

114TH CONGRESS
1ST SESSION

S. 290

To amend title 38, United States Code, to improve the accountability of employees of the Department of Veterans Affairs, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 28, 2015

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

A BILL

To amend title 38, United States Code, to improve the accountability of employees of the Department of Veterans Affairs, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Increasing the Depart-
5 ment of Veterans Affairs Accountability to Veterans Act
6 of 2015”.

1 **SEC. 2. REDUCTION OF BENEFITS FOR MEMBERS OF THE**
2 **SENIOR EXECUTIVE SERVICE WITHIN THE**
3 **DEPARTMENT OF VETERANS AFFAIRS CON-**
4 **VICTED OF CERTAIN CRIMES.**

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

8 **“§ 715. Senior executives: reduction of benefits of in-**
9 **dividuals convicted of certain crimes**

10 “(a) REDUCTION OF ANNUITY FOR REMOVED EM-
11 PLOYEE.—The covered service of an individual removed
12 from a senior executive position under section 713 of this
13 title shall not be taken into account for purposes of calcu-
14 lating an annuity with respect to such individual under
15 chapter 83 or chapter 84 of title 5, if the individual is
16 convicted of a felony that influenced the individual’s per-
17 formance while employed in the senior executive position.

18 “(b) REDUCTION OF ANNUITY FOR RETIRED EM-
19 PLOYEE.—(1) The Secretary may order that the covered
20 service of an individual who is subject to a removal or
21 transfer action under section 713 of this title but who
22 leaves employment at the Department prior to the
23 issuance of a final decision with respect to such action
24 shall not be taken into account for purposes of calculating
25 an annuity with respect to such individual under chapter
26 83 or chapter 84 of title 5, if the individual is convicted

1 of a felony that influenced the individual's performance
2 while employed in the senior executive position.

3 “(2) The Secretary shall make such an order not
4 later than 7 days after the date on which such individual
5 is convicted of such felony.

6 “(3) Not later than 30 days after the Secretary issues
7 any order with respect to an individual under paragraph
8 (1), the Director of the Office of Personnel Management
9 shall recalculate the annuity of the individual.

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

15 “(d) DEFINITIONS.—In this section:

16 “(1) The term ‘covered service’ means, with re-
17 spect to an individual subject to a removal or trans-
18 fer action under section 713 of this title, the period
19 of service beginning on the date that the Secretary
20 determines under such section that such individual
21 engaged in activity that gave rise to such action and
22 ending on the date that such individual is removed
23 from the civil service or leaves employment at the
24 Department prior to the issuance of a final decision
25 with respect to such action, as the case may be.

1 “(2) The term ‘lump-sum credit’ has the mean-
2 ing given such term in section 8331(8) or section
3 8401(19) of title 5, as the case may be.

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

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

10 (b) APPLICATION.—Section 715 of such title, as
11 added by subsection (a), shall apply to any action of re-
12 moval or transfer under section 713 of such title com-
13 mencing on or after the date of the enactment of this Act.

14 (c) CLERICAL AMENDMENT.—The table of sections
15 at the beginning of such chapter is amended by adding
16 at the end the following new item:

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

17 **SEC. 3. REFORM OF PERFORMANCE APPRAISAL SYSTEM**
18 **FOR SENIOR EXECUTIVE SERVICE EMPLOY-**
19 **EES OF THE DEPARTMENT OF VETERANS AF-**
20 **FAIRS.**

21 (a) PERFORMANCE APPRAISAL SYSTEM.—

22 (1) IN GENERAL.—Chapter 7 of title 38, United
23 States Code, as amended by section 2, is further

1 amended by adding at the end the following new sec-
2 tion:

3 **“§ 717. Senior executives: performance appraisal**

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

10 “(A) One outstanding level.

11 “(B) One exceeds fully successful level.

12 “(C) One fully successful level.

13 “(D) One minimally satisfactory level.

14 “(E) One unsatisfactory level.

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

17 “(A) For any year, not more than 10 percent
18 of such individuals who receive a performance rating
19 during that year may receive the outstanding level
20 under paragraph (1)(A).

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

1 “(3) In evaluating the performance of an individual
2 under the performance appraisal system, the Secretary
3 shall take into consideration any complaint or report (in-
4 cluding any pending or published report) submitted by the
5 Inspector General of the Department, the Comptroller
6 General of the United States, the Equal Employment Op-
7 portunity Commission, or any other appropriate person or
8 entity, related to any facility or program managed by the
9 individual.

10 “(b) CHANGE OF POSITION.—(1) Not less frequently
11 than once every five years, the Secretary shall reassign
12 each individual employed in a senior executive position to
13 a position at a different location that does not include the
14 supervision of the same personnel or programs.

15 “(2) The Secretary may waive the requirement under
16 paragraph (1) for any such individual, if the Secretary
17 submits to the Committee on Veterans’ Affairs of the Sen-
18 ate and the Committee on Veterans’ Affairs of the House
19 of Representatives notice of the waiver and an explanation
20 of the reasons for the waiver.

21 “(c) REPORT.—(1) Not later than March 1 of each
22 year, the Secretary shall submit to the Committee on Vet-
23 erans’ Affairs of the Senate and the Committee on Vet-
24 erans’ Affairs of the House of Representatives a report

1 on the performance appraisal system of the Department
2 under subsection (a).

3 “(2) Each report submitted under paragraph (1)
4 shall include, for the year preceding the year during which
5 the report is submitted, all documentation concerning each
6 of the following for each individual employed in a senior
7 executive position in the Department:

8 “(A) The initial performance appraisal.

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

10 “(C) The recommendations of the performance
11 review board.

12 “(D) The final summary review.

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

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

20 (2) CLERICAL AMENDMENT.—The table of sec-
21 tions at the beginning of such chapter is further
22 amended by adding at the end the following new
23 item:

“717. Senior executives: performance appraisal.”.

1 (3) CONFORMING AMENDMENT.—Section
2 4312(b) of title 5, United States Code, is amend-
3 ed—

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

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

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

9 “(4) that, in the case of the Department of
10 Veterans Affairs, the performance appraisal
11 system meets the requirements of section 716
12 of title 38.”.

13 (b) REVIEW OF SES MANAGEMENT TRAINING.—

14 (1) REVIEW.—

15 (A) IN GENERAL.—Not later than 180
16 days after the date of the enactment of this
17 Act, the Secretary of Veterans Affairs shall
18 enter into a contract with a nongovernmental
19 entity to review the management training pro-
20 gram for individuals employed in senior execu-
21 tive positions (as such term is defined in section
22 713(g) of title 38, United States Code) of the
23 Department of Veterans Affairs that is being
24 provided as of the date of the enactment of this
25 Act.

1 (B) COMPARISON.—The review required by
2 subparagraph (A) shall include a comparison of
3 the training provided by the Department of
4 Veterans Affairs to the management training
5 provided for senior executives of other Federal
6 departments and agencies and to the manage-
7 ment training provided to senior executives in
8 the private sector.

9 (C) REPORT TO SECRETARY.—The con-
10 tract required by subparagraph (A) shall pro-
11 vide that the nongovernmental entity must com-
12 plete and submit to the Secretary a report con-
13 taining the findings and conclusions of the re-
14 view by not later than 180 days after the date
15 on which the Secretary and the nongovern-
16 mental entity enter into the contract.

17 (2) REPORT TO CONGRESS.—Not later than 60
18 days after the date on which the Secretary receives
19 the report under paragraph (1)(C), the Secretary
20 shall submit to the Committee on Veterans' Affairs
21 of the Senate and the Committee on Veterans' Af-
22 fairs of the House of Representatives the report to-
23 gether with a plan for carrying out the recommenda-
24 tions contained in the report.

1 **SEC. 4. LIMITATION ON ADMINISTRATIVE LEAVE FOR MEM-**
2 **BERS OF THE SENIOR EXECUTIVE SERVICE**
3 **WITHIN THE DEPARTMENT OF VETERANS AF-**
4 **FAIRS.**

5 (a) IN GENERAL.—Chapter 7 of title 38, United
6 States Code, as amended by section 3, is further amended
7 by adding after section 717 the following new section:

8 **“§ 719. Administrative leave limitation and report**

9 “(a) LIMITATION APPLICABLE TO MEMBERS OF SEN-
10 IOR EXECUTIVE SERVICE WITHIN DEPARTMENT OF VET-
11 ERANS AFFAIRS.—(1) The Secretary may not place any
12 covered individual on administrative leave, or any other
13 type of paid non-duty status, for more than a total of 14
14 days during any 365-day period.

15 “(2)(A) The Secretary may waive the limitation
16 under paragraph (1) and extend the administrative leave
17 or other paid non-duty status of a covered individual
18 placed on such leave or status under paragraph (1) if the
19 Secretary submits to the Committee on Veterans’ Affairs
20 of the Senate and the Committee on Veterans’ Affairs of
21 the House of Representatives a detailed explanation of the
22 reasons the individual was placed on administrative leave
23 or other paid non-duty status and the reasons for the ex-
24 tension of such leave or status.

25 “(B) Any detailed explanation submitted under sub-
26 paragraph (A) shall include the name of the covered indi-

1 vidual, the location where the individual is employed, and
2 the individual's job title.

3 “(3) In this subsection, the term ‘covered individual’
4 means an individual (as defined in section 713(g) of this
5 title) occupying a senior executive position (as defined in
6 such section)—

7 “(A) who is subject to an investigation for pur-
8 poses of determining whether such individual should
9 be subject to any disciplinary action under this title
10 or title 5; or

11 “(B) against whom any disciplinary action is
12 proposed or initiated under this title or title 5.

13 “(b) REPORT ON ADMINISTRATIVE LEAVE.—(1) Not
14 later than 30 days after the end of each quarter of any
15 calendar year, the Secretary shall submit to the Com-
16 mittee on Veterans' Affairs of the Senate and the Com-
17 mittee on Veterans' Affairs of the House of Representa-
18 tives a report listing the name of any employee of the De-
19 partment (if any) who has been placed on administrative
20 leave, or any other type of paid non-duty status, for a pe-
21 riod longer than seven days during such quarter.

22 “(2) Any report submitted under paragraph (1) shall
23 include, with respect to any employee listed in such report,
24 the position occupied by the employee, the number of days

1 of such leave, and the reason that such employee was
2 placed on such leave.”.

3 (b) APPLICATION.—

4 (1) ADMINISTRATIVE LEAVE LIMITATION.—Sec-
5 tion 719(a) of title 38, United States Code, as added
6 by subsection (a), shall apply to any action of re-
7 moval or transfer under section 713 of such title or
8 title 5, United States Code, commencing on or after
9 the date of the enactment of this Act.

10 (2) REPORT.—The report under section 719(b)
11 of such title, as added by subsection (a), shall begin
12 to apply in the first quarter that ends after the date
13 that is 180 days after the date of the enactment of
14 this Act.

15 (c) CLERICAL AMENDMENT.—The table of sections
16 at the beginning of such chapter is amended by adding
17 at the end the following new item:

“719. Administrative leave limitation and report.”.

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