

Section by Section Summary of H.R. 5620, the “VA Accountability First and Appeals Modernization Act of 2016”

Section 1. Short Title

This section cites the short title of this bill as the “VA Accountability First and Appeals Modernization Act of 2016”

Section 2. References to Title 38

This section cites that amendments made by this bill are in reference to title 38, U.S.C.

Section 3. Removal or Demotion of Employees Based on Performance or Misconduct

This section would authorize the Secretary of the Department of Veterans Affairs (VA) to remove/fire or demote any VA employee (except Senior Executive Service (SES) and Political employees) for performance or misconduct. The employee would be entitled to:

- Advanced written notice and an opportunity to respond. This period shall not exceed 10 calendar days;
- Expedited appeal to the full Merit Systems Protection Board (MSPB), the appeal must be decided within 60 days and the MSPB would be required to uphold the removal or demotion if it is supported by substantial evidence; and
- Limited judicial review of the MSPB decision by the U.S. Federal Circuit.

Section 4. Reduction of Benefits for Members of the Senior Executive Service within the Department of Veterans Affairs Convicted of Certain Crimes

This section would authorize the Secretary to reduce an SES employee’s pension if they were convicted of a felony that influenced their job performance. The employee would be entitled to advance notice and an opportunity to respond to the order and the opportunity for an appeal of the Secretary’s decision before another agency or department within the Federal Government. This appeal would have to be completed within 30 days after the appeal has been filed by the employee.

Section 5. Authority to Recoup Bonuses of Awards Paid to Employees of Department of Veterans Affairs

This section would authorize the Secretary to recoup any bonus or award paid to any VA employee if the Secretary deems it appropriate to do so. Prior to the recoupment, the employee would be entitled to advance notice and an opportunity to respond to the order and the opportunity for an appeal of the Secretary’s decision before another agency or department within the Federal Government. This appeal would have to be completed within 30 days after the appeal has been filed by the employee.

Section 6. Authority to Recoup Relocation Expenses Paid to or on Behalf of Employees of Department of Veterans Affairs

This section would authorize the Secretary to recoup relocation expenses paid to a VA employee if the Secretary determined that the employee committed an act of fraud, waste, or malfeasance. Before the recoupment could occur the employee would be entitled to advance notice and an opportunity to respond to the order and the opportunity for an appeal of the Secretary’s decision before another agency or

department within the Federal Government. This appeal would have to be completed within 30 days after the appeal has been filed by the employee.

Section 7. Senior Executives Personnel Actions Based on Performance or Misconduct

This section would amend section 707 of the Veterans Access, Choice, and Accountability Act of 2014 to streamline disciplinary actions for SES employees at VA. The section would give the Secretary the authority to remove/fire, demote, suspend, reprimand, or admonish an SES employee for misconduct or performance. The employee would be entitled to:

- Advanced written notice of the Secretary's decision and an opportunity to respond. This period shall not exceed 5 days;
- An expedited appeal, which must be filed within seven days of the Secretary's final decision, to the newly created Senior Executive Disciplinary Appeals Board. The Board must issue a final decision within 21 days and if they cannot, then the personnel action is final. The Secretary would be authorized to overturn the decision of the Board if they reverse or mitigate the Secretary's decision; and
- Limited judicial review of the Board's or Secretary's decision by the U.S. Federal Circuit.

Section 8. Treatment of Whistleblower Complaints in Department of Veterans Affairs

This section would enhance protections for whistleblowers at VA. Specifically this section would:

- Provide employees an additional method to report whistleblower complaints and provide supervisors with the opportunity to address possible problems at the lowest level;
- Establish the VA's Office of Accountability Review or a successor office as a central whistleblower office at VA. The central whistleblower office must remain separate from the VA's Office of General Counsel to prevent conflicts of interest;
- Hold supervisors accountable for retaliation against employees by mandating suspension, termination, and bonus prohibition and recoupment for supervisors found to have retaliated against employees;
- Require VA to conduct annual training for each VA employee on handling whistleblower complaints; and
- Require VA to provide annual reports to Congress on the status and disposition of whistleblower complaints.

Section 9. Appeals Reform

This section would reform VA's current appeals process. Under the section if a veteran is dissatisfied with the VA Regional Office's (RO) initial decision, the veteran would appeal the decision by choosing one of three "lanes:"

- The "Local Higher Level Review Lane," in which the veteran cannot submit new evidence or receive a hearing. The RO would simply review the same evidence considered by the original claims processor.

- The “New Evidence Lane,” in which the veteran could submit new evidence to the RO for review and have a hearing.
- The “Board Lane,” in which jurisdiction for the appeal would transfer immediately to the Board of Veterans Appeals. Once jurisdiction transfers, VA would no longer have a duty to assist. The Board would maintain two dockets:
 - Docket A would provide an expedited review. The veteran could not submit new evidence and there would be no hearing.
 - Docket B would provide for a hearing and allow the veteran to submit new evidence within 90 days after the Board hearing.

Section 10. Elimination of SES bonuses

This section would eliminate all bonuses for SES employees for fiscal years 2017-2021.