H. R. 1259

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 HOUSE OF REPRESENTATIVES

February 28, 2017

Mr. Roe of Tennessee (for himself, Mr. Bilirakis, Mr. Arrington, Mr. Coffman, Mr. Wenstrup, Mrs. Radewagen, Mr. Bost, Mr. Bergman, Mr. Poliquin, Mr. Banks of Indiana, and Miss González-Colón of Puerto Rico) introduced the following bill; which was referred to the Committee on Veterans' Affairs, and in addition to the Committee on Oversight and Government Reform, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) Short Title.—This Act may be cited as the “VA Accountability First Act of 2017”.
(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. References to title 38, United States Code.
Sec. 3. Removal, demotion, and suspension of employees based on performance or misconduct.
Sec. 4. Reduction of benefits for Department of Veterans Affairs employees 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. Time period for response to notice of adverse actions against supervisory employees who commit prohibited personnel actions.
Sec. 8. Direct hiring authority for medical center directors and VISN directors.
Sec. 9. Time periods for review of adverse actions with respect to certain employees.

3 SEC. 2. REFERENCES TO TITLE 38, UNITED STATES CODE.

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

9 SEC. 3. REMOVAL, DEMOTION, AND SUSPENSION OF EMPLOYEES BASED ON PERFORMANCE OR MISCONDUCT.

(a) IN GENERAL.—Subchapter I of chapter 7 is amended by adding at the end the following new section:

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§ 719. Employees: removal, demotion, or suspension based on performance or misconduct

(a) IN GENERAL.—The Secretary may remove, demote, or suspend an individual who is an employee of the Department if the Secretary determines the performance
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or misconduct of the individual warrants such removal, de-
motion, or suspension. If the Secretary so removes, de-
motes, or suspends such an individual, the Secretary
may—

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

“(2) demote the individual by means of a reduc-
tion in grade for which the individual is qualified,
that the Secretary determines is appropriate, and
that reduces the annual rate of pay of the individual;
or

“(3) suspend the individual.

“(b) PAY OF CERTAIN DEMOTED INDIVIDUALS.—(1)
Notwithstanding any other provision of law, any individual
subject to a demotion under subsection (a)(2) shall, begin-
ning on the date of such demotion, receive the annual rate
of pay applicable to such grade.

“(2) An individual so demoted may not be placed on
administrative leave during the period during which an ap-
peal (if any) under this section is ongoing, and may only
receive pay if the individual reports for duty or is approved
to use accrued unused annual, sick, family medical, mili-
tary, or court leave. If an individual so demoted does not
report for duty or receive approval to use accrued unused
leave, such individual shall not receive pay or other benefits pursuant to subsection (e)(5).

“(c) NOTICE TO CONGRESS.—(1) Not later than 30 days after removing, demoting, or suspending an individual employed in a senior executive position under subsection (a) or after removing, demoting, or suspending an individual under chapter 74 of this title, the Secretary shall submit to the Committees on Veterans’ Affairs of the Senate and House of Representatives and to each Member of Congress representing a district in the State or territory where the facility where the individual was employed immediately before being removed, demoted, or suspended is located notice in writing of such removal, demotion, or suspension. Such notice shall include the job title of the individual, the location where the individual was employed immediately before being removed, demoted, or suspended, the proposed action, and the reason for such removal, demotion, or suspension.

“(2) Not later than 30 days after the last day of a fiscal year, the Secretary shall submit to the Committees on Veterans’ Affairs of the Senate and House of Representatives a report listing all removals, demotions, and suspensions under this section or under chapter 74 of this title during such fiscal year. Each such report shall include the job title of each individual removed, demoted,
or suspended, the location where the individual was em-
ployed immediately before being so removed, demoted or
suspended, the proposed action, and the reason for such
removal, demotion, or suspension.

“(3) In this subsection, the term ‘senior executive po-
sition’ means, with respect to a career appointee (as that
term is defined in section 3132(a)(4) of title 5), a Senior
Executive Service position (as such term is defined in sec-
tion 3132(a)(2) of title 5).

“(d) PROCEDURE.—(1) Subsection (b) of section
7513 of title 5 shall apply with respect to a removal, demo-
tion, or suspension under this section, except that the pe-
riod for notice and response, which includes the advance
notice period required by paragraph (1) of such subsection
and the response period required by paragraph (2) of such
subsection, shall not exceed a total of 10 business days.
Subsection (c) of such section and section 7121 of such
title shall not apply with respect to such a removal, demo-
tion, or suspension.

“(2) The Secretary shall issue a final decision with
respect to a removal, demotion, or suspension under this
section—

“(A) in the case of a proposed removal, demo-
tion, or suspension to which an individual responds
under paragraph (1), not later than five business
days after receiving the response of the individual; or

“(B) in the case of a proposed removal, demotion, or suspension to which an individual does not respond, not later than 15 business days after the Secretary provides notice to the individual under paragraph (1).

“(3) The procedures under chapter 43 of title 5 shall not apply to a removal, demotion, or suspension under this section.

“(4)(A) Subject to subparagraph (B) and subsection (e), any removal, demotion, or suspension under subsection (a) may be appealed to the Merit Systems Protection Board, which shall refer such appeal to an administrative judge pursuant to section 7701(b)(1) of title 5.

“(B) An appeal under subparagraph (A) of a removal, demotion, or suspension may only be made if such appeal is made not later than 7 days after the date of such removal, demotion, or suspension.

“(e) EXPEDITED REVIEW.—(1) Upon receipt of an appeal under subsection (d)(4)(A), the administrative judge shall expedite any such appeal under such section and, in any such case, shall issue a final and complete decision not later than 45 business days after the date of the appeal.
“(2) Notwithstanding section 7701(c)(1)(B) of title 5, the administrative judge shall uphold the decision of the Secretary to remove, demote, or suspend an employee under subsection (a) if the decision is supported by substantial evidence. If the decision of the Secretary is supported by substantial evidence, the administrative judge shall not mitigate the penalty prescribed by the Secretary.

“(3)(A) The decision of the administrative judge under paragraph (1) may be appealed to the Merit Systems Protection Board.

“(B) An appeal under subparagraph (A) of a decision of an administrative judge may only be made if such appeal is made not later than 7 business days after the date of the decision of the administrative judge.

“(4) In any case in which the administrative judge cannot issue a decision in accordance with the 45-day requirement under paragraph (1), the Merit Systems Protection Board shall, not later than 14 business days after the expiration of the 45-day period, submit to the Committees on Veterans’ Affairs of the Senate and House of Representatives a report that explains the reasons why a decision was not issued in accordance with such requirement.

“(5)(A) A decision of the Merit Systems Protection Board under paragraph (3) may be appealed to the United
States Court of Appeals for the Federal Circuit pursuant to section 7703 of title 5.

“(B) An appeal under subparagraph (A) of a decision of the Merit Systems Protection Board may only be made if such appeal is made not later than 7 business days after the date of the decision of the Board.

“(C) Any decision by such Court shall be in compliance with section 7462(f)(2) of this title.

“(6) The Merit Systems Protection Board may not stay any removal, demotion, under this section.

“(7) During the period beginning on the date on which an individual appeals a removal from the civil service under subsection (d) and ending on the date that the United States Court of Appeals for the Federal Circuit issues a final decision on such appeal, such individual may not receive any pay, awards, bonuses, incentives, allowances, differentials, student loan repayments, special payments, or benefits related to the employment of the individual by the Department.

“(8) To the maximum extent practicable, the Secretary shall provide to the Merit Systems Protection Board such information and assistance as may be necessary to ensure an appeal under this subsection is expedited.
“(9) If an employee prevails on appeal under this section, the employee shall be entitled to backpay (as provided in section 5596 of title 5).

“(10) This subsection shall supercede any collective bargaining agreement to the extent that such an agreement conflicts with this subsection.

“(f) Whistleblower Protection.—(1) In the case of an individual seeking corrective action (or on behalf of whom corrective action is sought) from the Office of Special Counsel based on an alleged prohibited personnel practice described in section 2302(b) of title 5, the Secretary may not remove, demote, or suspend such individual under subsection (a) without the approval of the Special Counsel under section 1214(f) of title 5.

“(2) In the case of an individual who has filed a whistleblower complaint, as such term is defined in section 731 of this title, the Secretary may not remove, demote, or suspend such individual under subsection (a) until a final decision with respect to the whistleblower complaint has been made.

“(g) Termination of Investigations by Office of Special Counsel.—Notwithstanding any other provision of law, the Special Counsel (established by section 1211 of title 5) may terminate an investigation of a prohibited personnel practice alleged by an employee or
former employee of the Department after the Special
Counsel provides to the employee or former employee a
written statement of the reasons for the termination of
the investigation. Such statement may not be admissible
as evidence in any judicial or administrative proceeding
without the consent of such employee or former employee.

“(h) VACANCIES.—In the case of an individual who
is removed or demoted under subsection (a), to the max-
imum extent feasible, the Secretary shall fill the vacancy
arising as a result of such removal or demotion.

“(i) DEFINITIONS.—In this section:

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

“(A) an individual appointed pursuant to
section 7306, 7401(1), or 7405 of this title;

“(B) an individual who has not completed
a probationary or trial period; or

“(C) a political appointee.

“(2) The term ‘suspend’ means the placing of
an employee, for disciplinary reasons, in a temporary
status without duties and pay for a period in excess
of 14 days.

“(3) The term ‘grade’ has the meaning given
such term in section 7511(a) of title 5.
“(4) The term ‘misconduct’ includes neglect of duty, malfeasance, or failure to accept a directed reassignment or to accompany a position in a transfer of function.

“(5) The term ‘political appointee’ means an individual who is—

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

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

“(C) employed in a position of a confidential or policy-determining character under schedule C of subpart C of part 213 of title 5 of the Code of Federal Regulations.”.

(b) Repeal of Superceded Provision of Law.—

(1) In general.—Section 713 of title 38, United States Code, is hereby repealed.

(2) Clerical Amendment.—The table of sections at the beginning of chapter 7 is amended by striking the item relating to section 713.

(c) Clerical and Conforming Amendments.—
(1) CLERICAL.—The table of sections at the beginning of chapter 7 is amended by inserting after the item relating to section 717 the following new item:

“719. Employees: removal, demotion, or suspension based on performance or misconduct.”.

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

(A) by striking “or” at the end of paragraph (2);

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

(C) by adding at the end the following:

“(4) any removal or demotion under section 719 of title 38.”.

(d) TEMPORARY EXEMPTION FROM CERTAIN LIMITATION ON INITIATION FROM REMOVAL FROM SENIOR EXECUTIVE SERVICE.—During the 120-day period beginning on the date of enactment of this Act, an action to remove an individual from the Senior Executive Service at the Department of Veterans Affairs pursuant to this section may be initiated, notwithstanding section 3592(b) of title 5, United States Code, or any other provision of law.
SEC. 4. REDUCTION OF BENEFITS FOR DEPARTMENT OF VETERANS AFFAIRS EMPLOYEES CONVICTED OF CERTAIN CRIMES.

(a) REDUCTION OF BENEFITS.—

(1) IN GENERAL.—Subchapter I of chapter 7 is further amended by inserting after section 719, as added by section 3, the following new section:

“§ 721. Reduction of benefits of employees convicted of certain crimes

“(a) REDUCTION OF ANNUITY FOR REMOVED EMPLOYEE.—(1) The Secretary shall order that the covered service of an employee of the Department removed from a position for performance or misconduct under section 719 or 7461 of this title or any other provision of law shall not be taken into account for purposes of calculating an annuity with respect to such individual under chapter 83 or chapter 84 of title 5, if—

“(A) the Secretary determines that the individual is convicted of a felony that influenced the individual’s performance while employed in the position;

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

“(i) notice of the proposed order; and
“(ii) an opportunity to respond to the proposed order by not later than ten business days following receipt of such notice; and

“(C) the Secretary issues the order—

“(i) in the case of a proposed order to which an individual responds under subparagraph (B)(ii), not later than five business days after receiving the response of the individual; or

“(ii) in the case of a proposed order to which an individual does not respond, not later than 15 business days after the Secretary provides notice to the individual under subparagraph (B)(i).

“(2) Upon the issuance of an order by the Secretary under paragraph (1), the individual shall have an opportunity to appeal the order to the Director of the Office of Personnel Management before the date that is seven business days after the date of such issuance.

“(3) The Director of the Office of Personnel Management shall make a final decision with respect to an appeal under paragraph (2) within 30 business days of receiving the appeal.

“(b) REDUCTION OF ANNUITY FOR RETIRED EMPLOYEE.—(1) The Secretary may order that the covered service of an individual who is removed for performance
or misconduct under section 719 or 7461 of this title or any other provision of law but who leaves employment at the Department prior to the issuance of a final decision with respect to such action shall not be taken into account for purposes of calculating an annuity with respect to such individual under chapter 83 or chapter 84 of title 5, if—

“(A) the Secretary determines that the individual is convicted of a felony that influenced the individual’s performance while employed in the position;

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

“(i) notice of the proposed order; and

“(ii) opportunity to respond to the proposed order by not later than ten business days following receipt of such notice; and

“(C) the Secretary issues the order—

“(i) in the case of a proposed order to which an individual responds under subpar- graph (B)(ii), not later than five business days after receiving the response of the individual; or

“(ii) in the case of a proposed order to which an individual does not respond, not later than 15 business days after the Secretary pro-
vides notice to the individual under subparagraph (B)(i).

“(2) Upon the issuance of an order by the Secretary under paragraph (1), the individual shall have an opportunity to appeal the order to the Director of the Office of Personnel Management before the date that is seven business days after the date of such issuance.

“(3) The Director of the Office of Personnel Management shall make a final decision with respect to an appeal under paragraph (2) within 30 business days of receiving the appeal.

“(c) Administrative Requirements.—Not later than 37 business days after the Secretary issues a final order under subsection (a) or (b), the Director of the Office of Personnel Management shall recalculate the annuity of the individual.

“(d) Lump-Sum Annuity Credit.—Any individual with respect to whom an annuity is reduced under subsection (a) or (b) shall be entitled to be paid so much of such individual’s lump-sum credit as is attributable to the period of covered service.

“(e) Spouse or Children Exception.—The Secretary, in consultation with the Office of Personnel Management, shall prescribe regulations that may provide for the payment to the spouse or children of any individual
referred to in subsection (a) or (b) of any amounts which
(but for this subsection) would otherwise have been non-
payable by reason of such subsections. Any such regu-
lations shall be consistent with the requirements of sections
8332(o)(5) and 8411(l)(5) of title 5, as the case may be.

“(f) DEFINITIONS.—In this section:

“(1) The term ‘covered service’ means, with re-
spect to an individual subject to a removal for per-
formance or misconduct under section 719 or 7461
of this title or any other provision of law, the period
of service beginning on the date that the Secretary
determines under such applicable provision that the
individual engaged in activity that gave rise to such
action and ending on the date that the individual is
removed from or leaves a position of employment at
the Department prior to the issuance of a final deci-
sion with respect to such action.

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

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

(2) CLERICAL AMENDMENT.—The table of sec-
tions at the beginning of chapter 7 is amended by
inserting after the item relating to section 719, as added by section 3, the following new item:

“721. Reduction of benefits of employees convicted of certain crimes.”.

(b) Application.—Section 721 of title 38, United States Code, as added by subsection (a)(1), shall apply to any action of removal of an employee of the Department of Veterans Affairs under section 719 or 7461 of this title or any other provision of law, commencing on or after the date of the enactment of this Act.

SEC. 5. AUTHORITY TO RECOUP BONUSES OR AWARDS PAID TO EMPLOYEES OF DEPARTMENT OF VETERANS AFFAIRS.

(a) In General.—Subchapter I of chapter 7 is further amended by inserting after section 721, as added by section 4, the following new section:

“§ 723. Recoupment of bonuses or awards paid to employees of Department

“(a) In General.—Notwithstanding any other provision of law, the Secretary may issue an order directing an employee of the Department to repay the amount, or a portion of the amount, of any award or bonus paid to the employee under title 5, including under chapter 45 or 53 of such title, or this title if—

“(1) the Secretary determines that the individual engaged in misconduct or poor performance prior to payment of the award or bonus, and that
such award or bonus would not have been paid, in
whole or in part, had the misconduct or poor per-
formance been known prior to payment;

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

“(A) notice of the proposed order; and

“(B) an opportunity to respond to the pro-
posed order by not later than ten business days
after the receipt of such notice; and

“(3) the Secretary issues the order—

“(A) in the case of a proposed order to
which an individual responds under paragraph
(2)(B), not later than five business days after
receiving the response of the individual; or

“(B) in the case of a proposed order to
which an individual does not respond, not later
than 15 business days after the Secretary pro-
vides notice to the individual under paragraph
(2)(A).

“(b) APPEALS.—Upon the issuance of an order by
the Secretary under subsection (a), the individual shall
have an opportunity to appeal the order to another depart-
ment or agency of the Federal Government before the date
that is seven business days after the date of such issuance.
“(c) Final Decisions.—The head of the applicable department or agency of the Federal Government shall make a final decision with respect to an appeal under subsection (b) within 30 business days after receiving such appeal.”.

(b) Clerical Amendment.—The table of sections at the beginning of such chapter, as amended by section 4, is amended by inserting after the item relating to section 721, as added by section 4(a)(2), the following new item:

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

(e) Effective Date.—Section 723 of title 38, United States Code, as added by subsection (a), shall apply with respect to an award or bonus paid by the Secretary of Veterans Affairs to an employee of the Department of Veterans Affairs on or after the date of the enactment of this Act.

(d) Construction.—Nothing in this Act or the amendments made by this Act may be construed to modify the certification issued by the Office of Personnel Management and the Office of Management and Budget regarding the performance appraisal system of the Senior Executive Service of the Department of Veterans Affairs.
SEC. 6. AUTHORITY TO RECOUP RELOCATION EXPENSES
PAID TO OR ON BEHALF OF EMPLOYEES OF
DEPARTMENT OF VETERANS AFFAIRS.

(a) IN GENERAL.—Subchapter I of chapter 7 is fur-
ther amended by adding at the end the following new sec-
tion:

“§ 725. Recoupment of relocation expenses paid on
behalf of employees of Department

“(a) IN GENERAL.—Notwithstanding any other pro-
vision of law, the Secretary may issue an order directing
an employee of the Department to repay the amount, or
a portion of the amount, paid to or on behalf of the em-
ployee under title 5 for relocation expenses, including any
expenses under section 5724 or 5724a of such title, or
this title if—

“(1) the Secretary determines that relocation
expenses were not lawfully authorized or that the
employee committed an act of fraud, waste, or mal-
feasance that influenced the authorization of the re-
location expenses;

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

“(A) notice of the proposed order; and

“(B) an opportunity to respond to the pro-
posed order not later than ten business days
following the receipt of such notice; and
“(3) the Secretary issues the order—

“(A) in the case of a proposed order to which an individual responds under paragraph (2)(B), not later than five business days after receiving the response of the individual; or

“(B) in the case of a proposed order to which an individual does not respond, not later than 15 business days after the Secretary provides notice to the individual under paragraph (2)(A).

“(b) Appeals.—Upon the issuance of an order by the Secretary under subsection (a), the individual shall have an opportunity to appeal the order to another department or agency of the Federal Government before the date that is seven business days after the date of such issuance.

“(c) Final Decisions.—The head of the applicable department or agency of the Federal Government shall make a final decision with respect to an appeal under subsection (b) within 30 days after receiving such appeal.”.

(b) Clerical Amendment.—The table of sections at the beginning of such chapter is further amended by inserting after the item relating to section 723, as added by section 5(b), the following new item:

“725. Recoupment of relocation expenses paid to or on behalf of employees of Department.”.
(c) **Effective Date.**—Section 725 of title 38, United States Code, as added by subsection (a), shall apply with respect to an amount paid by the Secretary of Veterans Affairs to or on behalf of an employee of the Department of Veterans Affairs for relocation expenses on or after the date of the enactment of this Act.

**SEC. 7. Time Period for Response to Notice of Adverse Actions Against Supervisory Employees Who Commit Prohibited Personnel Actions.**

Section 733(a)(2)(B) is amended—

(1) in clause (i), by striking “14 days” and inserting “10 days”; and

(2) in clause (ii), by striking “14-day period” and inserting “10-day period”.

**SEC. 8. Direct Hiring Authority for Medical Center Directors and VISN Directors.**

(a) **In General.**—Section 7401 is amended by adding at the end the following new paragraph:

“(4) Medical center directors and directors of Veterans Integrated Service Networks with demonstrated ability in the medical profession, in health care administration, or in health care fiscal management.”.
(b) Conforming Amendment.—Section 7404(a)(1) is amended by inserting “and 7401(4)” after “7306”.

SEC. 9. TIME PERIODS FOR REVIEW OF ADVERSE ACTIONS WITH RESPECT TO CERTAIN EMPLOYEES.

(a) Physicians, Dentists, Podiatrists, Chiropractors, Optometrists, Registered Nurses, Physician Assistants, and Expanded-Function Dental Auxiliaries.—Section 7461(b)(2) is amended to read as follows:

“(2) In any case other than a case described in paragraph (1) that involves or includes a question of professional conduct or competence in which a major adverse action was not taken, such an appeal shall be made through Department grievance procedures under section 7463 of this title.”.

(b) Major Adverse Actions Involving Professional Conduct or Competence.—Section 7462 is amended—

(1) in subsection (b)—

(A) in paragraph (1)—

(i) in subparagraph (A), by striking “At least 30” and inserting “Ten business”; and

(ii) in subparagraph (B)—
(I) by striking “A reasonable time, but not less than seven days” and inserting “The opportunity, within the ten-day notice period”; and

(II) by striking “orally and”; (B) in paragraph (3)—

(i) by striking “(A) If a proposed adverse action covered by this section is not withdrawn” and inserting “After considering the employee’s answer, if any”; 

(ii) by striking “21 days” and inserting “5 business days”; 

(iii) by striking “answer. The decision shall include a statement of” and inserting “answer stating”; and

(iv) by striking subparagraph (B); and

(C) in paragraph (4)—

(i) by striking “(A) The Secretary” and all that follows through “(B) The Secretary” and inserting “The Secretary”; and

(ii) by striking “30 days” and inserting “7 business days”; 

(2) in subsection (c)—
(A) in paragraph (3), by inserting “the hearing must be concluded not later than 30 business days after the date on which the appeal is filed, and” after “If such a hearing is held,”; and

(B) in paragraph (4)—

(i) by striking “45 days” and inserting “15 business days”; and

(ii) by striking “120 days” and inserting “45 business days”; and

(3) in subsection (d)(1), by striking “90 days” and inserting “15 business days”.

(c) OTHER ADVERSE ACTIONS.—Section 7463 is amended—

(1) by striking subsection (b) and redesignating subsections (e) through (e) as subsections (b) through (d), respectively; and

(2) in subsection (b)(2), as so redesignated—

(A) in subparagraph (A), by striking “an advance” and inserting “ten business days”; and

(B) in subparagraph (B)—

(i) by striking “a reasonable time” and inserting “the opportunity, within the ten business day notice period,”; and
(ii) by striking “orally and”.

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