

Calendar No. 725114TH CONGRESS
2D 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, Mr. MCCAIN, Mrs. ERNST, Mr. BLUMENTHAL, Mr. KIRK, Mr. BENNET, and Mr. DAINES) introduced the following bill; which was read twice and referred to the Committee on Veterans' Affairs

DECEMBER 9, 2016

Reported by Mr. ISAKSON, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

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,*

1 **SECTION 1. SHORT TITLE.**

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

5 **SEC. 2. REDUCTION OF BENEFITS FOR MEMBERS OF THE**
6 **SENIOR EXECUTIVE SERVICE WITHIN THE**
7 **DEPARTMENT OF VETERANS AFFAIRS CON-**
8 **VICTED OF CERTAIN CRIMES.**

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

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

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

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 under section 713 of this title but who
26 leaves employment at the Department prior to the

1 issuance of a final decision with respect to such action
2 shall not be taken into account for purposes of calculating
3 an annuity with respect to such individual under chapter
4 83 or chapter 84 of title 5, if the individual is convicted
5 of a felony that influenced the individual's performance
6 while employed in the senior executive position.

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

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

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

19 “(d) DEFINITIONS.—In this section:

20 “(1) The term ‘covered service’ means, with re-
21 spect to an individual subject to a removal or trans-
22 fer action under section 713 of this title, the period
23 of service beginning on the date that the Secretary
24 determines under such section that such individual
25 engaged in activity that gave rise to such action and

1 ending on the date that such individual is removed
 2 from the civil service or leaves employment at the
 3 Department prior to the issuance of a final decision
 4 with respect to such action, as the case may be.

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

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

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

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

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

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

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

5 (a) PERFORMANCE APPRAISAL SYSTEM.—

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

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

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

17 “(A) One outstanding level.

18 “(B) One exceeds fully successful level.

19 “(C) One fully successful level.

20 “(D) One minimally satisfactory level.

21 “(E) One unsatisfactory level.

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

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

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

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

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

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

21 “(2) The Secretary may waive the requirement under
22 paragraph (1) for any such individual, if the Secretary
23 submits to the Committee on Veterans’ Affairs of the Sen-
24 ate and the Committee on Veterans’ Affairs of the House

1 of Representatives notice of the waiver and an explanation
2 of the reasons for the waiver.

3 “(c) REPORT.—(1) Not later than March 1 of each
4 year, the Secretary shall submit to the Committee on Vet-
5 erans’ Affairs of the Senate and the Committee on Vet-
6 erans’ Affairs of the House of Representatives a report
7 on the performance appraisal system of the Department
8 under subsection (a).

9 “(2) Each report submitted under paragraph (1)
10 shall include, for the year preceding the year during which
11 the report is submitted, all documentation concerning each
12 of the following for each individual employed in a senior
13 executive position in the Department:

14 “(A) The initial performance appraisal.

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

16 “(C) The recommendations of the performance
17 review board.

18 “(D) The final summary review.

19 “(E) The review of the Inspector General of the
20 Department of the information described in subpara-
21 graphs (A) through (D).

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

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

“717. Senior executives: performance appraisal.”.

5 (3) CONFORMING AMENDMENT.—Section
 6 4312(b) of title 5, United States Code, is amend-
 7 ed—

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

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

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

13 “(4) that, in the case of the Department of
 14 Veterans Affairs, the performance appraisal
 15 system meets the requirements of section 716
 16 of title 38.”.

17 (b) REVIEW OF SES MANAGEMENT TRAINING.—

18 (1) REVIEW.—

19 (A) IN GENERAL.—Not later than 180
 20 days after the date of the enactment of this
 21 Act, the Secretary of Veterans Affairs shall
 22 enter into a contract with a nongovernmental
 23 entity to review the management training pro-
 24 gram for individuals employed in senior execu-
 25 tive positions (as such term is defined in section

1 713(g) of title 38, United States Code) of the
2 Department of Veterans Affairs that is being
3 provided as of the date of the enactment of this
4 Act.

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

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

21 (2) REPORT TO CONGRESS.—Not later than 60
22 days after the date on which the Secretary receives
23 the report under paragraph (1)(C), the Secretary
24 shall submit to the Committee on Veterans' Affairs
25 of the Senate and the Committee on Veterans' Af-

1 fairs of the House of Representatives the report to-
 2 gether with a plan for carrying out the recommenda-
 3 tions contained in the report.

4 **SEC. 4. LIMITATION ON ADMINISTRATIVE LEAVE FOR MEM-**
 5 **BERS OF THE SENIOR EXECUTIVE SERVICE**
 6 **WITHIN THE DEPARTMENT OF VETERANS AF-**
 7 **FAIRS.**

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

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

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

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

1 or other paid non-duty status and the reasons for the ex-
2 tension of such leave or status.

3 ~~“(B) Any detailed explanation submitted under sub-~~
4 ~~paragraph (A) shall include the name of the covered indi-~~
5 ~~vidual, the location where the individual is employed, and~~
6 ~~the individual’s job title.~~

7 ~~“(3) In this subsection, the term ‘covered individual’~~
8 ~~means an individual (as defined in section 713(g) of this~~
9 ~~title) occupying a senior executive position (as defined in~~
10 ~~such section)—~~

11 ~~“(A) who is subject to an investigation for pur-~~
12 ~~poses of determining whether such individual should~~
13 ~~be subject to any disciplinary action under this title~~
14 ~~or title 5; or~~

15 ~~“(B) against whom any disciplinary action is~~
16 ~~proposed or initiated under this title or title 5.~~

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

1 “(2) Any report submitted under paragraph (1) shall
 2 include, with respect to any employee listed in such report,
 3 the position occupied by the employee, the number of days
 4 of such leave, and the reason that such employee was
 5 placed on such leave.”.

6 (b) APPLICATION.—

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

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

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

“719. Administrative leave limitation and report.”.

21 **SECTION 1. SHORT TITLE.**

22 *This Act may be cited as the “Increasing the Depart-*
 23 *ment of Veterans Affairs Accountability to Veterans Act of*
 24 *2015”.*

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

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

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

10 “(a) *REDUCTION OF ANNUITY FOR REMOVED MEM-*
 11 *BER.*—The covered service of an individual removed from
 12 a senior executive position at the Department by the Sec-
 13 retary for performance or misconduct shall not be taken
 14 into account for purposes of calculating an annuity with
 15 respect to such individual under chapter 83 or chapter 84
 16 of title 5, if the individual is convicted of a felony (and
 17 the conviction is final) that was related, as determined by
 18 the Director of the Office of Personnel Management, to the
 19 individual’s performance while employed in such senior ex-
 20 ecutive position.

21 “(b) *REDUCTION OF ANNUITY FOR RETIRED MEM-*
 22 *BER.*—(1) The Secretary may order that the covered service
 23 of an individual who is subject to a removal or transfer
 24 from a senior executive position at the Department by the
 25 Secretary for performance or misconduct but who leaves em-
 26 ployment at the Department prior to the issuance of a final

1 *decision with respect to such removal or transfer shall not*
2 *be taken into account for purposes of calculating an annu-*
3 *ity with respect to such individual under chapter 83 or*
4 *chapter 84 of title 5, if the individual is convicted of a fel-*
5 *ony (and the conviction is final) that was related, as deter-*
6 *mined by the Director of the Office of Personnel Manage-*
7 *ment, to the individual's performance while employed in*
8 *such senior executive position.*

9 “(2) *The Secretary shall make such an order not later*
10 *than 7 days after the date on which such individual is con-*
11 *victed of such felony.*

12 “(3) *Not later than 30 days after the Secretary issues*
13 *any order with respect to an individual under paragraph*
14 *(1), the Director of the Office of Personnel Management*
15 *shall recalculate the annuity of the individual.*

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

21 “(d) *REVIEW OF REDUCTION OF ANNUITY.—Any indi-*
22 *vidual whose annuity is reduced under subsection (a) or*
23 *(b) may appeal the reduction to the Director of the Office*
24 *of Personnel Management.*

25 “(e) *DEFINITIONS.—In this section:*

1 “(1) *The term ‘covered service’ means, with re-*
2 *spect to an individual subject to a removal or transfer*
3 *from a senior executive position at the Department*
4 *for performance or misconduct, the period of service*
5 *beginning on the date that the Secretary determines*
6 *under such section that such individual engaged in*
7 *activity that gave rise to such action and ending on*
8 *the date that such individual is removed from the*
9 *civil service or leaves employment at the Department*
10 *prior to the issuance of a final decision with respect*
11 *to such action, as the case may be.*

12 “(2) *The term ‘lump-sum credit’ has the mean-*
13 *ing given such term in section 8331 or 8401 of title*
14 *5, as the case may be.*

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

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

21 **(b) APPLICATION.**—*Section 715 of such title, as added*
22 *by subsection (a), shall apply to any action of removal or*
23 *transfer from a senior executive position (as defined in sec-*
24 *tion 713(g) of such title) at the Department of Veterans Af-*

1 *fairs commencing on or after the date of the enactment of*
 2 *this Act.*

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

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

6 **SEC. 3. INDEPENDENT REVIEW AND ASSESSMENT OF MAN-**
 7 **AGEMENT TRAINING AND APPRAISAL AT DE-**
 8 **PARTMENT OF VETERANS AFFAIRS.**

9 (a) *REVIEW AND ASSESSMENT.*—

10 (1) *IN GENERAL.*—*Not later than 180 days after*
 11 *the date of the enactment of this Act, the Secretary of*
 12 *Veterans Affairs shall enter into a contract with a*
 13 *nongovernmental entity to review and assess the fol-*
 14 *lowing:*

15 (A) *The management training program for*
 16 *individuals employed in senior executive posi-*
 17 *tions of the Department of Veterans Affairs that*
 18 *is being provided as of the date of the enactment*
 19 *of this Act.*

20 (B) *The performance appraisal system of*
 21 *the Department in effect on the day before the*
 22 *date of the enactment of this Act for individuals*
 23 *employed in senior executive positions.*

1 (2) *ELEMENTS.*—*The review and assessment re-*
2 *quired by paragraph (1) shall include the following:*

3 (A) *A comparison of the training provided*
4 *by the Department 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 (B) *Recommendations for improving the*
10 *program described in paragraph (1)(A).*

11 (C) *Recommendations for improving the*
12 *system described in paragraph (1)(B).*

13 (D) *An assessment of the ability of the De-*
14 *partment to attract and develop employees suit-*
15 *able for senior executive service positions of the*
16 *Department.*

17 (E) *An assessment of the leadership and*
18 *management actions of the Department resulting*
19 *from Department of Veterans Affairs Perform-*
20 *ance and Accountability Reports submitted in*
21 *the two most recent fiscal years ending before the*
22 *date of the enactment of this Act.*

23 (F) *A review of the strategy of the Secretary*
24 *called “Lean Management”.*

1 (G) *An assessment of the compliance of the*
2 *Department with provisions of law added or*
3 *amended by the GPRA Modernization Act of*
4 *2010 (Public Law 111–352) and an explanation*
5 *of the changes made to the Department and the*
6 *activities carried out by the Secretary in re-*
7 *sponse to the enactment of such Act.*

8 (H) *An assessment of the results of the most*
9 *recent Annual Employee Survey carried out pur-*
10 *suant to part 250 of title 5, Code of Federal Reg-*
11 *ulations.*

12 (I) *An assessment of the efforts of the Sec-*
13 *retary to conduct data-driven reviews and de-*
14 *velop a results-oriented culture pursuant to part*
15 *6 of Circular A-11 of the Office of Management*
16 *and Budget.*

17 (J) *An assessment of the Department of Vet-*
18 *erans Affairs Federal Performance Improvement*
19 *Officer role and oversight function.*

20 (K) *A survey of the morale of employees*
21 *and their satisfaction with their work and work*
22 *environment in each Department of Veterans Af-*
23 *airs staff organization, staff office, and adminis-*
24 *tration as described by Directive 0211 of the De-*
25 *partment and provided for in version 3.0a of the*

1 *Functional Organization Manual of the Depart-*
2 *ment.*

3 (3) *REPORT TO SECRETARY.*—*The contract re-*
4 *quired by paragraph (1) shall provide that the non-*
5 *governmental entity must complete and submit to the*
6 *Secretary a report containing the findings and con-*
7 *clusions of the review by not later than 180 days after*
8 *the date on which the Secretary and the nongovern-*
9 *mental entity enter into the contract.*

10 (b) *REPORT TO CONGRESS.*—*Not later than 60 days*
11 *after the date on which the Secretary receives the report*
12 *under subsection (a)(3), the Secretary shall submit to the*
13 *Committee on Veterans' Affairs of the Senate and the Com-*
14 *mittee on Veterans' Affairs of the House of Representatives*
15 *the report together with a plan for carrying out the rec-*
16 *ommendations contained in the report.*

17 (c) *SENIOR EXECUTIVE POSITION DEFINED.*—*In this*
18 *section, the term "senior executive position" has the meaning*
19 *given that term in section 713(g) of title 38, United States*
20 *Code.*

1 **SEC. 4. LIMITATION ON ADMINISTRATIVE LEAVE FOR EM-**
 2 **PLLOYEES OF DEPARTMENT OF VETERANS AF-**
 3 **FAIRS.**

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

7 **“§ 717. Administrative leave limitation and report**

8 “(a) *LIMITATION APPLICABLE TO EMPLOYEES WITHIN*
 9 *THE DEPARTMENT*.—(1) *The Secretary may not place any*
 10 *covered individual on administrative leave for more than*
 11 *a total of 14 business days during any 365-day period.*

12 “(2)(A) *The Secretary may waive the limitation under*
 13 *paragraph (1) and extend the period of administrative leave*
 14 *of a covered individual if the Secretary submits to the Com-*
 15 *mittee on Veterans’ Affairs of the Senate and the Committee*
 16 *on Veterans’ Affairs of the House of Representatives a de-*
 17 *tailed explanation of the reasons the covered individual was*
 18 *placed on administrative leave and the reasons for the ex-*
 19 *tension of such leave.*

20 “(B) *Such explanation shall include the position of the*
 21 *covered individual and the location where the covered indi-*
 22 *vidual is employed.*

23 “(3) *In this subsection, the term ‘covered individual’*
 24 *means an employee of the Department, including an em-*
 25 *ployee in a senior executive position (as defined in section*
 26 *713(g) of this title)—*

1 “(A) *who is subject to an investigation for pur-*
2 *poses of determining whether such individual should*
3 *be subject to any disciplinary action under this title*
4 *or title 5; or*

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

7 “(b) *REPORT ON ADMINISTRATIVE LEAVE.—(1) Not*
8 *later than 30 days after the end of each fiscal year, the*
9 *Secretary shall submit to the Committee on Veterans’ Af-*
10 *fairs of the Senate and the Committee on Veterans’ Affairs*
11 *of the House of Representatives a report listing the position*
12 *of each employee of the Department (if any) who has been*
13 *placed on administrative leave for a period longer than 14*
14 *business days during such fiscal year.*

15 “(2) *Each report submitted under paragraph (1) shall*
16 *include, with respect to each employee listed in such report,*
17 *the following:*

18 “(A) *The position occupied by the employee.*

19 “(B) *The number of business days of such leave.*

20 “(C) *The reason that such employee was placed*
21 *on such leave.*

22 “(3) *In submitting each report under paragraph (1),*
23 *the Secretary shall take such measures to protect the pri-*
24 *vacy of the employees listed in the report as the Secretary*
25 *considers appropriate.*

1 “(c) *ADMINISTRATIVE LEAVE DEFINED.*—*In this sec-*
2 *tion, the term ‘administrative leave’—*

3 “(1) *means an administratively authorized ab-*
4 *sence from duty without loss of pay or charge to leave*
5 *for which the employee is placed due to an investiga-*
6 *tion on or for whom any disciplinary action is pro-*
7 *posed or initiated; and*

8 “(2) *includes any type of paid non-duty status*
9 *without a charge to leave.”.*

10 **(b) APPLICATION.**—

11 **(1) ADMINISTRATIVE LEAVE LIMITATION.**—*Sub-*
12 *section (a) of section 717 of title 38, United States*
13 *Code (as added by subsection (a)), shall apply to any*
14 *period of administrative leave (as defined in such sec-*
15 *tion) commencing on or after the date of the enact-*
16 *ment of this Act.*

17 **(2) REPORT.**—*The report under section 717(b) of*
18 *such title (as added by subsection (a)) shall apply be-*
19 *ginning in the first quarter that ends after the date*
20 *that is 180 days after the date of the enactment of*
21 *this Act.*

22 **(c) CLERICAL AMENDMENT.**—*The table of sections at*
23 *the beginning of chapter 7 of such title is further amended*
24 *by adding at the end the following new item:*

“717. *Administrative leave limitation and report.*”.

1 **SEC. 5. ACCOUNTABILITY OF LEADERS FOR MANAGING THE**
2 **DEPARTMENT OF VETERANS AFFAIRS.**

3 (a) *IN GENERAL.*—Chapter 7 of title 38, United States
4 Code, is amended by inserting after section 709 the fol-
5 lowing new section:

6 **“§ 710. Annual performance plan for political ap-**
7 **pointees**

8 “(a) *IN GENERAL.*—The Secretary shall conduct an
9 annual performance plan for each political appointee of the
10 Department that is similar to the annual performance plan
11 conducted for an employee of the Department who is ap-
12 pointed as a career appointee (as that term is defined in
13 section 3132(a)(4) of title 5) within the Senior Executive
14 Service at the Department.

15 “(b) *ELEMENTS OF PLAN.*—Each annual performance
16 plan conducted under subsection (a) with respect to a polit-
17 ical appointee of the Department shall include, to the extent
18 applicable, an assessment of whether the appointee is meet-
19 ing the following goals:

20 “(1) *Recruiting, selecting, and retaining well-*
21 *qualified individuals for employment at the Depart-*
22 *ment.*

23 “(2) *Engaging and motivating employees.*

24 “(3) *Training and developing employees and*
25 *preparing those employees for future leadership roles*
26 *within the Department.*

1 “(4) *Holding each employee of the Department*
 2 *that is a manager accountable for addressing issues*
 3 *relating to performance, in particular issues relating*
 4 *to the performance of employees that report to the*
 5 *manager.”.*

6 (b) *CLERICAL AMENDMENT.—The table of sections at*
 7 *the beginning of chapter 7 of such title is further amended*
 8 *by inserting after the item relating to section 709 the fol-*
 9 *lowing new item:*

“710. Annual performance plan for political appointees.”.

10 **SEC. 6. ACCOUNTABILITY OF MANAGERS FOR HIRING WELL-**
 11 **QUALIFIED PEOPLE.**

12 (a) *ASSESSMENT DURING PROBATIONARY PERIOD.—*

13 (1) *DETERMINATION REQUIRE.—With respect to*
 14 *any employee of the Department of Veterans Affairs*
 15 *who is required to serve a probationary period in a*
 16 *position in the Department, the Secretary of Veterans*
 17 *Affairs shall require the manager of such employee to*
 18 *determine, during the 30-day period ending on the*
 19 *date on which the probationary period ends, whether*
 20 *the employee—*

21 (A) *has demonstrated successful perform-*
 22 *ance; and*

23 (B) *should continue past the probationary*
 24 *period.*

1 (2) *LIMITATION ON EMPLOYMENT AFTER PROBA-*
2 *TIONARY PERIOD.*—No employee of the Department
3 serving a probationary period as described in para-
4 graph (1) may continue in that position after the end
5 of the probationary period unless and until the man-
6 ager of the employee has made an affirmative deter-
7 mination under such paragraph.

8 (b) *SUPERVISORS.*—With respect to any employee of
9 the Department who is serving a probationary period at
10 a supervisory position in the Department, successful per-
11 formance under subsection (a) shall include demonstrating
12 management competencies in addition to the technical skills
13 required for such position.

14 (c) *PERFORMANCE PLAN.*—Each annual performance
15 plan conducted for a manager of an employee serving a pro-
16 bationary period shall hold the manager accountable for—

17 (1) providing regular feedback to such employee
18 during such period before making a determination
19 under subsection (a) regarding the probationary sta-
20 tus of such employee; and

21 (2) making a timely determination under sub-
22 section (a) regarding the probationary status of such
23 employee.

1 **SEC. 7. ACCOUNTABILITY OF MANAGERS FOR ADDRESSING**
 2 **PERFORMANCE OF EMPLOYEES.**

3 *The Secretary of Veterans Affairs shall ensure that, as*
 4 *a part of the annual performance plan of an employee of*
 5 *the Department of Veterans Affairs who is a manager, the*
 6 *manager is evaluated on the following:*

7 (1) *Taking action to address poor performance*
 8 *and misconduct among the employees that report to*
 9 *the manager.*

10 (2) *Taking steps to improve or sustain high lev-*
 11 *els of employee engagement.*

12 **SEC. 8. EXPANSION OF DEFINITION OF PERSONNEL ACTION**
 13 **TO INCLUDE PERFORMANCE EVALUATIONS**
 14 **OF EMPLOYEES OF THE DEPARTMENT OF**
 15 **VETERANS AFFAIRS.**

16 *Section 2302(a)(2)(A)(viii) of title 5, United States*
 17 *Code, is amended by inserting “or under title 38” after*
 18 *“chapter 43 of this title”.*

19 **SEC. 9. WRITTEN OPINION ON CERTAIN EMPLOYMENT RE-**
 20 **STRICTIONS AFTER TERMINATING EMPLOY-**
 21 **MENT WITH THE DEPARTMENT OF VETERANS**
 22 **AFFAIRS.**

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

1 **“§ 719. Written opinion on certain employment restric-**
 2 **tions after terminating employment with**
 3 **the Department**

4 “(a) *IN GENERAL.*—*Before terminating employment*
 5 *with the Department, any official of the Department who*
 6 *has participated personally and substantially during the*
 7 *one-year period ending on the date of the termination in*
 8 *an acquisition by the Department that exceeds \$10,000,000*
 9 *shall obtain a written opinion from an appropriate ethics*
 10 *counselor at the Department regarding any restrictions on*
 11 *activities that the official may undertake on behalf of a cov-*
 12 *ered contractor during the two-year period beginning on the*
 13 *date on which the official terminates such employment.*

14 “(b) *COVERED CONTRACTOR DEFINED.*—*In this sec-*
 15 *tion, the term ‘covered contractor’ means a contractor car-*
 16 *rying out a contract entered into with the Department, in-*
 17 *cluding pursuant to a subcontract.”.*

18 (b) *CLERICAL AMENDMENT.*—*The table of sections at*
 19 *the beginning of chapter 7 of such title is further amended*
 20 *by inserting after the item relating to section 717 the fol-*
 21 *lowing new item:*

“719. *Written opinion on certain employment restrictions after leaving the De-*
partment.”.

1 **SEC. 10. REQUIREMENT FOR CONTRACTORS OF THE DE-**
 2 **PARTMENT EMPLOYING CERTAIN RECENTLY**
 3 **SEPARATED DEPARTMENT EMPLOYEES.**

4 (a) *IN GENERAL.*—Subchapter II of chapter 81 of title
 5 38, United States Code, is amended by adding at the end
 6 the following new section:

7 **“§ 8129. Requirement for contractors employing cer-**
 8 **tain recently separated Department em-**
 9 **ployees**

10 “(a) *IN GENERAL.*—A covered contractor may not
 11 knowingly provide compensation to an individual described
 12 in subsection (b) during the two-year period beginning on
 13 the date on which the individual terminates employment
 14 with the Department unless the covered contractor deter-
 15 mines that the individual—

16 “(1) has obtained the written opinion required
 17 under section 719(a) of this title; or

18 “(2) has requested such written opinion not later
 19 than 30 days before receiving compensation from the
 20 covered contractor.

21 “(b) *INDIVIDUAL DESCRIBED.*—An individual de-
 22 scribed in this subsection is any official of the Department
 23 who participated personally and substantially during the
 24 one-year period ending on the date of the termination indi-
 25 vidual’s employment with the Department in an acquisi-
 26 tion by the Department that exceeds \$10,000,000.

1 “(c) *COVERED CONTRACTOR DEFINED.*—*In this sec-*
 2 *tion, the term ‘covered contractor’ means a contractor car-*
 3 *rying out a contract entered into with the Department, in-*
 4 *cluding pursuant to a subcontract.”.*

5 (b) *APPLICATION.*—*The requirement under section*
 6 *8129(a) of title 38, United States Code, as added by sub-*
 7 *section (a), shall apply with respect to any entity that en-*
 8 *ters into a contract with the Department on or after the*
 9 *date of the enactment of this Act.*

10 (c) *CLERICAL AMENDMENT.*—*The table of sections at*
 11 *the beginning of chapter 81 of such title is amended by in-*
 12 *serting after the item relating to section 8128 the following*
 13 *new item:*

“8129. Requirement for contractors employing certain recently separated Depart-
ment employees.”.

14 **SEC. 11. RESTORATION OF PRIOR REPORTING FEE MULTI-**
 15 **PLIERS.**

16 *During the one-year period beginning on September*
 17 *26, 2016, the second sentence of subsection (c) of section*
 18 *3684 of title 38, United States Code, shall be applied—*

19 (1) *by substituting “\$10” for “\$12”; and*

20 (2) *by substituting “\$13” for “\$15”.*

Calendar No. 725

114TH CONGRESS
2^D SESSION

S. 290

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.

DECEMBER 9, 2016

Reported with an amendment