

115TH CONGRESS
1ST SESSION

S. 12

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

IN THE SENATE OF THE UNITED STATES

JANUARY 3, 2017

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

A BILL

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

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Increasing the Depart-
5 ment of Veterans Affairs Accountability to Veterans Act
6 of 2017”.

1 **SEC. 2. REDUCTION OF BENEFITS FOR SENIOR EXECU-**
 2 **TIVES AND CERTAIN HEALTH CARE EMPLOY-**
 3 **EES OF DEPARTMENT OF VETERANS AFFAIRS**
 4 **CONVICTED OF A FELONY.**

5 (a) IN GENERAL.—Chapter 7 of title 38, United
 6 States Code, is amended by inserting after section 713 the
 7 following new section:

8 **“§ 714. Senior executives and section 7401(1) employ-**
 9 **ees: reduction of benefits of individuals**
 10 **convicted of a felony**

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

22 “(b) REDUCTION OF ANNUITY FOR RETIRED INDIVIDUAL.—(1) The Secretary may order that the covered
 23 service of an individual who is subject to a removal or
 24 transfer from a covered position at the Department by the
 25 Secretary for performance or misconduct but who leaves
 26

1 employment at the Department prior to the issuance of
2 a final decision with respect to such removal or transfer
3 shall not be taken into account for purposes of calculating
4 an annuity with respect to such individual under chapter
5 83 or chapter 84 of title 5, if the individual is convicted
6 of a felony (and the conviction is final) that was related,
7 as determined by the Director of the Office of Personnel
8 Management, to the individual's performance while em-
9 ployed in such covered position.

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

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

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

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

1 “(e) DEFINITIONS.—In this section:

2 “(1) The term ‘covered position’ is—

3 “(A) a senior executive position; or

4 “(B) a position listed in section 7401(1) of
5 this title that is not a senior executive position.

6 “(2) The term ‘covered service’ means, with re-
7 spect to an individual subject to a removal or trans-
8 fer from a covered position at the Department for
9 performance or misconduct, the period of service be-
10 ginning on the date that the Secretary determines
11 that such individual engaged in activity that gave
12 rise to such action and ending on the date that such
13 individual is removed from the civil service or leaves
14 employment at the Department prior to the issuance
15 of a final decision with respect to such action, as the
16 case may be.

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

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

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

1 (b) APPLICATION.—Section 714 of such title, as
 2 added by subsection (a), shall apply to any action of re-
 3 moval or transfer from a covered position (as defined in
 4 subsection (e) of such section) at the Department of Vet-
 5 erans Affairs commencing on or after the date of the en-
 6 actment of this Act.

7 (c) CLERICAL AMENDMENT.—The table of sections
 8 at the beginning of such chapter is amended by inserting
 9 after section 713 the following new item:

“714. Senior executives and section 7401(1) employees: reduction of benefits of
 individuals convicted of a felony.”.

10 **SEC. 3. ACCOUNTABILITY OF LEADERS FOR MANAGING**
 11 **THE DEPARTMENT OF VETERANS AFFAIRS.**

12 (a) IN GENERAL.—Chapter 7 of title 38, United
 13 States Code, is amended by inserting after section 709 the
 14 following new section:

15 **“§ 710. Annual performance plan for political ap-**
 16 **pointees**

17 “(a) IN GENERAL.—The Secretary shall conduct an
 18 annual performance plan for each political appointee of
 19 the Department that is similar to the annual performance
 20 plan conducted for an employee of the Department who
 21 is appointed as a career appointee (as that term is defined
 22 in section 3132(a)(4) of title 5) within the Senior Execu-
 23 tive Service at the Department.

1 “(b) ELEMENTS OF PLAN.—Each annual perform-
 2 ance plan conducted under subsection (a) with respect to
 3 a political appointee of the Department shall include, to
 4 the extent applicable, an assessment of whether the ap-
 5 pointee is meeting the following goals:

6 “(1) Recruiting, selecting, and retaining well-
 7 qualified individuals for employment at the Depart-
 8 ment.

9 “(2) Engaging and motivating employees.

10 “(3) Training and developing employees and
 11 preparing those employees for future leadership roles
 12 within the Department.

13 “(4) Holding each employee of the Department
 14 that is a manager accountable for addressing issues
 15 relating to performance, in particular issues relating
 16 to the performance of employees that report to the
 17 manager.”.

18 (b) CLERICAL AMENDMENT.—The table of sections
 19 at the beginning of chapter 7 of such title is further
 20 amended by inserting after the item relating to section
 21 709 the following new item:

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

22 **SEC. 4. ACCOUNTABILITY OF SUPERVISORS AT DEPART-**
 23 **MENT OF VETERANS AFFAIRS FOR HIRING**
 24 **WELL-QUALIFIED PEOPLE.**

25 (a) ASSESSMENT DURING PROBATIONARY PERIOD.—

1 (1) DETERMINATION REQUIRED.—With respect
2 to any employee of the Department of Veterans Af-
3 fairs who is required to serve a probationary period
4 in a position in the Department, the Secretary of
5 Veterans Affairs shall require the supervisor of such
6 employee to determine, during the 30-day period
7 ending on the date on which the probationary period
8 ends, whether the employee—

9 (A) has demonstrated successful perform-
10 ance; and

11 (B) should continue past the probationary
12 period.

13 (2) LIMITATION ON EMPLOYMENT AFTER PRO-
14 BATIONARY PERIOD.—

15 (A) IN GENERAL.—Except as provided in
16 subparagraph (B), no employee of the Depart-
17 ment serving a probationary period as described
18 in paragraph (1) may complete that proba-
19 tionary period unless and until the supervisor of
20 the employee, or another supervisor capable of
21 making the requisite determination, has made
22 an affirmative determination under such para-
23 graph.

24 (B) PROBATIONARY PERIOD DEEMED COM-
25 PLETED.—

1 (i) NO DETERMINATION.—If no deter-
2 mination under paragraph (1) is made
3 with respect to an employee before the end
4 of the 60-day period following the end of
5 the 30-day period specified in such para-
6 graph, the employee shall be deemed to
7 have completed the probationary period of
8 the employee effective as of the end of that
9 60-day period.

10 (ii) RETROACTIVE EFFECT OF DETER-
11 MINATION.—If an affirmative determina-
12 tion under paragraph (1) is made with re-
13 spect to an employee after the end of the
14 30-day period specified in such paragraph,
15 the employee shall be deemed to have com-
16 pleted the probationary period of the em-
17 ployee effective as of the end of that 30-
18 day period.

19 (3) NOTIFICATION TO CONGRESS REGARDING
20 DETERMINATIONS.—Not less frequently than month-
21 ly, the Secretary shall notify the Committee on Vet-
22 erans' Affairs of the Senate and the Committee on
23 Veterans' Affairs of the House of Representatives
24 regarding—

1 (A) each instance during such month in
2 which a supervisor did not make a determina-
3 tion required under paragraph (1) during the
4 period required in such paragraph; and

5 (B) each such instance included in a pre-
6 vious notification under this paragraph for
7 which the supervisor still has not made such a
8 determination.

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

15 (c) PERFORMANCE PLAN.—Each annual perform-
16 ance plan conducted for a supervisor of an employee serv-
17 ing a probationary period shall hold the supervisor ac-
18 countable for—

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

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

1 (d) SUPERVISOR DEFINED.—In this section, the term
 2 “supervisor” has the meaning given such term in section
 3 7103(a) of title 5, United States Code.

4 **SEC. 5. ACCOUNTABILITY OF MANAGERS FOR ADDRESSING**
 5 **PERFORMANCE OF EMPLOYEES.**

6 The Secretary of Veterans Affairs shall ensure that,
 7 as a part of the annual performance plan of an employee
 8 of the Department of Veterans Affairs who is a manager,
 9 the manager is evaluated on the following:

10 (1) Taking action to address poor performance
 11 and misconduct among the employees that report to
 12 the manager.

13 (2) Taking steps to improve or sustain high lev-
 14 els of employee engagement.

15 **SEC. 6. WRITTEN OPINION ON CERTAIN EMPLOYMENT RE-**
 16 **STRICTIONS AFTER TERMINATING EMPLOY-**
 17 **MENT WITH THE DEPARTMENT OF VETERANS**
 18 **AFFAIRS.**

19 (a) IN GENERAL.—Subchapter I of chapter 7 of title
 20 38, United States Code, is further amended by adding at
 21 the end the following new section:

1 **“§ 717. Written opinion on certain employment re-**
 2 **strictions after terminating employment**
 3 **with the Department**

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

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

19 (b) CLERICAL AMENDMENT.—The table of sections
 20 at the beginning of chapter 7 of such title is further
 21 amended by inserting after the item relating to section
 22 715 the following new item:

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

1 **SEC. 7. REQUIREMENT FOR CONTRACTORS OF THE DE-**
2 **PARTMENT EMPLOYING CERTAIN RECENTLY**
3 **SEPARATED DEPARTMENT EMPLOYEES.**

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

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

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

16 “(1) has obtained the written opinion required
17 under section 717(a) of this title; or

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

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

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

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

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

“8129. Requirement for contractors employing certain recently separated De-
 partment employees.”.

