations that may provide for
12 the payment to the spouse or children of any individual
13 referred to in subsection (a) or (b) of any amounts which
14 (but for this subsection) would otherwise have been non-
15 payable by reason of such subsections. Any such regula-
16 tions shall be consistent with the requirements of section
17 8332(o)(5) and 8411(l)(5) of title 5, as the case may be.

18 “(f) DEFINITIONS.—In this section:

19 “(1) The term ‘covered service’ means, with re-
20 spect to an individual subject to a removal or trans-
21 fer for performance or misconduct under section 713
22 of this title, chapter 43 or subchapter V of chapter
23 75 of title 5, or any other provision of law, the pe-
24 riod of service beginning on the date that the Sec-
25 retary determines under such applicable provision

1 that the individual engaged in activity that gave rise
2 to such action and ending on the date that the indi-
3 vidual is removed or transferred from the senior ex-
4 ecutive position or leaves employment at the Depart-
5 ment prior to the issuance of a final decision with
6 respect to such action, as the case may be.

7 “(2) The term ‘lump-sum credit’ has the mean-
8 ing given such term in section 8331(8) or section
9 8401(19) of title 5, as the case may be.

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

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

16 (2) CLERICAL AMENDMENT.—The table of sec-
17 tions at the beginning of chapter 7 of such title is
18 amended by inserting after the item relating to sec-
19 tion 715, as added by section 3, the following new
20 item:

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

21 (b) APPLICATION.—Section 717 of title 38, United
22 States Code, as added by subsection (a)(1), shall apply
23 to any action of removal or transfer under section 713

1 of title 38, United States Code, commencing on or after
2 the date of the enactment of this Act.

3 **SEC. 5. AUTHORITY TO RECOUP BONUSES OR AWARDS**
4 **PAID TO EMPLOYEES OF DEPARTMENT OF**
5 **VETERANS AFFAIRS.**

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

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

11 **“(a) RECOUPMENT.**—Notwithstanding any other pro-
12 vision of law, the Secretary may issue an order directing
13 an employee of the Department to repay the amount, or
14 a portion of the amount, of any award or bonus paid to
15 the employee under title 5, including under chapters 45
16 or 53 of such title, or this title if—

17 “(1) the Secretary determines such repayment
18 appropriate pursuant to regulations prescribed under
19 subsection (c); and

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

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

4 “(A) notice of the order and an opportunity to
5 respond to the order; and

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

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

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

17 (b) CLERICAL AMENDMENT.—The table of sections
18 at the beginning of such chapter, as amended by section
19 4, is amended by inserting after the item relating to sec-
20 tion 717 the following new item:

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

21 (c) EFFECTIVE DATE.—Section 719 of title 38,
22 United States Code, as added by subsection (a), shall
23 apply with respect to an award or bonus paid by the Sec-
24 retary of Veterans Affairs to an employee of the Depart-

1 ment of Veterans Affairs on or after the date of the enact-
2 ment of this Act.

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

9 **SEC. 6. AUTHORITY TO RECOUP RELOCATION EXPENSES**

10 **PAID TO OR ON BEHALF OF EMPLOYEES OF**
11 **DEPARTMENT OF VETERANS AFFAIRS.**

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

14 **“§ 721. Recoupment of relocation expenses paid on**
15 **behalf of employees of Department**

16 **“(a) RECOUPMENT.—(1) Notwithstanding any other**
17 **provision of law, the Secretary may direct an employee of**
18 **the Department to repay the amount, or a portion of the**
19 **amount, paid to or on behalf of the employee under title**
20 **5 for relocation expenses, including any expenses under**
21 **section 5724 or 5724a of such title, or this title if—**

22 **“(A) the Secretary determines that—**

23 **“(i) the employee has committed an act of**
24 **fraud, waste, or malfeasance; and**

1 “(ii) such repayment is appropriate pursu-
2 ant to regulations prescribed under subsection
3 (c); and

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

6 “(i) notice of the determination of the Sec-
7 retary and an opportunity to respond to the de-
8 termination; and

9 “(ii) consistent with paragraph (2), an op-
10 portunity to appeal the determination to an-
11 other department or agency of the Federal Gov-
12 ernment.

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

19 “(b) REVIEW.—A decision regarding a repayment by
20 an employee pursuant to subsection (a)(1)(B)(ii) is final
21 and may not be reviewed by any department, agency, or
22 court.

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

1 (b) CLERICAL AMENDMENT.—The table of sections
2 at the beginning of such chapter is further amended by
3 adding at the end the following new item:

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

4 (c) EFFECTIVE DATE.—Section 721 of title 38,
5 United States Code, as added by subsection (a), shall
6 apply with respect to an amount paid by the Secretary
7 of Veterans Affairs to or on behalf of an employee of the
8 Department of Veterans Affairs for relocation expenses on
9 or after the date of the enactment of this Act.

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

16 **SEC. 7. SENIOR EXECUTIVES: PERSONNEL ACTIONS BASED**
17 **ON PERFORMANCE OR MISCONDUCT.**

18 (a) EXPANSION OF COVERED PERSONNEL AC-
19 TIONS.—Section 713 is amended in subsection (a)(1) by
20 inserting after “such removal.” the following: “If the Sec-
21 retary determines that the performance or misconduct of
22 such an individual does not merit removal from the senior
23 executive service position, the Secretary may suspend, rep-
24 rimand, or admonish the individual.”.

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

3 (1) in subsection (a)—

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

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

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

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

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

15 (2) in subsection (b)(2)—

16 (A) by striking “under this section” and
17 inserting “under section 723”; and

18 (B) by striking the second sentence;

19 (3) in subsection (c)—

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

22 (B) by striking “and the reason for such
23 removal or transfer” and inserting “, the rea-
24 son for such removal or transfer, the name and
25 position of the employee, and all charging docu-

1 ments and evidence pertaining to such removal
2 or transfer”;

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

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

7 “(2) A personnel action under this section—

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

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

12 (5) by redesignating subsections (f) and (g) as
13 subsections (e) and (f), respectively; and

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

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

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

22 (1) striking subsection (b); and

23 (2) redesignating subsections (c) and (d) as
24 subsections (b) and (c), respectively.

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

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

6 “(a) The Secretary shall from time to time appoint
7 a board to hear appeals of any personnel action taken
8 under section 713. Such board shall be known as the Sen-
9 ior Executive Disciplinary Appeals Board (hereinafter re-
10 ferred to as the ‘Board’). Each Board shall consist of 3
11 employees of the Department. The Board shall have exclu-
12 sive jurisdiction to review any personnel action under sec-
13 tion 713.

14 “(b) Upon an appeal of such a personnel action, the
15 Senior Executive Disciplinary Appeals Board shall—

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

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

20 “(c) The Board shall afford an employee appealing
21 a personnel action an opportunity for an oral hearing. If
22 such a hearing is held, the appellant may be represented
23 by counsel.

24 “(d) The Board shall uphold the decision of the Sec-
25 retary if—

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

3 “(2) the applicable personnel action is within
4 the tolerable bounds of reasonableness.

5 “(e) If the Board issues a decision under this section
6 that reverses or otherwise mitigates the applicable per-
7 sonnel action, the Secretary may reverse the decision of
8 the Board. Consistent with the requirements of subsection
9 (g), the decision of the Secretary under this subsection
10 shall be final.

11 “(f) In any case in which the Board cannot issue a
12 decision in accordance with the 21-day requirement under
13 subsection (b)(2), the personnel action is final.

14 “(g) A petition to review a final order or final deci-
15 sion of the Secretary or the Board under this section shall
16 be filed in the United States Court of Appeals for the Fed-
17 eral Circuit. Any decision by such Court shall be in compli-
18 ance with section 7462(f)(2) of this title.

19 “(h) During the period beginning on the date on
20 which an individual appeals a removal from the civil serv-
21 ice under section 713(d) and ending on the date that the
22 Board or Secretary issues a final decision on such appeal,
23 such individual may not receive any pay, awards, bonuses,
24 incentives, allowances, differentials, student loan repay-
25 ments, special payments, or benefits.”.

1 (e) TECHNICAL AND CLERICAL AMENDMENTS.—

2 (1) TECHNICAL AMENDMENT.—The section
3 heading of section 713 is amended to read as fol-
4 lows: **Senior executives: personnel actions**
5 **based on performance or misconduct.**

6 (2) CLERICAL AMENDMENTS.—The table of
7 contents for such chapter is further amended—

8 (A) by striking the item relating to section
9 713 and inserting the following:

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

10 and

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

“723. Senior Executive Disciplinary Appeals Board.”.

12 (f) RULE OF CONSTRUCTION.—Nothing in this sec-
13 tion or section 731 of title 38, United States Code, (as
14 added by subsection (c)) shall be construed to apply to
15 an appeal of a removal, transfer, or other personnel action
16 that was pending before the date of the enactment of this
17 Act.

18 **SEC. 8. TREATMENT OF WHISTLEBLOWER COMPLAINTS IN**
19 **DEPARTMENT OF VETERANS AFFAIRS.**

20 (a) IN GENERAL.—Chapter 7 is further amended by
21 adding at the end the following new subchapter:

1 “SUBCHAPTER II—WHISTLEBLOWER
 2 COMPLAINTS

3 **“§ 741. Whistleblower complaint defined**

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

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

12 “(a) **FILING.**—(1) In addition to any other method
 13 established by law in which an employee may file a whistle-
 14 blower complaint, an employee of the Department may file
 15 a whistleblower complaint in accordance with subsection
 16 (g) with a supervisor of the employee.

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

21 “(b) **NOTIFICATION.**—(1) Not later than four busi-
 22 ness days after the date on which a supervisor receives
 23 a whistleblower complaint by an employee under this sec-
 24 tion, the supervisor shall notify, in writing, the employee
 25 of whether the supervisor determines that there is a rea-

1 sonable likelihood that the complaint discloses a violation
2 of any law, rule, or regulation, or gross mismanagement,
3 gross waste of funds, abuse of authority, or substantial
4 and specific danger to public health and safety. The super-
5 visor shall retain written documentation regarding the
6 whistleblower complaint and shall submit to the next-level
7 supervisor a written report on the complaint.

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

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

24 “(d) FILING COMPLAINT WITH NEXT-LEVEL SUPER-
25 VISORS.—(1) If any circumstance described in paragraph

1 (3) is met, an employee may file a whistleblower complaint
2 in accordance with subsection (g) with the next-level su-
3 pervisor who shall treat such complaint in accordance with
4 this section.

5 “(2) An employee may file a whistleblower complaint
6 with the Secretary if the employee has filed the whistle-
7 blower complaint to each level of supervisors between the
8 employee and the Secretary in accordance with paragraph
9 (1).

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

12 “(A) A supervisor does not make a timely de-
13 termination under subsection (b)(1) regarding a
14 whistleblower complaint.

15 “(B) The employee who made a whistleblower
16 complaint determines that the supervisor did not
17 adequately address the complaint pursuant to sub-
18 section (c).

19 “(C) The immediate supervisor of the employee
20 is the basis of the whistleblower complaint.

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

1 “(1) inform the employee of the ability to vol-
2 unteer for a transfer in accordance with section
3 3352 of title 5; and

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

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

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

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

17 “(A) An explanation of the purpose of the whis-
18 tleblower complaint form.

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

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

1 “(D) A statement directing the employee to in-
2 formation accessible on the Internet website of the
3 Department as described in section 745(c).

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

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

6 “(ii) the name of the employee;

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

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

13 “(v) proposed solutions to complaint.

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

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

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

24 “(a) IN GENERAL.—(1) In accordance with para-
25 graph (2), the Secretary shall carry out the following ad-

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

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

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

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

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

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

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

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

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

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

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

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

1 742 or with the Inspector General of the De-
2 partment, the Special Counsel, or Congress;

3 “(D) participating in an audit or investiga-
4 tion by the Comptroller General of the United
5 States;

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

8 “(F) engaging in communications that are
9 related to the duties of the position or are oth-
10 erwise protected.

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

14 “(3) Conducting a peer review or opening a re-
15 taliatory investigation relating to an activity of an
16 employee that is protected by section 2302 of title
17 5.

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

21 **“§ 744. Evaluation criteria of supervisors and treat-**
22 **ment of bonuses**

23 “(a) EVALUATION CRITERIA.—(1) In evaluating the
24 performance of supervisors of the Department, the Sec-

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

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

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

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

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

24 “(2) Notwithstanding any other provision of law, the
25 Secretary shall issue an order directing a supervisor de-

1 scribed in subsection (a)(2)(B) to repay the amount of any
2 award or bonus paid under this title or title 5, including
3 under chapter 45 or 53 of such title, if—

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

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

11 “(C) before such order is made, the supervisor
12 is afforded—

13 “(i) notice of the order and an opportunity
14 to respond to the order; and

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

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

23 “(a) TRAINING.—The Secretary, in coordination with
24 the Whistleblower Protection Ombudsman designated
25 under section 3(d)(1)(C) of the Inspector General Act of

1 1978 (5 U.S.C. App.), shall annually provide to each em-
2 ployee of the Department training regarding whistleblower
3 complaints, including—

4 “(1) an explanation of each method established
5 by law in which an employee may file a whistle-
6 blower complaint;

7 “(2) an explanation of prohibited personnel ac-
8 tions described by section 743(c) of this title;

9 “(3) with respect to supervisors, how to treat
10 whistleblower complaints in accordance with section
11 742 of this title;

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

15 “(5) an explanation that the employee may not
16 be prosecuted or reprimed against for disclosing in-
17 formation to Congress in instances where such dis-
18 closure is permitted by law, including under sections
19 5701, 5705, and 7742 of this title, under section
20 552a of title 5 (commonly referred to as the Privacy
21 Act), under chapter 93 of title 18, and pursuant to
22 regulations promulgated under section 264(c) of the
23 Health Insurance Portability and Accountability Act
24 of 1996 (Public Law 104–191);

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

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

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

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

18 “(2) The Secretary shall publish on the Internet
19 website of the Department, the whistleblower complaint
20 form described in section 742(g)(2).

21 **“§ 746. Notice to Congress**

22 “Not later than 30 days after the date on which the
23 Secretary receives from the Special Counsel information
24 relating to a whistleblower complaint pursuant to section
25 1213 of title 5, the Secretary shall notify the Committees

1 on Veterans' Affairs of the House of Representatives and
 2 the Senate, the Committee on Oversight and Government
 3 Reform of the House of Representatives, and the Com-
 4 mittee on Homeland Security and Governmental Affairs
 5 of the Senate of such information, including the deter-
 6 mination made by the Special Counsel.”.

7 (b) CONFORMING AND CLERICAL AMENDMENTS.—

8 (1) CONFORMING AMENDMENT.—Such chapter
 9 is further amended by inserting before section 701
 10 the following:

11 “SUBCHAPTER I—GENERAL EMPLOYEE
 12 MATTERS”.

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

15 (A) by inserting before the item relating to
 16 section 701 the following new item:

“SUBCHAPTER I—GENERAL EMPLOYEE MATTERS”;

17 and

18 (B) by adding at the end the following new
 19 items:

“SUBCHAPTER II—WHISTLEBLOWER COMPLAINTS

“741. Whistleblower complaint defined.

“742. Treatment of whistleblower complaints.

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

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

“745. Training regarding whistleblower complaints.

“746. Notice to Congress.”.

1 **SEC. 9. APPEALS REFORM.**

2 (a) DEFINITIONS.—Section 101 of title 38, United
3 States Code, is amended by adding at the end the fol-
4 lowing new paragraphs:

5 “(34) The term ‘Agency of Original Jurisdic-
6 tion’ means the activity which entered the original
7 determination with regard to a claim for benefits
8 under this title.

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

12 (b) NOTICE TO CLAIMANTS OF REQUIRED INFORMA-
13 TION AND EVIDENCE.—Section 5103 of title 38, United
14 States Code, is amended—

15 (1) in subsection (a)(2)(B)(i) by striking “, a
16 claim for reopening a prior decision on a claim, or
17 a claim for an increase in benefits;” and inserting
18 “or a supplemental claim;”; and

19 (2) in subsection (b) by adding at the end the
20 following new paragraph:

21 “(6) Nothing in this section shall require notice
22 to be sent for a supplemental claim that is filed
23 within the timeframe set forth in subsections
24 (a)(2)(B) and (a)(2)(D) of section 5110 of this
25 title.”.

1 (c) RULE WITH RESPECT TO DISALLOWED
2 CLAIMS.—Section 5103A(f) of title 38, United States
3 Code, is amended to read as follows:

4 “(f) RULE WITH RESPECT TO DISALLOWED
5 CLAIMS.—Nothing in this section shall be construed to re-
6 quire the Secretary to readjudicate a claim that has been
7 disallowed except when new and relevant evidence is pre-
8 sented or secured, as described in section 5108 of this
9 title.”.

10 (d) OTHER MATTERS.—Chapter 51 of title 38,
11 United States Code, is amended by inserting after section
12 5103A the following new sections:

13 **“§ 5103B. Applicability of duty to assist**

14 “(a) TIME FRAME.—The Secretary’s duty to assist
15 under section 5103A of this title shall apply only to a
16 claim, or supplemental claim, for a benefit under a law
17 administered by the Secretary until the time that a claim-
18 ant is provided notice of the decision of the agency of
19 original jurisdiction decision with respect to such claim,
20 or supplemental claim, under section 5104 of this title.

21 “(b) NON-APPLICABILITY TO CERTAIN REVIEWS AND
22 APPEALS.—The Secretary’s duty to assist under section
23 5103A of this title shall not apply to higher-level review
24 by the agency of original jurisdiction, pursuant to section

1 5104B of this title, or to review on appeal by the Board
2 of Veterans' Appeals.

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

4 (1) If, during review of the decision of the agency of origi-
5 nal jurisdiction under section 5104B of this title, the high-
6 er-level reviewer identifies an error on the part of the
7 agency of original jurisdiction to satisfy its duties under
8 section 5103A of this title, and that error occurred prior
9 to the decision of the agency of original jurisdiction being
10 reviewed, the higher-level reviewer shall return the claim
11 for correction of such error and readjudication unless the
12 claim can be granted in full.

13 “(2) If the Board, during review on appeal of a deci-
14 sion of the agency of original jurisdiction decision, identi-
15 fies an error on the part of the agency of original jurisdic-
16 tion to satisfy its duties under section 5103A of this title,
17 and that error occurred prior to the decision of the agency
18 of original jurisdiction on appeal, the Board shall remand
19 the claim to the agency of original jurisdiction for correc-
20 tion of such error and readjudication unless the claim can
21 be granted in full. Remand for correction of such error
22 may include directing the agency of original jurisdiction
23 to obtain an advisory medical opinion under section 5109
24 of this title.

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

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

7 **“§ 5104B. Higher-level review by the agency of origi-**
8 **nal jurisdiction**

9 “(a) IN GENERAL.—The claimant may request a re-
10 view of the decision of the agency of original jurisdiction
11 by a higher-level adjudicator within the jurisdiction of the
12 agency of original jurisdiction.

13 “(b) TIME AND MANNER OF REQUEST.—A request
14 for higher-level review by the agency of original jurisdic-
15 tion must be in writing in the form prescribed by the Sec-
16 retary and made within one year of the notice of the deci-
17 sion of the agency of original jurisdiction. Such request
18 may specifically indicate whether such review is requested
19 by a higher-level adjudicator at the same office within the
20 agency of original jurisdiction or by an adjudicator at a
21 different office of the agency of original jurisdiction.

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

24 “(d) EVIDENTIARY RECORD FOR REVIEW.—The evi-
25 dentiary record before the higher-level reviewer shall be

1 limited to the evidence of record in the decision of the
2 agency of original jurisdiction being reviewed.

3 “(e) DE NOVO REVIEW.—Higher-level review under
4 this section shall be de novo.”.

5 (e) NOTICE OF DECISIONS.—Section 5104(b) of title
6 38, United States Code, is amended to read as follows:

7 “(b) In any case where the Secretary denies a benefit
8 sought, the notice required by subsection (a) shall also in-
9 clude—

10 “(1) identification of the issues adjudicated;

11 “(2) a summary of the evidence considered by
12 the Secretary;

13 “(3) a summary of the applicable laws and reg-
14 ulations;

15 “(4) identification of findings favorable to the
16 claimant;

17 “(5) identification of elements not satisfied
18 leading to the denial;

19 “(6) an explanation of how to obtain or access
20 evidence used in making the decision; and

21 “(7) if applicable, identification of the criteria
22 that must be satisfied to grant service connection or
23 the next higher level of compensation.”.

24 (f) SUPPLEMENTAL CLAIMS.—Section 5108 of title
25 38, United States Code, is amended to read as follows:

1 **“§ 5108. Supplemental claims**

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

7 (g) REMANDS FOR MEDICAL OPINIONS.—Section
8 5109 of title 38, United States Code, is amended by add-
9 ing at the end 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 Board’s remand
17 instructions shall include the questions to be posed to the
18 independent medical expert providing the advisory medical
19 opinion.”.

20 (h) EFFECTIVE DATES OF AWARDS.—Section 5110
21 of title 38, United States Code, is amended—

22 (1) by striking subsection (a) and inserting the
23 following new subsection (a):

24 “(a)(1) Unless specifically provided otherwise in this
25 chapter, the effective date of an award based on an initial
26 claim, or a supplemental claim, of compensation, depend-

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

4 “(2) For purposes of applying the effective date rules
5 in this section, the date of application shall be considered
6 the date of the filing of the initial application for a benefit
7 provided that the claim is continuously pursued by filing
8 any of the following either alone or in succession:

9 “(A) A request for higher-level review under
10 section 5104B of this title within one year of an
11 agency of original jurisdiction decision.

12 “(B) A supplemental claim under section 5108
13 of this title within one year of an agency of original
14 jurisdiction decision.

15 “(C) A notice of disagreement within one year
16 of an agency of original jurisdiction decision.

17 “(D) A supplemental claim under section 5108
18 of this title within one year of a decision of the
19 Board of Veterans’ Appeals.

20 “(3) Except as otherwise provided in this section, for
21 supplemental claims received more than one year after an
22 agency of original jurisdiction decision or a decision by
23 the Board of Veterans’ Appeals, the effective date shall
24 be fixed in accordance with the facts found, but shall not

1 be earlier than the date of receipt of the supplemental
2 claim.”; and

3 (2) in subsection (i) by—

4 (A) striking “reopened” and inserting “re-
5 adjudicated”;

6 (B) striking “material” and inserting “rel-
7 evant”; and

8 (C) striking “reopening” and inserting “re-
9 adjudication”.

10 (i) DEFINITION OF AWARD OR INCREASED RE-
11 WARD.—Section 5111(d)(1) of title 38, United States
12 Code, is amended by striking “or reopened award;” and
13 inserting “award or award based on a supplemental
14 claim;”.

15 (j) RECOGNITION OF AGENTS AND ATTORNEYS GEN-
16 ERALLY.—Section 5904 of title 38, United States Code,
17 is amended—

18 (1) in subsection (c)(1) by striking “notice of
19 disagreement is filed” and inserting “claimant is
20 provided notice of the initial decision of the agency
21 of original jurisdiction under section 5104 of this
22 title”; and

23 (2) in subsection (c)(2) by striking “notice of
24 disagreement is filed” and inserting “claimant is
25 provided notice of the initial decision of the agency

1 of original jurisdiction under section 5104 of this
2 title”.

3 (k) CORRECTION OF OBVIOUS ERRORS.—Section
4 7103 of title 38, United States Code, is amended—

5 (1) in subsection (b)(1)(A) by striking “heard”
6 and inserting “decided”; and

7 (2) in subsection (b)(1)(B) by striking “heard”
8 and inserting “decided”.

9 (l) JURISDICTION OF BOARD.—Section 7104(b) of
10 title 38, United States Code, is amended by striking “re-
11 opened” and inserting “readjudicated”.

12 (m) FILING OF APPEAL.—Section 7105 of title 38,
13 United States Code, is amended—

14 (1) in subsection (a)—

15 (A) by striking the first sentence and in-
16 serting “Appellate review will be initiated by
17 the filing of a notice of disagreement in the
18 form prescribed by the Secretary.”; and

19 (B) by striking “hearing and”;

20 (2) by amending subsection (b) to read as fol-
21 lows:

22 “(b)(1) Except in the case of simultaneously con-
23 tested claims, notice of disagreement shall be filed within
24 one year from the date of the mailing of notice of the deci-
25 sion of the agency of original jurisdiction under section

1 5104, 5104B, or 5108 of this title. A notice of disagree-
2 ment postmarked before the expiration of the one-year pe-
3 riod will be accepted as timely filed. A question as to time-
4 liness or adequacy of the notice of disagreement shall be
5 decided by the Board.

6 “(2) Notices of disagreement must be in writing,
7 must set out specific allegations of error of fact or law,
8 and may be filed by the claimant, the claimant’s legal
9 guardian, or such accredited representative, attorney, or
10 authorized agent as may be selected by the claimant or
11 legal guardian. Not more than one recognized organiza-
12 tion, attorney, or agent will be recognized at any one time
13 in the prosecution of a claim. Notices of disagreement
14 must be filed with the Board.

15 “(3) The notice of disagreement shall indicate wheth-
16 er the claimant requests a hearing before the Board, re-
17 quests an opportunity to submit additional evidence with-
18 out a Board hearing, or requests review by the Board
19 without a hearing or submission of additional evidence. If
20 the claimant does not expressly request a Board hearing
21 in the notice of disagreement, no Board hearing will be
22 held.”;

23 (3) by amending subsection (c) to read as fol-
24 lows:

1 “(c) If no notice of disagreement is filed in accord-
2 ance with this chapter within the prescribed period, the
3 action or decision of the agency of original jurisdiction
4 shall become final and the claim will not thereafter be re-
5 adjudicated or allowed, except as may otherwise be pro-
6 vided by section 5104B or 5108 of this title or regulations
7 not inconsistent with this title.”;

8 (4) by striking subsections (d)(1) through
9 (d)(5);

10 (5) by adding a new subsection (d) to read as
11 follows:

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

15 (6) by striking subsection (e).

16 (n) SIMULTANEOUSLY CONTESTED CLAIMS.—Sub-
17 section (b) of section 7105A of title 38, United States
18 Code, is amended to read as follows:

19 “(b) The substance of the notice of disagreement
20 shall be communicated to the other party or parties in in-
21 terest and a period of 30 days shall be allowed for filing
22 a brief or argument in response thereto. Such notice shall
23 be forwarded to the last known address of record of the
24 parties concerned, and such action shall constitute suffi-
25 cient evidence of notice.”.

1 (o) ADMINISTRATIVE APPEALS.—Strike section 7106
2 of title 38, United States Code.

3 (p) DOCKETS AND HEARINGS.—Section 7107 of title
4 38, United States Code, is amended—

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

7 “(a) The Board shall maintain two separate dockets.
8 A non-hearing option docket shall be maintained for cases
9 in which no Board hearing is requested and no additional
10 evidence will be submitted. A separate and distinct hearing
11 option docket shall be maintained for cases in which a
12 Board hearing is requested in the notice of disagreement
13 or in which no Board hearing is requested, but the appel-
14 lant requests, in the notice of disagreement, an oppor-
15 tunity to submit additional evidence. Except as provided
16 in subsection (b), each case before the Board will be de-
17 cided in regular order according to its respective place on
18 the Board’s non-hearing option docket or the hearing op-
19 tion docket.”;

20 (2) by amending subsection (b) to read as fol-
21 lows:

22 “(b) A case on either the Board’s non-hearing option
23 docket or hearing option docket, may, for cause shown,
24 be advanced on motion for earlier consideration and deter-
25 mination. Any such motion shall set forth succinctly the

1 grounds upon which the motion is based. Such a motion
2 may be granted only—

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

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

7 “(3) for other sufficient cause shown.”;

8 (3) by amending subsection (c) to read as fol-
9 lows:

10 “(c)(1) For cases on the Board hearing option docket
11 in which a hearing is requested in the notice of disagree-
12 ment, the Board shall notify the appellant whether a
13 Board hearing will be held—

14 “(A) at its principal location, or

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

19 “(2)(A) Upon notification of a Board hearing at the
20 Board’s principal location as described in subsection
21 (c)(1)(A) of this section, the appellant may alternatively
22 request a hearing as described in subsection (c)(1)(B) of
23 this section. If so requested, the Board shall grant such
24 request.

1 “(B) Upon notification of a Board hearing by picture
2 and voice transmission as described in subsection
3 (c)(1)(B) of this section, the appellant may alternatively
4 request a hearing as described in subsection (c)(1)(A) of
5 this section. If so requested, the Board shall grant such
6 request.”; and

7 (4) by striking subsections (d) and (e) and re-
8 designating subsection (f) as subsection (d).

9 (q) INDEPENDENT MEDICAL OPINIONS.—Strike sec-
10 tion 7109 of title 38, United States Code.

11 (r) REVISION OF DECISIONS ON GROUNDS OF CLEAR
12 AND UNMISTAKABLE ERROR.—Section 7111(e) of title
13 38, United States Code, is amended by striking “merits,
14 without referral to any adjudicative or hearing official act-
15 ing on behalf of the Secretary.” and inserting “merits.”.

16 (s) EVIDENTIARY RECORD.—Chapter 71 of title 38,
17 United States Code, is amended by adding the following
18 new section:

19 **“§ 7113. Evidentiary record before the board**

20 “(a) NON-HEARING OPTION DOCKET.—For cases in
21 which a Board hearing is not requested in the notice of
22 disagreement, the evidentiary record before the Board
23 shall be limited to the evidence of record at the time of
24 the agency of original jurisdiction decision on appeal.

1 “(b) HEARING OPTION DOCKET.—(1) Except as pro-
2 vided in paragraph (2), for cases on the hearing option
3 docket in which a hearing is requested in the notice of
4 disagreement, the evidentiary record before the Board
5 shall be limited to the evidence of record at the time of
6 the agency of original jurisdiction decision on appeal.

7 “(2) The evidentiary record before the Board for
8 cases on the hearing option docket in which a hearing is
9 requested, shall include each of the following, which the
10 Board shall consider in the first instance—

11 “(A) evidence submitted by the appellant and
12 his or her representative, if any, at the Board hear-
13 ing; and

14 “(B) evidence submitted by the appellant and
15 his or her representative, if any, within 90 days fol-
16 lowing the Board hearing.

17 “(3)(A) Except as provided in subparagraph (B) of
18 this paragraph, for cases on the hearing option docket in
19 which a hearing is not requested in the notice of disagree-
20 ment, the evidentiary record before the Board shall be lim-
21 ited to the evidence considered by the agency of original
22 jurisdiction in the decision on appeal.

23 “(B) The evidentiary record before the Board for
24 cases on the hearing option docket in which a hearing is

1 not requested, shall include each of the following, which
2 the Board shall consider in the first instance—

3 “(i) evidence submitted by the appellant and his
4 or her representative, if any, with the notice of dis-
5 agreement; and

6 “(ii) evidence submitted by the appellant and
7 his or her representative, if any, within 90 days fol-
8 lowing receipt of the notice of disagreement.”.

9 (t) CONFORMING AMENDMENT.—The heading of sec-
10 tion 7105 is amended by striking “notice of disagreement
11 and”.

12 (u) CLERICAL AMENDMENTS.—

13 (1) CHAPTER 51.—The table of sections at the
14 beginning of chapter 51 of title 38, United States
15 Code, is amended—

16 (A) by inserting after the item relating to
17 section 5103A the following new item:

“5103B. Applicability of duty to assist.”;

18 and

19 (B) by inserting after the item relating to
20 section 5104 the following new items:

“5104A. Binding nature of favorable findings.

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

21 and

1 (C) by striking the item relating to section
2 5108 and inserting the following new item:

“5108. Supplemental claims.”.

3 (2) CHAPTER 71.—The table of sections at the
4 beginning of chapter 71 of title 38, United States
5 Code, is amended—

6 (A) by striking the item relating to section
7 7105 and inserting the following new item:

“7105. Filing of appeal.”;

8 (B) by striking the item relating to section
9 7106;

10 (C) by striking the item relating to section
11 7109; and

12 (D) by adding at the end the following new
13 item:

“7113. Evidentiary record before the Board.”.

14 **SEC. 10. LIMITATION ON AWARDS AND BONUSES PAID TO**
15 **SENIOR EXECUTIVE EMPLOYEES OF DEPART-**
16 **MENT OF VETERANS AFFAIRS.**

17 Section 705 of the Veterans Access, Choice, and Ac-
18 countability Act of 2014 (Public Law 113–146; 38 U.S.C.
19 703 note) is amended by striking the period at the end
20 and inserting the following: “, except that during each of
21 fiscal years 2017 through 2021, no award or bonus may

- 1 be paid to any employee of the Department of Veterans
- 2 Affairs who is a member of the Senior Executive Service.”.

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