

# Union Calendar No. 16

115TH CONGRESS  
1ST SESSION

# H. R. 1259

[Report No. 115–34, Part I]

To amend title 38, United States Code, to provide for the removal or demotion of employees of the Department of Veterans Affairs based on performance or misconduct, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 28, 2017

Mr. ROE of Tennessee (for himself, Mr. BILIRAKIS, Mr. ARRINGTON, Mr. COFFMAN, Mr. WENSTRUP, Mrs. RADEWAGEN, Mr. BOST, Mr. BERGMAN, Mr. POLIQUIN, Mr. BANKS of Indiana, and Miss GONZÁLEZ-COLÓN of Puerto Rico) introduced the following bill; which was referred to the Committee on Veterans' Affairs, and in addition to the Committee on Oversight and Government Reform, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

MARCH 10, 2017

Additional sponsors: Mr. HIGGINS of Louisiana, Mr. DESANTIS, Mr. ROYCE of California, Mr. PITTENGER, Mr. DAVIDSON, Mrs. WALORSKI, Mr. DUNN, Mr. ROKITA, Mr. BYRNE, Mr. HARPER, Mr. RENACCI, Mr. SESSIONS, Mr. COLE, Ms. SINEMA, Mr. TIPTON, and Mr. SAM JOHNSON of Texas

MARCH 10, 2017

Reported from the Committee on Veterans' Affairs

MARCH 10, 2017

The Committee on Oversight and Government Reform discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed

# **A BILL**

To amend title 38, United States Code, to provide for the removal or demotion of employees of the Department of Veterans Affairs based on performance or misconduct, and for other purposes.

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

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

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

6 (b) **TABLE OF CONTENTS.**—The table of contents for  
 7 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.

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

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

14 **SEC. 3. REMOVAL, DEMOTION, AND SUSPENSION OF EM-**  
 15 **PLOYEES BASED ON PERFORMANCE OR MIS-**  
 16 **CONDUCT.**

17 (a) **IN GENERAL.**—Subchapter I of chapter 7 is  
 18 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, the  
14   Secretary may not remove, demote, or suspend such indi-  
15   vidual under subsection (a) without the approval of the  
16   Special Counsel under section 1214(f) of title 5.

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

23           “(g) TERMINATION OF INVESTIGATIONS BY OFFICE  
24   OF SPECIAL COUNSEL.—Notwithstanding any other provi-  
25   sion of law, the Special Counsel (established by section

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

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

13 “(i) DEFINITIONS.—In this section:

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

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

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

21 “(C) a political appointee.

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

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

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

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

9                   “(A) employed in a position described  
10 under sections 5312 through 5316 of title 5  
11 (relating to the Executive Schedule);

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

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

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

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

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

4           (c) CLERICAL AND CONFORMING AMENDMENTS.—

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

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

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

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

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

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

16           “(4) any removal or demotion under section  
17          719 of title 38.”.

18          (d) TEMPORARY EXEMPTION FROM CERTAIN LIM-  
19          ITATION ON INITIATION FROM REMOVAL FROM SENIOR  
20          EXECUTIVE SERVICE.—During the 120-day period begin-  
21          ning on the date of enactment of this Act, an action to  
22          remove an individual from the Senior Executive Service  
23          at the Department of Veterans Affairs pursuant to this  
24          section may be initiated, notwithstanding section 3592(b)

1 of title 5, United States Code, or any other provision of  
2 law.

3 **SEC. 4. REDUCTION OF BENEFITS FOR DEPARTMENT OF**  
4 **VETERANS AFFAIRS EMPLOYEES CONVICTED**  
5 **OF CERTAIN CRIMES.**

6 (a) REDUCTION OF BENEFITS.—

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

10 **“§ 721. Reduction of benefits of employees convicted**  
11 **of certain crimes**

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

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

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

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

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

5 “(C) the Secretary issues the order—

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

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

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

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

24 “(b) REDUCTION OF ANNUITY FOR RETIRED EM-  
25 PLOYEE.—(1) The Secretary may order that the covered

1 service of an individual who is removed for performance  
2 or misconduct under section 719 or 7461 of this title or  
3 any other provision of law but who leaves employment at  
4 the Department prior to the issuance of a final decision  
5 with respect to such action shall not be taken into account  
6 for purposes of calculating an annuity with respect to such  
7 individual under chapter 83 or chapter 84 of title 5, if—

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

12           “(B) before such order is made, the individual  
13          is afforded—

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

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

18           “(C) the Secretary issues the order—

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

23                   “(ii) in the case of a proposed order to  
24                   which an individual does not respond, not later  
25                   than 15 business days after the Secretary pro-



1           vides notice to the individual under subpara-  
2           graph (B)(i).

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

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

12          “(c) ADMINISTRATIVE REQUIREMENTS.—Not later  
13 than 37 business days after the Secretary issues a final  
14 order under subsection (a) or (b), the Director of the Of-  
15 fice of Personnel Management shall recalculate the annu-  
16 ity of the individual.

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

22          “(e) SPOUSE OR CHILDREN EXCEPTION.—The Sec-  
23 retary, in consultation with the Office of Personnel Man-  
24 agement, shall prescribe regulations that may provide for  
25 the payment to the spouse or children of any individual

1 referred to in subsection (a) or (b) of any amounts which  
2 (but for this subsection) would otherwise have been non-  
3 payable by reason of such subsections. Any such regula-  
4 tions shall be consistent with the requirements of sections  
5 8332(o)(5) and 8411(l)(5) of title 5, as the case may be.

6 “(f) DEFINITIONS.—In this section:

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

18 “(2) The term ‘lump-sum credit’ has the mean-  
19 ing given such term in section 8331(8) or section  
20 8401(19) of title 5, as the case may be.

21 “(3) 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 is amended by

1 inserting after the item relating to section 719, as  
2 added by section 3, the following new item:

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

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

9 **SEC. 5. AUTHORITY TO RECOUP BONUSES OR AWARDS**  
10 **PAID TO EMPLOYEES OF DEPARTMENT OF**  
11 **VETERANS AFFAIRS.**

12 (a) IN GENERAL.—Subchapter I of chapter 7 is fur-  
13 ther amended by inserting after section 721, as added by  
14 section 4, the following new section:

15 **“§ 723. Recoupment of bonuses or awards paid to em-**  
16 **ployees 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, of any award or bonus paid to  
21 the employee under title 5, including under chapter 45 or  
22 53 of such title, or this title if—

23 **“(1) the Secretary determines that the indi-**  
24 **vidual engaged in misconduct or poor performance**  
25 **prior to payment of the award or bonus, and that**

1 such award or bonus would not have been paid, in  
2 whole or in part, had the misconduct or poor per-  
3 formance been known prior to payment;

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 by not later than ten business days  
9 after 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 business days after receiving such  
5 appeal.”.

6           (b) CLERICAL AMENDMENT.—The table of sections  
7 at the beginning of such chapter, as amended by section  
8 4, is amended by inserting after the item relating to sec-  
9 tion 721, as added by section 4(a)(2), the following new  
10 item:

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

11           (c) EFFECTIVE DATE.—Section 723 of title 38,  
12 United States Code, as added by subsection (a), shall  
13 apply with respect to an award or bonus paid by the Sec-  
14 retary of Veterans Affairs to an employee of the Depart-  
15 ment of Veterans Affairs on or after the date of the enact-  
16 ment of this Act.

17           (d) CONSTRUCTION.—Nothing in this Act or the  
18 amendments made by this Act may be construed to modify  
19 the certification issued by the Office of Personnel Manage-  
20 ment and the Office of Management and Budget regarding  
21 the performance appraisal system of the Senior Executive  
22 Service of the Department of Veterans Affairs.

1 **SEC. 6. AUTHORITY TO RECOUP RELOCATION EXPENSES**  
2 **PAID TO OR ON BEHALF OF EMPLOYEES OF**  
3 **DEPARTMENT OF VETERANS AFFAIRS.**

4 (a) IN GENERAL.—Subchapter I of chapter 7 is fur-  
5 ther amended by adding at the end the following new sec-  
6 tion:

7 **“§ 725. Recoupment of relocation expenses paid on**  
8 **behalf of employees of Department**

9 “(a) IN GENERAL.—Notwithstanding any other pro-  
10 vision of law, the Secretary may issue an order directing  
11 an employee of the Department to repay the amount, or  
12 a portion of the amount, paid to or on behalf of the em-  
13 ployee under title 5 for relocation expenses, including any  
14 expenses under section 5724 or 5724a of such title, or  
15 this title if—

16 “(1) the Secretary determines that relocation  
17 expenses were not lawfully authorized or that the  
18 employee committed an act of fraud, waste, or mal-  
19 feasance that influenced the authorization of the re-  
20 location expenses;

21 “(2) before such repayment, the employee is af-  
22 forded—

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

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

1 “(3) the Secretary issues the order—

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

6 “(B) in the case of a proposed order to  
7 which an individual does not respond, not later  
8 than 15 business days after the Secretary pro-  
9 vides notice to the individual under paragraph  
10 (2)(A).

11 “(b) APPEALS.—Upon the issuance of an order by  
12 the Secretary under subsection (a), the individual shall  
13 have an opportunity to appeal the order to another depart-  
14 ment or agency of the Federal Government before the date  
15 that is seven business days after the date of such issuance.

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

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

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

1 (c) EFFECTIVE DATE.—Section 725 of title 38,  
2 United States Code, as added by subsection (a), shall  
3 apply with respect to an amount paid by the Secretary  
4 of Veterans Affairs to or on behalf of an employee of the  
5 Department of Veterans Affairs for relocation expenses on  
6 or after the date of the enactment of this Act.

7 **SEC. 7. TIME PERIOD FOR RESPONSE TO NOTICE OF AD-**  
8 **VERSE ACTIONS AGAINST SUPERVISORY EM-**  
9 **PLOYEES WHO COMMIT PROHIBITED PER-**  
10 **SONNEL ACTIONS.**

11 Section 733(a)(2)(B) is amended—

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

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

16 **SEC. 8. DIRECT HIRING AUTHORITY FOR MEDICAL CENTER**  
17 **DIRECTORS AND VISN DIRECTORS.**

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

20 “(4) Medical center directors and directors of  
21 Veterans Integrated Service Networks with dem-  
22 onstrated ability in the medical profession, in health  
23 care administration, or in health care fiscal manage-  
24 ment.”.



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

3 **SEC. 9. TIME PERIODS FOR REVIEW OF ADVERSE ACTIONS**  
4 **WITH RESPECT TO CERTAIN EMPLOYEES.**

5 (a) PHYSICIANS, DENTISTS, PODIATRISTS, CHIRO-  
6 PRACTORS, OPTOMETRISTS, REGISTERED NURSES, PHY-  
7 SICIAN ASSISTANTS, AND EXPANDED-FUNCTION DENTAL  
8 AUXILIARIES.—Section 7461(b)(2) is amended to read as  
9 follows:

10 “(2) In any case other than a case described in para-  
11 graph (1) that involves or includes a question of profes-  
12 sional conduct or competence in which a major adverse  
13 action was not taken, such an appeal shall be made  
14 through Department grievance procedures under section  
15 7463 of this title.”.

16 (b) MAJOR ADVERSE ACTIONS INVOLVING PROFES-  
17 SIONAL CONDUCT OR COMPETENCE.—Section 7462 is  
18 amended—

19 (1) in subsection (b)—

20 (A) in paragraph (1)—

21 (i) in subparagraph (A), by striking  
22 “At least 30” and inserting “Ten busi-  
23 ness”; and

24 (ii) in subparagraph (B)—

1 (I) by striking “A reasonable  
2 time, but not less than seven days”  
3 and inserting “The opportunity, with-  
4 in the ten-day notice period”; and

5 (II) by striking “orally and”;

6 (B) in paragraph (3)—

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

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

13 (iii) by striking “answer. The decision  
14 shall include a statement of” and inserting  
15 “answer stating”; and

16 (iv) by striking subparagraph (B);

17 and

18 (C) in paragraph (4)—

19 (i) by striking “(A) The Secretary”  
20 and all that follows through “(B) The Sec-  
21 retary” and inserting “The Secretary”;

22 and

23 (ii) by striking “30 days” and insert-  
24 ing “7 business days”;

25 (2) in subsection (c)—

1 (A) in paragraph (3), by inserting “the  
2 hearing must be concluded not later than 30  
3 business days after the date on which the ap-  
4 peal is filed, and” after “If such a hearing is  
5 held,”; and

6 (B) in paragraph (4)—

7 (i) by striking “45 days” and insert-  
8 ing “15 business days”; and

9 (ii) by striking “120 days” and insert-  
10 ing “45 business days”; and

11 (3) in subsection (d)(1), by striking “90 days”  
12 and inserting “15 business days”.

13 (c) OTHER ADVERSE ACTIONS.—Section 7463 is  
14 amended—

15 (1) by striking subsection (b) and redesignating  
16 subsections (c) through (e) as subsections (b)  
17 through (d), respectively; and

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

19 (A) in subparagraph (A), by striking “an  
20 advance” and inserting “ten business days”;  
21 and

22 (B) in subparagraph (B)—

23 (i) by striking “a reasonable time”  
24 and inserting “the opportunity, within the  
25 ten business day notice period,”; and

1

(ii) by striking “orally and”.



Union Calendar No. 16

115<sup>TH</sup> CONGRESS  
1<sup>ST</sup> Session

**H. R. 1259**

[Report No. 115-34, Part I]

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**A BILL**

To amend title 38, United States Code, to provide for the removal or denotion of employees of the Department of Veterans Affairs based on performance or misconduct, and for other purposes.

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MARCH 10, 2017

Reported from the Committee on Veterans' Affairs

MARCH 10, 2017

The Committee on Oversight and Government Reform discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed