

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 473
OFFERED BY MR. WENSTRUP OF OHIO**

Strike all after the enacting clause and insert the following:

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:

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 Secretary shall order that the covered serv-
16 ice of an individual removed from a senior executive posi-
17 tion under section 713 of this title shall not be taken into
18 account for purposes of calculating an annuity with re-

1 spect to such individual under chapter 83 or chapter 84
2 of title 5, if—

3 “(1) the individual is convicted of a felony that
4 influenced the individual’s performance while em-
5 ployed in the senior executive position; and

6 “(2) before such order is made, the individual
7 is afforded notice and an opportunity for a hearing
8 conducted by another department or agency of the
9 Federal Government

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

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

22 “(B) before such order is made, the individual
23 is afforded notice and an opportunity for a hearing
24 conducted by another department or agency of the
25 Federal Government.

1 “(2) The Secretary shall make such an order not
2 later than seven days after the date of the conclusion of
3 a hearing referred to in paragraph (1)(B) that determines
4 that such order is lawful

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

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

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

20 “(e) DEFINITIONS.—In this section:

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

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

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

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

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

15 (b) APPLICATION.—The amendment made by sub-
16 section (a) shall apply to any action of removal or transfer
17 under section 713 of title 38, United States Code, com-
18 mencing on or after the date of enactment of this section.

19 (c) CLERICAL AMENDMENT.—The table of sections
20 at the beginning of such chapter is amended by adding
21 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—

10 “(A) any complaint or report (including any
11 pending or published report) submitted by the In-
12 spector General of the Department, the Comptroller
13 General of the United States, the Equal Employ-
14 ment Opportunity Commission, or any other appro-
15 priate person or entity, related to any facility or pro-
16 gram managed by the individual, as determined by
17 the Secretary; and

18 “(B) efforts made by the individual to maintain
19 high levels of satisfaction and commitment among
20 the employees supervised by the individual.

21 “(b) CHANGE OF POSITION.—(1) At least once every
22 five years, the Secretary shall reassign each individual em-
23 ployed in a senior executive position to a position at a dif-
24 ferent location that does not include the supervision of the
25 same personnel or programs. The Secretary shall make

1 such reassessments on a rolling basis based on the date
2 on which an individual was originally assigned to a posi-
3 tion.

4 “(2) The Secretary may waive the requirement under
5 paragraph (1) for any such individual, if the Secretary
6 submits to the Committees on Veterans’ Affairs of the
7 Senate and House of Representatives notice of the waiver
8 and an explanation of the reasons for the waiver.

9 “(c) REPORT.—Not later than March 1 of each year,
10 the Secretary shall submit to the Committees on Veterans’
11 Affairs and Homeland Security and Governmental Affairs
12 of the Senate and the Committees on Veterans’ Affairs
13 and Oversight and Government Reform of the House of
14 Representatives a report on the performance appraisal
15 system of the Department under subsection (a). Each such
16 report shall include, for the year preceding the year during
17 which the report is submitted each of the following:

18 “(1) All documentation concerning each of the
19 following for each individual employed in a senior
20 executive position in the Department:

21 “(A) The initial performance appraisal.

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

23 “(C) The recommendations of the perform-
24 ance review board.

25 “(D) The final summary review.

1 “(E) The number of initial performance
2 ratings raised as a result of the recommenda-
3 tions of the performance review board.

4 “(F) The number of initial performance
5 ratings lowered as a result of the recommenda-
6 tions of the performance review board.

7 “(G) Any adverse action taken against any
8 such individual who receives a performance rat-
9 ing of less than fully successful.

10 “(2) The review of the Inspector General of the
11 Department of the information described in subpara-
12 graphs (A) through (D) of paragraph (1).

13 “(3) A summary of the documentation provided
14 under paragraph (1).

15 “(d) DEFINITION OF SENIOR EXECUTIVE POSI-
16 TION.—In this section, the term ‘senior executive position’
17 has the meaning given that term in section 713(g)(3) of
18 this title.”.

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

“717. Senior executives: performance appraisal.”.

23 (3) CONFORMING AMENDMENT.—Section
24 4312(b) of title 5, United States Code, is amend-
25 ed—

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

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

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

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

10 (b) REVIEW OF SES MANAGEMENT TRAINING.—

11 (1) REVIEW.—Not later than 180 days after
12 the date of the enactment of this Act, the Secretary
13 of Veterans Affairs shall enter into a contract with
14 a nongovernmental entity to review the management
15 training program for individuals employed in senior
16 executive positions (as such term is defined in sec-
17 tion 713(g)(3) of title 38, United States Code) of
18 the Department of Veterans Affairs that is being
19 provided as of the date of the enactment of this Act.
20 Such review shall include a comparison of the train-
21 ing provided by the Department of Veterans Affairs
22 to the management training provided for senior ex-
23 ecutives of other Federal departments and agencies
24 and to the management training provided to senior
25 executives in the private sector. The contract shall

1 provide that the nongovernmental entity must com-
2 plete and submit to the Secretary a report con-
3 taining the findings and conclusions of the review by
4 not later than 180 days after the date on which the
5 Secretary and the nongovernmental entity enter into
6 the contract.

7 (2) REPORT TO CONGRESS.—Not later than 60
8 days after the date on which the Secretary receives
9 the report under paragraph (1), the Secretary shall
10 submit to the Committees on Veterans' Affairs of
11 the Senate and House of Representatives the report
12 together with a plan for carrying out the rec-
13 ommendations contained in the report.

14 **SEC. 4. LIMITATION ON ADMINISTRATIVE LEAVE FOR MEM-**
15 **BERS OF THE SENIOR EXECUTIVE SERVICE**
16 **WITHIN THE DEPARTMENT OF VETERANS AF-**
17 **FAIRS.**

18 (a) IN GENERAL.—Chapter 7 of title 38, United
19 States Code, is further amended by adding after section
20 717 (as added by section 3) the following new section:

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

22 “(a) LIMITATION APPLICABLE TO MEMBERS OF THE
23 SENIOR EXECUTIVE SERVICE WITHIN THE DEPARTMENT
24 OF VETERANS AFFAIRS.—(1) The Secretary may not
25 place any covered individual on administrative leave, or

1 any other type of paid non-duty status, for more than a
2 total of 14 days during any 365-day period.

3 “(2) The Secretary may waive the limitation under
4 paragraph (1) and extend the administrative leave or other
5 paid non-duty status of a covered individual placed on
6 such leave or status under paragraph (1) if the Secretary
7 submits to the Committees on Veterans’ Affairs of the
8 Senate and House of Representatives a detailed expla-
9 nation of the reasons the individual was placed on admin-
10 istrative leave or other paid non-duty status and the rea-
11 sons for the extension of such leave or status. Such expla-
12 nation shall include the name of the covered individual,
13 the location where the individual is employed, and the indi-
14 vidual’s job title.

15 “(3) In this subsection, the term ‘covered individual’
16 means an individual (as defined in section 713(g)(1)) oc-
17 cupying a senior executive position (as defined in section
18 714(g)(3))—

19 “(A) who is subject to an investigation for pur-
20 poses of determining whether such individual should
21 be subject to any disciplinary action under this title
22 or title 5; or

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

1 “(b) REPORT ON ADMINISTRATIVE LEAVE.—(1) Not
2 later than 30 days after the end of each quarter of any
3 calendar year, the Secretary shall submit to the Com-
4 mittee on Veterans’ Affairs and the Committee on Home-
5 land Security and Governmental Affairs of the Senate and
6 the Committee on Veterans’ Affairs and the Committee
7 on Oversight and Government Reform of the House of
8 Representatives a report listing the name of any employee
9 of the Department who has been placed on administrative
10 leave, or any other type of paid non-duty status, for a pe-
11 riod longer than 7 days during such quarter.

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

17 (b) APPLICATION.—

18 (1) ADMINISTRATIVE LEAVE LIMITATION.—Sec-
19 tion 719(a) of title 38, United States Code (as
20 added by subsection (a)), shall apply to any action
21 of removal or transfer under section 713 of such
22 title or title 5, United States Code, commencing on
23 or after the date of enactment of this section.

24 (2) REPORT.—The report under section 719(b)
25 of such title (as added by subsection (a)) shall begin

1 to apply in the quarter that ends after the date that
2 is 6 months after the date of enactment of this sec-
3 tion.

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

“719. Administrative leave limitation and report.”.

