

114TH CONGRESS
1ST SESSION

H. R. 1994

AN ACT

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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “VA Accountability Act
3 of 2015”.

4 **SEC. 2. REMOVAL OR DEMOTION OF EMPLOYEES BASED ON**
5 **PERFORMANCE OR MISCONDUCT.**

6 (a) IN GENERAL.—Chapter 7 of title 38, United
7 States Code, is amended by adding at the end the fol-
8 lowing new section:

9 **“§ 715. Employees: removal or demotion based on**
10 **performance or misconduct**

11 “(a) IN GENERAL.—The Secretary may remove or
12 demote an individual who is an employee of the Depart-
13 ment if the Secretary determines the performance or mis-
14 conduct of the individual warrants such removal or demo-
15 tion. If the Secretary so removes or demotes such an indi-
16 vidual, the Secretary may—

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

19 “(2) demote the individual by means of—

20 “(A) a reduction in grade for which the in-
21 dividual is qualified and that the Secretary de-
22 termines is appropriate; or

23 “(B) a reduction in annual rate of pay
24 that the Secretary determines is appropriate.

25 “(b) PAY OF CERTAIN DEMOTED INDIVIDUALS.—(1)
26 Notwithstanding any other provision of law, any individual

1 subject to a demotion under subsection (a)(2)(A) shall, be-
2 ginning on the date of such demotion, receive the annual
3 rate of pay applicable to such grade.

4 “(2) An individual so demoted may not be placed on
5 administrative leave or any other category of paid leave
6 during the period during which an appeal (if any) under
7 this section is ongoing, and may only receive pay if the
8 individual reports for duty. If an individual so demoted
9 does not report for duty, such individual shall not receive
10 pay or other benefits pursuant to subsection (e)(5).

11 “(c) NOTICE TO CONGRESS.—Not later than 30 days
12 after removing or demoting an individual under subsection
13 (a), the Secretary shall submit to the Committees on Vet-
14 erans’ Affairs of the Senate and House of Representatives
15 notice in writing of such removal or demotion and the rea-
16 son for such removal or demotion.

17 “(d) PROCEDURE.—(1) The procedures under section
18 7513(b) of title 5 and chapter 43 of such title shall not
19 apply to a removal or demotion under this section.

20 “(2)(A) Subject to subparagraph (B) and subsection
21 (e), any removal or demotion under subsection (a) may
22 be appealed to the Merit Systems Protection Board under
23 section 7701 of title 5.

24 “(B) An appeal under subparagraph (A) of a removal
25 or demotion may only be made if such appeal is made not

1 later than seven days after the date of such removal or
2 demotion.

3 “(e) EXPEDITED REVIEW BY ADMINISTRATIVE
4 JUDGE.—(1) Upon receipt of an appeal under subsection
5 (d)(2)(A), the Merit Systems Protection Board shall refer
6 such appeal to an administrative judge pursuant to section
7 7701(b)(1) of title 5. The administrative judge shall expe-
8 dite any such appeal under such section and, in any such
9 case, shall issue a decision not later than 45 days after
10 the date of the appeal.

11 “(2) Notwithstanding any other provision of law, in-
12 cluding section 7703 of title 5, the decision of an adminis-
13 trative judge under paragraph (1) shall be final and shall
14 not be subject to any further appeal.

15 “(3) In any case in which the administrative judge
16 cannot issue a decision in accordance with the 45-day re-
17 quirement under paragraph (1), the removal or demotion
18 is final. In such a case, the Merit Systems Protection
19 Board shall, within 14 days after the date that such re-
20 moval or demotion is final, submit to Congress and the
21 Committees on Veterans’ Affairs of the Senate and House
22 of Representatives a report that explains the reasons why
23 a decision was not issued in accordance with such require-
24 ment.

1 “(4) The Merit Systems Protection Board or admin-
2 istrative judge may not stay any removal or demotion
3 under this section.

4 “(5) During the period beginning on the date on
5 which an individual appeals a removal from the civil serv-
6 ice under subsection (d) and ending on the date that the
7 administrative judge issues a final decision on such appeal,
8 such individual may not receive any pay, awards, bonuses,
9 incentives, allowances, differentials, student loan repay-
10 ments, special payments, or benefits.

11 “(6) To the maximum extent practicable, the Sec-
12 retary shall provide to the Merit Systems Protection
13 Board, and to any administrative judge to whom an appeal
14 under this section is referred, such information and assist-
15 ance as may be necessary to ensure an appeal under this
16 subsection is expedited.

17 “(f) WHISTLEBLOWER PROTECTION.—(1) In the
18 case of an individual seeking corrective action (or on be-
19 half of whom corrective action is sought) from the Office
20 of Special Counsel based on an alleged prohibited per-
21 sonnel practice described in section 2302(b) of title 5, the
22 Secretary may not remove or demote such individual
23 under subsection (a) without the approval of the Special
24 Counsel under section 1214(f) of title 5.

1 “(2) In the case of an individual who has filed a whis-
2 tleblower complaint, as such term is defined in section 731
3 of this title, the Secretary may not remove or demote such
4 individual under subsection (a) until the central whistle-
5 blower office under section 732(h) of this title has made
6 a final decision with respect to the whistleblower com-
7 plaint.

8 “(g) TERMINATION OF INVESTIGATIONS BY OFFICE
9 OF SPECIAL COUNSEL.—Notwithstanding any other provi-
10 sion of law, the Special Counsel (established by section
11 1211 of title 5) may terminate an investigation of a pro-
12 hibited personnel practice alleged by an employee or
13 former employee of the Department after the Special
14 Counsel provides to the employee or former employee a
15 written statement of the reasons for the termination of
16 the investigation. Such statement may not be admissible
17 as evidence in any judicial or administrative proceeding
18 without the consent of such employee or former employee.

19 “(h) RELATION TO TITLE 5.—The authority provided
20 by this section is in addition to the authority provided by
21 subchapter V of chapter 75 of title 5 and chapter 43 of
22 such title.

23 “(i) DEFINITIONS.—In this section:

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

4 “(A) an individual, as that term is defined
5 in section 713(g)(1); or

6 “(B) a political appointee.

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

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

13 “(4) The term ‘political appointee’ means an in-
14 dividual who is—

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

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

23 “(C) employed in a position of a confiden-
24 tial or policy-determining character under

1 schedule C of subpart C of part 213 of title 5
2 of the Code of Federal Regulations.”.

3 (b) CLERICAL AND CONFORMING AMENDMENTS.—

4 (1) CLERICAL.—The table of sections at the be-
5 ginning of such chapter is amended by adding at the
6 end the following new item:

“715. Employees: removal or demotion based on performance or misconduct.”.

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

9 (A) by striking “or” at the end of para-
10 graph (2);

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

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

14 “(4) any removal or demotion under section
15 715 of title 38.”.

16 **SEC. 3. REQUIRED PROBATIONARY PERIOD FOR NEW EM-**
17 **PLoyEES OF DEPARTMENT OF VETERANS AF-**
18 **FAIRS.**

19 (a) PROBATIONARY PERIOD.—

20 (1) IN GENERAL.—Chapter 7 of title 38, United
21 States Code, as amended by section 2, is further
22 amended by adding at the end the following new sec-
23 tion:

1 **“§ 717. Probationary period for employees**

2 “(a) IN GENERAL.—Notwithstanding sections 3321
3 and 3393(d) of title 5, the appointment of a covered em-
4 ployee shall become final only after such employee has
5 served a probationary period of 18 months. The Secretary
6 may extend a probationary period under this subsection
7 at the discretion of the Secretary.

8 “(b) COVERED EMPLOYEE.—In this section, the term
9 ‘covered employee’—

10 “(1) means any individual—

11 “(A) appointed to a permanent position
12 within the competitive service at the Depart-
13 ment; or

14 “(B) appointed as a career appointee (as
15 that term is defined in section 3132(a)(4) of
16 title 5) within the Senior Executive Service at
17 the Department; and

18 “(2) does not include any individual with a pro-
19 bationary period prescribed by section 7403 of this
20 title.

21 “(c) PERMANENT HIRES.—Upon the expiration of a
22 covered employee’s probationary period under subsection
23 (a), the supervisor of the employee shall determine wheth-
24 er the appointment becomes final based on regulations
25 prescribed for such purpose by the Secretary.”.

1 (2) CLERICAL AND CONFORMING AMEND-
2 MENTS.—

3 (A) CLERICAL.—The table of sections at
4 the beginning of such chapter, as amended by
5 section 2, is further amended by adding at the
6 end the following new item:

“717. Probationary period for employees.”.

7 (B) CONFORMING.—Title 5, United States
8 Code, is amended—

9 (i) in section 3321(e)—

10 (I) by striking “Service or” and
11 inserting “Service,”; and

12 (II) by inserting at the end be-
13 fore the period the following: “, or
14 any individual covered by section 717
15 of title 38”; and

16 (ii) in section 3393(d), by adding at
17 the end after the period the following:
18 “The preceding sentence shall not apply to
19 any individual covered by section 717 of
20 title 38.”.

21 (b) APPLICATION.—Section 717 of title 38, United
22 States Code, as added by subsection (a)(1), shall apply
23 to any covered employee (as that term is defined in sub-
24 section (b) of such section 717, as so added) appointed
25 after the date of the enactment of this Act.

1 **SEC. 4. TREATMENT OF WHISTLEBLOWER COMPLAINTS IN**
2 **DEPARTMENT OF VETERANS AFFAIRS.**

3 (a) IN GENERAL.—Chapter 7 of title 38, United
4 States Code, is further amended by adding at the end the
5 following new subchapter:

6 “SUBCHAPTER II—WHISTLEBLOWER
7 COMPLAINTS

8 **“§ 731. Whistleblower complaint defined**

9 “In this subchapter, the term ‘whistleblower com-
10 plaint’ means a complaint by an employee of the Depart-
11 ment disclosing, or assisting another employee to disclose,
12 a potential violation of any law, rule, or regulation, or
13 gross mismanagement, gross waste of funds, abuse of au-
14 thority, or substantial and specific danger to public health
15 and safety.

16 **“§ 732. Treatment of whistleblower complaints**

17 “(a) FILING.—(1) In addition to any other method
18 established by law in which an employee may file a whistle-
19 blower complaint, an employee of the Department may file
20 a whistleblower complaint in accordance with subsection
21 (g) with a supervisor of the employee.

22 “(2) Except as provided by subsection (d)(1), in mak-
23 ing a whistleblower complaint under paragraph (1), an
24 employee shall file the initial complaint with the imme-
25 diate supervisor of the employee.

1 “(b) NOTIFICATION.—(1) Not later than four busi-
2 ness days after the date on which a supervisor receives
3 a whistleblower complaint by an employee under this sec-
4 tion, the supervisor shall notify, in writing, the employee
5 of whether the supervisor determines that there is a rea-
6 sonable likelihood that the complaint discloses a violation
7 of any law, rule, or regulation, or gross mismanagement,
8 gross waste of funds, abuse of authority, or substantial
9 and specific danger to public health and safety. The super-
10 visor shall retain written documentation regarding the
11 whistleblower complaint and shall submit to the next-level
12 supervisor and the central whistleblower office described
13 in subsection (h) a written report on the complaint.

14 “(2) On a monthly basis, the supervisor shall submit
15 to the appropriate director or other official who is superior
16 to the supervisor a written report that includes the num-
17 ber of whistleblower complaints received by the supervisor
18 under this section during the month covered by the report,
19 the disposition of such complaints, and any actions taken
20 because of such complaints pursuant to subsection (c). In
21 the case in which such a director or official carries out
22 this paragraph, the director or official shall submit such
23 monthly report to the supervisor of the director or official
24 and to the central whistleblower office described in sub-
25 section (h).

1 “(c) POSITIVE DETERMINATION.—If a supervisor
2 makes a positive determination under subsection (b)(1) re-
3 garding a whistleblower complaint of an employee, the su-
4 pervisor shall include in the notification to the employee
5 under such subsection the specific actions that the super-
6 visor will take to address the complaint.

7 “(d) FILING COMPLAINT WITH NEXT-LEVEL SUPER-
8 VISORS.—(1) If any circumstance described in paragraph
9 (3) is met, an employee may file a whistleblower complaint
10 in accordance with subsection (g) with the next-level su-
11 pervisor who shall treat such complaint in accordance with
12 this section.

13 “(2) An employee may file a whistleblower complaint
14 with the Secretary if the employee has filed the whistle-
15 blower complaint to each level of supervisors between the
16 employee and the Secretary in accordance with paragraph
17 (1).

18 “(3) A circumstance described in this paragraph are
19 any of the following circumstances:

20 “(A) A supervisor does not make a timely de-
21 termination under subsection (b)(1) regarding a
22 whistleblower complaint.

23 “(B) The employee who made a whistleblower
24 complaint determines that the supervisor did not

1 adequately address the complaint pursuant to sub-
2 section (c).

3 “(C) The immediate supervisor of the employee
4 is the basis of the whistleblower complaint.

5 “(e) TRANSFER OF EMPLOYEE WHO FILES WHIS-
6 TLEBLOWER COMPLAINT.—If a supervisor makes a posi-
7 tive determination under subsection (b)(1) regarding a
8 whistleblower complaint filed by an employee, the Sec-
9 retary shall—

10 “(1) inform the employee of the ability to vol-
11 unteer for a transfer in accordance with section
12 3352 of title 5; and

13 “(2) give preference to the employee for such a
14 transfer in accordance with such section.

15 “(f) PROHIBITION ON EXEMPTION.—The Secretary
16 may not exempt any employee of the Department from
17 being covered by this section.

18 “(g) WHISTLEBLOWER COMPLAINT FORM.—(1) A
19 whistleblower complaint filed by an employee under sub-
20 section (a) or (d) shall consist of the form described in
21 paragraph (2) and any supporting materials or docu-
22 mentation the employee determines necessary.

23 “(2) The form described in this paragraph is a form
24 developed by the Secretary, in consultation with the Spe-
25 cial Counsel, that includes the following:

1 “(A) An explanation of the purpose of the whis-
2 tleblower complaint form.

3 “(B) Instructions for filing a whistleblower
4 complaint as described in this section.

5 “(C) An explanation that filing a whistleblower
6 complaint under this section does not preclude the
7 employee from any other method established by law
8 in which an employee may file a whistleblower com-
9 plaint.

10 “(D) A statement directing the employee to in-
11 formation accessible on the Internet website of the
12 Department as described in section 735(c).

13 “(E) Fields for the employee to provide—

14 “(i) the date that the form is submitted;

15 “(ii) the name of the employee;

16 “(iii) the contact information of the em-
17 ployee;

18 “(iv) a summary of the whistleblower com-
19 plaint (including the option to append sup-
20 porting documents pursuant to paragraph (1));
21 and

22 “(v) proposed solutions to complaint.

23 “(F) Any other information or fields that the
24 Secretary determines appropriate.

1 “(3) The Secretary, in consultation with the Special
2 Counsel, shall develop the form described in paragraph (2)
3 by not later than 60 days after the date of the enactment
4 of this section.

5 “(h) CENTRAL WHISTLEBLOWER OFFICE.—(1) The
6 Secretary shall ensure that the central whistleblower of-
7 fice—

8 “(A) is not an element of the Office of the Gen-
9 eral Counsel;

10 “(B) is not headed by an official who reports to
11 the General Counsel;

12 “(C) does not provide, or receive from, the Gen-
13 eral Counsel any information regarding a whistle-
14 blower complaint except pursuant to an action re-
15 garding the complaint before an administrative body
16 or court; and

17 “(D) does not provide advice to the General
18 Counsel.

19 “(2) The central whistleblower office shall be respon-
20 sible for investigating all whistleblower complaints of the
21 Department, regardless of whether such complaints are
22 made by or against an employee who is not a member of
23 the Senior Executive Service.

1 “(3) The Secretary shall ensure that the central whis-
2 tleblower office maintains a toll-free hotline to any-
3 mously receive whistleblower complaints.

4 “(4) In this subsection, the term ‘central whistle-
5 blower office’ means the Office of Accountability Review
6 or a successor office that is established or designated by
7 the Secretary to investigate whistleblower complaints filed
8 under this section or any other method established by law.

9 **“§ 733. Adverse actions against supervisory employ-**
10 **ees who commit prohibited personnel ac-**
11 **tions relating to whistleblower com-**
12 **plaints**

13 “(a) IN GENERAL.—(1) In accordance with para-
14 graph (2), the Secretary shall carry out the following ad-
15 verse actions against supervisory employees whom the Sec-
16 retary, an administrative judge, the Merit Systems Protec-
17 tion Board, the Office of Special Counsel, an adjudicating
18 body provided under a union contract, a Federal judge,
19 or the Inspector General of the Department determines
20 committed a prohibited personnel action described in sub-
21 section (c):

22 “(A) With respect to the first offense, an ad-
23 verse action that is not less than a 14-day suspen-
24 sion and not more than removal.

1 “(B) With respect to the second offense, re-
2 moval.

3 “(2)(A) Except as provided by subparagraph (B),
4 and notwithstanding subsections (b) and (c) of section
5 7513 and section 7543 of title 5, the provisions of sub-
6 sections (d) and (e) of section 713 of this title shall apply
7 with respect to an adverse action carried out under para-
8 graph (1).

9 “(B) An employee who is notified of being the subject
10 of a proposed adverse action under paragraph (1) may not
11 be given more than five days following such notification
12 to provide evidence to dispute such proposed adverse ac-
13 tion. If the employee does not provide any such evidence,
14 or if the Secretary determines that such evidence is not
15 sufficient to reverse the determination to propose the ad-
16 verse action, the Secretary shall carry out the adverse ac-
17 tion following such five-day period.

18 “(b) LIMITATION ON OTHER ADVERSE ACTIONS.—
19 With respect to a prohibited personnel action described in
20 subsection (c), if the Secretary carries out an adverse ac-
21 tion against a supervisory employee, the Secretary may
22 carry out an additional adverse action under this section
23 based on the same prohibited personnel action if the total
24 severity of the adverse actions do not exceed the level spec-
25 ified in subsection (a).

1 “(c) PROHIBITED PERSONNEL ACTION DE-
2 SCRIBED.—A prohibited personnel action described in this
3 subsection is any of the following actions:

4 “(1) Taking or failing to take a personnel ac-
5 tion in violation of section 2302 of title 5 against an
6 employee relating to the employee—

7 “(A) filing a whistleblower complaint in ac-
8 cordance with section 732 of this title;

9 “(B) filing a whistleblower complaint with
10 the Inspector General of the Department, the
11 Special Counsel, or Congress;

12 “(C) providing information or participating
13 as a witness in an investigation of a whistle-
14 blower complaint in accordance with section
15 732 or with the Inspector General of the De-
16 partment, the Special Counsel, or Congress;

17 “(D) participating in an audit or investiga-
18 tion by the Comptroller General of the United
19 States;

20 “(E) refusing to perform an action that is
21 unlawful or prohibited by the Department; or

22 “(F) engaging in communications that are
23 related to the duties of the position or are oth-
24 erwise protected.

1 “(2) Preventing or restricting an employee from
2 making an action described in any of subparagraphs
3 (A) through (F) of paragraph (1).

4 “(3) Conducting a peer review or opening a re-
5 taliatory investigation relating to an activity of an
6 employee that is protected by section 2302 of title
7 5.

8 “(4) Requesting a contractor to carry out an
9 action that is prohibited by section 4705(b) or sec-
10 tion 4712(a)(1) of title 41, as the case may be.

11 **“§ 734. Evaluation criteria of supervisors and treat-
12 ment of bonuses**

13 “(a) EVALUATION CRITERIA.—(1) In evaluating the
14 performance of supervisors of the Department, the Sec-
15 retary shall include the criteria described in paragraph
16 (2).

17 “(2) The criteria described in this subsection are the
18 following:

19 “(A) Whether the supervisor treats whistle-
20 blower complaints in accordance with section 732.

21 “(B) Whether the appropriate deciding official,
22 performance review board, or performance review
23 committee determines that the supervisor was found
24 to have committed a prohibited personnel action de-
25 scribed in section 733(b) by an administrative judge,

1 the Merit Systems Protection Board, the Office of
2 Special Counsel, an adjudicating body provided
3 under a union contract, a Federal judge, or, in the
4 case of a settlement of a whistleblower complaint
5 (regardless of whether any fault was assigned under
6 such settlement), the Secretary.

7 “(b) BONUSES.—(1) The Secretary may not pay to
8 a supervisor described in subsection (a)(2)(B) an award
9 or bonus under this title or title 5, including under chapter
10 45 or 53 of such title, during the one-year period begin-
11 ning on the date on which the determination was made
12 under such subsection.

13 “(2) Notwithstanding any other provision of law, the
14 Secretary shall issue an order directing a supervisor de-
15 scribed in subsection (a)(2)(B) to repay the amount of any
16 award or bonus paid under this title or title 5, including
17 under chapter 45 or 53 of such title, if—

18 “(A) such award or bonus was paid for per-
19 formance during a period in which the supervisor
20 committed a prohibited personnel action as deter-
21 mined pursuant to such subsection (a)(2)(B);

22 “(B) the Secretary determines such repayment
23 appropriate pursuant to regulations prescribed by
24 the Secretary to carry out this section; and

1 “(C) the supervisor is afforded notice and an
2 opportunity for a hearing before making such repay-
3 ment.

4 **“§ 735. Training regarding whistleblower complaints**

5 “(a) TRAINING.—The Secretary, in coordination with
6 the Whistleblower Protection Ombudsman designated
7 under section 3(d)(1)(C) of the Inspector General Act of
8 1978 (5 U.S.C. App.), shall annually provide to each em-
9 ployee of the Department training regarding whistleblower
10 complaints, including—

11 “(1) an explanation of each method established
12 by law in which an employee may file a whistle-
13 blower complaint;

14 “(2) an explanation of prohibited personnel ac-
15 tions described by section 733(c) of this title;

16 “(3) with respect to supervisors, how to treat
17 whistleblower complaints in accordance with section
18 732 of this title;

19 “(4) the right of the employee to petition Con-
20 gress regarding a whistleblower complaint in accord-
21 ance with section 7211 of title 5;

22 “(5) an explanation that the employee may not
23 be prosecuted or reprimed against for disclosing in-
24 formation to Congress in instances where such dis-
25 closure is permitted by law, including under sections

1 5701, 5705, and 7732 of this title, under section
2 552a of title 5 (commonly referred to as the Privacy
3 Act), under chapter 93 of title 18, and pursuant to
4 regulations promulgated under section 264(c) of the
5 Health Insurance Portability and Accountability Act
6 of 1996 (Public Law 104–191);

7 “(6) an explanation of the language that is re-
8 quired to be included in all nondisclosure policies,
9 forms, and agreements pursuant to section
10 115(a)(1) of the Whistleblower Protection Enhance-
11 ment Act of 2012 (5 U.S.C. 2302 note); and

12 “(7) the right of contractors to be protected
13 from reprisal for the disclosure of certain informa-
14 tion under section 4705 or 4712 of title 41.

15 “(b) CERTIFICATION.—The Secretary shall annually
16 provide training on merit system protection in a manner
17 that the Special Counsel certifies as being satisfactory.

18 “(c) PUBLICATION.—(1) The Secretary shall publish
19 on the Internet website of the Department, and display
20 prominently at each facility of the Department, the rights
21 of an employee to file a whistleblower complaint, including
22 the information described in paragraphs (1) through (7)
23 of subsection (a).

1 “(2) The Secretary shall publish on the Internet
2 website of the Department, the whistleblower complaint
3 form described in section 732(g)(2).

4 **“§ 736. Reports to Congress**

5 “(a) ANNUAL REPORTS.—The Secretary shall annu-
6 ally submit to the Committees on Veterans’ Affairs of the
7 House of Representatives and the Senate, the Committee
8 on Oversight and Government Reform of the House of
9 Representatives, and the Committee on Homeland Secu-
10 rity and Governmental Affairs of the Senate a report that
11 includes—

12 “(1) with respect to whistleblower complaints
13 filed under section 732 during the year covered by
14 the report—

15 “(A) the number of such complaints filed;

16 “(B) the disposition of such complaints;

17 and

18 “(C) the ways in which the Secretary ad-
19 dressed such complaints in which a positive de-
20 termination was made by a supervisor under
21 subsection (b)(1) of such section;

22 “(2) the number of whistleblower complaints
23 filed during the year covered by the report that are
24 not included under paragraph (1), including—

1 “(A) the method in which such complaints
2 were filed;

3 “(B) the disposition of such complaints;
4 and

5 “(C) the ways in which the Secretary ad-
6 dressed such complaints; and

7 “(3) with respect to disclosures made by a con-
8 tractor under section 4705 or 4712 of title 41—

9 “(A) the number of complaints relating to
10 such disclosures that were investigated by the
11 Inspector General of the Department of Vet-
12 erans Affairs during the year covered by the re-
13 port;

14 “(B) the disposition of such complaints;
15 and

16 “(C) the ways in which the Secretary ad-
17 dressed such complaints.

18 “(b) NOTICE OF OFFICE OF SPECIAL COUNSEL DE-
19 TERMINATIONS.—Not later than 30 days after the date
20 on which the Secretary receives from the Special Counsel
21 information relating to a whistleblower complaint pursu-
22 ant to section 1213 of title 5, the Secretary shall notify
23 the Committees on Veterans’ Affairs of the House of Rep-
24 resentatives and the Senate, the Committee on Oversight
25 and Government Reform of the House of Representatives,

1 and the Committee on Homeland Security and Govern-
 2 mental Affairs of the Senate of such information, includ-
 3 ing the determination made by the Special Counsel.”.

4 (b) CONFORMING AND CLERICAL AMENDMENTS.—

5 (1) CONFORMING AMENDMENT.—Such chapter
 6 is further amended by inserting before section 701
 7 the following:

8 “SUBCHAPTER I—GENERAL EMPLOYEE
 9 MATTERS”.

10 (2) CLERICAL AMENDMENTS.—The table of sec-
 11 tions at the beginning of such chapter is amended—

12 (A) by inserting before the item relating to
 13 section 701 the following new item:

“SUBCHAPTER I—GENERAL EMPLOYEE MATTERS”;

14 and

15 (B) by adding at the end the following new
 16 items:

“SUBCHAPTER II—WHISTLEBLOWER COMPLAINTS

“731. Whistleblower complaint defined.

“732. Treatment of whistleblower complaints.

“733. Adverse actions against supervisory employees who commit prohibited
 personnel actions relating to whistleblower complaints.

“734. Evaluation criteria of supervisors and treatment of bonuses.

“735. Training regarding whistleblower complaints.

“736. Reports to Congress.”.

1 **SEC. 5. 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, is further amended by inserting after
8 section 717, as added by section 3, the following new
9 section:

10 **“§ 719. 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;

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

21 “(C) the criteria described in section 734(a)(2)
22 of this title.

23 “(b) CHANGE OF POSITION.—(1) At least once every
24 five years, the Secretary shall reassign each individual em-
25 ployed in a senior executive position to a position at a dif-

1 ferent location that does not include the supervision of the
2 same personnel or programs. The Secretary shall make
3 such reassignments on a rolling basis based on the date
4 on which an individual was originally assigned to a posi-
5 tion.

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

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

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

23 “(A) The initial performance appraisal.

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

1 “(C) The recommendations of the perform-
2 ance review board.

3 “(D) The final summary review.

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

7 “(F) The number of initial performance
8 ratings lowered as a result of the recommenda-
9 tions of the performance review board.

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

13 “(2) The review of the Inspector General of the
14 Department of the information described in subpara-
15 graphs (A) through (D) of paragraph (1).

16 “(3) A summary of the documentation provided
17 under paragraph (1).

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

22 (2) CLERICAL AMENDMENT.—The table of sec-
23 tions at the beginning of such chapter, as amended
24 by section 3, is further amended by inserting after

1 the item relating to section 717 the following new
2 item:

“719. Senior executives: performance appraisal.”.

3 (3) CONFORMING AMENDMENT.—Section
4 4312(b) of title 5, United States Code, is amend-
5 ed—

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

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

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

11 “(4) that, in the case of the Department of Vet-
12 erans Affairs, the performance appraisal system
13 meets the requirements of section 719 of title 38.”.

14 (b) REVIEW OF SES MANAGEMENT TRAINING.—

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

1 to the management training provided for senior ex-
2 cutives of other Federal departments and agencies
3 and to the management training provided to senior
4 executives in the private sector. The contract shall
5 provide that the nongovernmental entity must com-
6 plete and submit to the Secretary a report con-
7 taining the findings and conclusions of the review by
8 not later than 180 days after the date on which the
9 Secretary and the nongovernmental entity enter into
10 the contract.

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

18 **SEC. 6. REDUCTION OF BENEFITS FOR MEMBERS OF THE**
19 **SENIOR EXECUTIVE SERVICE WITHIN THE**
20 **DEPARTMENT OF VETERANS AFFAIRS CON-**
21 **VICTED OF CERTAIN CRIMES.**

22 (a) REDUCTION OF BENEFITS.—

23 (1) IN GENERAL.—Chapter 7 of title 38, United
24 States Code, is further amended by inserting after

1 section 719, as added by section 5, the following new
2 section:

3 **“§ 721. Senior executives: reduction of benefits of in-**
4 **dividuals convicted of certain crimes**

5 “(a) REDUCTION OF ANNUITY FOR REMOVED EM-
6 PLOYEE.—The Secretary shall order that the covered serv-
7 ice of an individual removed from a senior executive posi-
8 tion under section 713 of this title shall not be taken into
9 account for purposes of calculating an annuity with re-
10 spect to such individual under chapter 83 or chapter 84
11 of title 5, if—

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

15 “(2) before such order is made, the individual
16 is afforded notice and an opportunity for a hearing
17 conducted by another department or agency of the
18 Federal Government.

19 “(b) REDUCTION OF ANNUITY FOR RETIRED EM-
20 PLOYEE.—(1) The Secretary may order that the covered
21 service of an individual who is subject to a removal or
22 transfer action under section 713 of this title but who
23 leaves employment at the Department prior to the
24 issuance of a final decision with respect to such action
25 shall not be taken into account for purposes of calculating

1 an annuity with respect to such individual under chapter
2 83 or chapter 84 of title 5, if—

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

14 “(c) ADMINISTRATIVE REQUIREMENTS.—(1) Not
15 later than 30 days after the Secretary issues an order
16 under subsection (a) or (b), the Director of the Office of
17 Personnel Management shall recalculate the annuity of the
18 individual.

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

24 “(d) LUMP-SUM ANNUITY CREDIT.—Any individual
25 with respect to whom an annuity is reduced under sub-

1 section (a) or (b) shall be entitled to be paid so much of
2 such individual's lump-sum credit as is attributable to the
3 period of covered service.

4 “(e) DEFINITIONS.—In this section:

5 “(1) The term ‘covered service’ means, with re-
6 spect to an individual subject to a removal or trans-
7 fer action under section 713 of this title, the period
8 of service beginning on the date that the Secretary
9 determines under such section that such individual
10 engaged in activity that gave rise to such action and
11 ending on the date that such individual is removed
12 from the civil service or leaves employment at the
13 Department prior to the issuance of a final decision
14 with respect to such action, as the case may be.

15 “(2) The term ‘lump-sum credit’ has the mean-
16 ing given such term in section 8331(8) or section
17 8401(19) of title 5, as the case may be.

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

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

24 (2) CLERICAL AMENDMENT.—The table of sec-
25 tions at the beginning of chapter 7 of such title is

1 amended by inserting after the item relating to sec-
 2 tion 719, as added by section 5, the following new
 3 item:

“721. Senior executives: reduction of benefits of individuals convicted of certain crimes.”.

4 (b) APPLICATION.—Section 721 of title 38, United
 5 States Code, as added by subsection (a)(1), shall apply
 6 to any action of removal or transfer under section 713
 7 of title 38, United States Code, commencing on or after
 8 the date of the enactment of this Act.

9 **SEC. 7. LIMITATION ON ADMINISTRATIVE LEAVE FOR EM-**
 10 **PLOYEES DEPARTMENT OF VETERANS AF-**
 11 **FAIRS.**

12 (a) LIMITATION.—

13 (1) IN GENERAL.—Chapter 7 of title 38, United
 14 States Code, is further amended by inserting after
 15 section 721, as added by section 6, the following new
 16 section:

17 **“§ 723. Limitation on administrative leave**

18 “(a) IN GENERAL.—Except as provided in subsection
 19 (b), the Secretary may not place any covered individual
 20 on administrative leave, or any other type of paid non-
 21 duty status without charge to leave, for more than a total
 22 of 14 days during any 365-day period.

23 “(b) WAIVER.—The Secretary may waive the limita-
 24 tion under subsection (a) and extend the administrative

1 leave or other paid non-duty status without charge to leave
2 of a covered individual placed on such leave or status
3 under subsection (a) if the Secretary submits to the Com-
4 mittees on Veterans' Affairs of the Senate and House of
5 Representatives a detailed explanation of the reasons the
6 individual was placed on administrative leave or other paid
7 non-duty status without charge to leave and the reasons
8 for the extension of such leave or status. Such explanation
9 shall include the name of the covered individual, the loca-
10 tion where the individual is employed, and the individual's
11 job title.

12 “(c) COVERED INDIVIDUAL.—In this subsection, the
13 term ‘covered individual’ means an employee of the De-
14 partment—

15 “(1) who is subject to an investigation for pur-
16 poses of determining whether such individual should
17 be subject to any disciplinary action under this title
18 or title 5; or

19 “(2) against whom any disciplinary action is
20 proposed or initiated under this title or title 5.”.

21 (2) CLERICAL AMENDMENT.—The table of sec-
22 tions at the beginning of such chapter, as amended
23 by section 6, is further amended by inserting after
24 the item relating to section 721 the following new
25 item:

“723. Limitation on administrative leave.”.

1 (b) APPLICATION.—Section 723 of title 38, United
2 States Code, as added by subsection (a)(1), shall apply
3 with respect to any 365-day period beginning on or after
4 the date of enactment of this Act.

5 **SEC. 8. TREATMENT OF CONGRESSIONAL TESTIMONY BY**
6 **DEPARTMENT OF VETERANS AFFAIRS EM-**
7 **PLOYEES AS OFFICIAL DUTY.**

8 (a) IN GENERAL.—Chapter 7 of title 38, United
9 States Code, is further amended by inserting after section
10 723, as added by section 7, the following new section:

11 **“§ 725. Congressional testimony by employees: treat-**
12 **ment as official duty**

13 “(a) CONGRESSIONAL TESTIMONY.—An employee of
14 the Department is performing official duty during the pe-
15 riod with respect to which the employee is testifying in
16 an official capacity in front of either House of Congress,
17 a committee of either House of Congress, or a joint or
18 select committee of Congress.

19 “(b) TRAVEL EXPENSES.—The Secretary shall pro-
20 vide travel expenses, including per diem in lieu of subsist-
21 ence, in accordance with applicable provisions under sub-
22 chapter I of chapter 57 of title 5, to any employee of the
23 Department of Veterans Affairs performing official duty
24 described under subsection (a).”.

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

“725. Congressional testimony by employees: treatment as official duty.”.

5 **SEC. 9. LIMITATION ON AWARDS AND BONUSES PAID TO**
6 **EMPLOYEES OF DEPARTMENT OF VETERANS**
7 **AFFAIRS.**

8 Section 705 of the Veterans Access, Choice, and Ac-
9 countability Act of 2014 (Public Law 113–146; 38 U.S.C.
10 703 note) is amended to read as follows:

11 **“SEC. 705. LIMITATION ON AWARDS AND BONUSES PAID TO**
12 **EMPLOYEES OF DEPARTMENT OF VETERANS**
13 **AFFAIRS.**

14 “The Secretary of Veterans Affairs shall ensure that
15 the aggregate amount of awards and bonuses paid by the
16 Secretary in a fiscal year under chapter 45 or 53 of title
17 5, United States Code, or any other awards or bonuses
18 authorized under such title or title 38, United States
19 Code, does not exceed the following amounts:

20 “(1) With respect to each of fiscal years 2015
21 through 2018, \$300,000,000.

22 “(2) With respect to each of fiscal years 2019
23 through 2024, \$360,000,000.”.

1 **SEC. 10. COMPTROLLER GENERAL STUDY OF DEPARTMENT**
2 **TIME AND SPACE USED FOR LABOR ORGANI-**
3 **ZATION ACTIVITY.**

4 (a) **STUDY REQUIRED.**—Not later than 180 days
5 after the date of the enactment of this Act, the Comp-
6 troller General of the United States shall conduct a study
7 on the amount of time spent by Department of Veterans
8 Affairs employees carrying out organizing activities relat-
9 ing to labor organizations and the amount of space in De-
10 partment facilities used for such activities. The study shall
11 include a cost-benefit analysis of the use of such time and
12 space for such activities.

13 (b) **REPORT TO CONGRESS.**—Not later than 90 days
14 after the completion of the study required under sub-
15 section (a), the Comptroller General shall submit to the
16 Committees on Veterans' Affairs of the Senate and House
17 of Representatives a report on the results of the study.

18 **SEC. 11. ACCOUNTABILITY OF SECRETARY OF VETERANS**
19 **AFFAIRS TO INSPECTOR GENERAL OF THE**
20 **DEPARTMENT OF VETERANS AFFAIRS.**

21 (a) **IN GENERAL.**—Chapter 7 of title 38, United
22 States Code, as amended by section 8, is amended by add-
23 ing at the end the following new section:

1 **“§ 727. Accountability of Secretary to Inspector Gen-**
2 **eral**

3 “(a) SUBMISSION OF REPORTS.—(1) At the same
4 time as the Inspector General of the Department submits
5 to the Secretary a covered report, the Inspector General
6 shall submit to the Committees on Veterans’ Affairs of
7 the Senate and House of Representatives a copy of such
8 covered report.

9 “(2) The Inspector General shall include in each cov-
10 ered report submitted under paragraph (1)—

11 “(A) an explanation of any changes to the cov-
12 ered report recommended by the Secretary during
13 the period in which the Inspector General was pre-
14 paring the covered report; and

15 “(B) a list of the names of each responsible
16 manager.

17 “(3) The Inspector General may not make public the
18 names of responsible managers submitted under para-
19 graph (2)(B).

20 “(b) PERFORMANCE OF RESPONSIBLE MANAGERS.—
21 (1) The Secretary shall—

22 “(A) promptly notify each responsible manager
23 of a covered issue by not later than seven days after
24 the date on which the Inspector General submits a
25 covered report to the Secretary;

1 “(B) direct such manager to resolve such issue;
2 and

3 “(C) provide such manager with appropriate
4 counseling and a mitigation plan with respect to re-
5 solving such issue.

6 “(2) The Secretary shall ensure that any performance
7 review of a responsible manager includes an evaluation of
8 whether the manager took appropriate actions during the
9 period covered by the review to respond to a covered issue.

10 “(3) The Secretary may not pay to a responsible
11 manager any bonus or award under chapter 45 or 53 of
12 title 5 or any other bonus or award authorized under such
13 title or this title if a covered issue is unresolved.

14 “(c) ROLE OF INSPECTOR GENERAL.—Any authority
15 of the Inspector General provided under this section is in
16 addition to any responsibility or authority provided to the
17 Inspector General in the Inspector General Act of 1978
18 (5 U.S.C. App.).

19 “(d) DEFINITIONS.—In this section:

20 “(1) The term ‘covered issue’ means, with re-
21 spect to a responsible manager, an issue described in
22 a covered report for which the manager is or was re-
23 sponsible.

24 “(2) The term ‘covered report’ means a report
25 by the Inspector General of the Department of Vet-

1 erans Affairs that recommends actions to the Sec-
2 retary of Veterans Affairs (or other official or em-
3 ployee of the Department) to address an issue in the
4 Department with respect to public health or safety
5 relating to misconduct, or alleged misconduct, by an
6 employee of the Department.

7 “(3) The term ‘responsible manager’ means an
8 individual who—

9 “(A) is an employee of the Department;

10 “(B) is or was responsible for an issue in-
11 cluded in a covered report; and

12 “(C) in being so responsible, is or was em-
13 ployed in a management position, regardless of
14 whether the employee is in the competitive civil
15 service, Senior Executive Service, or other type
16 of civil service.”.

17 (b) CLERICAL AMENDMENT.—The table of sections
18 at the beginning of such chapter, as amended by section
19 8, is amended by inserting after the item relating to sec-
20 tion 725 the following new item:

“727. Accountability of Secretary to Inspector General.”.

Passed the House of Representatives July 29, 2015.

Attest:

Clerk.

114TH CONGRESS
1ST SESSION

H. R. 1994

AN ACT

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.