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.

IN THE HOUSE OF REPRESENTATIVES

Mr. Lamborn introduced the following bill; which was referred to the Committee on ______________________

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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) Short Title.—This Act may be cited as the “VA Accountability First and Appeals Modernization Act of 2017”.
(b) **TABLE OF CONTENTS.**—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. References to title 38, United States Code.
Sec. 3. Removal or demotion of employees based on performance or misconduct.
Sec. 4. Reduction of benefits for members of the Senior Executive Service within the Department of Veterans Affairs 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. Expansion of personnel actions for senior executives based on performance or misconduct and establishment of Senior Executive Disciplinary Appeals Board.
Sec. 8. Reform of rights and processes relating to appeals of decisions regarding claims for benefits under laws administered by Secretary of Veterans Affairs.
Sec. 9. Limitation on awards and bonuses paid to senior executive employees of Department of Veterans Affairs.

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

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

**SEC. 3. REMOVAL OR DEMOTION OF EMPLOYEES BASED ON PERFORMANCE OR MISCONDUCT.**

(a) **IN GENERAL.**—Chapter 7 is amended—

(1) by redesignating section 715 as section 725;

and

(2) by inserting after section 713 the following new section 715:
§ 715. Employees: removal or demotion based on performance or misconduct

(a) IN GENERAL.—The Secretary may remove or demote an individual who is an employee of the Department if the Secretary determines the performance or misconduct of the individual warrants such removal or demotion. If the Secretary so removes or demotes such an individual, the Secretary may—

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

(2) demote the individual by means of—

(A) a reduction in grade for which the individual is qualified and that the Secretary determines is appropriate; or

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

(b) PAY OF CERTAIN DEMOTED INDIVIDUALS.—(1) Notwithstanding any other provision of law, any individual subject to a demotion by a reduction in grade under subsection (a)(2)(A) shall, beginning on the date of such demotion, receive the annual rate of pay applicable to such grade.

(2) An individual demoted as described in paragraph (1) may not be placed on administrative leave or any other category of paid leave during the period during which an appeal (if any) under this section is ongoing, and may only
receive pay if the individual reports for duty. If an individual so demoted does not report for duty, such individual shall not receive any pay, awards, bonuses, incentives, allowances, differentials, student loan repayments, special payments, or benefits from the Department.

“(c) NOTICE TO CONGRESS.—Not later than 30 days after removing or demoting an individual under subsection (a), the Secretary shall submit to the Committee on Veterans’ Affairs of the Senate and the Committee on Veterans’ Affairs of the House of Representatives notice in writing of such removal or demotion and the reason for such removal or demotion.

“(d) PROCEDURE.—(1) Subsection (b) of section 7513 of title 5 shall apply with respect to a removal or demotion under this section, except that the period for notice and response, which includes the advance notice period required by paragraph (1) of such subsection and the response period required by paragraph (2) of such subsection, shall not exceed a total of ten calendar days.

“(2) The procedures under chapter 43 of title 5 shall not apply to a removal or demotion under this section.

“(3)(A) Subject to subparagraph (B) and subsection (e), any removal or demotion under subsection (a) may be appealed to the Merit Systems Protection Board under section 7701 of title 5.
“(B) An appeal under subparagraph (A) of a removal or demotion may only be made if such appeal is made not later than seven days after the date of such removal or demotion.

“(e) EXPEDITED REVIEW BY MERIT SYSTEMS PROTECTION BOARD.—(1) Upon receipt of an appeal under subsection (d)(3)(A), the Merit Systems Protection Board shall expedite any such appeal under such section and, in any such case, shall issue a decision not later than 60 days after the date of the appeal.

“(2) Notwithstanding section 7701(c)(1)(B) of title 5, the Merit Systems Protection Board shall uphold the decision of the Secretary to remove or demote an employee under subsection (a) if the decision is supported by substantial evidence.

“(3) The decision of the Merit Systems Protection Board under paragraph (1), and any final removal or demotion described in paragraph (4), may be appealed to the United States Court of Appeals for the Federal Circuit pursuant to section 7703 of title 5. Any decision by such Court shall be in compliance with section 7462(f)(2) of this title.

“(4) In any case in which the Merit Systems Protection Board cannot issue a decision in accordance with the 60-day requirement under paragraph (1), the removal or
demotion is final. In such a case, the Merit Systems Protection Board shall, within 14 days after the date that such removal or demotion is final, submit to Congress and the Committee on Veterans’ Affairs of the Senate and the Committee on Veterans’ Affairs of the House of Representatives a report that explains the reasons why a decision was not issued in accordance with such requirement.

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

“(6) During the period beginning on the date on which an individual appeals a removal from the civil service under subsection (d) and ending on the date that the Merit Systems Protection Board issues a final decision on such appeal, such individual may not receive any pay, awards, bonuses, incentives, allowances, differentials, student loan repayments, special payments, or benefits from the Department.

“(7) To the maximum extent practicable, the Secretary shall provide to the Merit Systems Protection Board such information and assistance as may be necessary to ensure an appeal under this subsection is expedited.

“(f) WHISTLEBLOWER PROTECTION.—(1) In the case of an individual seeking corrective action (or on behalf of whom corrective action is sought) from the Office
of Special Counsel based on an alleged prohibited personnel practice described in section 2302(b) of title 5, the Secretary may not remove or demote such individual under subsection (a) without the approval of the Special Counsel under section 1214(f) of title 5.

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

“(g) Termination of Investigations by Office of Special Counsel.—Notwithstanding any other provision of law, the Special Counsel (established by section 1211 of title 5) may terminate an investigation of a prohibited personnel practice alleged by an employee or former employee of the Department after the Special Counsel provides to the employee or former employee a written statement of the reasons for the termination of the investigation. Such statement may not be admissible as evidence in any judicial or administrative proceeding without the consent of such employee or former employee.

“(h) Relation to Other Authorities.—The authority provided by this section is in addition to the authority provided by subchapter V of chapter 74 of this title, subchapter II of chapter 75 of title 5, chapter 43
of such title, and any other authority with respect to dis-

ciplining an individual.

“(i) DEFINITIONS.—In this section:

“(1) The term ‘individual’ means an individual

occupying a position at the Department but does not

include—

“(A) an individual, as that term is defined

in section 713(g); or

“(B) a political appointee.

“(2) The term ‘grade’ has the meaning given

that term in section 7511(a) of title 5.

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

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

“(A) employed in a position described

under sections 5312 through 5316 of title 5

(relating to the Executive Schedule);

“(B) a limited term appointee, limited
emergency appointee, or noncareer appointee in
the Senior Executive Service, as defined under
paragraphs (5), (6), and (7), respectively, of
section 3132(a) of title 5; or
“(C) employed in a position of a confidential or policy-determining character under schedule C of subpart C of part 213 of title 5 of the Code of Federal Regulations (or any successor regulation).”.

(b) Clerical and Conforming Amendments.—

(1) Clerical.—The table of sections at the beginning of chapter 7 is amended—

(A) by striking the item relating to section 715 and inserting the following new item:

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

and

(B) by inserting after the item relating to section 715 the following new item:

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

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

(A) by striking “or” at the end of paragraph (2);

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

(C) by adding at the end the following:

“(4) any removal or demotion under section 715 of title 38.”.
SEC. 4. REDUCTION OF BENEFITS FOR MEMBERS OF THE

SENIOR EXECUTIVE SERVICE WITHIN THE

DEPARTMENT OF VETERANS AFFAIRS CONVICTED OF CERTAIN CRIMES.

(a) REDUCTION OF BENEFITS.—

(1) IN GENERAL.—Chapter 7 is further amended by inserting after section 715, as added by section 3, the following new section:

“§717. Senior executives: reduction of benefits of individuals convicted of certain crimes

“(a) REDUCTION OF ANNUITY FOR REMOVED EMPLOYEE.—(1) The Secretary shall order that the covered service of an individual removed from a senior executive position for performance or misconduct under section 713 of this title, chapter 43 or subchapter V of chapter 75 of title 5, or any other provision of law shall not be taken into account for purposes of calculating an annuity with respect to such individual under chapter 83 or chapter 84 of title 5, if—

“(A) the individual is convicted of a felony that influenced the individual’s performance while employed in the senior executive position; and

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

“(i) notice of the order and an opportunity to respond to the order; and
“(ii) consistent with paragraph (2), an opportunity to appeal the order to another department or agency of the Federal Government.

“(2) If a final decision on an appeal made under paragraph (1)(B)(ii) is not made by the applicable department or agency of the Federal Government within 30 days after receiving such appeal, the order of the Secretary under paragraph (1) shall be final and not subject to further appeal.

“(b) Reduction of Annuity for Retired Employee.—(1) The Secretary may order that the covered service of an individual who is subject to a removal or transfer action for performance or misconduct under section 713 of this title, chapter 43 or subchapter V of chapter 75 of title 5, or any other provision of law but who leaves employment at the Department prior to the issuance of a final decision with respect to such action shall not be taken into account for purposes of calculating an annuity with respect to such individual under chapter 83 or chapter 84 of title 5, if—

“(A) the individual is convicted of a felony that influenced the individual’s performance while employed in the senior executive position; and

“(B) before such order is made, the individual is afforded—
“(i) notice of the order and an opportunity to respond to the order; and

“(ii) an opportunity for a hearing conducted by another department or agency of the Federal Government.

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

“(c) Administrative Requirements.—(1) Not later than 30 days after the Secretary issues an order under subsection (a) or (b), the Director of the Office of Personnel Management shall recalculate the annuity of the individual.

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

“(d) Lump-Sum Annuity Credit.—Any individual with respect to whom an annuity is reduced under subsection (a) or (b) shall be entitled to be paid so much of such individual’s lump-sum credit as is attributable to the period of covered service.
“(e) Spouse or Children Exception.—The Secretary, in consultation with the Director of the Office of Personnel Management, shall prescribe regulations that may provide for the payment to the spouse or children of any individual referred to in subsection (a) or (b) of any amounts that (but for this subsection) would otherwise have been nonpayable by reason of subsection (a) or (b). Any such regulations shall be consistent with the requirements of section 8332(o)(5) and 8411(l)(5) of title 5, as the case may be.

“(f) Definitions.—In this section:

“(1) The term ‘covered service’ means, with respect to an individual subject to a removal or transfer for performance or misconduct under section 713 of this title, chapter 43 or subchapter V of chapter 75 of title 5, or any other provision of law, the period of service beginning on the date that the Secretary determines under such applicable provision that the individual engaged in activity that gave rise to such action and ending on the date that the individual is removed or transferred from the senior executive position or leaves employment at the Department prior to the issuance of a final decision with respect to such action, as the case may be.
“(2) The term ‘lump-sum credit’ has the meaning given such term in section 8331(8) or section 8401(19) of title 5, as the case may be.

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

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

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 7 is further amended by inserting after the item relating to section 715, as added by section 3, the following new item:

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

(b) APPLICATION.—Section 717 of title 38, United States Code, as added by subsection (a)(1), shall apply to any action of removal or transfer under section 713 of title 38, United States Code, commencing on or after the date of the enactment of this Act.

SEC. 5. AUTHORITY TO RECOUP BONUSES OR AWARDS PAID TO EMPLOYEES OF DEPARTMENT OF VETERANS AFFAIRS.

(a) IN GENERAL.—Chapter 7 is further amended by inserting after section 717, as added by section 4, the following new section:
§ 719. Recoupment of bonuses or awards paid to employees of Department

(a) RECOUPMENT.—Notwithstanding any other provision of law, the Secretary may issue an order directing an employee of the Department to repay the amount, or a portion of the amount, of any award or bonus paid to the employee under title 5, including under chapter 45 or 53 of such title, or this title if—

(1) the Secretary determines such repayment appropriate pursuant to regulations prescribed under subsection (c); and

(2) before such repayment, the employee is afforded notice and an opportunity for a hearing conducted by another department or agency of the Federal Government.

(b) REVIEW.—(1) Upon the issuance of an order by the Secretary under subsection (a), the employee shall be afforded—

(A) notice of the order and an opportunity to respond to the order; and

(B) consistent with paragraph (2), an opportunity to appeal the order to another department or agency of the Federal Government.

(2) If a final decision on an appeal made under paragraph (1)(B) is not made by the applicable department or agency of the Federal Government within 30 days
after receiving such appeal, the order of the Secretary
under subsection (a) shall be final and not subject to fur-
ther appeal.

“(c) REGULATIONS.—The Secretary shall prescribe
regulations to carry out this section.”.

(b) CLERICAL AMENDMENT.—The table of sections
at the beginning of chapter 7 is further amended by insert-
ing after the item relating to section 717, as added by
section 4, the following new item:

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

(c) EFFECTIVE DATE.—Section 719 of title 38,
United States Code, as added by subsection (a), shall
apply with respect to an award or bonus paid by the Sec-
retary of Veterans Affairs to an employee of the Depart-
ment of Veterans Affairs on or after the date of the enact-
ment of this Act.

(d) CONSTRUCTION.—Nothing in this section or the
amendments made by this section may be construed to
modify the certification issued by the Office of Personnel
Management and the Office of Management and Budget
regarding the performance appraisal system of the Senior
Executive Service of the Department of Veterans Affairs.
SEC. 6. AUTHORITY TO RECOUP RELOCATION EXPENSES PAID TO OR ON BEHALF OF EMPLOYEES OF DEPARTMENT OF VETERANS AFFAIRS.

(a) In general.—Chapter 7 is further amended by inserting after section 719, as added by section 5, the following new section:

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§ 721. Recoupment of relocation expenses paid on behalf of employees of Department

(a) RECOUPMENT.—(1) Notwithstanding any other provision of law, the Secretary may direct an employee of the Department to repay the amount, or a portion of the amount, paid to or on behalf of the employee for relocation expenses under title 5, including any expenses under section 5724 or 5724a of such title, or this title if—

“(A) the Secretary determines that—

“(i) the employee has committed an act of fraud, waste, or malfeasance; and

“(ii) such repayment is appropriate pursuant to regulations prescribed under subsection (c); and

“(B) before such repayment is ordered, the individual is afforded—

“(i) notice of the determination of the Secretary and an opportunity to respond to the determination; and
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“(ii) consistent with paragraph (2), an opportunity to appeal the determination to another department or agency of the Federal Government.

“(2) If a final decision on an appeal made under paragraph (1)(B)(ii) is not made by the applicable department or agency of the Federal Government within 30 days after receiving such appeal, the order of the Secretary under paragraph (1) shall be final and not subject to further appeal.

“(b) REVIEW.—A decision by the applicable department or agency of the Federal Government regarding a repayment by an employee pursuant to subsection (a)(1)(B)(ii) is final and may not be reviewed by any department, agency, or court.

“(c) REGULATIONS.—The Secretary shall prescribe regulations to carry out this section.”.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 7 is further amended by inserting after the item relating to section 719, as added by section 5, the following new item:

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

(e) EFFECTIVE DATE.—Section 721 of title 38, United States Code, as added by subsection (a), shall apply with respect to an amount paid by the Secretary
of Veterans Affairs to or on behalf of an employee of the
Department of Veterans Affairs for relocation expenses on
or after the date of the enactment of this Act.

(d) CONSTRUCTION.—Nothing in this section or the
amendments made by this section may be construed to
modify the certification issued by the Office of Personnel
Management and the Office of Management and Budget
regarding the performance appraisal system of the Senior
Executive Service of the Department of Veterans Affairs.

SEC. 7. EXPANSION OF PERSONNEL ACTIONS FOR SENIOR
EXECUTIVES BASED ON PERFORMANCE OR
MISCONDUCT AND ESTABLISHMENT OF SEN-
IOR EXECUTIVE DISCIPLINARY APPEALS
BOARD.

(a) EXPANSION OF COVERED PERSONNEL AC-
TIONS.—Subsection (a)(1) of section 713 is amended, in
the matter preceding subparagraph (A), by inserting after
“such removal.” the following: “If the Secretary deter-
mines that the performance or misconduct of such an indi-
vidual does not warrant removal from the senior executive
service position, the Secretary may suspend, reprimand,
or admonish the individual.”.

(b) REMOVAL OF APPEAL TO MERIT SYSTEMS PRO-
TECTION BOARD.—Section 713 is further amended—

(1) in subsection (a)—
(A) in paragraph (1), by striking “so re-
moves” and inserting “removes”; and

(B) by adding at the end the following:

“(3) On the date that is five days before taking any
personnel action against a senior executive under para-
graph (1), the Secretary shall provide the individual
with—

“(A) notice in writing of the proposed personnel
action, including the reasons for such action; and

“(B) an opportunity to respond to the proposed
personnel action within the five-day period.”;

(2) in subsection (b)(2)—

(A) by striking “under this section” and
inserting “under section 723 of this title”; and

(B) by striking the second sentence;

(3) in subsection (c)—

(A) by striking “30” and inserting “five”;
and

(B) by striking “and the reason for such
removal or transfer” and inserting “, the rea-
son for such removal or transfer, the name and
position of the individual, and all charging doc-
uments and evidence pertaining to such removal
or transfer”;
(4) by striking subsections (d) and (e) and inserting the following:

“(d) PROCEDURE.—(1) The procedures under title 5 shall not apply to any personnel action under this section.

“(2) Subject to paragraph (3), a personnel action under this section—

“(A) may be appealed to the Senior Executive Disciplinary Appeals Board under section 723 of this title; and

“(B) may not be appealed to the Merit Systems Protection Board under section 7701 of title 5.

“(3) An appeal under paragraph (2)(A) of a personnel action under this section may only be made if such appeal is made not later than seven days after the date of such action. If no such appeal is made, the decision of the Secretary under this section shall be final.”;

(5) by redesignating subsections (f) and (g) as subsections (e) and (f), respectively; and

(6) in subsection (f), as redesignated by paragraph (5), by adding at the end the following:

“(4) The term ‘suspend’ means the placing of an individual in a temporary status without duties and pay for a period greater than 14 days.”.

(c) REMOVAL OF EXPEDITED PROCEDURES.—Section 707 of the Veterans Access, Choice, and Account-
ability Act of 2014 (Public Law 113–146; 38 U.S.C. 713 note) is amended—

(1) by striking subsection (b); and

(2) by redesignating subsections (c) and (d) as subsections (b) and (c), respectively.

(d) SENIOR EXECUTIVE DISCIPLINARY APPEALS BOARD.—Chapter 7 is further amended by inserting after section 721, as added by section 6, the following new section:

“§ 723. Senior Executive Disciplinary Appeals Board

“(a) IN GENERAL.—The Secretary shall from time to time appoint a board to hear appeals of any personnel action taken under section 713 of this title. Such board shall be known as the Senior Executive Disciplinary Appeals Board (in this section referred to as the ‘Board’). Each Board shall consist of three employees of the Department. The Board shall have exclusive jurisdiction to review any personnel action under section 713.

“(b) REVIEW AND DECISION.—Upon an appeal of such a personnel action, the Board shall—

“(1) review all evidence provided by the Secretary and the appellant; and

“(2) issue a decision not later than 21 days after the date of the appeal.
“(c) Hearing.—The Board shall afford an employee appealing a personnel action an opportunity for an oral hearing. If such a hearing is held, the appellant may be represented by counsel.

“(d) Standard of Review.—The Board shall uphold the decision of the Secretary if—

“(1) there is substantial evidence supporting the decision; and

“(2) the applicable personnel action is within the tolerable bounds of reasonableness.

“(e) Reversal by Secretary.—If the Board issues a decision under this section that reverses or otherwise mitigates the applicable personnel action, the Secretary may reverse the decision of the Board. Consistent with the requirements of subsection (g), the decision of the Secretary under this subsection shall be final.

“(f) No decision by Board.—In any case in which the Board cannot issue a decision in accordance with the 21-day requirement under subsection (b)(2), the personnel action is final.

“(g) Appeal of Decision.—A petition to review a final order or final decision of the Secretary or the Board under this section shall be filed in the United States Court of Appeals for the Federal Circuit. Any decision by such
Court shall be in compliance with section 7462(f)(2) of this title.

“(h) Prohibition on Receipt of Benefits.—

During the period beginning on the date on which an individual appeals a removal from the civil service under section 713(d) of this title and ending on the date that the Board or Secretary issues a final decision on such appeal, such individual may not receive any pay, awards, bonuses, incentives, allowances, differentials, student loan repayments, special payments, or benefits from the Department.”.

(e) Technical and Clerical Amendments.—

(1) Technical Amendment.—The section heading of section 713 is amended to read as follows: Senior executives: personnel actions based on performance or misconduct.

(2) Clerical Amendments.—The table of sections at the beginning of chapter 7 is further amended—

(A) by striking the item relating to section 713 and inserting the following new item:

“713. Senior executives: personnel actions based on performance or misconduct.”;

and
(B) by inserting after the item relating to section 721 the following new item:

“723. Senior Executive Disciplinary Appeals Board.”.

(f) Rule of Construction.—Nothing in this section or section 723 of title 38, United States Code, as added by subsection (d), shall be construed to apply to an appeal of a removal, transfer, or other personnel action that was pending before the date of the enactment of this Act.


(a) Definitions.—Section 101 is amended by adding at the end the following new paragraphs:

“(34) The term ‘agency of original jurisdiction’ means the activity which entered the original determination with regard to a claim for benefits under laws administered by the Secretary.

“(35) The term ‘relevant evidence’ means evidence that tends to prove or disprove a matter in issue.”.

(b) Notice Regarding Claims.—Section 5103(a) is amended—
(1) in paragraph (1), in the first sentence, by striking “The” and inserting “Except as provided in paragraph (3), the”;

(2) in paragraph (2)(B)(i) by striking “, a claim for reopening a prior decision on a claim, or a claim for an increase in benefits;” and inserting “or a supplemental claim;”; and

(3) by adding at the end the following new paragraph:

“(3) The requirement to provide notice under paragraph (1) shall not apply with respect to a supplemental claim that is filed within the time frame set forth in subparagraphs (B) and (D) of section 5110(a)(2) of this title.”.

(c) Modification of Rule Regarding Disallowed Claims.—Section 5103A(f) is amended—

(1) by striking “reopen” and inserting “readjudicate”; and

(2) by striking “material” and inserting “relevant”.

(d) Modification of Duty to Assist Claimants.—

(1) Limitations on Duty.—Section 5103A(a) is amended—
(A) in paragraph (1), by striking “The” and inserting “Except as otherwise provided in this subsection, the”; and

(B) by adding at the end the following new paragraphs:

“(4) The Secretary’s duty to assist under paragraph (1) shall apply only to a claim, or supplemental claim, for a benefit under a law administered by the Secretary until the time that a claimant is provided notice of the decision of the agency of original jurisdiction with respect to such claim, or supplemental claim, under section 5104 of this title.

“(5) The Secretary’s duty to assist under paragraph (1) shall not apply to—

“(A) higher-level review by the agency of original jurisdiction, pursuant to section 5104B of this title; or

“(B) to review on appeal by the Board of Veterans’ Appeals.”.

(2) CORRECTION OF ERRORS FROM DUTY TO ASSIST.—Section 5103A is amended—

(A) by redesignating subsections (e) through (g) as subsections (f) through (h), respectively; and
(B) by inserting after subsection (d) the following new subsection:

“(e) CORRECTION OF DUTY TO ASSIST ERRORS.—

(1) If, during review of the agency of original jurisdiction decision under section 5104B of this title, the higher-level reviewer identifies an error on the part of the agency of original jurisdiction to satisfy its duties under this section, and that error occurred prior to the agency of original jurisdiction decision being reviewed, unless the claim can be granted in full, the higher-level reviewer shall return the claim for correction of such error and readjudication.

“(2)(A) If the Board, during review on appeal of a decision of the agency of original jurisdiction, identifies an error on the part of the agency of original jurisdiction to satisfy its duties under section 5103A of this title, and that error occurred prior to the decision of the agency of original jurisdiction on appeal, unless the claim can be granted in full, the Board shall remand the claim to the agency of original jurisdiction for correction of such error and readjudication.

“(B) Remand for correction of an error under suparagraph (A) may include directing the agency of original jurisdiction to obtain an advisory medical opinion under section 5109 of this title”.
(c) DECISIONS AND NOTICES OF DECISIONS.—Subsection (b) of section 5104 is amended to read as follows:

“(b) In any case where the Secretary denies a benefit sought, the notice required by subsection (a) shall also include all of the following:

“(1) Identification of the issues adjudicated.

“(2) A summary of the evidence considered by the Secretary.

“(3) A summary of the applicable laws and regulations.

“(4) Identification of findings favorable to the claimant.

“(5) Identification of elements not satisfied leading to the denial.

“(6) An explanation of how to obtain or access evidence used in making the decision.

“(7) If applicable, identification of the criteria that must be satisfied to grant service connection or the next higher level of compensation.”.

(f) BINDING NATURE OF FAVORABLE FINDINGS.—

(1) IN GENERAL.—Chapter 51 is amended inserting after section 5104 the following new section:

“§ 5104A. Binding nature of favorable findings

“Any finding favorable to the claimant as described in section 5104(b)(4) of this title shall be binding on all
subsequent adjudicators within the Department, unless clear and convincing evidence is shown to the contrary to rebut such favorable finding.”.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 51 is amended by inserting after the item relating to section 5104 the following new item:

“5104A. Binding nature of favorable findings.”.

(g) HIGHER-LEVEL REVIEW BY AGENCY OF ORIGINAL JURISDICTION.—

(1) IN GENERAL.—Chapter 51, as amended by subsection (f), is further amended by inserting after section 5104A, as added by such subsection, the following new section:

“§ 5104B. Higher-level review by the agency of original jurisdiction

(a) IN GENERAL.—A claimant may request a de novo review of the decision of the agency of original jurisdiction by a higher-level adjudicator within the agency of original jurisdiction.

(b) TIME AND MANNER OF REQUEST.—(1) A request for higher-level review by the agency of original jurisdiction shall be—

(A) in writing in such form as the Secretary may prescribe; and
“(B) made within one year of the notice of the agency of original jurisdiction’s decision.

“(2) Such request may specifically indicate whether such review is requested by a higher-level adjudicator at the same office within the agency of original jurisdiction or by an adjudicator at a different office of the agency of original jurisdiction.

“(c) DECISION.—Notice of a higher-level review decision under this section shall be provided in writing.

“(d) EVIDENTIARY RECORD FOR REVIEW.—The evidentiary record before the higher-level reviewer shall be limited to the evidence of record in the agency of original jurisdiction decision being reviewed.”.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 51, as amended by subsection (f), is further amended by inserting after the item relating to section 5104A, as added by such subsection, the following new item:

“5104B. Higher-level review by the agency of original jurisdiction.”.

(h) SUPPLEMENTAL CLAIMS.—

(1) IN GENERAL.—Section 5108 is amended to read as follows:

“§ 5108. Supplemental claims

“If new and relevant evidence is presented or secured with respect to a supplemental claim, the Secretary shall readjudicate the claim taking into consideration any evi-
dence added to the record prior to the former disposition of the claim.”.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 51 is amended by striking the item relating to section 5108 and inserting the following new item:

“5108. Supplemental claims.”.

(i) REMAND OF CLAIM FOR ADVISORY MEDICAL OPINION.—Section 5109 is amended by adding at the end the following new subsection:

“(d) The Board of Veterans’ Appeals may remand a claim to direct the agency of original jurisdiction to obtain an advisory medical opinion under this section to correct an error on the part of the agency of original jurisdiction to satisfy its duties under section 5103A of this title when such error occurred prior to the decision of the agency of original jurisdiction on appeal. The remand instructions set forth by the Board shall include the questions to be posed to the independent medical expert providing the advisory medical opinion.”.

(j) EFFECTIVE DATES OF AWARDS.—Section 5110 is amended—

(1) by amending subsection (a) to read as follows:

“(a)(1) Unless specifically provided otherwise in this chapter, the effective date of an award based on an initial
claim, or a supplemental claim, of compensation, depend-
ency and indemnity compensation, or pension, shall be
fixed in accordance with the facts found, but shall not be
earlier than the date of receipt of application therefor.

“(2) For purposes of determining the effective date
of an award under this section, the date of application
shall be considered the date of the filing of the initial ap-
plication for a benefit if the claim is continuously pursued
by filing any of the following, either alone or in succession:

“(A) A request for higher-level review under
section 5104B of this title on or before the date that
is one year after the date on which the agency of
original jurisdiction issues a decision.

“(B) A supplemental claim under section 5108
of this title on or before the date that is one year
after the date on which the agency of original jurisdic-
tion issues a decision.

“(C) A notice of disagreement on or before the
date that is one year after the date on which the
agency of original jurisdiction issues a decision.

“(D) A supplemental claim under section 5108
of this title on or before the date that is one year
after the date on which the Board of Veterans’ Ap-
peals issues a decision.
“(3) Except as otherwise provided in this section, for supplemental claims received more than one year after the date on which the agency of original jurisdiction issued a decision or the Board of Veterans’ Appeals issued a decision, the effective date shall be fixed in accordance with the facts found, but shall not be earlier than the date of receipt of the supplemental claim.”; and

(2) in subsection (i), in the first sentence—

(A) by striking “reopened” and inserting “readjudicated”;

(B) by striking “material” and inserting “relevant”; and

(C) by striking “reopening” and inserting “readjudication”.

(k) Definition of Award or Increased Award For Purposes of Provisions Relating to Commencement of Period of Payment.—Section 5111(d)(1) is amended by striking “or reopened award” and inserting “award or award based on a supplemental claim”.

(l) Modification on Limitation on Fees Allowable for Representation.—Section 5904(c) is amended, in paragraphs (1) and (2), by striking “notice of disagreement is filed” both places it appears and inserting...
claimant is provided notice of the agency of original jurisdiction’s initial decision under section 5104 of this title’’.

(m) **Modification of Board of Veterans’ Appeals Referral Requirements After Order for Reconsideration of Decisions.**—Section 7103(b)(1) is amended by striking “heard” both places it appears and inserting “decided”.

(n) **Conforming Amendment Relating to Readjudication by Board of Veterans’ Appeals.**—Section 7104(b) is amended by striking “reopened” and inserting “readjudicated”.

(o) **Modification of Rights and Procedures for Appeals to Board of Veterans’ Appeals.**—

(1) **In General.**—Section 7105 is amended—

(A) in subsection (a)—

(i) by striking the first sentence and inserting “Appellate review shall be initiated by the filing of a notice of disagreement in the form prescribed by the Secretary.”; and

(ii) by striking “hearing and”;

(B) by amending subsection (b) to read as follows:

“(b)(1)(A) Except in the case of simultaneously contested claims, notice of disagreement shall be filed within
one year from the date of the mailing of notice of the decision of the agency of original jurisdiction pursuant to section 5104, 5104B, or 5108 of this title.

“(B) A notice of disagreement postmarked before the expiration of the one-year period shall be accepted as timely filed.

“(C) A question as to timeliness or adequacy of the notice of disagreement shall be decided by the Board.

“(2)(A) Notices of disagreement shall be in writing, shall set out specific allegations of error of fact or law, and may be filed by the claimant, the claimant’s legal guardian, or such accredited representative, attorney, or authorized agent as may be selected by the claimant or legal guardian.

“(B) Not more than one recognized organization, attorney, or agent may be recognized at any one time in the prosecution of a claim.

“(C) Notices of disagreement shall be filed with the Board.

“(3)(A) The notice of disagreement shall indicate whether the claimant requests—

“(i) a hearing before the Board;

“(ii) an opportunity to submit additional evidence without a hearing before the Board; or
“(iii) a review by the Board without a hearing or submission of additional evidence.

“(B) If the claimant does not expressly request a hearing before the Board in the notice of disagreement, no hearing before the Board may be held.”;

(C) by amending subsection (c) to read as follows:

“(c) If no notice of disagreement is filed in accordance with this chapter within the prescribed period, the action or decision of the agency of original jurisdiction shall become final and the claim may not thereafter be readjudicated or allowed, except as may otherwise be provided by section 5104B or 5108 of this title or such regulations as the Secretary may promulgate that are consistent with this title.”;

(D) by striking subsection (d) and inserting the following new subsection (d):

“(d) The Board of Veterans’ Appeals may dismiss any appeal which fails to allege specific error of fact or law in the decision being appealed.”;

(E) by striking subsection (e); and

(F) in the section heading, by striking “notice of disagreement and”.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 71 is amended by
striking the item relating to section 7105 and inserting the following new item:

“7105. Filing of appeal.”

(p) MODIFICATION OF PROCEDURES AND REQUIREMENTS FOR SIMULTANEOUSLY CONTESTED CLAIMS.—

Subsection (b) of section 7105A is amended to read as follows:

“(b)(1) The substance of the notice of disagreement shall be communicated to the other party or parties in interest and a period of thirty days shall be allowed for filing a brief or argument in response thereto.

“(2) Such notice shall be forwarded to the last known address of record of the parties concerned, and such action shall constitute sufficient evidence of notice.”

(q) REPEAL OF PROCEDURES FOR ADMINISTRATIVE APPEALS.—

(1) IN GENERAL.—Chapter 71 is amended by striking section 7106.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 71 is amended by striking the item relating to section 7106.

(r) MODIFICATIONS RELATING TO APPEALS: DOCKETS; HEARINGS.—Section 7107 is amended to read as follows:
§ 7107. Appeals: dockets; hearings

“(a) DOCKETS.—(1) The Board shall maintain two separate dockets as follows:

“(A) A non-hearing option docket shall be maintained for cases in which no Board hearing is requested and no additional evidence will be submitted.

“(B) A separate and distinct hearing option docket shall be maintained for cases in which a Board hearing is requested in the notice of disagreement or in which no Board hearing is requested, but the appellant requests, in the notice of disagreement, an opportunity to submit additional evidence.

“(2) Except as provided in subsection (b), each case before the Board will be decided in regular order according to its respective place on the Board’s non-hearing option docket or the hearing option docket.

“(b) ADVANCEMENT ON THE DOCKET.—(1) A case on either the Board’s non-hearing option docket or hearing option docket may, for cause shown, be advanced on motion for earlier consideration and determination.

“(2) Any such motion shall set forth succinctly the grounds upon which the motion is based.

“(3) Such a motion may be granted only—

“(A) if the case involves interpretation of law of general application affecting other claims;
“(B) if the appellant is seriously ill or is under severe financial hardship; or
“(C) for other sufficient cause shown.
“(c) MANNER AND SCHEDULING OF HEARINGS FOR CASES ON BOARD HEARING OPTION DOCKET.—(1) For cases on the Board hearing option docket in which a hearing is requested in the notice of disagreement, the Board shall notify the appellant whether a Board hearing will be held—
“(A) at its principal location, or
“(B) by picture and voice transmission at a facility of the Department where the Secretary has provided suitable facilities and equipment to conduct such hearings.
“(2)(A) Upon notification of a Board hearing at the Board’s principal location as described in subparagraph (A) of paragraph (1), the appellant may alternatively request a hearing as described in subparagraph (B) of such paragraph. If so requested, the Board shall grant such request.
“(B) Upon notification of a Board hearing by picture and voice transmission as described in subparagraph (B) of paragraph (1), the appellant may alternatively request a hearing as described in subparagraph (A) of such paragraph. If so requested, the Board shall grant such request.
“(d) SCREENING OF CASES.—Nothing in this section shall be construed to preclude the screening of cases for purposes of—

“(1) determining the adequacy of the record for decisional purposes; or

“(2) the development, or attempted development, of a record found to be inadequate for decisional purposes.”.

(s) REPEAL OF AUTHORITY FOR INDEPENDENT MEDICAL OPINIONS.—

(1) IN GENERAL.—Chapter 71 is amended by striking section 7109.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 71 is amended by striking the item relating to section 7109.

(3) CONFORMING AMENDMENT.—Section 5701(b)(1) is amended by striking “or 7109”.

(t) MODIFICATION OF STANDARD FOR REVIEW OF DECISIONS ON GROUNDS OF CLEAR AND UNMISTAKABLE ERROR.—Section 7111(e) is amended by striking “, without referral to any adjudicative or hearing official acting on behalf of the Secretary”.

(u) EVIDENTIARY RECORD BEFORE BOARD OF VETERANS’ APPEALS.—
(1) IN GENERAL.—Chapter 71 is amended by adding at the end the following new section:

§ 7113. Evidentiary record before the Board of Veterans’ Appeals

“(a) NON-HEARING OPTION DOCKET.—For cases in which a hearing before the Board of Veterans’ Appeals is not requested in the notice of disagreement, the evidentiary record before the Board shall be limited to the evidence of record at the time of the decision of the agency of original jurisdiction on appeal.

“(b) HEARING OPTION DOCKET.—(1)(A) Except as provided in subparagraph (B), for cases on the hearing option docket in which a hearing is requested in the notice of disagreement, the evidentiary record before the Board shall be limited to the evidence of record at the time of the decision of the agency of original jurisdiction on appeal.

“(B) The evidentiary record before the Board for cases on the hearing option docket in which a hearing is requested, shall include each of the following, which the Board shall consider in the first instance:

“(i) Evidence submitted by the appellant and his or her representative, if any, at the Board hearing.
“(ii) Evidence submitted by the appellant and his or her representative, if any, within 90 days following the Board hearing.

“(2)(A) Except as provided in subparagraph (B), for cases on the hearing option docket in which a hearing is not requested in the notice of disagreement, the evidentiary record before the Board shall be limited to the evidence considered by the agency of original jurisdiction in the decision on appeal.

“(B) The evidentiary record before the Board for cases on the hearing option docket in which a hearing is not requested, shall include each of the following, which the Board shall consider in the first instance:

“(i) Evidence submitted by the appellant and his or her representative, if any, with the notice of disagreement.

“(ii) Evidence submitted by the appellant and his or her representative, if any, within 90 days following receipt of the notice of disagreement.”.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 71 is amended by inserting after the item relating to section 7112 the following new item:

“7113. Evidentiary record before the Board of Veterans’ Appeals.”.
SEC. 9. LIMITATION ON AWARDS AND BONUSES PAID TO
SENIOR EXECUTIVE EMPLOYEES OF DEPARTMENT OF VETERANS AFFAIRS.

Section 705 of the Veterans Access, Choice, and Accountability Act of 2014 (Public Law 113–146; 38 U.S.C. 703 note) is amended—

(1) in subsection (a), by striking “The Secretary” and inserting “Except as provided in subsection (b), the Secretary”;

(2) by redesignating subsection (b) as subsection (c); and

(3) by inserting after subsection (a) the following new subsection (b):

“(b) PROHIBITION ON AWARDS AND BONUSES FOR SENIOR EXECUTIVE EMPLOYEES.—During each of fiscal years 2017 through 2021, no award or bonus may be paid to any employee of the Department of Veterans Affairs who is employed in a Senior Executive Service position, as that term is defined in section 3132(a)(2) of title 5.”.