

# Calendar No. 240

114TH CONGRESS  
1ST SESSION

# S. 627

[Report No. 114-148]

To require the Secretary of Veterans Affairs to revoke bonuses paid to employees involved in electronic wait list manipulations, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

MARCH 3, 2015

Ms. AYOTTE (for herself, Mrs. MCCASKILL, Mr. MORAN, Mr. FLAKE, Ms. KLOBUCHAR, Mrs. SHAHEEN, Mr. THUNE, Mr. CRAPO, Mr. TOOMEY, and Mr. CASSIDY) introduced the following bill; which was read twice and referred to the Committee on Veterans' Affairs

SEPTEMBER 28, 2015

Reported by Mr. ISAKSON, with an amendment and an amendment to the title  
[Strike out all after the enacting clause and insert the part printed in *italie*]

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## A BILL

To require the Secretary of Veterans Affairs to revoke bonuses paid to employees involved in electronic wait list manipulations, 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. RETURN OF BONUSES AWARDED TO EMPLOY-**  
2 **EES OF DEPARTMENT OF VETERANS AFFAIRS**  
3 **FOR PERFORMANCE THEY MISREPRE-**  
4 **SENTED.**

5 (a) INVESTIGATIONS.—Not later than 180 days after  
6 the date on which the Inspector General of the Depart-  
7 ment of Veterans Affairs submits to Congress a report de-  
8 scribed in subsection (b), the Secretary of Veterans Affairs  
9 shall identify each employee of the Department of Vet-  
10 erans Affairs who—

11 (1) during any of fiscal years 2011 through  
12 2014—

13 (A) contributed to the purposeful omission  
14 of the name of one or more veterans waiting for  
15 health care from an electronic wait list for a  
16 medical facility of the Department identified by  
17 the Inspector General in such report; or

18 (B) was the supervisor of an employee of  
19 the Department, or was a supervisor of that su-  
20 pervisor, at any level, who contributed to a pur-  
21 poseful omission as described in subparagraph  
22 (A) and knew, or reasonably should have  
23 known, that the employee contributed to such  
24 purposeful omission; and

25 (2) received a bonus in part because of such  
26 omission.

1 (b) REPORTS DESCRIBED.—A report described in  
2 this subsection is a report that—

3 (1) was submitted to Congress by the Inspector  
4 General;

5 (2) is based on investigations carried out by the  
6 Inspector General in calendar year 2014; and

7 (3) identifies medical facilities of the Depart-  
8 ment at which scheduling practices in use, or for-  
9 merly in use, did not comply with scheduling policies  
10 and procedures of the Department.

11 (c) IDENTIFICATION.—The Secretary shall identify  
12 employees contributing to an omission described in sub-  
13 section (a)(1) without regard to whether the employee  
14 knowingly contributed to such omission or contributed to  
15 such omission for the purpose of receiving a bonus.

16 (d) REPAYMENT.—

17 (1) IN GENERAL.—For each employee identified  
18 under subsection (a) who received a bonus as de-  
19 scribed in such subsection, the Secretary shall, after  
20 notice and an opportunity for a hearing, issue an  
21 order directing the employee to repay the amount of  
22 such bonus.

23 (2) HEARINGS.—A hearing under this sub-  
24 section shall be conducted in accordance with regula-  
25 tions relating to hearings promulgated by the Sec-

1       retary under chapter 75 of title 5, United States  
2       Code.

3           ~~(3)~~ APPEAL.—

4           (A) IN GENERAL.—An employee against  
5       whom an order is issued under paragraph (1)  
6       may appeal to the Merit Systems Protection  
7       Board under section 7701 of title 5, United  
8       States Code.

9           (B) SCOPE OF REVIEW.—A review of an  
10       appeal by the Merit Systems Protection Board  
11       under subparagraph (A) shall be based on the  
12       record established through the appellant's hear-  
13       ing conducted under paragraph (2).

14          (C) STANDARD OF REVIEW.—The Merit  
15       Systems Protection Board shall set aside an  
16       order issued under paragraph (1) if the issuing  
17       of the order was clearly erroneous or the result  
18       of a denial of procedural due process.

19       **SECTION 1. PROHIBITION ON AWARD OF BONUSES TO EM-**  
20       **PLOYEES SUBJECT OF ADVERSE FINDINGS.**

21       (a) IN GENERAL.—Chapter 7 of title 38, United States  
22       Code, is amended by adding at the end the following new  
23       section:

1 **“§ 714. Prohibition on award of bonuses to employees**  
2 **subject of adverse findings**

3 “(a) *PROHIBITION.—(1) Notwithstanding any other*  
4 *provision of law, in a case in which the Secretary makes*  
5 *an adverse finding relating to an employee of the Depart-*  
6 *ment, the Secretary may not award a bonus to such em-*  
7 *ployee until the earlier of—*

8 “(A) *the date that is five years after the end of*  
9 *the fiscal year in which the adverse finding was*  
10 *made; or*

11 “(B) *the date that the finding is found to have*  
12 *been made in error.*

13 “(2) *The Secretary may base an adverse finding under*  
14 *paragraph (1) on an investigation by, determination of, or*  
15 *information provided by the Inspector General of the De-*  
16 *partment or another senior ethics official of the Department*  
17 *or the Comptroller General of the United States in connec-*  
18 *tion with the carrying out by such official of an activity,*  
19 *authority, or function under a provision of law other than*  
20 *this section.*

21 “(b) *PREVIOUSLY AWARDED BONUSES.—If the Sec-*  
22 *retary makes an adverse finding relating to an employee*  
23 *under subsection (a), the Secretary, after notice and an op-*  
24 *portunity for a hearing, shall issue an order directing the*  
25 *employee to repay the amount of any bonus awarded to the*  
26 *employee during the year during which the adverse finding*

1 *is made, unless such finding is found to have been made*  
 2 *in error.*

3 “(c) *DEFINITIONS.—In this section:*

4 “(1) *The term ‘adverse finding’ relating to an*  
 5 *employee means a determination that the conduct of*  
 6 *the employee—*

7 “(A) *violated a policy of the Department for*  
 8 *which the employee may be removed or sus-*  
 9 *pending; or*

10 “(B) *violated a law for which the employee*  
 11 *may be imprisoned for more than 1 year.*

12 “(2) *The term ‘bonus’ means any bonus or cash*  
 13 *award, including—*

14 “(A) *an award under chapter 45 of title 5;*

15 “(B) *an award under section 5384 of such*  
 16 *title; and*

17 “(C) *a retention bonus under section 5754*  
 18 *of such title.”.*

19 (b) *CLERICAL AMENDMENT.—The table of sections at*  
 20 *the beginning of such chapter is amended by adding at the*  
 21 *end the following new item:*

“714. *Prohibition on award of bonuses to employees subject of adverse findings.”.*

1 **SEC. 2. RETENTION OF RECORDS OF REPRIMANDS AND AD-**  
 2 **MONISHMENTS RECEIVED BY EMPLOYEES OF**  
 3 **THE DEPARTMENT OF VETERANS AFFAIRS.**

4 (a) *IN GENERAL.*—Chapter 7 of title 38, United States  
 5 Code, as amended by section 1, is further amended by add-  
 6 ing at the end the following new section:

7 **“§ 715. Record of reprimands and admonishments**

8 *“If any employee of the Department receives a rep-*  
 9 *rimand or admonishment, the Secretary shall retain a copy*  
 10 *of such reprimand or admonishment in the permanent*  
 11 *record of the employee as long as the employee is employed*  
 12 *by the Department.”.*

13 (b) *CLERICAL AMENDMENT.*—The table of sections at  
 14 the beginning of such chapter, as amended by section 1, is  
 15 further amended by adding at the end the following new  
 16 item:

*“715. Record of reprimands and admonishments.”.*

Amend the title so as to read: “A bill to prohibit the Secretary of Veterans Affairs from awarding bonuses to employees of the Department of Veterans Affairs with respect to whom an adverse finding has been made by the Secretary, and for other purposes.”.

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