

115TH CONGRESS  
1ST SESSION

# S. 12

---

IN THE HOUSE OF REPRESENTATIVES

MAY 26, 2017

Referred to the Committee on Veterans' Affairs

---

## AN ACT

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

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

1 **SECTION 1. SHORT TITLE.**

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

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

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

10 **“§ 710. Annual performance plan for political ap-**  
11 **pointees**

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

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

24 “(1) Recruiting, selecting, and retaining well-  
25 qualified individuals for employment at the Depart-  
26 ment.

1           “(2) Engaging and motivating employees.

2           “(3) Training and developing employees and  
3 preparing those employees for future leadership roles  
4 within the Department.

5           “(4) Holding each employee of the Department  
6 that is a manager accountable for addressing issues  
7 relating to performance, in particular issues relating  
8 to the performance of employees that report to the  
9 manager.”.

10          (b) CLERICAL AMENDMENT.—The table of sections  
11 at the beginning of chapter 7 of such title is further  
12 amended by inserting after the item relating to section  
13 709 the following new item:

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

14 **SEC. 3. ACCOUNTABILITY OF SUPERVISORS AT DEPART-**  
15 **MENT OF VETERANS AFFAIRS FOR HIRING**  
16 **WELL-QUALIFIED PEOPLE.**

17          (a) ASSESSMENT DURING PROBATIONARY PERIOD.—

18           (1) DETERMINATION REQUIRED.—With respect  
19 to any employee of the Department of Veterans Af-  
20 fairs who is required to serve a probationary period  
21 in a position in the Department, the Secretary of  
22 Veterans Affairs shall require the supervisor of such  
23 employee to determine, during the 30-day period  
24 ending on the date on which the probationary period  
25 ends, whether the employee—

1 (A) has demonstrated successful perform-  
2 ance; and

3 (B) should continue past the probationary  
4 period.

5 (2) LIMITATION ON EMPLOYMENT AFTER PRO-  
6 BATIONARY PERIOD.—

7 (A) IN GENERAL.—Except as provided in  
8 subparagraph (B), no employee of the Depart-  
9 ment serving a probationary period as described  
10 in paragraph (1) may complete that proba-  
11 tionary period unless and until the supervisor of  
12 the employee, or another supervisor capable of  
13 making the requisite determination, has made  
14 an affirmative determination under such para-  
15 graph.

16 (B) PROBATIONARY PERIOD DEEMED COM-  
17 PLETED.—

18 (i) NO DETERMINATION.—If no deter-  
19 mination under paragraph (1) is made  
20 with respect to an employee before the end  
21 of the 60-day period following the end of  
22 the 30-day period specified in such para-  
23 graph, the employee shall be deemed to  
24 have completed the probationary period of

1 the employee effective as of the end of that  
2 60-day period.

3 (ii) RETROACTIVE EFFECT OF DETER-  
4 MINATION.—If an affirmative determina-  
5 tion under paragraph (1) is made with re-  
6 spect to an employee after the end of the  
7 30-day period specified in such paragraph,  
8 the employee shall be deemed to have com-  
9 pleted the probationary period of the em-  
10 ployee effective as of the end of that 30-  
11 day period.

12 (3) NOTIFICATION TO CONGRESS REGARDING  
13 DETERMINATIONS.—Not less frequently than month-  
14 ly, the Secretary shall notify the Committee on Vet-  
15 erans' Affairs of the Senate and the Committee on  
16 Veterans' Affairs of the House of Representatives  
17 regarding—

18 (A) each instance during such month in  
19 which a supervisor did not make a determina-  
20 tion required under paragraph (1) during the  
21 period required in such paragraph; and

22 (B) each such instance included in a pre-  
23 vious notification under this paragraph for  
24 which the supervisor still has not made such a  
25 determination.

1 (b) SUPERVISORS.—With respect to any employee of  
2 the Department who is serving a probationary period in  
3 a supervisory position at the Department, successful per-  
4 formance under subsection (a) shall include demonstrating  
5 management competencies in addition to the technical  
6 skills required for such position.

7 (c) PERFORMANCE PLAN.—Each annual perform-  
8 ance plan conducted for a supervisor of an employee serv-  
9 ing a probationary period shall hold the supervisor ac-  
10 countable for—

11 (1) providing regular feedback to such employee  
12 during such period before making a determination  
13 under subsection (a) regarding the probationary sta-  
14 tus of such employee; and

15 (2) making a timely determination under sub-  
16 section (a) regarding the probationary status of such  
17 employee.

18 (d) SUPERVISOR DEFINED.—In this section, the term  
19 “supervisor” has the meaning given such term in section  
20 7103(a) of title 5, United States Code.

21 **SEC. 4. ACCOUNTABILITY OF MANAGERS FOR ADDRESSING**  
22 **PERFORMANCE OF EMPLOYEES.**

23 The Secretary of Veterans Affairs shall ensure that,  
24 as a part of the annual performance plan of an employee

1 of the Department of Veterans Affairs who is a manager,  
 2 the manager is evaluated on the following:

3 (1) Taking action to address poor performance  
 4 and misconduct among the employees that report to  
 5 the manager.

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

8 **SEC. 5. WRITTEN OPINION ON CERTAIN EMPLOYMENT RE-**  
 9 **STRICTIONS AFTER TERMINATING EMPLOY-**  
 10 **MENT WITH THE DEPARTMENT OF VETERANS**  
 11 **AFFAIRS.**

12 (a) IN GENERAL.—Subchapter I of chapter 7 of title  
 13 38, United States Code, is further amended by adding at  
 14 the end the following new section:

15 **“§ 717. Written opinion on certain employment re-**  
 16 **strictions after terminating employment**  
 17 **with the Department**

18 “(a) IN GENERAL.—Before terminating employment  
 19 with the Department, any official of the Department who  
 20 has participated personally and substantially during the  
 21 one-year period ending on the date of the termination in  
 22 an acquisition by the Department that exceeds  
 23 \$10,000,000 shall obtain a written opinion from an appro-  
 24 priate ethics counselor at the Department regarding any  
 25 restrictions on activities that the official may undertake

1 on behalf of a covered contractor during the two-year pe-  
 2 riod beginning on the date on which the official terminates  
 3 such employment.

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

8 (b) CLERICAL AMENDMENT.—The table of sections  
 9 at the beginning of chapter 7 of such title is further  
 10 amended by inserting after the item relating to section  
 11 715 the following new item:

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

12 **SEC. 6. REQUIREMENT FOR CONTRACTORS OF THE DE-**  
 13 **PARTMENT EMPLOYING CERTAIN RECENTLY**  
 14 **SEPARATED DEPARTMENT EMPLOYEES.**

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

18 **“§ 8129. Requirement for contractors employing cer-**  
 19 **tain recently separated Department em-**  
 20 **ployees**

21 “(a) IN GENERAL.—A covered contractor may not  
 22 knowingly provide compensation to an individual described  
 23 in subsection (b) during the two-year period beginning on  
 24 the date on which the individual terminates employment



1 with the Department unless the covered contractor deter-  
2 mines that the individual—

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

5 “(2) has requested such written opinion not  
6 later than 30 days before receiving compensation  
7 from the covered contractor.

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

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

18 (b) APPLICATION.—The requirement under section  
19 8129(a) of title 38, United States Code, as added by sub-  
20 section (a), shall apply with respect to any entity that en-  
21 ters into a contract with the Department on or after the  
22 date of the enactment of this Act.

23 (c) CLERICAL AMENDMENT.—The table of sections  
24 at the beginning of chapter 81 of such title is amended

1 by inserting after the item relating to section 8128 the  
2 following new item:

“8129. Requirement for contractors employing certain recently separated Department employees.”.

Passed the Senate May 25, 2017.

Attest:

JULIE E. ADAMS,

*Secretary.*