

115TH CONGRESS  
1ST SESSION

# S. 493

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.

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## IN THE SENATE OF THE UNITED STATES

MARCH 2, 2017

Mr. RUBIO introduced the following bill; which was read twice and referred to the Committee on Veterans' Affairs

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## 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       “Department of Veterans Affairs Accountability First Act  
6       of 2017”.

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, 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.

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, DEMOTION, AND SUSPENSION OF EM-**  
 8 **PLOYEES BASED ON PERFORMANCE OR MIS-**  
 9 **CONDUCT.**

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

12 **“§ 719. Employees: removal, demotion, or suspension**  
 13 **based on performance or misconduct**

14       “(a) IN GENERAL.—(1) The Secretary may remove,  
 15 demote, or suspend a covered individual who is an em-  
 16 ployee of the Department if the Secretary determines the  
 17 performance or misconduct of the covered individual war-  
 18 rants such removal, demotion, or suspension.

1       “(2) If the Secretary so removes, demotes, or sus-  
2       pends such a covered individual, the Secretary may—

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

5               “(B) demote the covered individual by means of  
6       a reduction in grade for which the covered individual  
7       is qualified, that the Secretary determines is appro-  
8       priate, and that reduces the annual rate of pay of  
9       the covered individual; or

10              “(C) suspend the covered individual.

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

16       “(2)(A) A covered individual so demoted may not be  
17       placed on administrative leave during the period during  
18       which an appeal (if any) under this section is ongoing,  
19       and may only receive pay if the covered individual reports  
20       for duty or is approved to use accrued unused annual,  
21       sick, family medical, military, or court leave.

22       “(B) If a covered individual so demoted does not re-  
23       port for duty or receive approval to use accrued unused  
24       leave, such covered individual shall not receive pay or  
25       other benefits pursuant to subsection (e)(5).

1       “(c) NOTICE TO CONGRESS.—(1)(A) Not later than  
2 30 days after removing, demoting, or suspending a covered  
3 individual employed in a senior executive position under  
4 subsection (a) or after removing, demoting, or suspending  
5 an individual under chapter 74 of this title, the Secretary  
6 shall submit to the Committee on Veterans’ Affairs of the  
7 Senate, to the Committee on Veterans’ Affairs of the  
8 House of Representatives, and to each Member of Con-  
9 gress representing a district in the State or territory where  
10 the facility where the individual was employed immediately  
11 before being removed, demoted, or suspended is located  
12 notice in writing of such removal, demotion, or suspension.

13       “(B) Such notice shall include the job title of the indi-  
14 vidual, the location where the individual was employed im-  
15 mediately before being removed, demoted, or suspended,  
16 the proposed action, and the reason for such removal, de-  
17 motion, or suspension.

18       “(2)(A) Not later than 30 days after the last day of  
19 a fiscal year, the Secretary shall submit to the Committee  
20 on Veterans’ Affairs of the Senate and the Committee on  
21 Veterans’ Affairs of the House of Representatives a report  
22 listing all removals, demotions, and suspensions under this  
23 section or under chapter 74 of this title during such fiscal  
24 year.

1       “(B) Each such report shall include the job title of  
2 each individual removed, demoted, or suspended, the loca-  
3 tion where the individual was employed immediately before  
4 being so removed, demoted or suspended, the proposed ac-  
5 tion, and the reason for such removal, demotion, or sus-  
6 pension.

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

12       “(d) PROCEDURE.—(1)(A) Subsection (b) of section  
13 7513 of title 5 shall apply with respect to a removal, demo-  
14 tion, or suspension under this section, except that the pe-  
15 riod for notice and response, which includes the advance  
16 notice period required by paragraph (1) of such subsection  
17 and the response period required by paragraph (2) of such  
18 subsection, shall not exceed a total of 10 business days.

19       “(B) Subsection (c) of such section and section 7121  
20 of such title shall not apply with respect to such a removal,  
21 demotion, or suspension.

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

1           “(A) in the case of a proposed removal, demo-  
2           tion, or suspension to which a covered individual re-  
3           sponds under paragraph (1), not later than five  
4           business days after receiving the response of the cov-  
5           ered individual; or

6           “(B) in the case of a proposed removal, demo-  
7           tion, or suspension to which a covered individual  
8           does not respond, not later than 15 business days  
9           after the Secretary provides notice to the covered in-  
10          dividual under paragraph (1).

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

14          “(4)(A) Subject to subparagraph (B) and subsection  
15          (e), any removal, demotion, or suspension under sub-  
16          section (a) may be appealed to the Merit Systems Protec-  
17          tion Board, which shall refer such appeal to an adminis-  
18          trative judge pursuant to section 7701(b)(1) of title 5.

19          “(B) An appeal under subparagraph (A) of a re-  
20          moval, demotion, or suspension may only be made if such  
21          appeal is made not later than seven days after the date  
22          of such removal, demotion, or suspension.

23          “(e) EXPEDITED REVIEW.—(1) Upon receipt of an  
24          appeal under subsection (d)(4)(A), the administrative  
25          judge shall expedite any such appeal under section

1 7701(b)(1) of title 5 and, in any such case, shall issue  
2 a final and complete decision not later than 45 business  
3 days after the date of the appeal.

4 “(2)(A) Notwithstanding section 7701(c)(1)(B) of  
5 title 5, the administrative judge shall uphold the decision  
6 of the Secretary to remove, demote, or suspend an em-  
7 ployee under subsection (a) if the decision is supported  
8 by substantial evidence.

9 “(B) If the decision of the Secretary is supported by  
10 substantial evidence, the administrative judge shall not  
11 mitigate the penalty prescribed by the Secretary.

12 “(3)(A) The decision of the administrative judge  
13 under paragraph (1) may be appealed to the Merit Sys-  
14 tems Protection Board.

15 “(B) An appeal under subparagraph (A) of a decision  
16 of an administrative judge may only be made if such ap-  
17 peal is made not later than seven business days after the  
18 date of the decision of the administrative judge.

19 “(4) In any case in which the administrative judge  
20 cannot issue a decision in accordance with the 45-day re-  
21 quirement under paragraph (1), the Merit Systems Pro-  
22 tection Board shall, not later than 14 business days after  
23 the expiration of the 45-day period, submit to the Com-  
24 mittee on Veterans’ Affairs of the Senate and the Com-  
25 mittee on Veterans’ Affairs of the House of Representa-

1 tives a report that explains the reasons why a decision was  
2 not issued in accordance with such requirement.

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

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

11 “(C) Any decision by such Court shall be in compli-  
12 ance with section 7462(f)(2) of this title.

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

15 “(7) During the period beginning on the date on  
16 which a covered individual appeals a removal from the civil  
17 service under subsection (d) and ending on the date that  
18 the United States Court of Appeals for the Federal Circuit  
19 issues a final decision on such appeal, such covered indi-  
20 vidual may not receive any pay, awards, bonuses, incen-  
21 tives, allowances, differentials, student loan repayments,  
22 special payments, or benefits related to the employment  
23 of the individual by the Department.

24 “(8) To the maximum extent practicable, the Sec-  
25 retary shall provide to the Merit Systems Protection

1 Board such information and assistance as may be nec-  
 2 essary to ensure an appeal under this subsection is expe-  
 3 dited.

4 “(9) If an employee prevails on appeal under this sec-  
 5 tion, the employee shall be entitled to backpay (as pro-  
 6 vided in section 5596 of title 5).

7 “(10) This subsection shall supercede any collective  
 8 bargaining agreement to the extent that such an agree-  
 9 ment conflicts with this subsection.

10 “(f) WHISTLEBLOWER PROTECTION.—(1) In the  
 11 case of a covered individual seeking corrective action (or  
 12 on behalf of whom corrective action is sought) from the  
 13 Office of Special Counsel based on an alleged prohibited  
 14 personnel practice described in section 2302(b) of title 5,  
 15 the Secretary may not remove, demote, or suspend such  
 16 covered individual under subsection (a) without the ap-  
 17 proval of the Special Counsel under section 1214(f) of title  
 18 5.

19 “(2) In the case of a covered individual who has filed  
 20 a whistleblower complaint, as such term is defined in sec-  
 21 tion 731 of this title, the Secretary may not remove, de-  
 22 mote, or suspend such covered individual under subsection  
 23 (a) until a final decision with respect to the whistleblower  
 24 complaint has been made.

1       “(g) TERMINATION OF INVESTIGATIONS BY OFFICE  
 2 OF SPECIAL COUNSEL.—(1) Notwithstanding any other  
 3 provision of law, the Special Counsel (established by sec-  
 4 tion 1211 of title 5) may terminate an investigation of  
 5 a prohibited personnel practice alleged by an employee or  
 6 former employee of the Department after the Special  
 7 Counsel provides to the employee or former employee a  
 8 written statement of the reasons for the termination of  
 9 the investigation.

10       “(2) Such statement may not be admissible as evi-  
 11 dence in any judicial or administrative proceeding without  
 12 the consent of such employee or former employee.

13       “(h) VACANCIES.—In the case of a covered individual  
 14 who is removed or demoted under subsection (a), to the  
 15 maximum extent feasible, the Secretary shall fill the va-  
 16 cancy arising as a result of such removal or demotion.

17       “(i) DEFINITIONS.—In this section:

18               “(1) The term ‘covered individual’ means an in-  
 19 dividual occupying a position at the Department, but  
 20 does not include—

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

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

25                       “(C) a political appointee.

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

5           “(3) The term ‘grade’ has the meaning given  
 6           such term in section 7511(a) of title 5.

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

11          “(5) The term ‘political appointee’ means an in-  
 12          dividual who is—

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

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

21               “(C) employed in a position of a confiden-  
 22               tial or policy-determining character under  
 23               schedule C of subpart C of part 213 of title 5  
 24               of the Code of Federal Regulations.”.

25          (b) REPEAL OF SUPERCEDED PROVISION OF LAW.—

1           (1) IN GENERAL.—Section 713 is hereby re-  
2       pealed.

3           (2) CLERICAL AMENDMENT.—The table of sec-  
4       tions at the beginning of chapter 7 is amended by  
5       striking the item relating to section 713.

6       (c) CLERICAL AND CONFORMING AMENDMENTS.—

7           (1) CLERICAL.—The table of sections at the be-  
8       ginning of chapter 7 is amended by inserting after  
9       the item relating to section 717 the following new  
10      item:

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

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

13               (A) in paragraph (2), by striking “or” at  
14      the end;

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

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

18           “(4) any removal or demotion under section  
19      719 of title 38.”.

20       (d) TEMPORARY EXEMPTION FROM CERTAIN LIM-  
21      TATION ON INITIATION FROM REMOVAL FROM SENIOR  
22      EXECUTIVE SERVICE.—During the 120-day period begin-  
23      ning on the date of the enactment of this Act, an action  
24      to remove an individual from the Senior Executive Service

1 at the Department of Veterans Affairs pursuant to section  
 2 719 of title 38, United States Code, as added by sub-  
 3 section (a), may be initiated, notwithstanding section  
 4 3592(b) of title 5, United States Code, or any other provi-  
 5 sion of law.

6 **SEC. 4. REDUCTION OF BENEFITS FOR DEPARTMENT OF**  
 7 **VETERANS AFFAIRS EMPLOYEES CONVICTED**  
 8 **OF CERTAIN CRIMES.**

9 (a) REDUCTION OF BENEFITS.—

10 (1) IN GENERAL.—Subchapter I of chapter 7,  
 11 as amended by section 3, is further amended by add-  
 12 ing at the end the following new section:

13 **“§ 721. Reduction of benefits of employees convicted**  
 14 **of certain crimes**

15 “(a) REDUCTION OF ANNUITY FOR REMOVED EM-  
 16 PLOYEE.—(1) The Secretary shall order that the covered  
 17 service of an employee of the Department removed from  
 18 a position for performance or misconduct under section  
 19 719 or 7461 of this title or any other provision of law  
 20 shall not be taken into account for purposes of calculating  
 21 an annuity with respect to such individual under chapter  
 22 83 or chapter 84 of title 5, if—

23 “(A) the Secretary determines that the indi-  
 24 vidual is convicted of a felony that influenced the in-

1       dividual’s performance while employed in the posi-  
2       tion;

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

5               “(i) notice of the proposed order; and

6               “(ii) an opportunity to respond to the pro-  
7       posed order by not later than ten business days  
8       following receipt of such notice; and

9               “(C) the Secretary issues the order—

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

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

19       “(2) Upon the issuance of an order by the Secretary  
20       under paragraph (1), the individual shall have an oppor-  
21       tunity to appeal the order to the Director of the Office  
22       of Personnel Management before the date that is seven  
23       business days after the date of such issuance.

24       “(3) The Director of the Office of Personnel Manage-  
25       ment shall make a final decision with respect to an appeal

1 under paragraph (2) not later than 30 business days after  
2 receiving the 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 removed for performance  
6 or misconduct under section 719 or 7461 of this title or  
7 any other provision of law but who leaves employment at  
8 the Department prior to the issuance of a final decision  
9 with respect to such action shall not be taken into account  
10 for purposes of calculating an annuity with respect to such  
11 individual under chapter 83 or chapter 84 of title 5, if—

12 “(A) the Secretary determines that the indi-  
13 vidual is convicted of a felony that influenced the in-  
14 dividual’s performance while employed in the posi-  
15 tion;

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

18 “(i) notice of the proposed order; and

19 “(ii) opportunity to respond to the pro-  
20 posed order by not later than ten business days  
21 following receipt of such notice; and

22 “(C) the Secretary issues the order—

23 “(i) in the case of a proposed order to  
24 which an individual responds under subpara-

1 graph (B)(ii), not later than five business days  
2 after receiving the response of the individual; or  
3 “(ii) in the case of a proposed order to  
4 which an individual does not respond, not later  
5 than 15 business days after the Secretary pro-  
6 vides notice to the individual under subpara-  
7 graph (B)(i).

8 “(2) Upon the issuance of an order by the Secretary  
9 under paragraph (1), the individual shall have an oppor-  
10 tunity to appeal the order to the Director of the Office  
11 of Personnel Management before the date that is seven  
12 business days after the date of such issuance.

13 “(3) The Director of the Office of Personnel Manage-  
14 ment shall make a final decision with respect to an appeal  
15 under paragraph (2) within 30 business days of receiving  
16 the appeal.

17 “(c) ADMINISTRATIVE REQUIREMENTS.—Not later  
18 than 37 business days after the Secretary issues a final  
19 order under subsection (a) or (b) with respect to an indi-  
20 vidual, the Director of the Office of Personnel Manage-  
21 ment shall recalculate the annuity of the individual.

22 “(d) LUMP-SUM ANNUITY CREDIT.—Any individual  
23 with respect to whom an annuity is reduced under sub-  
24 section (a) or (b) shall be entitled to be paid so much of

1 such individual's lump-sum credit as is attributable to the  
 2 period of covered service.

3 “(e) SPOUSE OR CHILDREN EXCEPTION.—(1) The  
 4 Secretary, in consultation with the Director of the Office  
 5 of Personnel Management, shall prescribe regulations that  
 6 may provide for the payment to the spouse or children  
 7 of any individual referred to in subsection (a) or (b) of  
 8 any amounts which (but for this subsection) would other-  
 9 wise have been nonpayable by reason of such subsections.

10 “(2) Regulations prescribed under paragraph (1)  
 11 shall be consistent with the requirements of sections  
 12 8332(o)(5) and 8411(l)(5) of title 5, as the case may be.

13 “(f) DEFINITIONS.—In this section:

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

1           “(2) The term ‘lump-sum credit’ has the mean-  
 2           ing given such term in section 8331(8) or section  
 3           8401(19) of title 5, as the case may be.

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

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

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

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

17      **SEC. 5. AUTHORITY TO RECOUP BONUSES OR AWARDS**  
 18                                      **PAID TO EMPLOYEES OF DEPARTMENT OF**  
 19                                      **VETERANS AFFAIRS.**

20          (a) IN GENERAL.—Subchapter I of chapter 7, as  
 21          amended by section 4, is further amended by adding at  
 22          the end the following new section:

1   **“§ 723. Recoupment of bonuses or awards paid to em-**  
 2                   **ployees of Department**

3           “(a) IN GENERAL.—Notwithstanding any other pro-  
 4 vision of law, the Secretary may issue an order directing  
 5 an employee of the Department to repay the amount, or  
 6 a portion of the amount, of any award or bonus paid to  
 7 the employee under title 5, including under chapter 45 or  
 8 53 of such title, or this title if—

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

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

17           “(A) notice of the proposed order; and

18           “(B) an opportunity to respond to the pro-  
 19 posed order by not later than 10 business days  
 20 after the receipt of such notice; and

21           “(3) the Secretary issues the order—

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

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

6           “(b) APPEALS.—Upon the issuance of an order by  
 7           the Secretary under subsection (a) with respect to an indi-  
 8           vidual, the individual shall have an opportunity to appeal  
 9           the order to another department or agency of the Federal  
 10          Government before the date that is seven business days  
 11          after the date of such issuance.

12          “(c) FINAL DECISIONS.—The head of the applicable  
 13          department or agency of the Federal Government shall  
 14          make a final decision with respect to an appeal under sub-  
 15          section (b) within 30 business days after receiving such  
 16          appeal.”.

17          (b) CLERICAL AMENDMENT.—The table of sections  
 18          at the beginning of such chapter, as amended by section  
 19          4(a)(2), is further amended by inserting after the item re-  
 20          lating to section 721 the following new item:

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

21          (c) EFFECTIVE DATE.—Section 723 of title 38,  
 22          United States Code, as added by subsection (a), shall  
 23          apply with respect to an award or bonus paid by the Sec-  
 24          retary of Veterans Affairs to an employee of the Depart-

1 ment of Veterans Affairs on or after the date of the enact-  
 2 ment of this Act.

3 (d) CONSTRUCTION.—Nothing in this Act or the  
 4 amendments made by this Act may be construed to modify  
 5 the certification issued by the Office of Personnel Manage-  
 6 ment and the Office of Management and Budget regarding  
 7 the performance appraisal system of the Senior Executive  
 8 Service of the Department of Veterans Affairs.

9 **SEC. 6. AUTHORITY TO RECOUP RELOCATION EXPENSES**

10 **PAID TO OR ON BEHALF OF EMPLOYEES OF**  
 11 **DEPARTMENT OF VETERANS AFFAIRS.**

12 (a) IN GENERAL.—Subchapter I of chapter 7, as  
 13 amended by section 5, is further amended by adding at  
 14 the end the following new section:

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

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

24 **“(1)** the Secretary determines that relocation  
 25 expenses were not lawfully authorized or that the

1 employee committed an act of fraud, waste, or mal-  
2 feasance that influenced the authorization of the re-  
3 location expenses;

4 “(2) before such repayment, the employee is af-  
5 forced—

6 “(A) notice of the proposed order; and

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

10 “(3) the Secretary issues the order—

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

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

20 “(b) APPEALS.—Upon the issuance of an order by  
21 the Secretary under subsection (a) with respect to an indi-  
22 vidual, the individual shall have an opportunity to appeal  
23 the order to another department or agency of the Federal  
24 Government before the date that is seven business days  
25 after the date of such issuance.

1       “(c) FINAL DECISIONS.—The head of the applicable  
2 department or agency of the Federal Government shall  
3 make a final decision with respect to an appeal under sub-  
4 section (b) within 30 days after receiving such appeal.”.

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

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

9       (c) EFFECTIVE DATE.—Section 725 of title 38,  
10 United States Code, as added by subsection (a), shall  
11 apply with respect to an amount paid by the Secretary  
12 of Veterans Affairs to or on behalf of an employee of the  
13 Department of Veterans Affairs for relocation expenses on  
14 or after the date of the enactment of this Act.

15 **SEC. 7. TIME PERIOD FOR RESPONSE TO NOTICE OF AD-**  
16 **VERSE ACTIONS AGAINST SUPERVISORY EM-**  
17 **PLOYEES WHO COMMIT PROHIBITED PER-**  
18 **SONNEL ACTIONS.**

19       Section 733(a)(2)(B) is amended—

20           (1) in clause (i), by striking “14 days” and in-  
21 serting “10 days”; and

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

1 **SEC. 8. DIRECT HIRING AUTHORITY FOR MEDICAL CENTER**

2 **DIRECTORS AND VISN DIRECTORS.**

3 (a) IN GENERAL.—Section 7401 is amended by add-  
4 ing at the end the following new paragraph:

5 “(4) Medical center directors and directors of  
6 Veterans Integrated Service Networks with dem-  
7 onstrated ability in the medical profession, in health  
8 care administration, or in health care fiscal manage-  
9 ment.”.

10 (b) CONFORMING AMENDMENT.—Section 7404(a)(1)  
11 is amended by inserting “and 7401(4)” after “7306”.

12 **SEC. 9. TIME PERIODS FOR REVIEW OF ADVERSE ACTIONS**

13 **WITH RESPECT TO CERTAIN EMPLOYEES.**

14 (a) PHYSICIANS, DENTISTS, PODIATRISTS, CHIRO-  
15 PRACTORS, OPTOMETRISTS, REGISTERED NURSES, PHY-  
16 SICIAN ASSISTANTS, AND EXPANDED-FUNCTION DENTAL  
17 AUXILIARIES.—Section 7461(b)(2) is amended to read as  
18 follows:

19 “(2) In any case other than a case described in para-  
20 graph (1) that involves or includes a question of profes-  
21 sional conduct or competence in which a major adverse  
22 action was not taken, such an appeal shall be made  
23 through Department grievance procedures under section  
24 7463 of this title.”.

1 (b) MAJOR ADVERSE ACTIONS INVOLVING PROFES-  
 2 SIONAL CONDUCT OR COMPETENCE.—Section 7462 is  
 3 amended—

4 (1) in subsection (b)—

5 (A) in paragraph (1)—

6 (i) in subparagraph (A), by striking  
 7 “At least 30” and inserting “Ten busi-  
 8 ness”; and

9 (ii) in subparagraph (B)—

10 (I) by striking “A reasonable  
 11 time, but not less than seven days”  
 12 and inserting “The opportunity, with-  
 13 in the ten-day notice period”; and

14 (II) by striking “orally and”;

15 (B) in paragraph (3)—

16 (i) by striking “(A) If a proposed ad-  
 17 verse action covered by this section is not  
 18 withdrawn” and inserting “After consid-  
 19 ering the employee’s answer, if any”;

20 (ii) by striking “21 days” and insert-  
 21 ing “5 business days”;

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

1 (iv) by striking subparagraph (B);

2 and

3 (C) in paragraph (4)—

4 (i) by striking “(A) The Secretary”

5 and all that follows through “(B) The Sec-

6 retary” and inserting “The Secretary”;

7 and

8 (ii) by striking “30 days” and insert-

9 ing “seven business days”;

10 (2) in subsection (c)—

11 (A) in paragraph (3), by inserting “the

12 hearing must be concluded not later than 30

13 business days after the date on which the ap-

14 peal is filed, and” after “If such a hearing is

15 held,”; and

16 (B) in paragraph (4)—

17 (i) by striking “45 days” and insert-

18 ing “15 business days”; and

19 (ii) by striking “120 days” and insert-

20 ing “45 business days”; and

21 (3) in subsection (d)(1), by striking “90 days”

22 and inserting “15 business days”.

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

24 amended—

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

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

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

8               (B) in subparagraph (B)—

9                   (i) by striking “a reasonable time”  
10       and inserting “the opportunity, within the  
11       ten business day notice period,”; and

12                   (ii) by striking “orally and”.

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