

**AMENDMENT IN THE NATURE OF A SUBSTITUTE  
TO H.R. 1994  
OFFERED BY MR. MILLER OF FLORIDA**

Strike all after the enacting clause and insert the following:

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

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

2                   “(A) a reduction in grade for which the in-  
3           dividual is qualified and that the Secretary de-  
4           termines is appropriate; or

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

7           “(b) PAY OF CERTAIN DEMOTED INDIVIDUALS.—(1)  
8   Notwithstanding any other provision of law, any individual  
9   subject to a demotion under subsection (a)(2)(A) shall, be-  
10   ginning on the date of such demotion, receive the annual  
11   rate of pay applicable to such grade.

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

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

1           “(d) PROCEDURE.—(1) The procedures under section  
2 7513(b) of title 5 and chapter 43 of such title shall not  
3 apply to a removal or demotion under this section.

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

8           “(B) An appeal under subparagraph (A) of a removal  
9 or demotion may only be made if such appeal is made not  
10 later than seven days after the date of such removal or  
11 demotion.

12           “(e) EXPEDITED REVIEW BY ADMINISTRATIVE  
13 JUDGE.—(1) Upon receipt of an appeal under subsection  
14 (d)(2)(A), the Merit Systems Protection Board shall refer  
15 such appeal to an administrative judge pursuant to section  
16 7701(b)(1) of title 5. The administrative judge shall expe-  
17 dite any such appeal under such section and, in any such  
18 case, shall issue a decision not later than 45 days after  
19 the date of the appeal.

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

24           “(3) In any case in which the administrative judge  
25 cannot issue a decision in accordance with the 45-day re-

1 quirement under paragraph (1), the removal or demotion  
2 is final. In such a case, the Merit Systems Protection  
3 Board shall, within 14 days after the date that such re-  
4 moval or demotion is final, submit to Congress and the  
5 Committees on Veterans' Affairs of the Senate and House  
6 of Representatives a report that explains the reasons why  
7 a decision was not issued in accordance with such require-  
8 ment.

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

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

19       “(6) To the maximum extent practicable, the Sec-  
20 retary shall provide to the Merit Systems Protection  
21 Board, and to any administrative judge to whom an appeal  
22 under this section is referred, such information and assist-  
23 ance as may be necessary to ensure an appeal under this  
24 subsection is expedited.

1           “(f) WHISTLEBLOWER PROTECTION.—(1) In the  
2 case of an individual seeking corrective action (or on be-  
3 half of whom corrective action is sought) from the Office  
4 of Special Counsel based on an alleged prohibited per-  
5 sonnel practice described in section 2302(b) of title 5, the  
6 Secretary may not remove or demote such individual  
7 under subsection (a) without the approval of the Special  
8 Counsel under section 1214(f) of title 5; or

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

16           “(g) TERMINATION OF INVESTIGATIONS BY OFFICE  
17 OF SPECIAL COUNSEL.—Notwithstanding any other provi-  
18 sion of law, the Special Counsel (established by section  
19 1211 of title 5) may terminate an investigation of a pro-  
20 hibited personnel practice alleged by an employee or  
21 former employee of the Department after the Special  
22 Counsel provides to the employee or former employee a  
23 written statement of the reasons for the termination of  
24 the investigation. Such statement may not be admissible

1 as evidence in any judicial or administrative proceeding  
2 without the consent of such employee or former employee.

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

7 “(i) DEFINITIONS.—In this section:

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

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

13 “(B) a political appointee.

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

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

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

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

1           “(B) a limited term appointee, limited  
2           emergency appointee, or noncareer appointee in  
3           the Senior Executive Service, as defined under  
4           paragraphs (5), (6), and (7), respectively, of  
5           section 3132(a) of title 5; or

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

10       (b) CLERICAL AND CONFORMING AMENDMENTS.—

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

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

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

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

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

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

21           “(4) any removal or demotion under section  
22           715 of title 38.”.

1 **SEC. 3. REQUIRED PROBATIONARY PERIOD FOR NEW EM-**  
2 **PLLOYEES OF DEPARTMENT OF VETERANS AF-**  
3 **FAIRS.**

4 (a) PROBATIONARY PERIOD.—

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

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

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

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

18 “(1) means any individual—

19 “(A) appointed to a permanent position  
20 within the competitive service at the Depart-  
21 ment; or

22 “(B) appointed as a career appointee (as  
23 that term is defined in section 3132(a)(4) of  
24 title 5) within the Senior Executive Service at  
25 the Department; and



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

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

9           (2) CLERICAL AND CONFORMING AMEND-  
10          MENTS.—

11           (A) CLERICAL.—The table of sections at  
12           the beginning of such chapter, as amended by  
13           section 2, is further amended by adding at the  
14           end the following new item:

“717. Probationary period for employees.”.

15           (B) CONFORMING.—Title 5, United States  
16           Code, is amended—

17           (i) in section 3321(e), by—

18                   (I) striking “Service or” and in-  
19                   serting “Service,”; and

20                   (II) inserting at the end before  
21                   the period the following: “, or any in-  
22                   dividual covered by section 717 of title  
23                   38”; and

24           (ii) in section 3393(d), by adding at  
25           the end after the period the following:

1           “The preceding sentence shall not apply to  
2           any individual covered by section 717 of  
3           title 38.”.

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

9   **SEC. 4. TREATMENT OF WHISTLEBLOWER COMPLAINTS IN**  
10                           **DEPARTMENT OF VETERANS AFFAIRS.**

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

14           “SUBCHAPTER II—WHISTLEBLOWER  
15                           COMPLAINTS

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

17           “In this subchapter, the term ‘whistleblower com-  
18 plaint’ means a complaint by an employee of the Depart-  
19 ment disclosing, or assisting another employee to disclose,  
20 a potential violation of any law, rule, or regulation, or  
21 gross mismanagement, gross waste of funds, abuse of au-  
22 thority, or substantial and specific danger to public health  
23 and safety.

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

2 “(a) FILING.—(1) In addition to any other method  
3 established by law in which an employee may file a whistle-  
4 blower complaint, an employee of the Department may file  
5 a whistleblower complaint in accordance with subsection  
6 (g) with a supervisor of the employee.

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

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

24 “(2) On a monthly basis, the supervisor shall submit  
25 to the appropriate director or other official who is superior  
26 to the supervisor a written report that includes the num-

1 ber of whistleblower complaints received by the supervisor  
2 under this section during the month covered by the report,  
3 the disposition of such complaints, and any actions taken  
4 because of such complaints pursuant to subsection (c). In  
5 the case in which such a director or official carries out  
6 this paragraph, the director or official shall submit such  
7 monthly report to the supervisor of the director or official  
8 and to the central whistleblower office described in sub-  
9 section (h).

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

16 “(d) FILING COMPLAINT WITH NEXT-LEVEL SUPER-  
17 VISORS.—(1) If any circumstance described in paragraph  
18 (3) is met, an employee may file a whistleblower complaint  
19 in accordance with subsection (g) with the next-level su-  
20 pervisor who shall treat such complaint in accordance with  
21 this section.

22 “(2) An employee may file a whistleblower complaint  
23 with the Secretary if the employee has filed the whistle-  
24 blower complaint to each level of supervisors between the

1 employee and the Secretary in accordance with paragraph  
2 (1).

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

5 “(A) A supervisor does not make a timely de-  
6 termination under subsection (b)(1) regarding a  
7 whistleblower complaint.

8 “(B) The employee who made a whistleblower  
9 complaint determines that the supervisor did not  
10 adequately address the complaint pursuant to sub-  
11 section (c).

12 “(C) The immediate supervisor of the employee  
13 is the basis of the whistleblower complaint.

14 “(e) TRANSFER OF EMPLOYEE WHO FILES WHIS-  
15 TLEBLOWER COMPLAINT.—If a supervisor makes a posi-  
16 tive determination under subsection (b)(1) regarding a  
17 whistleblower complaint filed by an employee, the Sec-  
18 retary shall—

19 “(1) inform the employee of the ability to vol-  
20 unteer for a transfer in accordance with section  
21 3352 of title 5; and

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

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

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

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

12           “(A) An explanation of the purpose of the whis-  
13 tleblower complaint form.

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

16           “(C) An explanation that filing a whistleblower  
17 complaint under this section does not preclude the  
18 employee from any other method established by law  
19 in which an employee may file a whistleblower com-  
20 plaint.

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

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

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

1                   “(ii) the name of the employee;

2                   “(iii) the contact information of the em-  
3                   ployee;

4                   “(iv) a summary of the whistleblower com-  
5                   plaint (including the option to append sup-  
6                   porting documents pursuant to paragraph (1));  
7                   and

8                   “(v) proposed solutions to complaint.

9                   “(F) Any other information or fields that the  
10                  Secretary determines appropriate.

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

15                  “(h) CENTRAL WHISTLEBLOWER OFFICE.—(1) The  
16                  Secretary shall ensure that the central whistleblower of-  
17                  fice—

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

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

22                   “(C) does not provide, or receive from, the Gen-  
23                   eral Counsel any information regarding a whistle-  
24                   blower complaint except pursuant to an action re-

1       garding the complaint before an administrative body  
2       or court; and

3               “(D) does not provide advice to the General  
4       Counsel.

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

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

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

18       **“§ 733. Adverse actions against supervisory employ-**  
19                       **ees who commit prohibited personnel ac-**  
20                       **tions relating to whistleblower com-**  
21                       **plaints**

22       “(a) IN GENERAL.—(1) In accordance with para-  
23       graph (2), the Secretary shall carry out the following ad-  
24       verse actions against supervisory employees whom the Sec-  
25       retary, an administrative judge, the Merit Systems Protec-



1 tion Board, the Office of Special Counsel, an adjudicating  
2 body provided under a union contract, a Federal judge,  
3 or the Inspector General of the Department determines  
4 committed a prohibited personnel action described in sub-  
5 section (c):

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

9           “(B) With respect to the second offense, re-  
10          moval.

11          “(2)(A) Except as provided by subparagraph (B),  
12          and notwithstanding subsections (b) and (c) of section  
13          7513 and section 7543 of title 5, the provisions of sub-  
14          sections (d) and (e) of section 713 of this title shall apply  
15          with respect to an adverse action carried out under para-  
16          graph (1).

17          “(B) An employee who is notified of being the subject  
18          of a proposed adverse action under paragraph (1) may not  
19          be given more than five days following such notification  
20          to provide evidence to dispute such proposed adverse ac-  
21          tion. If the employee does not provide any such evidence,  
22          or if the Secretary determines that such evidence is not  
23          sufficient to reverse the determination to propose the ad-  
24          verse action, the Secretary shall carry out the adverse ac-  
25          tion following such five-day period.

1           “(b) LIMITATION ON OTHER ADVERSE ACTIONS.—  
2 With respect to a prohibited personnel action described in  
3 subsection (c), if the Secretary carries out an adverse ac-  
4 tion against a supervisory employee, the Secretary may  
5 carry out an additional adverse action under this section  
6 based on the same prohibited personnel action if the total  
7 severity of the adverse actions do not exceed the level spec-  
8 ified in subsection (a).

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

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

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

17                           “(B) filing a whistleblower complaint with  
18 the Inspector General of the Department, the  
19 Special Counsel, or Congress;

20                           “(C) providing information or participating  
21 as a witness in an investigation of a whistle-  
22 blower complaint in accordance with section  
23 732 or with the Inspector General of the De-  
24 partment, the Special Counsel, or Congress;



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

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

5           “(B) Whether the appropriate deciding official,  
6 performance review board, or performance review  
7 committee determines that the supervisor was found  
8 to have committed a prohibited personnel action de-  
9 scribed in section 733(b) by an administrative judge,  
10 the Merit Systems Protection Board, the Office of  
11 Special Counsel, an adjudicating body provided  
12 under a union contract, a Federal judge, or, in the  
13 case of a settlement of a whistleblower complaint  
14 (regardless of whether any fault was assigned under  
15 such settlement), the Secretary.

16       “(b) BONUSES.—(1) The Secretary may not pay to  
17 a supervisor described in subsection (a)(2)(B) an award  
18 or bonus under this title or title 5, including under chapter  
19 45 or 53 of such title, during the one-year period begin-  
20 ning on the date on which the determination was made  
21 under such subsection.

22       “(2) Notwithstanding any other provision of law, the  
23 Secretary shall issue an order directing a supervisor de-  
24 scribed in subsection (a)(2)(B) to repay the amount of any

1 award or bonus paid under this title or title 5, including  
2 under chapter 45 or 53 of such title, if—

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

7 “(B) the Secretary determines such repayment  
8 appropriate pursuant to regulations prescribed by  
9 the Secretary to carry out this section; and

10 “(C) the supervisor is afforded notice and an  
11 opportunity for a hearing before making such repay-  
12 ment.

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

14 “(a) TRAINING.—The Secretary, in coordination with  
15 the Whistleblower Protection Ombudsman designated  
16 under section 3(d)(1)(C) of the Inspector General Act of  
17 1978 (5 U.S.C. App.), shall annually provide to each em-  
18 ployee of the Department training regarding whistleblower  
19 complaints, including—

20 “(1) an explanation of each method established  
21 by law in which an employee may file a whistle-  
22 blower complaint;

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

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

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

7           “(5) an explanation that the employee may not  
8 be prosecuted or reprimed against for disclosing in-  
9 formation to Congress in instances where such dis-  
10 closure is permitted by law, including under sections  
11 5701, 5705, and 7732 of this title, under section  
12 552a of title 5 (commonly referred to as the Privacy  
13 Act), under chapter 93 of title 18, and pursuant to  
14 regulations promulgated under section 264(c) of the  
15 Health Insurance Portability and Accountability Act  
16 of 1996 (Public Law 104–191);

17           “(6) an explanation of the language that is re-  
18 quired to be included in all nondisclosure policies,  
19 forms, and agreements pursuant to section  
20 115(a)(1) of the Whistleblower Protection Enhance-  
21 ment Act of 2012 (5 U.S.C. 2302 note); and

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

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

4           “(c) PUBLICATION.—(1) The Secretary shall publish  
5 on the Internet website of the Department, and display  
6 prominently at each facility of the Department, the rights  
7 of an employee to file a whistleblower complaint, including  
8 the information described in paragraphs (1) through (7)  
9 of subsection (a).

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

13   **“§ 736. Reports to Congress**

14          “(a) ANNUAL REPORTS.—The Secretary shall annu-  
15 ally submit to the Committees on Veterans’ Affairs of the  
16 House of Representatives and the Senate, the Committee  
17 on Oversight and Government Reform of the House of  
18 Representatives, and the Committee on Homeland Secu-  
19 rity and Governmental Affairs of the Senate a report that  
20 includes—

21                 “(1) with respect to whistleblower complaints  
22                 filed under section 732 during the year covered by  
23                 the report—

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

1           “(B) the disposition of such complaints;  
2           and

3           “(C) the ways in which the Secretary ad-  
4           dressed such complaints in which a positive de-  
5           termination was made by a supervisor under  
6           subsection (b)(1) of such section;

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

10           “(A) the method in which such complaints  
11           were filed;

12           “(B) the disposition of such complaints;  
13           and

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

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

18           “(A) the number of complaints relating to  
19           such disclosures that were investigated by the  
20           Inspector General of the Department of Vet-  
21           erans Affairs during the year covered by the re-  
22           port;

23           “(B) the disposition of such complaints;  
24           and





1 (B) by adding at the end the following new  
2 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.”.

3 **SEC. 5. REFORM OF PERFORMANCE APPRAISAL SYSTEM**  
4 **FOR SENIOR EXECUTIVE SERVICE EMPLOY-**  
5 **EES OF THE DEPARTMENT OF VETERANS AF-**  
6 **FAIRS.**

7 (a) PERFORMANCE APPRAISAL SYSTEM.—

8 (1) IN GENERAL.—Chapter 7 of title 38, United  
9 States Code, is further amended by inserting after  
10 section 717, as added by section 3, the following new  
11 section:

12 **“§ 719. Senior executives: performance appraisal**

13 “(a) PERFORMANCE APPRAISAL SYSTEM.—(1) The  
14 performance appraisal system for individuals employed in  
15 senior executive positions in the Department required by  
16 section 4312 of title 5 shall provide, in addition to the  
17 requirements of such section, for five annual summary rat-  
18 ings of levels of performance as follows:

19 “(A) One outstanding level.

20 “(B) One exceeds fully successful level.

21 “(C) One fully successful level.

1           “(D) One minimally satisfactory level.

2           “(E) One unsatisfactory level.

3           “(2) The following limitations apply to the rating of  
4 the performance of such individuals:

5           “(A) For any year, not more than 10 percent  
6 of such individuals who receive a performance rating  
7 during that year may receive the outstanding level  
8 under paragraph (1)(A).

9           “(B) For any year, not more than 20 percent  
10 of such individuals who receive a performance rating  
11 during that year may receive the exceeds fully suc-  
12 cessful level under paragraph (1)(B).

13          “(3) In evaluating the performance of an individual  
14 under the performance appraisal system, the Secretary  
15 shall take into consideration—

16          “(A) any complaint or report (including any  
17 pending or published report) submitted by the In-  
18 spector General of the Department, the Comptroller  
19 General of the United States, the Equal Employ-  
20 ment Opportunity Commission, or any other appro-  
21 priate person or entity, related to any facility or pro-  
22 gram managed by the individual, as determined by  
23 the Secretary;

1           “(B) efforts made by the individual to maintain  
2           high levels of satisfaction and commitment among  
3           the employees supervised by the individual; and

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

6           “(b) CHANGE OF POSITION.—(1) At least once every  
7           five years, the Secretary shall reassign each individual em-  
8           ployed in a senior executive position to a position at a dif-  
9           ferent location that does not include the supervision of the  
10          same personnel or programs. The Secretary shall make  
11          such reassignments on a rolling basis based on the date  
12          on which an individual was originally assigned to a posi-  
13          tion.

14          “(2) The Secretary may waive the requirement under  
15          paragraph (1) for any such individual, if the Secretary  
16          submits to the Committees on Veterans’ Affairs of the  
17          Senate and House of Representatives notice of the waiver  
18          and an explanation of the reasons for the waiver.

19          “(c) REPORT.—Not later than March 1 of each year,  
20          the Secretary shall submit to the Committees on Veterans’  
21          Affairs and Homeland Security and Governmental Affairs  
22          of the Senate and the Committees on Veterans’ Affairs  
23          and Oversight and Government Reform of the House of  
24          Representatives a report on the performance appraisal  
25          system of the Department under subsection (a). Each such

1 report shall include, for the year preceding the year during  
2 which the report is submitted, each of the following:

3 “(1) All documentation concerning each of the  
4 following for each individual employed in a senior  
5 executive position in the Department:

6 “(A) The initial performance appraisal.

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

8 “(C) The recommendations of the perform-  
9 ance review board.

10 “(D) The final summary review.

11 “(E) The number of initial performance  
12 ratings raised as a result of the recommenda-  
13 tions of the performance review board.

14 “(F) The number of initial performance  
15 ratings lowered as a result of the recommenda-  
16 tions of the performance review board.

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

20 “(2) The review of the Inspector General of the  
21 Department of the information described in subpara-  
22 graphs (A) through (D) of paragraph (1).

23 “(3) A summary of the documentation provided  
24 under paragraph (1).

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

5           (2) CLERICAL AMENDMENT.—The table of sec-  
6 tions at the beginning of such chapter is further  
7 amended by inserting after the item relating to sec-  
8 tion 715 the following new item:

“719. Senior executives: performance appraisal.”.

9           (3) CONFORMING AMENDMENT.—Section  
10 4312(b) of title 5, United States Code, is amend-  
11 ed—

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

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

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

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

20 (b) REVIEW OF SES MANAGEMENT TRAINING.—

21           (1) REVIEW.—Not later than 180 days after  
22 the date of the enactment of this Act, the Secretary  
23 of Veterans Affairs shall enter into a contract with  
24 a nongovernmental entity to review the management  
25 training program for individuals employed in senior

1 executive positions (as such term is defined in sec-  
2 tion 713(g)(3) of title 38, United States Code) of  
3 the Department of Veterans Affairs that is being  
4 provided as of the date of the enactment of this Act.  
5 Such review shall include a comparison of the train-  
6 ing provided by the Department of Veterans Affairs  
7 to the management training provided for senior ex-  
8 ecutives of other Federal departments and agencies  
9 and to the management training provided to senior  
10 executives in the private sector. The contract shall  
11 provide that the nongovernmental entity must com-  
12 plete and submit to the Secretary a report con-  
13 taining the findings and conclusions of the review by  
14 not later than 180 days after the date on which the  
15 Secretary and the nongovernmental entity enter into  
16 the contract.

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

1 **SEC. 6. REDUCTION OF BENEFITS FOR MEMBERS OF THE**  
2 **SENIOR EXECUTIVE SERVICE WITHIN THE**  
3 **DEPARTMENT OF VETERANS AFFAIRS CON-**  
4 **VICTED OF CERTAIN CRIMES.**

5 (a) REDUCTION OF BENEFITS.—

6 (1) IN GENERAL.—Chapter 7 of title 38, United  
7 States Code, is further amended by inserting after  
8 section 719, as added by section 5, the following new  
9 section:

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

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

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

22 “(2) before such order is made, the individual  
23 is afforded notice and an opportunity for a hearing  
24 conducted by another department or agency of the  
25 Federal Government.



1           “(b) REDUCTION OF ANNUITY FOR RETIRED EM-  
2 PLOYEE.—(1) The Secretary may order that the covered  
3 service of an individual who is subject to a removal or  
4 transfer action under section 713 of this title but who  
5 leaves employment at the Department prior to the  
6 issuance of a final decision with respect to such action  
7 shall not be taken into account for purposes of calculating  
8 an annuity with respect to such individual under chapter  
9 83 or chapter 84 of title 5, if—

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

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

17           “(2) The Secretary shall make such an order not  
18 later than seven days after the date of the conclusion of  
19 a hearing referred to in paragraph (1)(B) that determines  
20 that such order is lawful.

21           “(c) ADMINISTRATIVE REQUIREMENTS.—(1) Not  
22 later than 30 days after the Secretary issues an order  
23 under subsection (a) or (b), the Director of the Office of  
24 Personnel Management shall recalculate the annuity of the  
25 individual.

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

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

11          “(e) DEFINITIONS.—In this section:

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

22           “(2) The term ‘lump-sum credit’ has the mean-  
23 ing given such term in section 8331(8) or section  
24 8401(19) of title 5, as the case may be.



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

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

7       “(b) WAIVER.—The Secretary may waive the limita-  
8 tion under subsection (a) and extend the administrative  
9 leave or other paid non-duty status without charge to leave  
10 of a covered individual placed on such leave or status  
11 under subsection (a) if the Secretary submits to the Com-  
12 mittees on Veterans’ Affairs of the Senate and House of  
13 Representatives a detailed explanation of the reasons the  
14 individual was placed on administrative leave or other paid  
15 non-duty status without charge to leave and the reasons  
16 for the extension of such leave or status. Such explanation  
17 shall include the name of the covered individual, the loca-  
18 tion where the individual is employed, and the individual’s  
19 job title.

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

23               “(1) who is subject to an investigation for pur-  
24 poses of determining whether such individual should  
25 be subject to any disciplinary action under this title  
26 or title 5; or

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

3           (2) CLERICAL AMENDMENT.—The table of sec-  
4           tions at the beginning of such chapter is amended  
5           by inserting after the item relating to section 721  
6           the following new item:

“723. Limitation on administrative leave.”.

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

11 **SEC. 8. LIMITATION ON AWARDS AND BONUSES PAID TO**  
12                           **EMPLOYEES OF DEPARTMENT OF VETERANS**  
13                           **AFFAIRS.**

14          Section 705 of the Veterans Access, Choice, and Ac-  
15          countability Act of 2014 (Public Law 113–146; 38 U.S.C.  
16          703 note) is amended to read as follows:

17 **“SEC. 705. LIMITATION ON AWARDS AND BONUSES PAID TO**  
18                           **EMPLOYEES OF DEPARTMENT OF VETERANS**  
19                           **AFFAIRS.**

20          “The Secretary of Veterans Affairs shall ensure that  
21          the aggregate amount of awards and bonuses paid by the  
22          Secretary in a fiscal year under chapter 45 or 53 of title  
23          5, United States Code, or any other awards or bonuses  
24          authorized under such title or title 38, United States  
25          Code, does not exceed the following amounts:

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

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

5 **SEC. 9. COMPTROLLER GENERAL STUDY OF DEPARTMENT**  
6           **TIME AND SPACE USED FOR LABOR ORGANI-**  
7           **ZATION ACTIVITY.**

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

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

Amend the title so as to read: “A bill to amend title  
38, United States Code, to improve the treatment of  
whistleblower complaints by the Secretary of Veterans  
Affairs, to improve the accountability of employees of the

Department of Veterans Affairs, and for other purposes.”.

