

114TH CONGRESS
2^D SESSION

H. R. 5620

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 15, 2016

Received; read twice and referred to the Committee on Veterans' Affairs

AN ACT

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; TABLE OF CONTENTS.**

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

5 (b) **TABLE OF CONTENTS.**—The table of contents for
 6 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. Office of Accountability and Whistleblower Protection.
- Sec. 9. Treatment of whistleblower complaints in Department of Veterans Affairs.
- Sec. 10. Appeals reform.
- Sec. 11. Limitation on awards and bonuses paid to senior executive employees of Department of Veterans Affairs.
- Sec. 12. Clarification of emergency hospital care furnished by the Secretary of Veterans Affairs to certain veterans.
- Sec. 13. Sense of Congress regarding American veterans disabled for life.
- Sec. 14. Establishment of positions of Directors of Veterans Integrated Service Networks in Office of Under Secretary for Health of Department of Veterans Affairs and modification of qualifications for Medical Directors.
- Sec. 15. Continuing education requirement for employees of Department of Veterans Affairs authorized to prescribe medication.
- Sec. 16. Review of whistleblower complaints.
- Sec. 17. Identification of matters relating to part-time employment of members of the Armed Forces who are physicians.
- Sec. 18. Recruitment of physicians in Department of Veterans Affairs.
- Sec. 19. Authority to disclose certain medical records of veterans who receive non-Department of Veterans Affairs health care.
- Sec. 20. Survey of veteran experiences with Department of Veterans Affairs medical care.
- Sec. 21. Annual report on performance of regional offices of the Department of Veterans Affairs.
- Sec. 22. Extension of authority of the Secretary of Veterans Affairs to provide for the conduct of medical disability examinations by contract physicians.
- Sec. 23. Provision of status under law by honoring certain members of the reserve components as veterans.

Sec. 24. Provision of rehabilitative equipment and human-powered vehicles to certain disabled veterans.

Sec. 25. Appointment of licensed hearing aid specialists in Veterans Health Administration.

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

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

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

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

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

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

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

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

1 “(A) a reduction in grade for which the in-
2 dividual is qualified and that the Secretary de-
3 termines is appropriate; or

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

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

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

18 “(c) NOTICE TO CONGRESS.—Not later than 30 days
19 after removing or demoting an individual under subsection
20 (a), the Secretary shall submit to the Committees on Vet-
21 erans’ Affairs of the Senate and House of Representatives
22 and to each Member of Congress representing a district
23 in the State or territory where the facility where the indi-
24 vidual was employed immediately before being removed or

1 demoted is located notice in writing of such removal or
2 demotion and the reason for such removal or demotion.

3 “(d) PROCEDURE.—(1) Subsection (b) of section
4 7513 of title 5 shall apply with respect to a removal or
5 a demotion under this section, except that the period for
6 notice and response, which includes the advance notice pe-
7 riod required by paragraph (1) of such subsection and the
8 response period required by paragraph (2) of such sub-
9 section, shall not exceed a total of 10 calendar days.

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

12 “(3)(A) Subject to subparagraph (B) and subsection
13 (e), any removal or demotion under subsection (a) may
14 be appealed to the Merit Systems Protection Board.

15 “(B) An appeal under subparagraph (A) of a removal
16 or demotion may only be made if such appeal is made not
17 later than 7 days after the date of such removal or demo-
18 tion.

19 “(e) EXPEDITED REVIEW BY MSPB.—(1) Upon re-
20 ceipt of an appeal under subsection (d)(3)(A), the Merit
21 Systems Protection Board shall expedite any such appeal
22 under such section and, in any such case, shall issue a
23 decision not later than 60 days after the date of the ap-
24 peal.

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

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

13 “(4) In any case in which the Merit Systems Protec-
14 tion Board cannot issue a decision in accordance with the
15 60-day requirement under paragraph (1), the removal or
16 demotion is final. In such a case, the Merit Systems Pro-
17 tection Board shall, within 14 days after the date that
18 such removal or demotion is final, submit to Congress and
19 the Committees on Veterans’ Affairs of the Senate and
20 House of Representatives and to each Member of Congress
21 representing a district in the State or territory where the
22 facility where the individual was employed immediately be-
23 fore being removed or demoted is located a report that
24 explains the reasons why a decision was not issued in ac-
25 cordance with 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—

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.

18 “(2) The Secretary shall make such an order not
19 later than 7 days after the date of the conclusion of a
20 hearing referred to in paragraph (1)(B) that determines
21 that such order is lawful.

22 “(c) ADMINISTRATIVE REQUIREMENTS.—(1) Not
23 later than 30 days after the Secretary issues an order
24 under subsection (a) or (b), the Director of the Office of

1 Personnel Management shall recalculate the annuity of the
2 individual.

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

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

13 “(e) SPOUSE OR CHILDREN EXCEPTION.—The Sec-
14 retary, in consultation with the Office of Personnel Man-
15 agement, shall prescribe regulations that may provide for
16 the payment to the spouse or children of any individual
17 referred to in subsection (a) or (b) of any amounts which
18 (but for this subsection) would otherwise have been non-
19 payable by reason of such subsections. Any such regula-
20 tions shall be consistent with the requirements of section
21 8332(o)(5) and 8411(l)(5) of title 5, as the case may be.

22 “(f) DEFINITIONS.—In this section:

23 “(1) The term ‘covered service’ means, with re-
24 spect to an individual subject to a removal or trans-
25 fer for performance or misconduct under section 713

1 of this title, chapter 43 or subchapter V of chapter
2 75 of title 5, or any other provision of law, the pe-
3 riod of service beginning on the date that the Sec-
4 retary determines under such applicable provision
5 that the individual engaged in activity that gave rise
6 to such action and ending on the date that the indi-
7 vidual is removed or transferred from the senior ex-
8 ecutive position or leaves employment at the Depart-
9 ment prior to the issuance of a final decision with
10 respect to such action, as the case may be.

11 “(2) The term ‘lump-sum credit’ has the mean-
12 ing given such term in section 8331(8) or section
13 8401(19) of title 5, as the case may be.

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

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

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

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

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

6 **SEC. 5. AUTHORITY TO RECOUP BONUSES OR AWARDS**
7 **PAID TO EMPLOYEES OF DEPARTMENT OF**
8 **VETERANS AFFAIRS.**

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

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

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

20 **“(1)** the Secretary determines such repayment
21 appropriate pursuant to regulations prescribed under
22 subsection (c); and

23 **“(2)** before such repayment, the employee is af-
24 forded—

1 “(A) notice of the order and an oppor-
2 tunity to respond to the order; and

3 “(B) an opportunity to appeal the order to
4 another department or agency of the Federal
5 Government.

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

9 “(A) notice of the order and an opportunity to
10 respond to the order; and

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

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

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

22 (b) CLERICAL AMENDMENT.—The table of sections
23 at the beginning of such chapter, as amended by section
24 4, is amended by inserting after the item relating to sec-
25 tion 717 the following new item:

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

1 (c) EFFECTIVE DATE.—Section 719 of title 38,
2 United States Code, as added by subsection (a), shall
3 apply with respect to an award or bonus paid by the Sec-
4 retary of Veterans Affairs to an employee of the Depart-
5 ment of Veterans Affairs on or after the date of the enact-
6 ment of this Act.

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

13 **SEC. 6. AUTHORITY TO RECOUP RELOCATION EXPENSES**
14 **PAID TO OR ON BEHALF OF EMPLOYEES OF**
15 **DEPARTMENT OF VETERANS AFFAIRS.**

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

18 **“§ 721. Recoupment of relocation expenses paid on**
19 **behalf of employees of Department**

20 **“(a) RECOUPMENT.—(1) Notwithstanding any other**
21 **provision of law, the Secretary may direct an employee of**
22 **the Department to repay the amount, or a portion of the**
23 **amount, paid to or on behalf of the employee under title**
24 **5 for relocation expenses, including any expenses under**
25 **section 5724 or 5724a of such title, or this title if—**

1 “(A) the Secretary determines that—

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

4 “(ii) such repayment is appropriate pursu-
5 ant to regulations prescribed under subsection
6 (c); and

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

9 “(i) notice of the determination of the Sec-
10 retary and an opportunity to respond to the de-
11 termination; and

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

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) REVIEW.—A decision regarding a repayment by
23 an employee pursuant to subsection (a)(1)(B)(ii) is final
24 and may not be reviewed by any department, agency, or
25 court.

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

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

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

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

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

18 **SEC. 7. SENIOR EXECUTIVES: PERSONNEL ACTIONS BASED**
19 **ON PERFORMANCE OR MISCONDUCT.**

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

1 executive service position, the Secretary may suspend, rep-
2 rimand, or admonish the individual.”.

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

5 (1) in subsection (a)—

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

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

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

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

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

17 (2) in subsection (b)(2)—

18 (A) by striking “under this section” and
19 inserting “under section 723”; and

20 (B) by striking the second sentence;

21 (3) in subsection (c)—

22 (A) by striking “30” and inserting “5”;
23 and

24 (B) by striking “and the reason for such
25 removal or transfer” and inserting “, the rea-

1 son for such removal or transfer, the name and
2 position of the employee, and all charging docu-
3 ments and evidence pertaining to such removal
4 or transfer”;

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

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

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

10 “(A) consistent with paragraph (3), may be ap-
11 pealed to the Senior Executive Disciplinary Appeals
12 Board under section 723; and

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

15 “(3) An appeal of a personnel action pursuant to
16 paragraph (2)(A) must be filed with the Senior Executive
17 Disciplinary Appeals Board not later than the date that
18 is 7 days after the date of such action. If such appeal
19 is not made within the 7-day period, the personnel action
20 shall be final and not subject to further appeal.”;

21 (5) by redesignating subsections (f) and (g) as
22 subsections (e) and (f), respectively; and

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

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

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

7 (1) striking subsection (b); and

8 (2) redesignating subsections (c) and (d) as
9 subsections (b) and (c), respectively.

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

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

15 “(a) The Secretary shall from time to time appoint
16 a board to hear appeals of any personnel action taken
17 under section 713. Such board shall be known as the Sen-
18 ior Executive Disciplinary Appeals Board (hereinafter re-
19 ferred to as the ‘Board’). Each Board shall consist of
20 three employees of the Department. The Board shall have
21 exclusive jurisdiction to review any personnel action under
22 section 713.

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

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

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

5 “(c) The Board shall afford an employee appealing
6 a personnel action an opportunity for an oral hearing. If
7 such a hearing is held, the appellant may be represented
8 by counsel.

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

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

13 “(2) the applicable personnel action is within
14 the tolerable bounds of reasonableness.

15 “(e) If the Board issues a decision under this section
16 that reverses or otherwise mitigates the applicable per-
17 sonnel action, the Secretary may reverse the decision of
18 the Board. Consistent with the requirements of subsection
19 (g), the decision of the Secretary under this subsection
20 shall be final.

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

24 “(g) A petition to review a final order or final deci-
25 sion of the Secretary or the Board under this section shall

1 be filed in the United States Court of Appeals for the Fed-
 2 eral Circuit. Any decision by such Court shall be in compli-
 3 ance with section 7462(f)(2) of this title.

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

11 (e) TECHNICAL AND CLERICAL AMENDMENTS.—

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

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

18 (A) by striking the item relating to section
 19 713 and inserting the following:

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

20 and

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

“723. Senior Executive Disciplinary Appeals Board.”.

22 (f) RULE OF CONSTRUCTION.—Nothing in this sec-
 23 tion or section 731 of title 38, United States Code, (as

1 added by subsection (c)) shall be construed to apply to
2 an appeal of a removal, transfer, or other personnel action
3 that was pending before the date of the enactment of this
4 Act.

5 **SEC. 8. OFFICE OF ACCOUNTABILITY AND WHISTLE-**
6 **BLOWER PROTECTION.**

7 (a) IN GENERAL.—Chapter 3 of title 38, United
8 States Code, is amended by adding at the end the fol-
9 lowing new section:

10 **“§ 323. Office of Accountability and Whistleblower**
11 **Protection**

12 “(a) ESTABLISHMENT.—There is established in the
13 Department an office to be known as the Office of Ac-
14 countability and Whistleblower Protection (in this section
15 referred to as the ‘Office’).

16 “(b) HEAD OF OFFICE.—(1) The head of the Office
17 shall be responsible for the functions of the Office and
18 shall be appointed by the President pursuant to section
19 308(a) of this title.

20 “(2) The head of the Office shall be known as the
21 ‘Assistant Secretary for Accountability and Whistleblower
22 Protection’.

23 “(3) The Assistant Secretary shall report directly to
24 the Secretary on all matters relating to the Office.

1 “(4) Notwithstanding section 308(b) of this title, the
2 Secretary may only assign to the Assistant Secretary re-
3 sponsibilities relating to the functions of the Office set
4 forth in subsection (c).

5 “(c) FUNCTIONS.—(1) The functions of the Office
6 are as follows:

7 “(A) Advising the Secretary on all matters of
8 the Department relating to accountability, including
9 accountability of employees of the Department, re-
10 tialiation against whistleblowers, and such matters as
11 the Secretary considers similar and affect public
12 trust in the Department.

13 “(B) Issuing reports and providing rec-
14 ommendations related to the duties described in sub-
15 paragraph (A).

16 “(C) Receiving whistleblower complaints.

17 “(D) Referring whistleblower complaints re-
18 ceived under subparagraph (C) for investigation to
19 the Office of the Medical Inspector, the Office of In-
20 spector General, or other investigative entity, as ap-
21 propriate, if the Assistant Secretary has reason to
22 believe the whistleblower complaint is evidence of a
23 violation of a provision of law, mismanagement,
24 gross waste of funds, abuse of authority, or a sub-

1 stantial and specific danger to public health and
2 safety.

3 “(E) Receiving and referring complaints from
4 the Special Counsel for investigation to the Medical
5 Inspector of the Department, the Inspector General
6 of the Department, or such other person with inves-
7 tigatory authority, as the Assistant Secretary con-
8 siders appropriate.

9 “(F) Recording, tracking, reviewing, and con-
10 firming implementation of recommendations from
11 audits and investigations carried out by the Inspec-
12 tor General of the Department, the Medical Inspec-
13 tor of the Department, the Special Counsel, and the
14 Comptroller General of the United States, including
15 the imposition of disciplinary actions and other cor-
16 rective actions contained in such recommendations.

17 “(G) Analyzing data from the Office and the
18 Office of Inspector General telephone hotlines, other
19 whistleblower complaints, disaggregated by facility
20 and area of health care if appropriate, and relevant
21 audits and investigations to identify trends and issue
22 reports to the Secretary based on analysis conducted
23 under this subparagraph.

1 “(H) Receiving, reviewing, and investigating al-
2 legations of misconduct, retaliation, or poor perform-
3 ance involving—

4 “(i) an individual in a senior executive po-
5 sition (as defined in section 713(d) of this title)
6 in the Department;

7 “(ii) an individual employed in a confiden-
8 tial, policy-making, policy-determining, or pol-
9 icy-advocating position in the Department; or

10 “(iii) a supervisory employee.

11 “(I) Making such recommendations to the Sec-
12 retary for disciplinary action as the Assistant Sec-
13 retary considers appropriate after substantiating any
14 allegation of misconduct or poor performance pursu-
15 ant to an investigation carried out as described in
16 subparagraph (F) or (H).

17 “(2) In carrying out the functions of the Office, the
18 Assistant Secretary shall ensure that the Office maintains
19 a toll-free telephone number and Internet website to re-
20 ceive anonymous whistleblower complaints.

21 “(3) In any case in which the Assistant Secretary re-
22 ceives a whistleblower complaint from an employee of the
23 Department under paragraph (1)(C), the Assistant Sec-
24 retary may not disclose the identity of the employee with-
25 out the consent of the employee, except in accordance with

1 the provisions of section 552a of title 5, or as required
2 by any other applicable provision of Federal law.

3 “(d) RELATION TO OFFICE OF GENERAL COUN-
4 SEL.—The Office shall not be established as an element
5 of the Office of the General Counsel and the Assistant
6 Secretary may not report to the General Counsel.

7 “(e) REPORTS.—(1)(A) Not later than June 30 of
8 each calendar year, beginning with June 30, 2017, the As-
9 sistant Secretary shall submit to the Committee on Vet-
10 erans’ Affairs of the Senate and the Committee on Vet-
11 erans’ Affairs of the House of Representatives a report
12 on the activities of the Office during the calendar year
13 in which the report is submitted.

14 “(B) Each report submitted under subparagraph (A)
15 shall include, for the period covered by the report, the fol-
16 lowing:

17 “(i) A full and substantive analysis of the ac-
18 tivities of the Office, including such statistical infor-
19 mation as the Assistant Secretary considers appro-
20 priate.

21 “(ii) Identification of any issues reported to the
22 Secretary under subsection (c)(1)(G), including such
23 data as the Assistant Secretary considers relevant to
24 such issues and any trends the Assistant Secretary
25 may have identified with respect to such issues.

1 “(iii) Identification of such concerns as the As-
2 sistant Secretary may have regarding the size, staff-
3 ing, and resources of the Office and such rec-
4 ommendations as the Assistant Secretary may have
5 for legislative or administrative action to address
6 such concerns.

7 “(iv) Such recommendations as the Assistant
8 Secretary may have for legislative or administrative
9 action to improve—

10 “(I) the process by which concerns are re-
11 ported to the Office; and

12 “(II) the protection of whistleblowers with-
13 in the Department.

14 “(v) Such other matters as the Assistant Sec-
15 retary considers appropriate regarding the functions
16 of the Office or other matters relating to the Office.

17 “(2) If the Secretary receives a recommendation for
18 disciplinary action under subsection (c)(1)(I) and does not
19 take or initiate the recommended disciplinary action before
20 the date that is 60 days after the date on which the Sec-
21 retary received the recommendation, the Secretary shall
22 submit to the Committee on Veterans’ Affairs of the Sen-
23 ate and the Committee on Veterans’ Affairs of the House
24 of Representatives a detailed justification for not taking
25 or initiating such disciplinary action.

1 “(f) DEFINITIONS.—In this section:

2 “(1) The term ‘supervisory employee’ means an
3 employee of the Department who is a supervisor as
4 defined in section 7103(a) of title 5.

5 “(2) The term ‘whistleblower’ means one who
6 makes a whistleblower complaint.

7 “(3) The term ‘whistleblower complaint’ means
8 any disclosure of information by an employee of the
9 Department or individual applying to become an em-
10 ployee of the Department which the employee or in-
11 dividual reasonably believes evidences—

12 “(A) a violation of a provision of law; or

13 “(B) gross mismanagement, a gross waste
14 of funds, an abuse of authority, or a substantial
15 and specific danger to public health or safety.”.

16 (b) CONFORMING AMENDMENT.—Section 308(b) of
17 such title is amended by adding at the end the following
18 new paragraph:

19 “(12) The functions set forth in section 323(c)
20 of this title.”.

21 (c) CLERICAL AMENDMENT.—The table of sections
22 at the beginning of chapter 3 of such title is amended by
23 adding at the end the following new item:

“323. Office of Accountability and Whistleblower Protection.”.

1 **SEC. 9. TREATMENT OF WHISTLEBLOWER COMPLAINTS IN**
2 **DEPARTMENT OF VETERANS AFFAIRS.**

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

5 “SUBCHAPTER II—WHISTLEBLOWER
6 COMPLAINTS

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

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

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

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

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

25 “(b) NOTIFICATION.—(1) Not later than 4 business
26 days after the date on which a supervisor receives a whis-

1 whistleblower complaint by an employee under this section, the
2 supervisor shall notify, in writing, the employee of whether
3 the supervisor determines that there is a reasonable likeli-
4 hood that the complaint discloses a violation of any law,
5 rule, or regulation, or gross mismanagement, gross waste
6 of funds, abuse of authority, or substantial and specific
7 danger to public health and safety. The supervisor shall
8 retain written documentation regarding the whistleblower
9 complaint and shall submit to the next-level supervisor a
10 written report on the complaint.

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

21 “(A) the supervisor of the director or official;

22 “(B) the Committees on Veterans’ Affairs of
23 the Senate and House or Representatives; and

1 “(C) each Member of Congress representing a
2 district in the State or territory where the facility
3 where the supervisor is employed is located.

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

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

16 “(2) An employee may file a whistleblower complaint
17 with the Secretary if the employee has filed the whistle-
18 blower complaint to each level of supervisors between the
19 employee and the Secretary in accordance with paragraph
20 (1).

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

23 “(A) A supervisor does not make a timely de-
24 termination under subsection (b)(1) regarding a
25 whistleblower complaint.

1 “(B) The employee who made a whistleblower
2 complaint determines that the supervisor did not
3 adequately address the complaint pursuant to sub-
4 section (c).

5 “(C) The immediate supervisor of the employee
6 is the basis of the whistleblower complaint.

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

12 “(1) inform the employee of the ability to vol-
13 unteer for a transfer in accordance with section
14 3352 of title 5; and

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

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

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

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

4 “(A) An explanation of the purpose of the whis-
5 tleblower complaint form.

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

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

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

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

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

18 “(ii) the name of the employee;

19 “(iii) the contact information of the em-
20 ployee;

21 “(iv) a summary of the whistleblower com-
22 plaint (including the option to append sup-
23 porting documents pursuant to paragraph (1));

24 and

25 “(v) proposed solutions to complaint.

1 “(F) Any other information or fields that the
2 Secretary determines appropriate.

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

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

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

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

23 “(B) With respect to the second offense, re-
24 moval.

1 “(2)(A) Except as provided by subparagraph (B),
2 with respect to a supervisory employee subject to an ad-
3 verse action under this section who is—

4 “(i) an individual as that term is defined in sec-
5 tion 715(i)(1) of this title, the procedures under sub-
6 sections (d) and (e) of section 715 of this title shall
7 apply; and

8 “(ii) an individual as that term is defined in
9 section 713(g)(1) of this title, the procedures under
10 section 713(d) of this title shall apply.

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

20 “(b) LIMITATION ON OTHER ADVERSE ACTIONS.—
21 With respect to a prohibited personnel action described in
22 subsection (c), if the Secretary carries out an adverse ac-
23 tion against a supervisory employee, the Secretary may
24 carry out an additional adverse action under this section
25 based on the same prohibited personnel action if the total

1 severity of the adverse actions do not exceed the level spec-
2 ified in subsection (a).

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

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

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

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

14 “(C) providing information or participating
15 as a witness in an investigation of a whistle-
16 blower complaint in accordance with section
17 742 or with the Inspector General of the De-
18 partment, the Special Counsel, or Congress;

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

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

1 “(F) engaging in communications that are
2 related to the duties of the position or are oth-
3 erwise protected.

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

7 “(3) Conducting a peer review or opening a re-
8 taliatory investigation relating to an activity of an
9 employee that is protected by section 2302 of title
10 5.

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

14 **“§ 744. Evaluation criteria of supervisors and treat-**
15 **ment of bonuses**

16 “(a) EVALUATION CRITERIA.—(1) In evaluating the
17 performance of supervisors of the Department, the Sec-
18 retary shall include the criteria described in paragraph
19 (2).

20 “(2) The criteria described in this subsection are the
21 following:

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

24 “(B) Whether the appropriate deciding official,
25 performance review board, or performance review

1 committee determines that the supervisor was found
2 to have committed a prohibited personnel action de-
3 scribed in section 743(b) by an administrative judge,
4 the Merit Systems Protection Board, the Office of
5 Special Counsel, an adjudicating body provided
6 under a union contract, a Federal judge, or, in the
7 case of a settlement of a whistleblower complaint
8 (regardless of whether any fault was assigned under
9 such settlement), the Secretary.

10 “(b) BONUSES.—(1) The Secretary may not pay to
11 a supervisor described in subsection (a)(2)(B) an award
12 or bonus under this title or title 5, including under chapter
13 45 or 53 of such title, during the 1-year period beginning
14 on the date on which the determination was made under
15 such subsection.

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

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

1 “(B) the Secretary determines such repayment
2 appropriate pursuant to regulations prescribed by
3 the Secretary to carry out this section; and

4 “(C) before such order is made, the supervisor
5 is afforded—

6 “(i) notice of the order and an opportunity
7 to respond to the order; and

8 “(ii) an opportunity to appeal the order to
9 another department or agency of the Federal
10 Government, except that—

11 “(I) any such department or agency
12 shall issue a final decision with respect to
13 such appeal not later than the date that is
14 30 days after the date the department or
15 agency received such appeal; and

16 “(II) if such a final decision is not
17 made by the applicable department or
18 agency within 30 days after receiving such
19 appeal, the order of the Secretary shall be
20 final and not subject to further appeal.

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

22 “(a) TRAINING.—The Secretary, in coordination with
23 the Whistleblower Protection Ombudsman designated
24 under section 3(d)(1)(C) of the Inspector General Act of
25 1978 (5 U.S.C. App.), shall annually provide to each em-

1 ployee of the Department training regarding whistleblower
2 complaints, including—

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

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

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

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

14 “(5) an explanation that the employee may not
15 be prosecuted or reprimed against for disclosing in-
16 formation to Congress in instances where such dis-
17 closure is permitted by law, including under sections
18 5701, 5705, and 7332 of this title, under section
19 552a of title 5 (commonly referred to as the Privacy
20 Act), under chapter 93 of title 18, and pursuant to
21 regulations promulgated under section 264(c) of the
22 Health Insurance Portability and Accountability Act
23 of 1996 (Public Law 104–191);

24 “(6) an explanation of the language that is re-
25 quired to be included in all nondisclosure policies,

1 forms, and agreements pursuant to section
2 115(a)(1) of the Whistleblower Protection Enhance-
3 ment Act of 2012 (5 U.S.C. 2302 note); and

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

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

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

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

19 **“§ 746. Notice to Congress**

20 “Not later than 30 days after the date on which the
21 Secretary receives from the Special Counsel information
22 relating to a whistleblower complaint pursuant to section
23 1213 of title 5, the Secretary shall notify the Committees
24 on Veterans’ Affairs of the House of Representatives and
25 the Senate, the Committee on Oversight and Government

1 Reform of the House of Representatives, and the Com-
 2 mittee on Homeland Security and Governmental Affairs
 3 of the Senate and each Member of Congress representing
 4 a district in the State or territory where a facility relevant
 5 to the whistleblower complaint is located of such informa-
 6 tion, including the determination made by the Special
 7 Counsel.”.

8 (b) CONFORMING AND CLERICAL AMENDMENTS.—

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

12 “SUBCHAPTER I—GENERAL EMPLOYEE
 13 MATTERS”.

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

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

“SUBCHAPTER I—GENERAL EMPLOYEE MATTERS”;

18 and

19 (B) by adding at the end the following new
 20 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. 10. 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 1 year of the notice of the decision
17 of the agency of original jurisdiction. Such request may
18 specifically indicate whether such review is requested by
19 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 1 year of an agen-
11 cy of original jurisdiction decision.

12 “(B) A supplemental claim under section 5108
13 of this title within 1 year of an agency of original
14 jurisdiction decision.

15 “(C) A notice of disagreement within 1 year of
16 an agency of original jurisdiction decision.

17 “(D) A supplemental claim under section 5108
18 of this title within 1 year of a decision of the Board
19 of Veterans’ Appeals.

20 “(3) Except as otherwise provided in this section, for
21 supplemental claims received more than 1 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 1 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 1-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 (B) by inserting after the item relating to
19 section 5104 the following new items:

“5104A. Binding nature of favorable findings.

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

20 and

21 (C) by striking the item relating to section
22 5108 and inserting the following new item:

“5108. Supplemental claims.”.

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

4 (A) by striking the item relating to section
5 7105 and inserting the following new item:

“7105. Filing of appeal.”;

6 (B) by striking the item relating to section
7 7106;

8 (C) by striking the item relating to section
9 7109; and

10 (D) by adding at the end the following new
11 item:

“7113. Evidentiary record before the Board.”.

12 **SEC. 11. LIMITATION ON AWARDS AND BONUSES PAID TO**
13 **SENIOR EXECUTIVE EMPLOYEES OF DEPART-**
14 **MENT OF VETERANS AFFAIRS.**

15 Section 705 of the Veterans Access, Choice, and Ac-
16 countability Act of 2014 (Public Law 113–146; 38 U.S.C.
17 703 note) is amended by striking the period at the end
18 and inserting the following: “, except that during each of
19 fiscal years 2017 through 2021, no award or bonus may
20 be paid to any employee of the Department of Veterans
21 Affairs who is a member of the Senior Executive Service.”.

1 **SEC. 12. CLARIFICATION OF EMERGENCY HOSPITAL CARE**
2 **FURNISHED BY THE SECRETARY OF VET-**
3 **ERANS AFFAIRS TO CERTAIN VETERANS.**

4 (a) IN GENERAL.—Chapter 17 of title 38, United
5 States Code, is amended by inserting after section 1730A
6 the following new section:

7 **“§ 1730B. Examination and treatment for emergency**
8 **medical conditions and women in labor**

9 “(a) MEDICAL SCREENING EXAMINATIONS.—In car-
10 rying out this chapter, if any enrolled veteran requests,
11 or a request is made on behalf of the veteran, for examina-
12 tion or treatment for a medical condition, regardless of
13 whether such condition is service-connected, at a hospital
14 emergency department of a medical facility of the Depart-
15 ment, the Secretary shall ensure that the veteran is pro-
16 vided an appropriate medical screening examination within
17 the capability of the emergency department, including an-
18 cillary services routinely available to the emergency de-
19 partment, to determine whether an emergency medical
20 condition exists.

21 “(b) NECESSARY STABILIZING TREATMENT FOR
22 EMERGENCY MEDICAL CONDITIONS AND LABOR.—(1) If
23 an enrolled veteran comes to a medical facility of the De-
24 partment and the Secretary determines that the veteran
25 has an emergency medical condition, the Secretary shall
26 provide either—

1 “(A) such further medical examination and
2 such treatment as may be required to stabilize the
3 medical condition; or

4 “(B) for the transfer of the veteran to another
5 medical facility of the Department or a non-Depart-
6 ment facility in accordance with subsection (c).

7 “(2) The Secretary is deemed to meet the require-
8 ment of paragraph (1)(A) with respect to an enrolled vet-
9 eran if the Secretary offers the veteran the further medical
10 examination and treatment described in such paragraph
11 and informs the veteran (or an individual acting on behalf
12 of the veteran) of the risks and benefits to the veteran
13 of such examination and treatment, but the veteran (or
14 individual) refuses to consent to the examination and
15 treatment. The Secretary shall take all reasonable steps
16 to secure the written informed consent of such veteran (or
17 individual) to refuse such examination and treatment.

18 “(3) The Secretary is deemed to meet the require-
19 ment of paragraph (1) with respect to an enrolled veteran
20 if the Secretary offers to transfer the individual to another
21 medical facility in accordance with subsection (c) of this
22 section and informs the veteran (or an individual acting
23 on behalf of the veteran) of the risks and benefits to the
24 veteran of such transfer, but the veteran (or individual)
25 refuses to consent to the transfer. The hospital shall take

1 all reasonable steps to secure the written informed consent
2 of such veteran (or individual) to refuse such transfer.

3 “(c) RESTRICTION OF TRANSFERS UNTIL VETERAN
4 STABILIZED.—(1) If an enrolled veteran at a medical fa-
5 cility of the Department has an emergency medical condi-
6 tion that has not been stabilized, the Secretary may not
7 transfer the veteran to another medical facility of the De-
8 partment or a non-Department facility unless—

9 “(A)(i) the veteran (or a legally responsible in-
10 dividual acting on behalf of the veteran), after being
11 informed of the obligation of the Secretary under
12 this section and of the risk of transfer, requests in
13 writing a transfer to another medical facility;

14 “(ii) a physician has signed a certification (in-
15 cluding a summary of the risks and benefits) that,
16 based upon the information available at the time of
17 transfer, the medical benefits reasonably expected
18 from the provision of appropriate medical treatment
19 at another medical facility outweigh the increased
20 risks to the veteran and, in the case of labor, to the
21 unborn child from effecting the transfer; or

22 “(iii) if a physician is not physically present in
23 the emergency department at the time a veteran is
24 transferred, a qualified medical person (as defined
25 by the Secretary in regulations) has signed a certifi-

1 cation described in clause (ii) after a physician, in
2 consultation with the person, has made the deter-
3 mination described in such clause, and subsequently
4 countersigns the certification; and

5 “(B) the transfer is an appropriate transfer as
6 described in paragraph (2).

7 “(2) An appropriate transfer to a medical facility is
8 a transfer—

9 “(A) in which the transferring medical facility
10 provides the medical treatment within the capacity
11 of the facility that minimizes the risks to the health
12 of the enrolled veteran and, in the case of a woman
13 in labor, the health of the unborn child;

14 “(B) in which the receiving facility—

15 “(i) has available space and qualified per-
16 sonnel for the treatment of the veteran; and

17 “(ii) has agreed to accept transfer of the
18 veteran and to provide appropriate medical
19 treatment;

20 “(C) in which the transferring facility sends to
21 the receiving facility all medical records (or copies
22 thereof), related to the emergency condition for
23 which the veteran has presented, available at the
24 time of the transfer, including records related to the
25 emergency medical condition of the veteran, observa-

1 tions of signs or symptoms, preliminary diagnosis,
2 treatment provided, results of any tests and the in-
3 formed written consent or certification (or copy
4 thereof) provided under paragraph (1)(A), and the
5 name and address of any on-call physician (de-
6 scribed in subsection (d)(1)(C) of this section) who
7 has refused or failed to appear within a reasonable
8 time to provide necessary stabilizing treatment;

9 “(D) in which the transfer is effected through
10 qualified personnel and transportation equipment, as
11 required including the use of necessary and medi-
12 cally appropriate life support measures during the
13 transfer; and

14 “(E) that meets such other requirements as the
15 Secretary may find necessary in the interest of the
16 health and safety of veterans transferred.

17 “(d) CHARGES.—(1) Nothing in this section may be
18 construed to affect any charges that the Secretary may
19 collect from a veteran or third party.

20 “(2) The Secretary shall treat any care provided by
21 a non-Department facility pursuant to this section as care
22 otherwise provided by a non-Department facility pursuant
23 to this chapter for purposes of paying such non-Depart-
24 ment facility for such care.

1 “(e) NONDISCRIMINATION.—A medical facility of the
2 Department or a non-Department facility, as the case may
3 be, that has specialized capabilities or facilities (such as
4 burn units, shock-trauma units, neonatal intensive care
5 units, or (with respect to rural areas) regional referral
6 centers as identified by the Secretary in regulation) shall
7 not refuse to accept an appropriate transfer of an enrolled
8 veteran who requires such specialized capabilities or facili-
9 ties if the facility has the capacity to treat the veteran.

10 “(f) NO DELAY IN EXAMINATION OR TREATMENT.—
11 A medical facility of the Department or a non-Department
12 facility, as the case may be, may not delay provision of
13 an appropriate medical screening examination required
14 under subsection (a) or further medical examination and
15 treatment required under subsection (b) of this section in
16 order to inquire about the method of payment or insurance
17 status of an enrolled veteran.

18 “(g) WHISTLEBLOWER PROTECTIONS.—The Sec-
19 retary may not take adverse action against an employee
20 of the Department because the employee refuses to au-
21 thorize the transfer of an enrolled veteran with an emer-
22 gency medical condition that has not been stabilized or
23 because the employee reports a violation of a requirement
24 of this section.

25 “(h) DEFINITIONS.—In this section:

1 “(1) The term ‘emergency medical condition’
2 means—

3 “(A) a medical condition manifesting itself
4 by acute symptoms of sufficient severity (in-
5 cluding severe pain) such that the absence of
6 immediate medical attention could reasonably
7 be expected to result in—

8 “(i) placing the health of the enrolled
9 veteran (or, with respect to an enrolled vet-
10 eran who is a pregnant woman, the health
11 of the woman or her unborn child) in seri-
12 ous jeopardy;

13 “(ii) serious impairment to bodily
14 functions; or

15 “(iii) serious dysfunction of any bodily
16 organ or part; or

17 “(B) with respect to an enrolled veteran
18 who is a pregnant woman having contractions—

19 “(i) that there is inadequate time to
20 effect a safe transfer to another hospital
21 before delivery; or

22 “(ii) that transfer may pose a threat
23 to the health or safety of the woman or the
24 unborn child.

1 “(2) The term ‘enrolled veteran’ means a vet-
2 eran who is enrolled in the health care system estab-
3 lished under section 1705(a) of this title.

4 “(3) The term ‘to stabilize’ means, with respect
5 to an emergency medical condition described in
6 paragraph (1)(A), to provide such medical treatment
7 of the condition as may be necessary to assure, with-
8 in reasonable medical probability, that no material
9 deterioration of the condition is likely to result from
10 or occur during the transfer of the enrolled veteran
11 from a facility, or, with respect to an emergency
12 medical condition described in paragraph (1)(B), to
13 deliver (including the placenta).

14 “(4) The term ‘stabilized’ means, with respect
15 to an emergency medical condition described in
16 paragraph (1)(A), that no material deterioration of
17 the condition is likely, within reasonable medical
18 probability, to result from or occur during the trans-
19 fer of the individual from a facility, or, with respect
20 to an emergency medical condition described in
21 paragraph (1)(B), that the woman has delivered (in-
22 cluding the placenta).

23 “(5) The term ‘transfer’ means the movement
24 (including the discharge) of an enrolled veteran out-
25 side the facilities of a medical facility of the Depart-

1 ment at the direction of any individual employed by
2 (or affiliated or associated, directly or indirectly,
3 with) the Department, but does not include such a
4 movement of an individual who—

5 “(A) has been declared dead; or

6 “(B) leaves the facility without the permis-
7 sion of any such person.”.

8 (b) CLERICAL AMENDMENT.—The table of sections
9 of such chapter is amended by inserting after the item
10 relating to section 1730A the following new item:

“1730B. Examination and treatment for emergency medical conditions and
women in labor.”.

11 **SEC. 13. SENSE OF CONGRESS REGARDING AMERICAN VET-**
12 **ERANS DISABLED FOR LIFE.**

13 (a) FINDINGS.—Congress finds the following:

14 (1) There are at least 3.6 million veterans cur-
15 rently living with service-connected disabilities.

16 (2) As a result of their service, many veterans
17 are permanently disabled throughout their lives and
18 in many cases must rely on the support of their fam-
19 ilies and friends when these visible and invisible bur-
20 dens become too much to bear alone.

21 (3) October 5, which is the anniversary of the
22 dedication of the American Veterans Disabled for
23 Life Memorial, has been recognized as an appro-

1 appropriate day on which to honor American veterans dis-
2 abled for life each year.

3 (b) SENSE OF CONGRESS.—Congress—

4 (1) expresses its appreciation to the men and
5 women left permanently wounded, ill, or injured as
6 a result of their service in the Armed Forces;

7 (2) supports the annual recognition of Amer-
8 ican veterans disabled for life; and

9 (3) encourages the American people to honor
10 American veterans disabled for life each year with
11 appropriate programs and activities.

12 **SEC. 14. ESTABLISHMENT OF POSITIONS OF DIRECTORS OF**
13 **VETERANS INTEGRATED SERVICE NETWORKS**
14 **IN OFFICE OF UNDER SECRETARY FOR**
15 **HEALTH OF DEPARTMENT OF VETERANS AF-**
16 **FAIRS AND MODIFICATION OF QUALIFICA-**
17 **TIONS FOR MEDICAL DIRECTORS.**

18 Section 7306(a)(4) of title 38, United States Code,
19 is amended—

20 (1) by inserting “and Directors of Veterans In-
21 tegrated Service Networks” after “Such Medical Di-
22 rectors”; and

23 (2) by striking “, who shall be either a qualified
24 doctor of medicine or a qualified doctor of dental
25 surgery or dental medicine”.

1 “(1) The term ‘covered employee’ means any
2 employee of the Department authorized to prescribe
3 any controlled substance, including an employee
4 hired under section 7405 of this title.

5 “(2) The term ‘controlled substance’ has the
6 meaning given such term in section 102 of the Con-
7 trolled Substances Act (21 U.S.C. 802).

8 “(c) **APPLICABILITY.**—The requirement under sub-
9 section (a) shall apply with respect to a covered employee
10 for any 24-month period during which the covered em-
11 ployee is employed by the Department for at least 180
12 days.”.

13 (b) **CLERICAL AMENDMENT.**—The table of sections
14 at the beginning of such chapter is amended by adding
15 at the end of the items relating to subchapter I of such
16 chapter the following new item:

 “7413. Continuing education requirement for employees authorized to prescribe
 medication.”.

17 (c) **APPLICABILITY.**—Section 7413 of title 38, United
18 States Code, as added by subsection (a) shall apply with
19 respect to a 12-month period that begins on or after the
20 date of the enactment of this Act.

21 **SEC. 16. REVIEW OF WHISTLEBLOWER COMPLAINTS.**

22 (a) **IN GENERAL.**—Chapter 7 of title 38, United
23 States Code, is amended by inserting after section 711 the
24 following new section:

1 **“§ 712. Review of whistleblower complaints**

2 “(a) IN GENERAL.—During each calendar quarter,
3 the Secretary shall review each covered whistleblower com-
4 plaint that is filed during the previous calendar quarter.

5 “(b) DELEGATION.—The Secretary may only dele-
6 gate the authority of the Secretary under subsection (a)
7 to review a covered whistleblower complaint, without fur-
8 ther delegation, to—

9 “(1) the Deputy Secretary of Veterans Affairs;

10 “(2) the Under Secretary for Health;

11 “(3) the Under Secretary for Benefits;

12 “(4) the Under Secretary for Memorial Affairs;

13 “(5) an Assistant Secretary of Veterans Affairs;

14 “(6) a Deputy Assistant Secretary of Veterans
15 Affairs; or

16 “(7) a director of the Veterans Integrated Serv-
17 ice Network.

18 “(c) COVERED WHISTLEBLOWER COMPLAINT DE-
19 FINED.—In this section, the term ‘covered whistleblower
20 complaint’ means any complaint filed with the Office of
21 the Special Counsel under subchapter II of chapter 12 of
22 title 5 with respect to a prohibited personnel practice com-
23 mitted by an officer or employee of the Department of
24 Veterans Affairs and described in section 2302(b)(8) or
25 2302(b)(9)(A)(i), (B), (C), or (D) of such title.”.

1 (b) CLERICAL AMENDMENT.—The table of sections
2 at the beginning of such chapter is amended by inserting
3 after the item relating to section 711 the following new
4 item:

“712. Review of whistleblower complaints.”.

5 **SEC. 17. IDENTIFICATION OF MATTERS RELATING TO PART-**
6 **TIME EMPLOYMENT OF MEMBERS OF THE**
7 **ARMED FORCES WHO ARE PHYSICIANS.**

8 The Secretary of Veterans Affairs shall identify—

9 (1) the number of members of the Armed
10 Forces serving on active duty who are physicians
11 employed at a Department of Veterans Affairs med-
12 ical facility on a part-time basis;

13 (2) the process by which the Department hires
14 such physicians on a part-time basis;

15 (3) the process by which the Department hires
16 civilian physicians on a part-time basis; and

17 (4) the steps the Department is taking to re-
18 cruit members of the Armed Forces serving on ac-
19 tive duty who are physicians for employment at De-
20 partment medical facilities on a part-time basis.

21 **SEC. 18. RECRUITMENT OF PHYSICIANS IN DEPARTMENT**
22 **OF VETERANS AFFAIRS.**

23 (a) IN GENERAL.—Section 7402(b)(1) of title 38,
24 United States Code, is amended—

1 (1) by inserting “or to be offered a contingent
2 appointment to such position,” after “position,”; and

3 (2) by striking subparagraph (B) and inserting
4 the following new subparagraph (B):

5 “(B)(i) have completed a residency program
6 satisfactory to the Secretary; or

7 “(ii) with respect to an offer for a contingent
8 appointment upon the completion of a post-graduate
9 training program, complete such a residency pro-
10 gram by not later than 2 years after the date of
11 such offer; and”.

12 (b) OVERSIGHT OF GRADUATE MEDICAL EDUCATION
13 PROGRAMS.—The Secretary shall—

14 (1) ensure that a recruiter or other similar offi-
15 cial of each Veterans Integrated Service Network
16 visits, not less than annually, each allopathic and os-
17 teopathic teaching institution with a graduate med-
18 ical education program within the Network to re-
19 cruit individuals to be appointed to positions in the
20 Veterans Health Administration; and

21 (2) submit to Congress an annual report on the
22 implementation of paragraph (1), including the suc-
23 cess of such recruiting efforts.

1 **SEC. 19. AUTHORITY TO DISCLOSE CERTAIN MEDICAL**
2 **RECORDS OF VETERANS WHO RECEIVE NON-**
3 **DEPARTMENT OF VETERANS AFFAIRS**
4 **HEALTH CARE.**

5 Section 7332(b)(2) of title 38, United States Code,
6 is amended by adding at the end the following new sub-
7 paragraph:

8 “(H) To a non-Department entity (including
9 private entities and other departments or agencies of
10 the Federal Government) that provides hospital care
11 or medical treatment to veterans.”.

12 **SEC. 20. SURVEY OF VETERAN EXPERIENCES WITH DE-**
13 **PARTMENT OF VETERANS AFFAIRS MEDICAL**
14 **CARE.**

15 (a) IN GENERAL.—The Secretary of Veterans Affairs
16 shall seek to enter into a contract with a non-government
17 entity with significant experience conducting scientifically
18 verifiable surveys and research to conduct an annual sur-
19 vey of a statistically significant sample of veterans who
20 reside in the geographic area served by each of the medical
21 facilities of the Department of Veterans Affairs to deter-
22 mine the nature of the experiences of such veterans in ob-
23 taining hospital care and medical services furnished by the
24 Secretary at each such medical facility. Each such survey
25 shall be conducted using scientific and verifiable methods.
26 Such contract shall provide that the non-government enti-

1 ty shall conduct such annual surveys during the 5-year
2 period beginning on the date on which the Secretary en-
3 ters into the contract with the non-government entity.

4 (b) CONTENTS.—The contract entered into under
5 subsection (a) shall provide that each survey conducted
6 pursuant to the contract shall be specific to a medical fa-
7 cility of the Department and shall include questions relat-
8 ing to the experiences of veterans in requesting and receiv-
9 ing appointments for hospital care and medical services
10 furnished by the Secretary at that medical facility, includ-
11 ing questions relating to each of the following:

12 (1) The veteran's ability to obtain hospital care
13 and medical services at the facility in a timely man-
14 ner.

15 (2) The period of time between the date on
16 which the veteran requests an appointment at the
17 facility and the date on which the appointment is
18 scheduled.

19 (3) The frequency with which scheduled ap-
20 pointments are cancelled by the facility.

21 (4) The quality of hospital care or medical serv-
22 ices the veteran has received at the facility.

23 (c) CONSULTATION.—The contract entered into
24 under subsection (a) shall provide that in designing and
25 conducting the surveys for each medical facility of the De-

1 partment pursuant to such contract, the non-government
2 entity shall consult with veterans service organizations.

3 (d) CERTIFICATION.—The contract entered into
4 under subsection (a) shall provide that—

5 (1) before conducting a survey pursuant to the
6 contract, the non-government entity shall submit the
7 proposed survey to the Comptroller General who
8 shall assess whether the survey is scientifically valid
9 and whether the proposed sample size of veterans to
10 be surveyed is statistically significant; and

11 (2) the non-government entity may not conduct
12 such a survey until the Comptroller General provides
13 such a certification for the survey.

14 (e) SUBMITTAL OF RESULTS AND PUBLIC AVAIL-
15 ABILITY OF INFORMATION.—Not later than 30 days after
16 the completion of the surveys conducted pursuant to a
17 contract entered into under subsection (a) for a year, the
18 Secretary shall make the results of the surveys publicly
19 available on the Internet website of the Department.

20 (f) PAPERWORK REDUCTION.—Subchapter I of chap-
21 ter 35 of title 44, United States Code shall not apply to
22 this section.

23 (g) DEADLINE FOR IMPLEMENTATION.—The Sec-
24 retary shall enter into a contract under subsection (a) for

1 “(i) an explanation for why the re-
2 gional office did not meet the goal;

3 “(ii) a description of the additional re-
4 sources needed to enable the regional office
5 to reach the goal; and

6 “(iii) a description of any additional
7 actions planned for the subsequent year
8 that are proposed to enable the regional of-
9 fice to meet the goal; and

10 “(B) a statement prepared by the Under
11 Secretary for Benefits explaining how the fail-
12 ure of the regional office to meet the goal af-
13 fected the performance evaluation of the direc-
14 tor of the regional office; and”.

15 **SEC. 22. EXTENSION OF AUTHORITY OF THE SECRETARY**
16 **OF VETERANS AFFAIRS TO PROVIDE FOR THE**
17 **CONDUCT OF MEDICAL DISABILITY EXAMINA-**
18 **TIONS BY CONTRACT PHYSICIANS.**

19 Section 704(c) of the Veterans Benefits Act of 2003
20 (Public Law 108–183; 38 U.S.C. 5101 note) is amended
21 by striking “December 31, 2016” and inserting “Decem-
22 ber 31, 2017”.

1 **SEC. 23. PROVISION OF STATUS UNDER LAW BY HONORING**
2 **CERTAIN MEMBERS OF THE RESERVE COM-**
3 **PONENTS AS VETERANS.**

4 (a) VETERAN STATUS.—

5 (1) IN GENERAL.—Chapter 1 of title 38, United
6 States Code, is amended by inserting after section
7 107 the following new section:

8 **“§ 107A. Honoring as veterans certain persons who**
9 **performed service in the reserve compo-**
10 **nents**

11 “Any person who is entitled under chapter 1223 of
12 title 10 to retired pay for nonregular service or, but for
13 age, would be entitled under such chapter to retired pay
14 for nonregular service shall be honored as a veteran but
15 shall not be entitled to any benefit by reason of this sec-
16 tion.”.

17 (2) CLERICAL AMENDMENT.—The table of sec-
18 tions at the beginning of such chapter is amended
19 by inserting after the item relating to section 107
20 the following new item:

“107A. Honoring as veterans certain persons who performed service in the re-
serve components.”.

21 (b) CLARIFICATION REGARDING BENEFITS.—No
22 person may receive any benefit under the laws adminis-
23 tered by the Secretary of Veterans Affairs solely by reason

1 of section 107A of title 38, United States Code, as added
2 by subsection (a).

3 **SEC. 24. PROVISION OF REHABILITATIVE EQUIPMENT AND**
4 **HUMAN-POWERED VEHICLES TO CERTAIN**
5 **DISABLED VETERANS.**

6 (a) IN GENERAL.—Section 1714(a) of title 38,
7 United States Code, is amended—

8 (1) by striking “Any veteran” and inserting
9 “(1) Any veteran”; and

10 (2) by adding at the end the following new
11 paragraph:

12 “(2)(A) The Secretary may furnish rehabilitative
13 equipment to any veteran who is entitled to a prosthetic
14 appliance.

15 “(B) In carrying out subparagraph (A), the Secretary
16 may modify non-rehabilitative equipment owned by a vet-
17 eran only if the veteran elects for such modification.

18 “(C) The Secretary shall annually submit to the
19 Committees on Veterans’ Affairs of the House of Rep-
20 resentatives and the Senate a report on rehabilitative
21 equipment furnished to veterans under subparagraph (A).
22 Each such report shall include, with respect to the year
23 covered by the report—

24 (i) the number of veterans eligible to receive
25 such rehabilitative equipment;

1 “(ii) the number of veterans who received such
2 rehabilitative equipment;

3 “(iii) the number of veterans who elected to re-
4 ceive modified equipment pursuant to subparagraph
5 (B); and

6 “(iv) any recommendations of the Secretary to
7 improve furnishing veterans with rehabilitative
8 equipment.

9 “(D) In this paragraph, the term ‘rehabilitative
10 equipment’ means—

11 “(i) rehabilitative equipment, including rec-
12 reational sports equipment that provide an adaption
13 or accommodation for the veteran, regardless of
14 whether such equipment is intentionally designed to
15 be adaptive equipment; and

16 “(ii) includes hand cycles, recumbent bicycles,
17 medically adapted upright bicycles, and upright bicy-
18 cles.”.

19 (b) NO ADDITIONAL FUNDS.—No additional funds
20 are authorized to be appropriated to carry out the require-
21 ments of this section and the amendments made by this
22 section. Such requirements shall be carried out using
23 amounts otherwise authorized.

1 (3) the medical facilities of the Department of
2 Veterans Affairs provide to veterans access to the
3 full range of professional services provided by an au-
4 diologist.

5 (c) CONSULTATION.—In determining the qualifica-
6 tions required for hearing aid specialists and in carrying
7 out subsection (b), the Secretary shall consult with vet-
8 erans service organizations, audiologists,
9 otolaryngologists, hearing aid specialists, and other stake-
10 holder and industry groups as the Secretary determines
11 appropriate.

12 (d) ANNUAL REPORT.—

13 (1) IN GENERAL.—Not later than 1 year after
14 the date of the enactment of this Act, and annually
15 thereafter during the 5-year period beginning on the
16 date of the enactment of this Act, the Secretary of
17 Veterans Affairs shall submit to Congress a report
18 on the following:

19 (A) Timely access of veterans to hearing
20 health services through the Department of Vet-
21 erans Affairs.

22 (B) Contracting policies of the Department
23 with respect to providing hearing health serv-
24 ices to veterans in facilities that are not facili-
25 ties of the Department.

1 (2) **TIMELY ACCESS TO SERVICES.**—Each re-
2 report shall, with respect to the matter specified in
3 paragraph (1)(A) for the 1-year period preceding the
4 submittal of such report, include the following:

5 (A) The staffing levels of audiologists,
6 hearing aid specialists, and health technicians
7 in audiology in the Veterans Health Adminis-
8 tration.

9 (B) A description of the metrics used by
10 the Secretary in measuring performance with
11 respect to appointments and care relating to
12 hearing health.

13 (C) The average time that a veteran waits
14 to receive an appointment, beginning on the
15 date on which the veteran makes the request,
16 for the following:

17 (i) A disability rating evaluation for a
18 hearing-related disability.

19 (ii) A hearing aid evaluation.

20 (iii) Dispensing of hearing aids.

21 (iv) Any follow-up hearing health ap-
22 pointment.

23 (D) The percentage of veterans whose total
24 wait time for appointments described in sub-
25 paragraph (C), including an initial and follow-

1 up appointment, if applicable, is more than 30
2 days.

3 (3) CONTRACTING POLICIES.—Each report
4 shall, with respect to the matter specified in para-
5 graph (1)(B) for the 1-year period preceding the
6 submittal of such report, include the following:

7 (A) The number of veterans that the Sec-
8 retary refers to non-Department audiologists
9 for hearing health care appointments.

10 (B) The number of veterans that the Sec-
11 retary refers to non-Department hearing aid
12 specialists for follow-up appointments for a
13 hearing aid evaluation, the dispensing of hear-
14 ing aids, or any other purpose relating to hear-
15 ing health.

Passed the House of Representatives September 14,
2016.

Attest:

KAREN L. HAAS,

Clerk.