

115TH CONGRESS
1ST SESSION

H. R. 1259

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; TABLE OF CONTENTS.**

2 (a) **SHORT TITLE.**—This Act may be cited as the
3 “VA Accountability First Act of 2017”.

4 (b) **TABLE OF CONTENTS.**—The table of contents for
5 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.
- Sec. 10. Annual report on performance awards and bonuses awarded to certain high-level employees of the Department of Veterans Affairs.
- Sec. 11. Accountability of supervisors at Department of Veterans Affairs for addressing performance of employees.
- Sec. 12. Improvement of training for supervisors.

6 **SEC. 2. REFERENCES TO TITLE 38, UNITED STATES CODE.**

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

12 **SEC. 3. REMOVAL, DEMOTION, AND SUSPENSION OF EM-**
13 **EMPLOYEES BASED ON PERFORMANCE OR MIS-**
14 **CONDUCT.**

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

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

3 “(a) IN GENERAL.—The Secretary may remove, de-
4 mote, or suspend an individual who is an employee of the
5 Department if the Secretary determines the performance
6 or misconduct of the individual warrants such removal, de-
7 motion, or suspension. If the Secretary so removes, de-
8 motes, or suspends such an individual, the Secretary
9 may—

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

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

17 “(3) suspend the individual.

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

23 “(2) An individual so demoted may not be placed on
24 administrative leave during the period during which an ap-
25 peal (if any) under this section is ongoing, and may only
26 receive pay if the individual reports for duty or is approved

1 to use accrued unused annual, sick, family medical, mili-
2 tary, or court leave. If an individual so demoted does not
3 report for duty or receive approval to use accrued unused
4 leave, such individual shall not receive pay or other bene-
5 fits pursuant to subsection (e)(5).

6 “(c) NOTICE TO CONGRESS.—(1) Not later than 30
7 days after removing, demoting, or suspending an indi-
8 vidual employed in a senior executive position under sub-
9 section (a) or after removing, demoting, or suspending an
10 individual under chapter 74 of this title, the Secretary
11 shall submit to the Committees on Veterans’ Affairs of
12 the Senate and House of Representatives and to each
13 Member of Congress representing a district in the State
14 or territory where the facility where the individual was em-
15 ployed immediately before being removed, demoted, or sus-
16 pended is located notice in writing of such removal, demo-
17 tion, or suspension. Such notice shall include the job title
18 of the individual, the location where the individual was em-
19 ployed immediately before being removed, demoted, or sus-
20 pended, the proposed action, and the reason for such re-
21 moval, demotion, or suspension.

22 “(2) Not later than 30 days after the last day of a
23 fiscal year, the Secretary shall submit to the Committees
24 on Veterans’ Affairs of the Senate and House of Rep-
25 resentatives a report listing all removals, demotions, and

1 suspensions under this section or under chapter 74 of this
2 title during such fiscal year. Each such report shall in-
3 clude the job title of each individual removed, demoted,
4 or suspended, the location where the individual was em-
5 ployed immediately before being so removed, demoted or
6 suspended, the proposed action, and the reason for such
7 removal, demotion, or suspension.

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

13 “(d) PROCEDURE.—(1) Subsection (b) of section
14 7513 of title 5 shall apply with respect to a removal, demo-
15 tion, or suspension under this section, except that the pe-
16 riod for notice and response, which includes the advance
17 notice period required by paragraph (1) of such subsection
18 and the response period required by paragraph (2) of such
19 subsection, shall not exceed a total of 10 business days.
20 Subsection (c) of such section and section 7121 of such
21 title shall not apply with respect to such a removal, demo-
22 tion, or suspension.

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

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

6 “(B) in the case of a proposed removal, demo-
7 tion, or suspension to which an individual does not
8 respond, not later than 15 business days after the
9 Secretary provides notice to the individual under
10 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 7 days after the date of
22 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 such section

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

4 “(2) Notwithstanding section 7701(c)(1)(B) of title
5 5, the administrative judge shall uphold the decision of
6 the Secretary to remove, demote, or suspend an employee
7 under subsection (a) if the decision is supported by sub-
8 stantial evidence. If the decision of the Secretary is sup-
9 ported by substantial evidence, the administrative judge
10 shall not mitigate the penalty prescribed by the Secretary.

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

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

18 “(4) In any case in which the administrative judge
19 cannot issue a decision in accordance with the 45-day re-
20 quirement under paragraph (1), the Merit Systems Pro-
21 tection Board shall, not later than 14 business days after
22 the expiration of the 45-day period, submit to the Commit-
23 tees on Veterans’ Affairs of the Senate and House of Rep-
24 resentatives a report that explains the reasons why a deci-
25 sion was not issued in accordance with such requirement.

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

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

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

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

13 “(7) During the period beginning on the date on
14 which an individual appeals a removal from the civil serv-
15 ice under subsection (d) and ending on the date that the
16 United States Court of Appeals for the Federal Circuit
17 issues a final decision on such appeal, such individual may
18 not receive any pay, awards, bonuses, incentives, allow-
19 ances, differentials, student loan repayments, special pay-
20 ments, or benefits related to the employment of the indi-
21 vidual by the Department.

22 “(8) To the maximum extent practicable, the Sec-
23 retary shall provide to the Merit Systems Protection
24 Board such information and assistance as may be nec-

1 essary to ensure an appeal under this subsection is expe-
2 dited.

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

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

9 “(f) WHISTLEBLOWER PROTECTION.—(1) In the
10 case of an individual seeking corrective action (or on be-
11 half of whom corrective action is sought) from the Office
12 of Special Counsel based on an alleged prohibited per-
13 sonnel practice described in section 2302(b) of title 5 or
14 section 733(c) of this title, the Secretary may not remove,
15 demote, or suspend such individual under subsection (a)
16 without the approval of the Special Counsel under section
17 1214(f) of title 5.

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

24 “(g) TERMINATION OF INVESTIGATIONS BY OFFICE
25 OF SPECIAL COUNSEL.—Notwithstanding any other provi-

1 sion of law, the Special Counsel (established by section
2 1211 of title 5) may terminate an investigation of a pro-
3 hibited personnel practice alleged by an employee or
4 former employee of the Department after the Special
5 Counsel provides to the employee or former employee a
6 written statement of the reasons for the termination of
7 the investigation. Such statement may not be admissible
8 as evidence in any judicial or administrative proceeding
9 without the consent of such employee or former employee.

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

14 “(i) SEMI-ANNUAL REPORT ON TRANSFERRED EM-
15 PLOYEES.—The Secretary shall submit to the Committees
16 on Veterans’ Affairs of the Senate and House of Rep-
17 resentatives semi-annual reports on senior executive em-
18 ployees who are transferred within the Department. Each
19 such report shall include, for each such senior executive
20 employee transferred during the period covered by the re-
21 port, the reason for the transfer and any costs associated
22 with the transfer.

23 “(j) 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 appointed pursuant to
5 section 7306, 7401(1), or 7405 of this title;

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

8 “(C) a political appointee.

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

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

15 “(4) The term ‘misconduct’ includes neglect of
16 duty, malfeasance, or failure to accept a directed re-
17 assignment or to accompany a position in a transfer
18 of function.

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

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

24 “(B) a limited term appointee, limited
25 emergency appointee, or noncareer appointee in

1 the Senior Executive Service, as defined under
2 paragraphs (5), (6), and (7), respectively, of
3 section 3132(a) of title 5; or

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

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

9 (1) IN GENERAL.—Section 713 of title 38,
10 United States Code, is hereby repealed.

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

14 (c) CLERICAL AND CONFORMING AMENDMENTS.—

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

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

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

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

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

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

2 “(4) any removal or demotion under section
3 719 of title 38.”.

4 (d) TEMPORARY EXEMPTION FROM CERTAIN LIM-
5 TATION ON INITIATION FROM REMOVAL FROM SENIOR
6 EXECUTIVE SERVICE.—During the 120-day period begin-
7 ning on the date of enactment of this Act, an action to
8 remove an individual from the Senior Executive Service
9 at the Department of Veterans Affairs pursuant to this
10 section may be initiated, notwithstanding section 3592(b)
11 of title 5, United States Code, or any other provision of
12 law.

13 **SEC. 4. REDUCTION OF BENEFITS FOR DEPARTMENT OF**
14 **VETERANS AFFAIRS EMPLOYEES CONVICTED**
15 **OF CERTAIN CRIMES.**

16 (a) REDUCTION OF BENEFITS.—

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

20 **“§ 721. Reduction of benefits of employees convicted**
21 **of certain crimes**

22 “(a) REDUCTION OF ANNUITY FOR REMOVED EM-
23 PLOYEE.—(1) The Secretary shall order that the covered
24 service of an employee of the Department removed from
25 a position for performance or misconduct under section

1 719 or 7461 of this title or any other provision of law
2 shall not be taken into account for purposes of calculating
3 an annuity with respect to such individual under chapter
4 83 or chapter 84 of title 5, if—

5 “(A) the Secretary determines that the indi-
6 vidual is convicted of a felony that influenced the in-
7 dividual’s performance while employed in the posi-
8 tion;

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

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

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

15 “(C) the Secretary issues the order—

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

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

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

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

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

19 “(A) the Secretary determines that the indi-
20 vidual is convicted of a felony that influenced the in-
21 dividual’s performance while employed in the posi-
22 tion;

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

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

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

4 “(C) the Secretary issues the order—

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

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

14 “(2) Upon the issuance of an order by the Secretary
15 under paragraph (1), the individual shall have an oppor-
16 tunity to appeal the order to the Director of the Office
17 of Personnel Management before the date that is seven
18 business days after the date of such issuance.

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

23 “(c) ADMINISTRATIVE REQUIREMENTS.—Not later
24 than 37 business days after the Secretary issues a final
25 order under subsection (a) or (b), the Director of the Of-

1 fice of Personnel Management shall recalculate the annu-
2 ity of the individual.

3 “(d) LUMP-SUM ANNUITY CREDIT.—Any individual
4 with respect to whom an annuity is reduced under sub-
5 section (a) or (b) shall be entitled to be paid so much of
6 such individual’s lump-sum credit as is attributable to the
7 period of covered service.

8 “(e) SPOUSE OR CHILDREN EXCEPTION.—The Sec-
9 retary, in consultation with the Office of Personnel Man-
10 agement, shall prescribe regulations that may provide for
11 the payment to the spouse or children of any individual
12 referred to in subsection (a) or (b) of any amounts which
13 (but for this subsection) would otherwise have been non-
14 payable by reason of such subsections. Any such regula-
15 tions shall be consistent with the requirements of sections
16 8332(o)(5) and 8411(l)(5) of title 5, as the case may be.

17 “(f) DEFINITIONS.—In this section:

18 “(1) The term ‘covered service’ means, with re-
19 spect to an individual subject to a removal for per-
20 formance or misconduct under section 719 or 7461
21 of this title or any other provision of law, the period
22 of service beginning on the date that the Secretary
23 determines under such applicable provision that the
24 individual engaged in activity that gave rise to such
25 action and ending on the date that the individual is

1 removed from or leaves a position of employment at
2 the Department prior to the issuance of a final deci-
3 sion with respect to such action.

4 “(2) The term ‘lump-sum credit’ has the mean-
5 ing given such term in section 8331(8) or section
6 8401(19) of title 5, as the case may be.

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

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

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

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

20 **SEC. 5. AUTHORITY TO RECOUP BONUSES OR AWARDS**
21 **PAID TO EMPLOYEES OF DEPARTMENT OF**
22 **VETERANS AFFAIRS.**

23 (a) IN GENERAL.—Subchapter I of chapter 7 is fur-
24 ther amended by inserting after section 721, as added by
25 section 4, 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 ten 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), the individual shall
8 have an opportunity to appeal the order to another depart-
9 ment or agency of the Federal Government before the date
10 that is seven business days after the date of such issuance.

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

16 (b) CLERICAL AMENDMENT.—The table of sections
17 at the beginning of such chapter, as amended by section
18 4, is amended by inserting after the item relating to sec-
19 tion 721, as added by section 4(a)(2), the following new
20 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 is fur-
13 ther amended by adding at the end the following new sec-
14 tion:

15 **“§ 725. Recoupment of relocation expenses paid to or**
16 **on 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 forded—

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), the individual shall
22 have an opportunity to appeal the order to another depart-
23 ment or agency of the Federal Government before the date
24 that is seven business days 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 “7 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”.

13 **SEC. 10. ANNUAL REPORT ON PERFORMANCE AWARDS AND**
14 **BONUSES AWARDED TO CERTAIN HIGH-**
15 **LEVEL EMPLOYEES OF THE DEPARTMENT OF**
16 **VETERANS AFFAIRS.**

17 (a) IN GENERAL.—Chapter 7 of title 38, United
18 States Code, is further amended by inserting after section
19 723, as added by section 5, the following new section:

20 **“§ 724. Annual report on performance awards and bo-**
21 **nuses awarded to certain high-level em-**
22 **ployees**

23 “(a) IN GENERAL.—Not later than 30 days after the
24 end of each fiscal year, the Secretary shall submit to the
25 appropriate committees of Congress a report that con-

1 tains, for the most recent fiscal year ending before the
2 submittal of the report, a description of the performance
3 awards and bonuses awarded to Regional Office Directors
4 of the Department, Directors of Medical Centers of the
5 Department, Directors of Veterans Integrated Service
6 Networks, and any other individual employed in a senior
7 executive position.

8 “(b) ELEMENTS.—Each report submitted under sub-
9 section (a) shall include the following with respect to each
10 performance award or bonus awarded to an individual de-
11 scribed in such subsection:

12 “(1) The amount of each award or bonus.

13 “(2) The job title of the individual awarded the
14 award or bonus.

15 “(3) The location where the individual awarded
16 the award or bonus works.

17 “(c) DEFINITIONS.—In this section:

18 “(1) The term ‘appropriate committees of Con-
19 gress’ means—

20 “(A) the Committee on Veterans’ Affairs
21 and the Committee on Appropriations of the
22 Senate; and

23 “(B) the Committee on Veterans’ Affairs
24 and the Committee on Appropriations of the
25 House of Representatives.

1 “(2) The term ‘individual’ means—

2 “(A) a career appointee (as that term is
3 defined in section 3132(a)(4) of title 5); or

4 “(B) any individual who occupies an ad-
5 ministrative or executive position and who was
6 appointed under section 7306(a) or section
7 7401(1) of this title.

8 “(3) The term ‘senior executive position’
9 means—

10 “(A) with respect to a career appointee (as
11 that term is defined in section 3132(a)(4) of
12 title 5), a Senior Executive Service position (as
13 such term is defined in section 3132(a)(2) of
14 title 5); and

15 “(B) with respect to an individual ap-
16 pointed under section 7306(a) or section
17 7401(1) of this title, an administrative or exec-
18 utive position.”.

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

“724. Annual report on performance awards and bonuses awarded to certain
high-level employees.”.

1 **SEC. 11. ACCOUNTABILITY OF SUPERVISORS AT DEPART-**
2 **MENT OF VETERANS AFFAIRS FOR ADDRESS-**
3 **ING PERFORMANCE OF EMPLOYEES.**

4 (a) IN GENERAL.—The Secretary of Veterans Affairs
5 shall ensure that, as a part of the annual performance
6 plan of a supervisor in the Department, the supervisor is
7 evaluated on the following:

8 (1) Taking action to address poor performance
9 and misconduct among the employees that report to
10 the supervisor.

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

13 (3) Promoting a positive culture of service
14 that—

15 (A) reflects the mission of the Department
16 and the values of integrity, commitment, advo-
17 cacy, respect, and excellence; and

18 (B) emphasizes the greatest degree of per-
19 formance and conduct.

20 (b) SUPERVISOR DEFINED.—In this section, the term
21 “supervisor” has the meaning given such term in section
22 7103(a) of title 5, United States Code.

23 **SEC. 12. IMPROVEMENT OF TRAINING FOR SUPERVISORS.**

24 (a) IN GENERAL.—The Secretary of Veterans Affairs
25 shall provide to each employee of the Department of Vet-

1 erans Affairs who is employed as a supervisor periodic
2 training on the following:

3 (1) The rights of whistleblowers and how to ad-
4 dress a report by an employee of a hostile work envi-
5 ronment, reprisal, or harassment.

6 (2) How to effectively motivate, manage, and
7 reward the employees who report to the supervisor.

8 (3) How to effectively manage employees who
9 are performing at an unacceptable level and access
10 assistance from the human resources office of the
11 Department and the Office of the General Counsel
12 of the Department with respect to those employees.

13 (b) DEFINITIONS.—In this section:

14 (1) SUPERVISOR.—The term “supervisor” has
15 the meaning given such term in section 7103(a) of
16 title 5, United States Code.

17 (2) WHISTLEBLOWER.—The term “whistle-
18 blower” has the meaning given such term in section
19 323(g) of title 38, United States Code, as added by
20 section 101.

Passed the House of Representatives March 16,
2017.

Attest:

Clerk.

115TH CONGRESS
1ST SESSION

H. R. 1259

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.