

114TH CONGRESS
2D SESSION

S. 3170

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

IN THE SENATE OF THE UNITED STATES

JULY 12, 2016

Mr. RUBIO 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 provide for the removal or demotion of employees of the Department of Veterans Affairs based on performance or misconduct, and for other purposes.

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

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

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

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

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

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-

1 tion. If the Secretary so removes or demotes such an indi-
2 vidual, the Secretary may—

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

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

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

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

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

16 “(2) An individual so demoted may not be placed on
17 administrative leave or any other category of paid leave
18 during the period during which an appeal (if any) under
19 this section is ongoing, and may only receive pay if the
20 individual reports for duty. If an individual so demoted
21 does not report for duty, such individual shall not receive
22 any pay, awards, bonuses, incentives, allowances, differen-
23 tials, student loan repayments, special payments, or bene-
24 fits from the Department.

1 “(c) NOTICE TO CONGRESS.—Not later than 30 days
2 after removing or demoting an individual under subsection
3 (a), the Secretary shall submit to the Committee on Vet-
4 erans’ Affairs of the Senate and the Committee on Vet-
5 erans’ Affairs of the House of Representatives notice in
6 writing of such removal or demotion and the reason for
7 such removal or demotion.

8 “(d) PROCEDURE.—(1) Subsection (b) of section
9 7513 of title 5 shall apply with respect to a removal or
10 demotion under this section, except that the period for no-
11 tice and response, which includes the advance notice pe-
12 riod required by paragraph (1) of such subsection and the
13 response period required by paragraph (2) of such sub-
14 section, shall not exceed a total of ten calendar days.

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

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

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

1 “(e) EXPEDITED REVIEW BY MERIT SYSTEMS PRO-
2 TECTION BOARD.—(1) Upon receipt of an appeal under
3 subsection (d)(3)(A), the Merit Systems Protection Board
4 shall expedite any such appeal under such section and, in
5 any such case, shall issue a decision not later than 60 days
6 after the date of the appeal.

7 “(2) Notwithstanding section 7701(c)(1)(B) of title
8 5, the Merit Systems Protection Board shall uphold the
9 decision of the Secretary to remove or demote an employee
10 under subsection (a) if the decision is supported by sub-
11 stantial evidence.

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

19 “(4) In any case in which the Merit Systems Protec-
20 tion Board cannot issue a decision in accordance with the
21 60-day requirement under paragraph (1), the removal or
22 demotion is final. In such a case, the Merit Systems Pro-
23 tection Board shall, within 14 days after the date that
24 such removal or demotion is final, submit to Congress and
25 the Committee on Veterans’ Affairs of the Senate and the

1 Committee on Veterans' Affairs of the House of Rep-
2 resentatives a report that explains the reasons why a deci-
3 sion was not issued in accordance with such requirement.

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

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

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

19 “(f) WHISTLEBLOWER PROTECTION.—(1) In the
20 case of an individual seeking corrective action (or on be-
21 half of whom corrective action is sought) from the Office
22 of Special Counsel based on an alleged prohibited per-
23 sonnel practice described in section 2302(b) of title 5, the
24 Secretary may not remove or demote such individual

1 under subsection (a) without the approval of the Special
2 Counsel under section 1214(f) of title 5.

3 “(2) In the case of an individual who has filed a whis-
4 tleblower complaint, as such term is defined in section 741
5 of this title, the Secretary may not remove or demote such
6 individual under subsection (a) until a final decision with
7 respect to the whistleblower complaint has been made.

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

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

25 “(i) DEFINITIONS.—In this section:

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

4 “(A) an individual, as that term is defined
5 in section 713(g); or

6 “(B) a political appointee.

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

9 “(3) The term ‘misconduct’ includes neglect of
10 duty, malfeasance, or failure to accept a directed re-
11 assignment or to accompany a position in a transfer
12 of function.

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

15 “(A) employed in a position described
16 under sections 5312 through 5316 of title 5
17 (relating to the Executive Schedule);

18 “(B) a limited term appointee, limited
19 emergency appointee, or noncareer appointee in
20 the Senior Executive Service, as defined under
21 paragraphs (5), (6), and (7), respectively, of
22 section 3132(a) of title 5; or

23 “(C) employed in a position of a confiden-
24 tial or policy-determining character under
25 schedule C of subpart C of part 213 of title 5

1 of the Code of Federal Regulations (or any suc-
 2 cessor regulation).”.

3 (b) CLERICAL AND CONFORMING AMENDMENTS.—

4 (1) CLERICAL.—The table of sections at the be-
 5 ginning of chapter 7 is amended by inserting after
 6 the item relating to section 713 the following new
 7 item:

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

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

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

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

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

15 “(4) any removal or demotion under section
 16 715 of title 38.”.

17 **SEC. 4. REDUCTION OF BENEFITS FOR MEMBERS OF THE**
 18 **SENIOR EXECUTIVE SERVICE WITHIN THE**
 19 **DEPARTMENT OF VETERANS AFFAIRS CON-**
 20 **VICTED OF CERTAIN CRIMES.**

21 (a) REDUCTION OF BENEFITS.—

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

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

3 “(a) REDUCTION OF ANNUITY FOR REMOVED EM-
4 PLOYEE.—(1) The Secretary shall order that the covered
5 service of an individual removed from a senior executive
6 position for performance or misconduct under section 713
7 of this title, chapter 43 or subchapter V of chapter 75
8 of title 5, or any other provision of law shall not be taken
9 into account for purposes of calculating an annuity with
10 respect to such individual under chapter 83 or chapter 84
11 of title 5, if—

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

15 “(B) before such order is made, the individual
16 is afforded—

17 “(i) notice of the order and an opportunity
18 to respond to the order; and

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

22 “(2) If a final decision on an appeal made under
23 paragraph (1)(B)(ii) is not made by the applicable depart-
24 ment or agency of the Federal Government within 30 days
25 after receiving such appeal, the order of the Secretary

1 under paragraph (1) shall be final and not subject to fur-
2 ther appeal.

3 “(b) REDUCTION OF ANNUITY FOR RETIRED EM-
4 PLOYEE.—(1) The Secretary may order that the covered
5 service of an individual who is subject to a removal or
6 transfer action for performance or misconduct under sec-
7 tion 713 of this title, chapter 43 or subchapter V of chap-
8 ter 75 of title 5, or any other provision of law but who
9 leaves employment at the Department prior to the
10 issuance of a final decision with respect to such action
11 shall not be taken into account for purposes of calculating
12 an annuity with respect to such individual under chapter
13 83 or chapter 84 of title 5, if—

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

17 “(B) before such order is made, the individual
18 is afforded—

19 “(i) notice of the order and an opportunity
20 to respond to the order; and

21 “(ii) an opportunity for a hearing con-
22 ducted by another department or agency of the
23 Federal Government.

24 “(2) The Secretary shall make such an order not
25 later than seven days after the date of the conclusion of

1 a hearing described in paragraph (1)(B) that determines
2 that such order is lawful.

3 “(c) ADMINISTRATIVE REQUIREMENTS.—(1) Not
4 later than 30 days after the Secretary issues an order
5 under subsection (a) or (b), the Director of the Office of
6 Personnel Management shall recalculate the annuity of the
7 individual.

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

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

18 “(e) SPOUSE OR CHILDREN EXCEPTION.—The Sec-
19 retary, in consultation with the Director of the Office of
20 Personnel Management, shall prescribe regulations that
21 may provide for the payment to the spouse or children
22 of any individual referred to in subsection (a) or (b) of
23 any amounts that (but for this subsection) would other-
24 wise have been nonpayable by reason of subsection (a) or
25 (b). Any such regulations shall be consistent with the re-

1 requirements of sections 8332(o)(5) and 8411(l)(5) of title
2 5, as the case may be.

3 “(f) DEFINITIONS.—In this section:

4 “(1) The term ‘covered service’ means, with re-
5 spect to an individual subject to a removal or trans-
6 fer for performance or misconduct under section 713
7 of this title, chapter 43 or subchapter V of chapter
8 75 of title 5, or any other provision of law, the pe-
9 riod of service beginning on the date that the Sec-
10 retary determines under such applicable provision
11 that the individual engaged in activity that gave rise
12 to such action and ending on the date that the indi-
13 vidual is removed or transferred from the senior ex-
14 ecutive position or leaves employment at the Depart-
15 ment prior to the issuance of a final decision with
16 respect to such action, as the case may be.

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

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

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

1 (2) CLERICAL AMENDMENT.—The table of sec-
 2 tions at the beginning of chapter 7 is further amend-
 3 ed by inserting after the item relating to section
 4 715, as added by section 3, the following new item:

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

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

10 **SEC. 5. AUTHORITY TO RECOUP BONUSES OR AWARDS**

11 **PAID TO EMPLOYEES OF DEPARTMENT OF**
 12 **VETERANS AFFAIRS.**

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

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

18 “(a) RECOUPMENT.—Notwithstanding any other pro-
 19 vision of law, the Secretary may issue an order directing
 20 an employee of the Department to repay the amount, or
 21 a portion of the amount, of any award or bonus paid to
 22 the employee under title 5, including under chapter 45 or
 23 53 of such title, or this title if—

1 “(1) the Secretary determines such repayment
2 appropriate pursuant to regulations prescribed under
3 subsection (c); and

4 “(2) before such repayment, the employee is af-
5 forded notice and an opportunity for a hearing con-
6 ducted by another department or agency of the Fed-
7 eral Government.

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

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

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

16 “(2) If a final decision on an appeal made under
17 paragraph (1)(B) 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 subsection (a) shall be final and not subject to fur-
21 ther appeal.

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

24 (b) CLERICAL AMENDMENT.—The table of sections
25 at the beginning of chapter 7 is further amended by insert-

1 ing after the item relating to section 717, as added by
 2 section 4, the following new item:

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

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

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

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

18 (a) IN GENERAL.—Chapter 7 is further amended by
 19 inserting after section 719, as added by section 5, the fol-
 20 lowing new section:

21 **“§ 721. Recoupment of relocation expenses paid on**
 22 **behalf of employees of Department**

23 “(a) RECOUPMENT.—(1) Notwithstanding any other
 24 provision of law, the Secretary may direct an employee of
 25 the Department to repay the amount, or a portion of the

1 amount, paid to or on behalf of the employee for relocation
2 expenses under title 5, including any expenses under sec-
3 tion 5724 or 5724a of such title, or this title if—

4 “(A) the Secretary determines that—

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

7 “(ii) such repayment is appropriate pursu-
8 ant to regulations prescribed under subsection
9 (c); and

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

12 “(i) notice of the determination of the Sec-
13 retary and an opportunity to respond to the de-
14 termination; and

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

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

1 “(b) REVIEW.—A decision by the applicable depart-
2 ment or agency of the Federal Government regarding a
3 repayment by an employee pursuant to subsection
4 (a)(1)(B)(ii) is final and may not be reviewed by any de-
5 partment, agency, or court.

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

8 (b) CLERICAL AMENDMENT.—The table of sections
9 at the beginning of chapter 7 is further amended by insert-
10 ing after the item relating to section 719, as added by
11 section 5, the following new item:

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

12 (c) EFFECTIVE DATE.—Section 721 of title 38,
13 United States Code, as added by subsection (a), shall
14 apply with respect to an amount paid by the Secretary
15 of Veterans Affairs to or on behalf of an employee of the
16 Department of Veterans Affairs for relocation expenses on
17 or after the date of the enactment of this Act.

18 (d) CONSTRUCTION.—Nothing in this section or the
19 amendments made by this section may be construed to
20 modify the certification issued by the Office of Personnel
21 Management and the Office of Management and Budget
22 regarding the performance appraisal system of the Senior
23 Executive Service of the Department of Veterans Affairs.

1 **SEC. 7. SENIOR EXECUTIVES: PERSONNEL ACTIONS BASED**
 2 **ON PERFORMANCE OR MISCONDUCT.**

3 (a) EXPANSION OF COVERED PERSONNEL AC-
 4 TIONS.—Subsection (a)(1) of section 713 is amended, in
 5 the matter preceding subparagraph (A), by inserting after
 6 “such removal.” the following: “If the Secretary deter-
 7 mines that the performance or misconduct of such an indi-
 8 vidual does not warrant removal from the Senior Execu-
 9 tive Service position, the Secretary may suspend, rep-
 10 rimand, or admonish the individual.”.

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

13 (1) in subsection (a)—

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

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

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

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

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

25 (2) in subsection (b)(2)—

1 (A) by striking “under this section” and
2 inserting “under section 723 of this title”; and

3 (B) by striking the second sentence;

4 (3) in subsection (c)—

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

6 and

7 (B) by striking “and the reason for such
8 removal or transfer” and inserting “, the rea-
9 son for such removal or transfer, the name and
10 position of the employee, and all charging docu-
11 ments and evidence pertaining to such removal
12 or transfer”;

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

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

17 “(2) Subject to paragraph (3), a personnel action
18 under this section—

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

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

23 “(3) An appeal under paragraph (2)(A) of a per-
24 sonnel action under this section may only be made if such
25 appeal is made not later than seven days after the date

1 of such action. If no such appeal is made, the decision
2 of the Secretary under this section shall be final.”;

3 (5) by redesignating subsections (f) and (g) as
4 subsections (e) and (f), respectively; and

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

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

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

13 (1) striking subsection (b); and

14 (2) redesignating subsections (c) and (d) as
15 subsections (b) and (c), respectively.

16 (d) SENIOR EXECUTIVE DISCIPLINARY APPEALS
17 BOARD.—Chapter 7 is further amended by inserting after
18 section 721, as added by section 6, the following new sec-
19 tion:

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

21 “(a) IN GENERAL.—The Secretary shall from time
22 to time appoint a board to hear appeals of any personnel
23 action taken under section 713. Such board shall be
24 known as the Senior Executive Disciplinary Appeals
25 Board (in this section referred to as the ‘Board’). Each

1 Board shall consist of three employees of the Department.
2 The Board shall have exclusive jurisdiction to review any
3 personnel action under section 713.

4 “(b) REVIEW AND DECISION.—Upon an appeal of
5 such a personnel action, the Board shall—

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

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

10 “(c) HEARING.—The Board shall afford an employee
11 appealing a personnel action an opportunity for an oral
12 hearing. If such a hearing is held, the appellant may be
13 represented by counsel.

14 “(d) STANDARD OF REVIEW.—The Board shall up-
15 hold the decision of the Secretary if—

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

18 “(2) the applicable personnel action is within
19 the tolerable bounds of reasonableness.

20 “(e) REVERSAL BY SECRETARY.—If the Board issues
21 a decision under this section that reverses or otherwise
22 mitigates the applicable personnel action, the Secretary
23 may reverse the decision of the Board. Consistent with the
24 requirements of subsection (g), the decision of the Sec-
25 retary under this subsection shall be final.

1 “(f) NO DECISION BY BOARD.—In any case in which
2 the Board cannot issue a decision in accordance with the
3 21-day requirement under subsection (b)(2), the personnel
4 action is final.

5 “(g) APPEAL OF DECISION.—A petition to review a
6 final order or final decision of the Secretary or the Board
7 under this section shall be filed in the United States Court
8 of Appeals for the Federal Circuit. Any decision by such
9 Court shall be in compliance with section 7462(f)(2) of
10 this title.

11 “(h) PROHIBITION ON RECEIPT OF BENEFITS.—
12 During the period beginning on the date on which an indi-
13 vidual appeals a removal from the civil service under sec-
14 tion 713(d) and ending on the date that the Board or Sec-
15 retary issues a final decision on such appeal, such indi-
16 vidual may not receive any pay, awards, bonuses, incen-
17 tives, allowances, differentials, student loan repayments,
18 special payments, or benefits from the Department.”.

19 (e) TECHNICAL AND CLERICAL AMENDMENTS.—

20 (1) TECHNICAL AMENDMENT.—The section
21 heading of section 713 is amended to read as fol-
22 lows: “**Senior executives: personnel actions**
23 **based on performance or misconduct**”.

1 ment disclosing, or assisting another employee to disclose,
2 a potential violation of any law (including any regulation)
3 or rule, or gross mismanagement, gross waste of funds,
4 abuse of authority, or substantial and specific danger to
5 public health and safety.

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

7 “(a) FILING.—(1) In addition to any other method
8 established by law in which an employee may file a whistle-
9 blower complaint, an employee of the Department may file
10 a whistleblower complaint in accordance with subsection
11 (g) with a supervisor of the employee.

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

16 “(b) NOTIFICATION.—(1) Not later than four busi-
17 ness days after the date on which a supervisor receives
18 a whistleblower complaint by an employee under this sec-
19 tion, the supervisor shall notify, in writing, the employee
20 of whether the supervisor determines that there is a rea-
21 sonable likelihood that the complaint discloses a violation
22 of any law (including any regulation) or rule, or gross mis-
23 management, gross waste of funds, abuse of authority, or
24 substantial and specific danger to public health and safety.
25 The supervisor shall retain written documentation regard-

1 ing the whistleblower complaint and shall submit to the
2 next-level supervisor a written report on the complaint.

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

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

19 “(d) FILING COMPLAINT WITH NEXT-LEVEL SUPER-
20 VISORS.—(1) If any circumstance described in paragraph
21 (3) is met, an employee may file a whistleblower complaint
22 in accordance with subsection (g) with the next-level su-
23 pervisor who shall treat such complaint in accordance with
24 this section.

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

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

8 “(A) A supervisor does not make a timely de-
9 termination under subsection (b)(1) regarding a
10 whistleblower complaint.

11 “(B) The employee who made a whistleblower
12 complaint determines that the supervisor did not
13 adequately address the complaint pursuant to sub-
14 section (c).

15 “(C) The immediate supervisor of the employee
16 is the basis of the whistleblower complaint.

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

22 “(1) inform the employee of the ability to vol-
23 unteer for a transfer in accordance with section
24 3352 of title 5; and

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

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

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

11 “(2) The form described in this paragraph is a form
12 developed by the Secretary, in consultation with the Spe-
13 cial Counsel (established by section 1211 of title 5), that
14 includes the following:

15 “(A) An explanation of the purpose of the whis-
16 tleblower complaint form.

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

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

24 “(D) A statement directing the employee to in-
25 formation accessible on the Internet website of the

1 Department as described in section 745(e) of this
2 title.

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

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

5 “(ii) the name of the employee;

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

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

11 and

12 “(v) proposed solutions to complaint.

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

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

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

23 “(a) IN GENERAL.—(1) In accordance with para-
24 graph (2), the Secretary shall carry out the following ad-
25 verse actions against supervisory employees whom the Sec-

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 “(C) before such order is made, the supervisor
14 is afforded—

15 “(i) notice of the order and an opportunity
16 to respond to the order; and

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

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

2 “(a) TRAINING.—The Secretary, in coordination with
3 the Whistleblower Protection Ombudsman designated
4 under section 3(d)(1)(C) of the Inspector General Act of
5 1978 (5 U.S.C. App.), shall annually provide to each em-
6 ployee of the Department training regarding whistleblower
7 complaints, including—

8 “(1) an explanation of each method established
9 by law in which an employee may file a whistle-
10 blower complaint;

11 “(2) an explanation of prohibited personnel ac-
12 tions described in section 743(c) of this title;

13 “(3) with respect to supervisors, how to treat
14 whistleblower complaints in accordance with section
15 742 of this title;

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

19 “(5) an explanation that the employee may not
20 be prosecuted or reprimed against for disclosing in-
21 formation to Congress in instances in which such
22 disclosure is permitted by law, including under sec-
23 tions 5701, 5705, and 7332 of this title, under sec-
24 tion 552a of title 5 (commonly referred to as the
25 Privacy Act), under chapter 93 of title 18, and pur-
26 suant to regulations promulgated under section

1 264(c) of the Health Insurance Portability and Ac-
2 countability Act of 1996 (Public Law 104–191; 42
3 U.S.C. 1320d–2 note);

4 “(6) an explanation of the language that is re-
5 quired to be included in all nondisclosure policies,
6 forms, and agreements pursuant to section
7 115(a)(1) of the Whistleblower Protection Enhance-
8 ment Act of 2012 (Public Law 112–199; 5 U.S.C.
9 2302 note); and

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

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

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

22 “(2) The Secretary shall publish on the Internet
23 website of the Department the whistleblower complaint
24 form described in section 742(g)(2) of this title.

1 **“§ 746. Notice to Congress**

2 “Not later than 30 days after the date on which the
3 Secretary receives from the Special Counsel information
4 relating to a whistleblower complaint pursuant to section
5 1213 of title 5, the Secretary shall notify the Committee
6 on Veterans’ Affairs of the Senate, the Committee on Vet-
7 erans’ Affairs of the House of Representatives, the Com-
8 mittee on Homeland Security and Governmental Affairs
9 of the Senate, and the Committee on Oversight and Gov-
10 ernment Reform of the House of Representatives of such
11 information, including the determination made by the Spe-
12 cial Counsel.”.

13 (b) CONFORMING AND CLERICAL AMENDMENTS.—

14 (1) CONFORMING AMENDMENT.—Chapter 7 is
15 further amended by inserting before section 701 the
16 following:

17 “SUBCHAPTER I—GENERAL EMPLOYEE
18 MATTERS”.

19 (2) CLERICAL AMENDMENTS.—The table of sec-
20 tions at the beginning of chapter 7 is amended—

21 (A) by inserting before the item relating to
22 section 701 the following new item:

“SUBCHAPTER I—GENERAL EMPLOYEE MATTERS”;

23 and

24 (B) by adding at the end the following new
25 items:

“SUBCHAPTER II—WHISTLEBLOWER COMPLAINTS

- “741. Whistleblower complaint defined.
 “742. Treatment of whistleblower complaints.
 “743. Adverse actions against supervisory employees who commit prohibited personnel actions relating to whistleblower complaints.
 “744. Evaluation criteria of supervisors and treatment of bonuses.
 “745. Training regarding whistleblower complaints.
 “746. Notice to Congress.”.

1 **SEC. 9. REFORM OF RIGHTS AND PROCESSES RELATING TO**
 2 **APPEALS OF DECISIONS REGARDING CLAIMS**
 3 **FOR BENEFITS UNDER LAWS ADMINISTERED**
 4 **BY SECRETARY OF VETERANS AFFAIRS.**

5 (a) DEFINITIONS.—Section 101 is amended by add-
 6 ing at the end the following new paragraphs:

7 “(34) The term ‘agency of original jurisdiction’
 8 means the activity which entered the original deter-
 9 mination with regard to a claim for benefits under
 10 laws administered by the Secretary.

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

14 (b) NOTICE REGARDING CLAIMS.—Section 5103(a)
 15 is amended—

16 (1) in paragraph (1), in the first sentence, by
 17 striking “The” and inserting “Except as provided in
 18 paragraph (3), the”;

19 (2) in paragraph (2)(B)(i) by striking “, a
 20 claim for reopening a prior decision on a claim, or

1 a claim for an increase in benefits;” and inserting
2 “or a supplemental claim;”; and

3 (3) by adding at the end the following new
4 paragraph:

5 “(3) The requirement to provide notice under para-
6 graph (1) shall not apply with respect to a supplemental
7 claim that is filed within the time frame set forth in sub-
8 paragraphs (B) and (D) of section 5110(a)(2) of this
9 title.”.

10 (c) MODIFICATION OF RULE REGARDING DIS-
11 ALLOWED CLAIMS.—Section 5103A(f) is amended—

12 (1) by striking “reopen” and inserting “readju-
13 dicate”; and

14 (2) by striking “material” and inserting “rel-
15 evant”.

16 (d) MODIFICATION OF DUTY TO ASSIST CLAIM-
17 ANTS.—

18 (1) LIMITATIONS ON DUTY.—Section 5103A(a)
19 is amended—

20 (A) in paragraph (1), by striking “The”
21 and inserting “Except as otherwise provided in
22 this subsection, the”; and

23 (B) by adding at the end the following new
24 paragraphs:

1 “(4) The Secretary’s duty to assist under paragraph
2 (1) shall apply only to a claim, or supplemental claim, for
3 a benefit under a law administered by the Secretary until
4 the time that a claimant is provided notice of the decision
5 of the agency of original jurisdiction with respect to such
6 claim, or supplemental claim, under section 5104 of this
7 title.

8 “(5) The Secretary’s duty to assist under paragraph
9 (1) shall not apply to—

10 “(A) higher-level review by the agency of origi-
11 nal jurisdiction, pursuant to section 5104B of this
12 title; or

13 “(B) to review on appeal by the Board of Vet-
14 erans’ Appeals.”.

15 (2) CORRECTION OF ERRORS FROM DUTY TO
16 ASSIST.—Section 5103A is amended—

17 (A) by redesignating subsections (e)
18 through (g) as subsections (f) through (h), re-
19 spectively; and

20 (B) by inserting after subsection (d) the
21 following new subsection:

22 “(e) CORRECTION OF DUTY TO ASSIST ERRORS.—

23 (1) If, during review of the agency of original jurisdiction
24 decision under section 5104B of this title, the higher-level
25 reviewer identifies an error on the part of the agency of

1 original jurisdiction to satisfy its duties under this section,
2 and that error occurred prior to the agency of original ju-
3 risdiction decision being reviewed, unless the claim can be
4 granted in full, the higher-level reviewer shall return the
5 claim for correction of such error and readjudication.

6 “(2)(A) If the Board, during review on appeal of a
7 decision of the agency of original jurisdiction, identifies
8 an error on the part of the agency of original jurisdiction
9 to satisfy its duties under section 5103A of this title, and
10 that error occurred prior to the decision of the agency of
11 original jurisdiction on appeal, unless the claim can be
12 granted in full, the Board shall remand the claim to the
13 agency of original jurisdiction for correction of such error
14 and readjudication.

15 “(B) Remand for correction of an error under
16 subparagraph (A) may include directing the agency of origi-
17 nal jurisdiction to obtain an advisory medical opinion
18 under section 5109 of this title.”.

19 (e) DECISIONS AND NOTICES OF DECISIONS.—Sub-
20 section (b) of section 5104 is amended to read as follows:

21 “(b) In any case where the Secretary denies a benefit
22 sought, the notice required by subsection (a) shall also in-
23 clude all of the following:

24 “(1) Identification of the issues adjudicated.

1 “(2) A summary of the evidence considered by
2 the Secretary.

3 “(3) A summary of the applicable laws and reg-
4 ulations.

5 “(4) Identification of findings favorable to the
6 claimant.

7 “(5) Identification of elements not satisfied
8 leading to the denial.

9 “(6) An explanation of how to obtain or access
10 evidence used in making the decision.

11 “(7) If applicable, identification of the criteria
12 that must be satisfied to grant service connection or
13 the next higher level of compensation.”.

14 (f) BINDING NATURE OF FAVORABLE FINDINGS.—

15 (1) IN GENERAL.—Chapter 51 is amended by
16 inserting after section 5104 the following new sec-
17 tion:

18 **“§ 5104A. Binding nature of favorable findings**

19 “Any finding favorable to the claimant as described
20 in section 5104(b)(4) of this title shall be binding on all
21 subsequent adjudicators within the Department, unless
22 clear and convincing evidence is shown to the contrary to
23 rebut such favorable finding.”.

24 (2) CLERICAL AMENDMENT.—The table of sec-
25 tions at the beginning of chapter 51 is amended by

1 inserting after the item relating to section 5104 the
 2 following new item:

“5104A. Binding nature of favorable findings.”.

3 (g) HIGHER-LEVEL REVIEW BY AGENCY OF ORIGI-
 4 NAL JURISDICTION.—

5 (1) IN GENERAL.—Chapter 51, as amended by
 6 subsection (f), is further amended by inserting after
 7 section 5104A, as added by such subsection, the fol-
 8 lowing new section:

9 **“§ 5104B. Higher-level review by the agency of origi-
 10 nal jurisdiction**

11 “(a) IN GENERAL.—A claimant may request a de
 12 novo review of the decision of the agency of original juris-
 13 diction by a higher-level adjudicator within the agency of
 14 original jurisdiction.

15 “(b) TIME AND MANNER OF REQUEST.—(1) A re-
 16 quest for higher-level review by the agency of original ju-
 17 risdiction shall be—

18 “(A) in writing in such form as the Secretary
 19 may prescribe; and

20 “(B) made within one year of the notice of the
 21 agency of original jurisdiction’s decision.

22 “(2) Such request may specifically indicate whether
 23 such review is requested by a higher-level adjudicator at
 24 the same office within the agency of original jurisdiction

1 or by an adjudicator at a different office of the agency
2 of original jurisdiction.

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

5 “(d) EVIDENTIARY RECORD FOR REVIEW.—The evi-
6 dentiary record before the higher-level reviewer shall be
7 limited to the evidence of record in the agency of original
8 jurisdiction decision being reviewed.”.

9 (2) CLERICAL AMENDMENT.—The table of sec-
10 tions at the beginning of chapter 51, as amended by
11 subsection (f), is further amended by inserting after
12 the item relating to section 5104A, as added by such
13 subsection, the following new item:

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

14 (h) SUPPLEMENTAL CLAIMS.—

15 (1) IN GENERAL.—Section 5108 is amended to
16 read as follows:

17 **“§ 5108. Supplemental claims**

18 “If new and relevant evidence is presented or secured
19 with respect to a supplemental claim, the Secretary shall
20 readjudicate the claim taking into consideration any evi-
21 dence added to the record prior to the former disposition
22 of the claim.”.

23 (2) CLERICAL AMENDMENT.—The table of sec-
24 tions at the beginning of chapter 51 is amended by

1 striking the item relating to section 5108 and insert-
2 ing the following new item:

“5108. Supplemental claims.”.

3 (i) REMAND OF CLAIM FOR ADVISORY MEDICAL
4 OPINION.—Section 5109 is amended by adding at the end
5 the following new subsection:

6 “(d) The Board of Veterans’ Appeals may remand
7 a claim to direct the agency of original jurisdiction to ob-
8 tain an advisory medical opinion under this section to cor-
9 rect an error on the part of the agency of original jurisdic-
10 tion to satisfy its duties under section 5103A of this title
11 when such error occurred prior to the decision of the agen-
12 cy of original jurisdiction on appeal. The remand instruc-
13 tions set forth by the Board shall include the questions
14 to be posed to the independent medical expert providing
15 the advisory medical opinion.”.

16 (j) EFFECTIVE DATES OF AWARDS.—Section 5110 is
17 amended—

18 (1) by amending subsection (a) to read as fol-
19 lows:

20 “(a)(1) Unless specifically provided otherwise in this
21 chapter, the effective date of an award based on an initial
22 claim, or a supplemental claim, of compensation, depend-
23 ency and indemnity compensation, or pension, shall be
24 fixed in accordance with the facts found, but shall not be
25 earlier than the date of receipt of application therefor.

1 “(2) For purposes of determining the effective date
2 of an award under this section, the date of application
3 shall be considered the date of the filing of the initial ap-
4 plication for a benefit if the claim is continuously pursued
5 by filing any of the following, either alone or in succession:

6 “(A) A request for higher-level review under
7 section 5104B of this title on or before the date that
8 is one year after the date on which the agency of
9 original jurisdiction issues a decision.

10 “(B) A supplemental claim under section 5108
11 of this title on or before the date that is one year
12 after the date on which the agency of original juris-
13 diction issues a decision.

14 “(C) A notice of disagreement on or before the
15 date that is one year after the date on which the
16 agency of original jurisdiction issues a decision.

17 “(D) A supplemental claim under section 5108
18 of this title on or before the date that is one year
19 after the date on which the Board of Veterans’ Ap-
20 peals issues a decision.

21 “(3) Except as otherwise provided in this section, for
22 supplemental claims received more than one year after the
23 date on which the agency of original jurisdiction issued
24 a decision or the Board of Veterans’ Appeals issued a deci-
25 sion, the effective date shall be fixed in accordance with

1 the facts found, but shall not be earlier than the date of
2 receipt of the supplemental claim.”; and

3 (2) in subsection (i), in the first sentence—

4 (A) by striking “reopened” and inserting
5 “readjudicated”;

6 (B) by striking “material” and inserting
7 “relevant”; and

8 (C) by striking “reopening” and inserting
9 “readjudication”.

10 (k) DEFINITION OF AWARD OR INCREASED AWARD
11 FOR PURPOSES OF PROVISIONS RELATING TO COM-
12 MENCEMENT OF PERIOD OF PAYMENT.—Section
13 5111(d)(1) is amended by striking “or reopened award”
14 and inserting “award or award based on a supplemental
15 claim”.

16 (l) MODIFICATION ON LIMITATION ON FEES ALLOW-
17 ABLE FOR REPRESENTATION.—Section 5904(c) is amend-
18 ed, in paragraphs (1) and (2), by striking “notice of dis-
19 agreement is filed” both places it appears and inserting
20 “claimant is provided notice of the agency of original juris-
21 diction’s initial decision under section 5104 of this title”.

22 (m) MODIFICATION OF BOARD OF VETERANS’ AP-
23 PEALS REFERRAL REQUIREMENTS AFTER ORDER FOR
24 RECONSIDERATION OF DECISIONS.—Section 7103(b)(1)

1 is amended by striking “heard” both places it appears and
2 inserting “decided”.

3 (n) CONFORMING AMENDMENT RELATING TO RE-
4 ADJUDICATION BY BOARD OF VETERANS’ APPEALS.—
5 Section 7104(b) is amended by striking “reopened” and
6 inserting “readjudicated”.

7 (o) MODIFICATION OF RIGHTS AND PROCEDURES
8 FOR APPEALS TO BOARD OF VETERANS’ APPEALS.—

9 (1) IN GENERAL.—Section 7105 is amended—

10 (A) in subsection (a)—

11 (i) by striking the first sentence and
12 inserting “Appellate review shall be initi-
13 ated by the filing of a notice of disagree-
14 ment in the form prescribed by the Sec-
15 retary.”; and

16 (ii) by striking “hearing and”;

17 (B) by amending subsection (b) to read as
18 follows:

19 “(b)(1)(A) Except in the case of simultaneously con-
20 tested claims, notice of disagreement shall be filed within
21 one year from the date of the mailing of notice of the deci-
22 sion of the agency of original jurisdiction pursuant to sec-
23 tion 5104, 5104B, or 5108 of this title.

1 “(B) A notice of disagreement postmarked before the
2 expiration of the one-year period shall be accepted as time-
3 ly filed.

4 “(C) A question as to timeliness or adequacy of the
5 notice of disagreement shall be decided by the Board.

6 “(2)(A) Notices of disagreement shall be in writing,
7 shall 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.

12 “(B) Not more than one recognized organization, at-
13 torney, or agent may be recognized at any one time in
14 the prosecution of a claim.

15 “(C) Notices of disagreement shall be filed with the
16 Board.

17 “(3)(A) The notice of disagreement shall indicate
18 whether the claimant requests—

19 “(i) a hearing before the Board;

20 “(ii) an opportunity to submit additional evi-
21 dence without a hearing before the Board; or

22 “(iii) a review by the Board without a hearing
23 or submission of additional evidence.

1 “(B) If the claimant does not expressly request a
2 hearing before the Board in the notice of disagreement,
3 no hearing before the Board may be held.”;

4 (C) by amending subsection (c) to read as
5 follows:

6 “(c) If no notice of disagreement is filed in accord-
7 ance with this chapter within the prescribed period, the
8 action or decision of the agency of original jurisdiction
9 shall become final and the claim may not thereafter be
10 readjudicated or allowed, except as may otherwise be pro-
11 vided by section 5104B or 5108 of this title or such regu-
12 lations as the Secretary may promulgate that are con-
13 sistent with this title.”;

14 (D) by striking subsection (d) and insert-
15 ing the following new subsection (d):

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

19 (E) by striking subsection (e); and

20 (F) in the section heading, by striking
21 **“notice of disagreement and”**.

22 (2) CLERICAL AMENDMENT.—The table of sec-
23 tions at the beginning of chapter 71 is amended by
24 striking the item relating to section 7105 and insert-
25 ing the following new item:

“7105. Filing of appeal.”.

1 (p) MODIFICATION OF PROCEDURES AND REQUIRE-
2 MENTS FOR SIMULTANEOUSLY CONTESTED CLAIMS.—

3 Subsection (b) of section 7105A is amended to read as
4 follows:

5 “(b)(1) The substance of the notice of disagreement
6 shall be communicated to the other party or parties in in-
7 terest and a period of thirty days shall be allowed for filing
8 a brief or argument in response thereto.

9 “(2) Such notice shall be forwarded to the last known
10 address of record of the parties concerned, and such action
11 shall constitute sufficient evidence of notice.”.

12 (q) REPEAL OF PROCEDURES FOR ADMINISTRATIVE
13 APPEALS.—

14 (1) IN GENERAL.—Chapter 71 is amended by
15 striking section 7106.

16 (2) CLERICAL AMENDMENT.—The table of sec-
17 tions at the beginning of chapter 71 is amended by
18 striking the item relating to section 7106.

19 (r) MODIFICATIONS RELATING TO APPEALS: DOCK-
20 ETS; HEARINGS.—Section 7107 is amended to read as fol-
21 lows:

22 **“§ 7107. Appeals: dockets; hearings**

23 “(a) DOCKETS.—(1) The Board shall maintain two
24 separate dockets as follows:

1 “(A) A non-hearing option docket shall be
2 maintained for cases in which no Board hearing is
3 requested and no additional evidence will be sub-
4 mitted.

5 “(B) A separate and distinct hearing option
6 docket shall be maintained for cases in which a
7 Board hearing is requested in the notice of disagree-
8 ment or in which no Board hearing is requested, but
9 the appellant requests, in the notice of disagreement,
10 an opportunity to submit additional evidence.

11 “(2) Except as provided in subsection (b), each case
12 before the Board will be decided in regular order according
13 to its respective place on the Board’s non-hearing option
14 docket or the hearing option docket.

15 “(b) ADVANCEMENT ON THE DOCKET.—(1) A case
16 on either the Board’s non-hearing option docket or hear-
17 ing option docket may, for cause shown, be advanced on
18 motion for earlier consideration and determination.

19 “(2) Any such motion shall set forth succinctly the
20 grounds upon which the motion is based.

21 “(3) Such a motion may be granted only—

22 “(A) if the case involves interpretation of law of
23 general application affecting other claims;

24 “(B) if the appellant is seriously ill or is under
25 severe financial hardship; or

1 “(C) for other sufficient cause shown.

2 “(c) MANNER AND SCHEDULING OF HEARINGS FOR
3 CASES ON BOARD HEARING OPTION DOCKET.—(1) For
4 cases on the Board hearing option docket in which a hear-
5 ing is requested in the notice of disagreement, the Board
6 shall notify the appellant whether a Board hearing will
7 be held—

8 “(A) at its principal location, or

9 “(B) by picture and voice transmission at a fa-
10 cility of the Department where the Secretary has
11 provided suitable facilities and equipment to conduct
12 such hearings.

13 “(2)(A) Upon notification of a Board hearing at the
14 Board’s principal location as described in subparagraph
15 (A) of paragraph (1), the appellant may alternatively re-
16 quest a hearing as described in subparagraph (B) of such
17 paragraph. If so requested, the Board shall grant such re-
18 quest.

19 “(B) Upon notification of a Board hearing by picture
20 and voice transmission as described in subparagraph (B)
21 of paragraph (1), the appellant may alternatively request
22 a hearing as described in subparagraph (A) of such para-
23 graph. If so requested, the Board shall grant such request.

1 “(d) SCREENING OF CASES.—Nothing in this section
2 shall be construed to preclude the screening of cases for
3 purposes of—

4 “(1) determining the adequacy of the record for
5 decisional purposes; or

6 “(2) the development, or attempted develop-
7 ment, of a record found to be inadequate for
8 decisional purposes.”.

9 (s) REPEAL OF AUTHORITY FOR INDEPENDENT
10 MEDICAL OPINIONS.—

11 (1) IN GENERAL.—Chapter 71 is amended by
12 striking section 7109.

13 (2) CLERICAL AMENDMENT.—The table of sec-
14 tions at the beginning of chapter 71 is amended by
15 striking the item relating to section 7109.

16 (t) MODIFICATION OF STANDARD FOR REVIEW OF
17 DECISIONS ON GROUNDS OF CLEAR AND UNMISTAKABLE
18 ERROR.—Section 7111(e) is amended by striking “, with-
19 out referral to any adjudicative or hearing official acting
20 on behalf of the Secretary”.

21 (u) EVIDENTIARY RECORD BEFORE BOARD OF VET-
22 ERANS’ APPEALS.—

23 (1) IN GENERAL.—Chapter 71 is amended by
24 adding at the end the following new section:

1 **“§ 7113. Evidentiary record before the Board of Vet-**
2 **erans’ Appeals**

3 “(a) NON-HEARING OPTION DOCKET.—For cases in
4 which a hearing before the Board of Veterans’ Appeals
5 is not requested in the notice of disagreement, the evi-
6 dentiary record before the Board shall be limited to the
7 evidence of record at the time of the decision of the agency
8 of original jurisdiction on appeal.

9 “(b) HEARING OPTION DOCKET.—(1)(A) Except as
10 provided in subparagraph (B), for cases on the hearing
11 option docket in which a hearing is requested in the notice
12 of disagreement, the evidentiary record before the Board
13 shall be limited to the evidence of record at the time of
14 the decision of the agency of original jurisdiction on ap-
15 peal.

16 “(B) The evidentiary record before the Board for
17 cases on the hearing option docket in which a hearing is
18 requested, shall include each of the following, which the
19 Board shall consider in the first instance:

20 “(i) Evidence submitted by the appellant and
21 his or her representative, if any, at the Board hear-
22 ing.

23 “(ii) Evidence submitted by the appellant and
24 his or her representative, if any, within 90 days fol-
25 lowing the Board hearing.

1 “(2)(A) Except as provided in subparagraph (B), for
 2 cases on the hearing option docket in which a hearing is
 3 not requested in the notice of disagreement, the evi-
 4 dentiary record before the Board shall be limited to the
 5 evidence considered by the agency of original jurisdiction
 6 in the decision on appeal.

7 “(B) The evidentiary record before the Board for
 8 cases on the hearing option docket in which a hearing is
 9 not requested, shall include each of the following, which
 10 the Board shall consider in the first instance:

11 “(i) Evidence submitted by the appellant and
 12 his or her representative, if any, with the notice of
 13 disagreement.

14 “(ii) Evidence submitted by the appellant and
 15 his or her representative, if any, within 90 days fol-
 16 lowing receipt of the notice of disagreement.”.

17 (2) CLERICAL AMENDMENT.—The table of sec-
 18 tions at the beginning of chapter 71 is amended by
 19 inserting after the item relating to section 7112 the
 20 following new item:

“7113. Evidentiary record before the Board of Veterans’ Appeals.”.

21 **SEC. 10. LIMITATION ON AWARDS AND BONUSES PAID TO**
 22 **SENIOR EXECUTIVE EMPLOYEES OF DEPART-**
 23 **MENT OF VETERANS AFFAIRS.**

24 Section 705 of the Veterans Access, Choice, and Ac-
 25 countability Act of 2014 (Public Law 113–146; 38 U.S.C.

1 703 note) is amended by striking the period at the end
2 and inserting the following: “, except that during each of
3 fiscal years 2017 through 2021, no award or bonus may
4 be paid to any employee of the Department of Veterans
5 Affairs who is a member of the Senior Executive Service.”.

○