Furthermore, both the majority and minority of the House and Senate Committees on Veterans' Affairs have worked on this language and agree on the need to extend all of these programs.

H.R. 5985, as amended, includes an extension of authority which would allow VA to continue to approve schools for GI Bill benefits for up to 18 months, even if the school's accreditor loses formal recognition by the Department of Education.

Mr. Speaker, this change is necessary to provide student veterans with the same protections that students using title IV funds would have, and it would ensure that our Nation's veterans don't immediately have their GI Bill benefits, including their housing allowances, halted by a DOE decision to no longer recognize an accrediting body.

This provision is a must-pass, as there is possibly an imminent decision by the Department of Education to do just that and to withdraw the approval of the Accrediting Council for Independent Colleges and Schools.

While I am not going to comment today on the Secretary of Education's decision, we have been told it could come as early as this month, and it is this body's duty to protect an estimated 18,000 veterans from losing their benefits instantaneously through absolutely no fault of their own.

The language in this bill would mirror language that is already included in the law governing nonveteran student aid and is supported by numerous veterans service organizations and other stakeholders, including the American Legion, Veterans of Foreign Wars of the United States, Student Veterans of America, and the National Association of State Approving Agencies.

Mr. Speaker, I encourage all Members to support H.R. 5985, as amended.

I reserve the balance of my time.

Mr. TAKANO. Mr. Speaker, I yield myself such time as I may consume.

I rise today in support of H.R. 5985, a bill to extend certain expiring provisions related to care at the Department of Veterans Affairs. This bill makes sure that some of the vital programs we have in place to take care of our veterans continue past the end of the fiscal year and continue to help our veterans. Included in this bill are provisions related to health care, benefits, homeless veterans, and other related issues.

I am pleased to support extending programs related to support services for caregivers, child care for certain veterans receiving health care, and a pilot program on counseling in retreat settings for women veterans newly separated from the service.

It also has provisions to extend the authority related to rehabilitation and vocational benefits to members of the armed services with severe injuries or illnesses, homeless veterans' reintegration programs, homeless women veterans and homeless veterans with children and providing housing assistance for homeless veterans.

The final section of the bill deals with the GI Bill and when an institution of higher education loses its accreditation. This section aligns GI Bill benefits in law with all other higher education benefits, such as Pell and Federal student loans.

Now, this provision is crucial because soon the Department of Education may withdraw recognition of the Accrediting Council for Independent Colleges and Schools. I support this move by the Department of Education. It is a long time coming.

But without section 415, when this happens, GI Bill benefits will be cut off for student veterans in schools accredited by this agency. It puts the 37,000 student veterans and dependents receiving GI Bill benefits in schools accredited by this agency on the same footing as all other students receiving Federal higher education benefits. It allows them the time they need to recoup.

Section 415 is strongly supported by veterans service organizations such as Student Veterans of America and is the result of bipartisan agreement.

Mr. Speaker, I reserve the balance of my time.

Mr. MILLER of Florida. Mr. Speaker, I yield 1½ minutes to the gentleman from the Fifth District of Colorado (Mr. LAMBORN), a very active member of the House Committee on Veterans' Affairs.

Mr. LAMBORN. Mr. Speaker, I thank the chairman for the great work. We are going to miss his leadership next year when he goes into other pursuits. He will be sorely missed, and veterans will miss him.

Mr. Speaker, I rise today to speak of a missed opportunity in H.R. 5985. At present, the VA is pushing a rule that permits certified registered nurse anesthetists to practice without the supervision of a physician. This is a huge mistake. This bill should extend a 1-year period where the VA cannot implement this rule.

Opponents to this provision cited conditions present in forward-deployed locations as justification for implementing a change of this magnitude. Be that as it may, just because certain practices are permitted in forward-deployed locations due to military necessity does not mean that those risky practices should be forced upon our veterans at all other times and places.

Our veterans deserve the absolute best care possible. They should not be used as test subjects when the VA tries to change how it delivers services. It is not right for the VA to give our veterans unsafe and risky health care.

Mr. TAKANO. Mr. Speaker, I have no further speakers. I simply want to urge my colleagues to join me in passing H.R. 5985, as amended. I want to thank, sincerely, the work that we have done together with Chairman MILLER on this legislation. I am so pleased that we are passing this in the manner we are.

Mr. Speaker, I yield back the balance of my time.

Mr. MILLER of Florida. Mr. Speaker, once again, I encourage all Members to support H.R. 5985, as amended.

I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Florida (Mr. MILLER) that the House suspend the rules and pass the bill, H.R. 5985, as amended.

The question was taken; and (two-thirds being in the affirmative) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

VA ACCOUNTABILITY FIRST AND APPEALS MODERNIZATION ACT OF 2016

GENERAL LEAVE

Mr. MILLER of Florida. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and insert extraneous material into the RECORD on H.R. 5620.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

The SPEAKER pro tempore (Mr. BOUSTANY). Pursuant to House Resolution 859 and rule XVIII, the Chair declares the House in the Committee of the Whole House on the state of the Union for the consideration of the bill, H.R. 5620.

The Chair appoints the gentleman from Illinois (Mr. HULTGREN) to preside over the Committee of the Whole.

□ 1716

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the state of the Union for the consideration of the bill (H.R. 5620) 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, with Mr. HULTGREN in the chair.

The Clerk read the title of the bill.

The CHAIR. Pursuant to the rule, the bill is considered read the first time.

The gentleman from Florida (Mr. MILLER) and the gentleman from California (Mr. TAKANO) each will control 30 minutes.

The Chair recognizes the gentleman from Florida.

Mr. MILLER of Florida. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, my bill, the VA Accountability First and Appeals Modernization Act of 2016, would do two very important things for our Nation's veterans. First, it would provide the Secretary of the Department of Veterans Affairs with more tools needed to enforce accountability at VA. Second, it would help modernize VA's current

appeals process, which is not just broken but is preventing VA from providing veterans with the benefits they deserve in a timely manner.

I want to first take a moment to discuss the important and forward-thinking accountability measures that are included in the bill before us today.

H.R. 5620 would allow the VA Secretary to remove or demote any employee for poor performance or misconduct; would allow the recoupment of a bonus given inappropriately to an employee; reduce a senior executive's pension if they are found guilty of a felony that influenced their job performance; make modifications to the Secretary's authority to remove senior executives that was granted in the Choice Act; and recoup any location and moving expenses if the Secretary determines that the employee committed any acts of waste, fraud, or malfeasance.

Furthermore, despite comments made by some of my colleagues on the other side of the aisle, my bill also contains language that increases protections. Let me say that again. It increases protections of whistleblowers. These new whistleblower protections would stipulate that any employee cannot be removed under this new authority if they have an open claim at the Office of Special Counsel.

To add even more protections for those who blow the whistle at VA, my bill would also set up a new process to be used in addition to any other process that is currently allowed by law. This will protect whistleblowers from retaliation and removal while they bring issues to light up through their chain of command.

These protections are unprecedented and strengthen existing whistleblower protections. In fact, 16 whistleblower groups signed a letter of support for the whistleblower provisions of this particular bill and stated that section 8 of my bill is ''. . . a major breakthrough in the struggle for VA whistleblowers to gain credible rights when defending the integrity of the agency mission and disclosing quality of care concerns. Further, section 8 of the bill would provide a system to hold employees accountable for their actions when they retaliate against those exposing waste, fraud, or abuse.''

Mr. Chair, as I have always said, I agree with all of my colleagues that the vast majority of the employees at the Department of Veterans Affairs are hardworking public servants who are dedicated to providing quality health care and the benefits that our veterans have earned. But it is beyond comprehension that, with as much outright malfeasance as our committee has uncovered at the Department of Veterans Affairs and increased scrutiny that we have placed on the Department over the past 5 years and their need to hold employees accountable, we still see far too many instances of VA employees not living up to the standards that America expects. It is even more incomprehensible that anyone would oppose this bill.

For example, we have shown an employee showing up drunk to work to scrub in for a surgery on a veteran; an employee taking a recovering addict to a crack house and buying him drugs and the services of a prostitute; a VA employee participating in an armed robbery; and senior managers retaliating against whistleblowers, at which point VA then has to pay hundreds of thousands of dollars to the whistleblower in restitution.

Not only are all of these acts egregious and not only are all of these instances factual, they really are just the tip of the iceberg. But what causes me to stand before you today is that in none of these instances did the VA hold these employees accountable in any reasonable timeframe, if they did at all. I blame many factors for this, but mainly I blame an antiquated system that has left VA managers unwilling to jump through the many hoops to do what is right.

Mr. Chair, it is well past time that we not allow the current system to continue. It is certainly our duty to finally take action and enact meaningful change at VA that puts their veterans and their families first and foremost. Everything else should come second. That includes the power of the public sector unions. As I have said before, VA is not sacred. Our veterans are.

Unfortunately, since the VA Committee began placing a greater focus on changing the civil service as it pertains to the VA, the unions have pushed back at every single turn, even telling committee staff that anything other than the status quo would never garner their support. Well, if the list of employees I mentioned before of who were not held accountable is not a clear example of how broken the status quo is, then I don't know what is.

Mr. Chair, it is time that we put politics and the misguided rhetoric of opponents of change aside and, instead, align ourselves with our Nation's veterans and the organizations that represent them.

Eighteen veterans service organizations support the bill that is before us today: The American Legion, The Veterans of Foreign Wars of the United States, Disabled American Veterans, Paralyzed Veterans of America, Student Veterans of America, AMVETS, Association of the United States Navy, the Military Order of Purple Heart, National Association for Uniformed Services, Iraq and Afghanistan Veterans of America, Concerned Veterans for America, the Fleet Reserve Association, Military Officers Association of America, Reserve Officers Association, The Enlisted Association of the National Guard of the United States, VetsFirst, Vietnam Veterans of America, and The United States Army Warrant Officers Association.

That is 18 groups, Mr. Chairman. These groups represent millions of veterans and their families, not public employee unions who support the status quo that has led to the litany of problems at the Department of Veterans Affairs. The choice is clear. Each of us is now faced with either siding with the veterans of this country or corrupt union bosses.

Everyone in government knows that the civil service laws that were once meant to promote the efficiency of government are now obsolete and make it almost impossible to remove a poor-performing employee.

Even last year, VA Deputy Secretary Sloan Gibson sat before our committee and admitted it was too difficult to fire a substandard employee. Another former senior VA employee, then Acting Under Secretary for Benefits, stated at a committee hearing last year that ''. . . With our GS employees, it's the rules, the regulations, the protections are such that it's almost impossible to do anything.''

The Government Accountability Office studied the government's ability to hold low-performing employees accountable. They found that it took 6 months to a year, on average, and sometimes significantly longer, to fire poor-performing government employees.

When the Choice Act was signed into law in 2014, even President Obama said at the bill signing: ''If you engage in an unethical practice, if you cover up a serious problem, you should be fired. Period. It shouldn't be that difficult.''

While I know the administration has changed its tone since the Choice Act was signed into law, since this legislation would now affect all VA employees, even unionized ones, I strongly believe we should maintain the same expectations for rank and file employees at VA as we do senior officials, regardless of your title or rank within the agency. It is a privilege to work at VA and to serve the veterans of this country. It is not a right.

Last summer, the House passed the removal section for all VA employees in H.R. 1994. At the time, I received a lot of pushback from my colleagues on the minority side about the accountability language. I was told I was trying to make all VA employees at-will and completely destroy the civil service system.

As I said then and I say now, that was not and is not my intention. But I believe that the current system is hampering VA from moving forward into an organization that is deserving of the veterans that it serves. In short, I want a civil service system at VA that serves and protects veterans, not bad employees.

I continue to hear concerns that this bill will hurt the Department's ability to recruit and retain good employees and will hurt morale. I also know that, last night, the administration released a statement about its concerns with the accountability measures in this bill and that this language would impede rather than support VA's ability to

carry out its duties. I think these arguments are nothing more than scare tactics.

Mr. Chairman, what is impeding VA from carrying out its duties is decades of tolerating poor performance and even criminal or unethical behavior. The antiquated civil service laws are binding the Department's hands and permitting the toxic behavior of a few to overcome the good work of a majority.

If we do not at least try to give the Secretary the tools needed to hold VA employees accountable, then we are just as culpable for any future VA failures as the antiquated civil service laws that foster these failures now.

That is why this legislation is not punitive, but it is necessary if we truly want to make the ability for the changes in this Congress. The American people and, most importantly, our veterans expect this to occur. The best way to improve morale is to make it easier to get rid of the roots of dysfunction that we currently see throughout the Department of Veterans Affairs.

I have been told that VA can't fire its way to excellence, but neither can you tolerate malfeasance and expect excellence to become routine. Most Americans would be appalled with the complexity that is now baked into our civil service system. In the real world, if you don't do your job effectively or if you engage in unethical conduct, you get removed from the payroll. It is that simple.

We only need to look at the news that broke last week regarding 5,300 employees at the Wells Fargo Bank that were fired for creating hundreds of thousands of fake deposit accounts and cheating customers by charging them bogus fees.

□ 1730

That is how disciplinary actions are handled in the private sector. They were fired. And I believe it is something the public sector needs to learn from.

Compare that to the fewer than 10 VA employees held accountable for the wait time manipulation at the center of the largest scandal in VA history, and it is no wonder why Americans are losing faith in their government.

There is not a doubt in my mind that all of my colleagues here, all of them, care about our Nation's veterans, and we can show that by passing this bill before us today.

I also want to touch on a provision in my bill that would improve the appeals process of disability claims at the VA. VA should process veterans' claims for disability benefits accurately, consistently, and in a timely fashion. However, if a veteran disagrees with the decision and decides to file an appeal, VA's appeals process should be thorough, it should be swift, and it should be fair.

The truth is that VA's current appeals process is broken. It is a lengthy, complicated, and confusing process for our veterans and their families. The appeals reform section was drafted by the Department in collaboration with VSOs and other veterans advocates.

The intent of the bill is to modernize their existing cumbersome appeals process and to ensure that veterans receive appeals decisions in a timely fashion.

My bill, based entirely off committee member DINA TITUS' bill, would allow the veteran to remove a traditional appeal with a hearing and opportunity to new evidence in support of their claim.

Additionally, the bill would give veterans the option of choosing a faster process in which the veteran would not submit new evidence or have a hearing but would receive an expedited decision.

Although there are many questions about how VA is going to implement this proposal, we don't have the luxury of time in these closing days, and the backlog of pending appeals is exploding. As of the first of January of this year, there were 375,000 appeals pending in VA, including at the Board of Veterans' Appeals. On the first of June of this year, there were almost 457,000 appeals pending, an increase of 82,000 pending appeals in less than 18 months.

Moreover, the Board of Veterans' Appeals estimates that the number of appeals certified to the Board will rise from 88,000 to almost 360,000 in fiscal year 2017, a 400 percent increase in 1 year.

It is obvious that Congress needs to act now. This bill offers the best chance to improve VA's appeals process and provide veterans with the best possible decision on their claim.

Mr. Chairman, today we have a meaningful package that makes changes to VA's civil service system, while maintaining due process rights, as well as making progressive steps in changing the antiquated system that veterans are currently stuck in when appealing their disability claims.

And finally, it is vital for our colleagues to keep in mind that H.R. 5620 is truly a bipartisan bill. It combines two of the biggest legislative priorities proposed by both the Republicans and the Democrats. And as we near the end of this Congress, we have the opportunity to put politics aside to make real and lasting change to a broken system.

Today, we can decide to stand with our veterans, or we can stand with the status quo and the unions that perpetuate the status quo which, I believe, has failed them and the American public for far, far too long.

I hope you will join me and the 18 veterans service organizations who support this legislation. Do what is right for our veterans. Pass H.R. 5620. Let's put accountability first so that transformative reforms can succeed.

Mr. Chairman, I reserve the balance of my time.

HOUSE OF REPRESENTATIVES, COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
Washington DC, September 8, 2016.

Hon. JEFF MILLER,
Chairman, Committee on Veterans' Affairs, Washington, DC.

DEAR MR. CHAIRMAN: I write concerning H.R. 5620, the VA Accountability First and Appeals Modernization Act of 2016. As you know, the Committee on Veterans' Affairs received an original referral and the Committee on Oversight and Government Reform a secondary referral when the bill was introduced on July 5, 2016. I recognize and appreciate your desire to bring this legislation before the House of Representatives in an expeditious manner, and accordingly, the Committee on Oversight and Government Reform will forego action on the bill, as amended.

The Committee takes this action with our mutual understanding that by foregoing consideration of H.R. 5620 at this time, we do not waive any jurisdiction over the subject matter contained in this or similar legislation. Further, I request your support for the appointment of conferees from the Committee on Oversight and Government Reform during any House-Senate conference convened on this or related legislation.

Finally, I would ask that a copy of our exchange of letters on this matter be included in the Congressional Record during floor consideration, to memorialize our understanding.

Sincerely,

JASON CHAFFETZ,
Chairman.

CONGRESS OF THE UNITED STATES,
Washington DC, September 8, 2016.

Hon. JASON CHAFFETZ,
Chairman, House Committee on Oversight and Government Reform, Washington, DC.

DEAR CHAIRMAN CHAFFETZ: In reference to your letter on September 8, 2016, I write to confirm our mutual understanding regarding H.R. 5620, as amended.

I appreciate the House Committee on Oversight and Government Reform's waiver of consideration of provisions under its jurisdiction and its subject matter. I acknowledge that the waiver was granted only to expedite floor consideration of H.R. 5620, as amended, and does not in any way waive or diminish the House Committee on Oversight and Government Reform's jurisdictional interests over this legislation or similar legislation. I will support a request from the House Committee on Oversight and Government Reform for appointment to any House-Senate conference on H.R. 5620, as amended. Finally, I will also support your request to include a copy of our exchange of letters on this matter in the Congressional Record during floor consideration.

Again, thank you for your assistance with these matters.

With personal regards, I am

Sincerely,

JEFF MILLER,
Chairman.

Mr. TAKANO. Mr. Chairman, I yield myself as much time as I may consume, and I rise in strong opposition to H.R. 5620.

Now, there is no dispute whether Congress should take action to increase accountability at the VA. On both sides of the aisle, we recognize that VA employees have a patriotic duty to provide veterans the care they have earned, and there should be consequences when they fail to meet that standard.

But we must also recognize that VA employees, nearly a third of whom are

veterans themselves, have constitutional rights. In several ways, H.R. 5620 violates those rights and, therefore, will not achieve our shared goal of a more accountable VA workforce. In fact, passing this bill will move us further away from a strong accountability system that will improve the quality of service VA provides to veterans.

This flaw in the legislation is not without precedent. The accountability provisions included in the 2014 Veterans Choice Act could not be enforced after the Attorney General determined they violated due process rights. And President Obama threatened to veto a previous version of the bill, H.R. 1994, for the very same reason.

Now, unfortunately, the majority continues to treat the constitutional rights of VA employees as inconvenient obstacles to evade, instead of fundamental civil service protections to uphold.

The strict time requirements H.R. 5620 puts on administrative bodies, such as the Office of Personnel Management and the U.S. Merit Systems Protection Board, to decide appeals cases would meaningfully impact the ability of every VA employee to get a fair and proper hearing.

This bill improperly hands power to the VA Secretary with respect to setting standards for bonuses. According to the Non-Delegation Doctrine, Congress cannot shift its authority to agencies without providing an intelligent framework for carrying out that authority. As written, H.R. 5620 violates that doctrine.

Finally, I believe the majority's effort to institute new whistleblower provisions would be overturned for the same reason that the U.S. Attorney General's Office said it would not defend an unconstitutional section of the Choice Act: it violates the Appointments clause in the Constitution by allowing lower-level employees to have the final decisionmaking authority to decide whether an employee will be fired.

Now, these are more than minor legal concerns; they are reasons why VA employees who commit misconduct will not be held accountable when their terminations are challenged in court. We can pass H.R. 5620, but we will be right back here a year from now or 2 years from now when the law is deemed unconstitutional.

Our Senate colleagues have a bipartisan bill that includes accountability provisions that could serve as a foundation for legislation in the House. We had an opportunity to advance language that both parties and both Chambers can agree to, and I am disappointed that we are not pursuing that path.

I am also disappointed that this bill includes a moratorium on bonuses for VA's senior executives. Recruiting and retaining strong leadership at the VA is critical to its long-term success, and this provision will damage the Department's efforts to maintain a talented workforce that can address the underlying systematic issues that are causing poor performance.

Now I am not alone in this assessment. The American Legion, the Military Officers Association of America, and others have expressed reservations about this punitive approach to the VA's senior executives.

Finally, I am frustrated—I am particularly frustrated that the majority has attached to this bill a desperately needed bipartisan fix for the VA appeals process. The VA Appeals Modernization Act of 2016, introduced by my friend and colleague, Congresswoman DINA TITUS, has unanimous support and would sail through the House and Senate on its own. It is nearly the product of 4 years of work, and both sides agree to it.

Yet, you would attach it to a bill that we cannot agree to. It makes no sense that we are holding up this magnificent legislation that both sides worked on and that was the hard work of my friend and colleague from Nevada.

This legislation would move the VA away from an inefficient and convoluted unified appeals process and replace it with differentiated lanes, which give veterans clear options after receiving an initial decision on a claim. In sum, it would allow veterans to have a clear answer and path forward on their appeal within 1 year from filing.

By attaching it to this bipartisan accountability bill, the majority is preventing VA appeals reform from moving forward, denying veterans the streamlined appeals process they deserve.

I strongly urge the majority to allow Congresswoman TITUS' legislation to come to the floor as a stand-alone bill so we can accomplish a critical objective for the veterans community. Free the Titus bill. Let it come to the floor.

Now, the chairman talks about accountability and improving the culture at the VA. I would like to remind my friend from Florida that last week we heard testimony from the co-chairs of the Commission on Care. This Commission was appointed in a bipartisan way by the President, by the Speaker, by the minority leader of this House, and by the majority and minority leaders of the Senate; and the co-chairs gave us a report on their recommendations.

When asked about should there be an easier way to fire people, should there be a way to streamline the accountability process, to my surprise, they both answered ''no'' to a question posed by one of the Republican Members. They recommended that more investment and more time be devoted to leadership training within the VA.

They both lead private sector health organizations, and they both stated how they are obligated to the due process concerns with their employees. They were shocked at the relative under-appreciation for the personnel function at the VA.

They did not emphasize stripping away due process rights for workers. Instead, they strongly urged our committee to look at supporting the personnel function of the VA and improving leadership development and managerial skills of our managers.

So I recommend that we take this legislation back to committee, back to regular order, instead of considering it on a rushed basis and suspending the rules.

Mr. Chairman, all of us, Democrats and Republicans, believe in the need for stronger accountability for employees at the VA to ensure that our veterans get the care they deserve. Unfortunately, this legislation falls short of that goal. I urge my colleagues to vote ''no.''

I reserve the balance of my time.

Mr. MILLER of Florida. Mr. Chairman, I would remind my good friend, the ranking member over on the minority side, that this bill has been sitting out there for 6 weeks, in time for 80 amendments to have been filed, so it definitely was not rushed.

I remember back in high school the three branches of government, and the executive branch is supposed to enforce the laws that this body, Congress, writes. I don't believe it is the Attorney General's responsibility. She may wish she was a judge, but she is not. She is the Attorney General. She cannot deem something unconstitutional.

Mr. Chairman, I yield 1½ minutes to the gentleman from Colorado (Mr. LAMBORN).

Mr. LAMBORN. Mr. Chairman, I appreciate the leadership of Chairman JEFF MILLER, both in the committee and with this particular piece of legislation.

Mr. Chairman, our veterans demand the strong accountability tools contained in H.R. 5620. Since the Phoenix wait-list scandals, very few individuals have been held accountable. Fewer still are those whose disciplinary actions have not been overturned by the Merit System Protection Board. This state of affairs is deplorable.

This bill provides VA leadership with the tools to hold all VA employees accountable for their performance and misconduct, not just those members of the Senior Executive Service.

This bill is long overdue. Veterans within my district are still experiencing poor service from the VA. VA employees have openly joked in front of our veterans about their immunity to any disciplinary actions for their poor performance.

Mr. Chairman, our veterans have earned the privilege of interacting with VA employees who put the veteran first, not their own careers. I urge my colleagues to support this vital piece of legislation.

□ 1745

Mr. TAKANO. Mr. Chairman, I yield 5 minutes to the gentlewoman from Nevada (Ms. TITUS).

Ms. TITUS. Mr. Chairman, I thank the ranking member for yielding, and I

thank the chairman. Even though we may disagree on this piece of legislation, I believe he has been a fair chairman to work with all members of the committee.

When I became a member of the Veterans' Affairs Committee and the ranking member of the Disability Assistance and Memorial Affairs Subcommittee back in 2013, much of the focus was on the disability claims backlog. It had ballooned, and it was causing some veterans to wait almost 2 years just for their initial claim decision.

After that backlog was reduced, after considerable work by Congress and the administration, the problem shifted to the appeals process, where 450,000 veterans are currently waiting in an overburdened and overcomplicated system. The average claim takes more than 3 years to adjudicate, and claims that progress to the Board of Veterans Appeals can languish for more than 2,000 days. Both of these figures are also rising. So, if we miss this historic opportunity to reform the outdated and overcomplicated appeals system, the wait for our Nation's heroes will continue to lengthen. By 2027, we will be telling our veteran constituents that they will likely have to wait a decade for their appeal to be resolved. That is just unacceptable.

It is important to keep in mind that the appeals process was first developed back in 1933, and it was last updated in the late 1980s; so, surely, true reform is long overdue. Accordingly, this has become a top priority for the VA and for veterans service organizations, and it should be a priority for Congress as well.

Over the past months, the VA has been working closely with experts from the VSOs and other veterans advocacy groups to reform this broken system and replace it with a streamlined process designed to provide quicker outcomes for veterans while also preserving their due process rights.

Before you in this bill is the result of that effort. The new plan creates three lanes from which veterans can choose to appeal their claim. The first is a high-level de novo review for veterans who want to have a fresh set of well-trained eyes review their claim. The second is a lane for veterans who wish to add additional information or evidence to their claim. The third is for veterans who choose to have a full review done by the board, either with new evidence or as an expedited review without new supporting documents.

Veterans will be able to choose their own lane, depending on the specifics of their particular case. As part of this new system, the VA will provide more details to veterans when their initial claim decisions are delivered. This enhanced claims decision will better help veterans decide if they want to appeal and which lane will best suit their needs.

I appreciate that so many veterans organizations, including Disabled American Veterans, The American Legion, Veterans of Foreign Wars, Iraq and Afghanistan Veterans of America, AMVETS, Paralyzed Veterans of America, and others have all endorsed this appeals reform legislation.

It is unfortunate that my bill has been attached to controversial legislation regarding accountability at the VA. While we all agree that accountability for employees at the VA is critical for ensuring that our veterans receive the services and the care that they have earned and deserved, we should separate the two issues, pass appeals reform, and then work in a bipartisan manner on the accountability proceedings.

Last summer, this House passed an accountability bill; so, rather than passing another one that is very similar and which we know the administration opposes and feels is unconstitutional, let's get the appeals reform process done instead of playing politics that could hurt our Nation's heroes.

Mr. MILLER of Florida. Mr. Chairman, I would remind my good friend that the very same group that she says supported her appeals reform is the very same one that supports my accountability legislation.

Mr. Chairman, I yield 1 minute to the gentleman from Florida (Mr. BILIRAKIS) from the State of Florida's District 12.

Mr. BILIRAKIS. Mr. Chairman, I rise today in support of H.R. 5620, the VA Accountability First and Appeals Modernization Act, and I thank the chairman for filing the bill.

H.R. 5620 provides additional resources and flexibility to the Secretary to remove employees for poor performance or misconduct. What is wrong with that?

It further improves the protections of whistleblowers that continue to receive retaliation from simply wanting to do the right thing. I thank the chairman for putting that language in there.

Additionally, this bill improves the veterans appeals process with reforms sought to decrease excessive wait times for those waiting on a disability rating. I thank Representative TITUS for that language, as well.

In my district, I still hear veterans waiting too long for a decision to be made, which could take additional years on average in the appeals process—much too long.

Mr. Chairman, this process is broken and needs to be modernized right now. So again, with that, I urge my colleagues to support the bill.

Mr. TAKANO. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I wish to comment on the assertion that it is the Attorney General's and the President's responsibility to enforce the law, as it does say that and as it is reflected in the Constitution. However, the Attorney General of the United States also has the duty to make sure that the taxpayers' money is well used. I often hear on the other side of the aisle a concern about unnecessary litigation or litigation that goes beyond the bounds of what is reasonable.

The Attorney General also has the obligation to take a look at the laws and to examine whether or not they would withstand constitutional muster. The American people do not demand of their Attorney General to litigate laws that are clearly unconstitutional. That would be a waste of money.

In the case of an accountability law and an accountability bill that clearly have flawed tools, tools which would be deemed unconstitutional, it would result in the following: it would result in managers taking actions against employees, money being spent on lawyers to dismiss these employees or otherwise discipline them, but employees being able to get their day in court and find that the provisions under which they are being disciplined are unconstitutional being reinstated after a lot of expense.

This is precisely why I would like to see this legislation go back to committee and for us to consult attorneys on both sides and not pass laws that are clearly going to not pass constitutional muster.

Yes, 81 amendments were filed because there are many problems with this legislation. Only 22 were ruled in order. I think we should go back to the drawing board and take the Senate legislation, which has bipartisan support, as a starting point.

As for the whistleblower protections, I have already stated my comments that these whistleblower protections in H.R. 5620 are also flawed. I believe that they would be ruled and deemed unconstitutional and, therefore, are also flawed.

Mr. Chairman, passing this legislation does not pass constitutional muster. It won't solve our problem. We need a real fix to improving VA accountability, and H.R. 5620 is not the solution.

Mr. Chairman, I reserve the balance of my time.

Mr. MILLER of Florida. Mr. Chairman, I would remind my good friend that the Attorney General did comment on one particular live case. As a matter of fact, Sharon Helman, the person at the very center of the wait time debacle in Phoenix, believe it or not, is suing to get her job back, and the Attorney General has taken exception with one minor part of the law that was passed in 2014, the Veterans Choice Act. We have actually fixed her questions as relate to the Appointments Clause in the piece of legislation, so that problem should have been resolved at this point.

Mr. Chairman, I yield 2 minutes to the gentleman from the State of Tennessee (Mr. ROE). Dr. ROE is from the First Congressional District of Tennessee.

Mr. ROE of Tennessee. Mr. Chairman, I rise today in support of H.R. 5620, the VA Accountability First and Appeals

Modernization Act sponsored by my friend and colleague and VA Committee chair, JEFF MILLER.

This legislation would bring much-needed relief for veterans who are currently waiting months, and sometimes even years, for the disability benefit appeal to be adjudicated. It also grants the Secretary the expanded authority he needs to remove VA employees for poor performance or misconduct.

Mr. Chairman, at the beginning of 2015, there were roughly 375,000 pending appeals within the VA system. A mere 18 months later, in June of 2016, that number had exploded to 457,000, a 1.2 percent increase per month. With that in mind, it is clear that the VA appeals process is fundamentally broken.

By its own admission, the Board of Veterans' Appeals annual report for fiscal year 2015 stated that the number of appeals certified to the Board from the regional offices will increase from 88,183 in 2016 to 359,000 in 2017, an almost 400 percent increase in 12 months. We must work now, not later, to address this backlog before things get even more out of hand.

By implementing the reforms included in this legislation, the VA will be operating under streamlined processes needed to draw down this backlog. This bill also gives veterans some amount of control over how they wish their appeal to be reviewed. Under H.R. 5620, a veteran will be given the option of having their appeal heard by the regional office or having it bumped directly to the Board of Veterans' Appeals for adjudication.

By allowing veterans to waive or request a hearing and to limit or introduce new evidence in support of their claim, the veteran will have more control over who reviews their appeal, when it is reviewed, and what evidence is reviewed. Without this legislation, veterans will continue to be treated by VA as a mere case number, not as a veteran of the United States Armed Forces.

The CHAIR. The time of the gentleman has expired.

Mr. MILLER of Florida. Mr. Chairman, I yield the gentleman an additional 30 seconds.

Mr. ROE of Tennessee. Also included in this legislation is an important management tool for the Secretary to better maintain order within its workforce by expanding the authority of the Secretary to discipline or fire senior executive employees granted under the Veterans Choice Act to all VA employees. In an effort to protect employees who speak out from suffering retaliation, this bill provides comprehensive whistleblower protections.

These provisions are not meant to discourage or reduce morale for good, honest VA employees. In fact, it should accomplish just the opposite. The opponents of this provision are looking to protect the nurse who showed up drunk for surgery, the employees who purchased illegal drugs for veterans, or the managers who cooked the books on scheduling appointments and resulted in veterans dying. As someone who spent time working in a VA facility, I feel very strongly that the expedited removal of these types of employees improves the corrosive nature within the VA and makes the VA a safer, more respectful place to work.

Veterans deserve the best care, and I would challenge anyone to explain to me how these bad employees contribute to delivering quality of care.

Mr. TAKANO. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I am concerned that the bill before us today will actually undermine whistleblower protections rather than strengthen them. The Office of Special Counsel echoes my concerns. Their statement regarding the bill reads: ''Section 8 of this act may undermine whistleblower protections and accountability by creating a new and unnecessary process for reporting concerns. Section 8 also creates an unreasonable expectation that supervisors will be able to evaluate an employee concern within 4 business days. This process is overly burdensome for employees and supervisors and may be entirely unworkable in many instances.''

We should go back to the drawing board. Let's go through regular order back in committee and not do this under the suspended rules and try to fix things on the floor of the House.

I continue the quote of the Special Counsel: ''This approach is not the best method for improving accountability or evaluating supervisory efforts to support and protect whistleblowers. OSC believes that reinforcing existing channels for reporting concerns would better protect the interests of VA whistleblowers.''

Whistleblowers are essential for proper oversight. Accountability measures that undermine whistleblowers or deter them from coming forward will make it harder. Again, the whistleblower protections in this bill may actually undermine our ability to protect them.

Mr. Chairman, I reserve the balance of my time.

□ 1800

Mr. MILLER of Florida. Mr. Chairman, I quote from a letter to Mrs. KIRKPATRICK from the Office of Special Counsel:

''We appreciate the bipartisan support for stronger whistleblower protections for VA employees, as reflected in H.R. 5620.''

Mr. Chairman, I yield 2 minutes to the gentleman from Kansas (Mr. HUELSKAMP), from the First District.

Mr. HUELSKAMP. Mr. Chairman, I thank the chairman, and appreciate his strong, effective leadership in the Veterans' Affairs Committee.

At a committee hearing last year, the VA publicly admitted to me it was too difficult to fire bad employees. The situation is so dire that dozens of blatantly negligent employees and convicted criminals continue to work at the VA with zero consequences for their behavior.

I was a quick cosponsor of this bill when introduced by the chairman because it provides necessary solutions to a problem that has persisted far too long.

This bill will expand the VA Secretary's removal authority to include all VA employees and speed up the process. It will put in place additional whistleblower protections and give the Secretary the authority and responsibility to rescind bonuses and expense payments for corrupt employees. And it reforms the current broken claims process by providing veterans more choices when it comes to appealing VA claims.

It might not be talked about much around here, but inside Washington everyone knows there is almost no accountability in the Federal civil service. In fact, a recent nonpartisan GAO study found, on average, it takes 6 months to a year, and often longer, to remove a bad bureaucrat.

In the VA, we have seen example after example of Federal employees more concerned with defending a couple of bad apples than caring for our veterans. It is not unreasonable to demand VA employees be held accountable for their performance, just like our veterans were during their military service and how millions of hard-working Americans must do in their jobs every single day.

It is my hope this bill will begin a long-overdue cultural shift within the VA. Until that happens, we will continue to see headlines about employees dealing heroin to patients, operating on patients while drunk, keeping their job despite an armed robbery charge, and giving years of paid leave to bad doctors. We can all agree: our veterans deserve better, and the VA should be held accountable for this obligation.

I urge my colleagues in the House to support passage of this very important bill.

Mr. TAKANO. Mr. Chairman, I yield myself such time as I may consume.

I include in the RECORD a letter from the Office of Special Counsel to Representative KIRKPATRICK praising her for her amendment. I understand the majority also supports the Kirkpatrick amendment, so it is bipartisan support.

U.S. OFFICE OF SPECIAL COUNSEL,
Washington, DC, September 13, 2016.

Re Pending Legislation to Protect VA Whistleblowers.

Hon. ANN KIRKPATRICK,
Washington, DC.

DEAR REPRESENTATIVE KIRKPATRICK: The Office of Special Counsel (OSC) has received thousands of whistleblower retaliation complaints and disclosures from Department of Veterans Affairs (VA) employees. Based on this experience, we write to express our strong support for your amendment to H.R. 5620, the VA Accountability First and Appeals Modernization Act. Based on our review of the amendment, we believe it will advance the interests of VA whistleblowers.

Importantly, the amendment establishes the Office of Accountability and Whistleblower Protection (OAWP). OSC's ongoing

work with VA whistleblowers will benefit from having a high-level point of contact with the statutory authority to identify, correct, and prevent threats to patient care and to discipline those responsible for creating them. The establishment of similar offices at other agencies, including the Federal Aviation Administration, has significantly improved the whistleblower experience at those agencies. And OAWP, with a Senate-confirmed leader, will have the authority and a mandate to make a significant difference.

For these and other reasons, we believe your amendment will best advance the interests of VA whistleblowers and the Veterans served by the Department. If you are in need of additional information, please contact Adam Miles, Deputy Special Counsel for Policy and Congressional Affairs, at 202–254–3607. We appreciate the bipartisan support for stronger whistleblower protections for VA employees, as reflected in H.R. 5620, and believe this amendment will greatly enhance this effort.

Sincerely,

CAROLYN N. LERNER.

Mr. TAKANO. Mr. Chairman, I yield to the gentleman from Florida (Mr. MILLER) to ask him a question.

Was the quotation the gentleman read from this letter of the special counsel to Mrs. KIRKPATRICK?

Mr. MILLER of Florida. Will the gentleman yield?

Mr. TAKANO. I yield to the gentleman.

Mr. MILLER of Florida. I don't know what the letter is you are holding in your hand. I have one dated September 13.

Mr. TAKANO. Yes, September 13. And it is regarding pending legislation to protect VA whistleblowers?

Mr. MILLER of Florida. That is correct.

Mr. TAKANO. The quotation was from that letter.

I want to clarify that letter from the Office of Special Counsel was in support of Mrs. KIRKPATRICK's amendment, not in support of the entire bill H.R. 5620, and I am pleased that the majority joins us in support of that amendment.

My colleague, Chairman MILLER, mentioned that we have already covered our concerns in the Choice Act, and President Obama lauded the Choice Act when signing it into law. I will remind the chairman that the court—not Congress and not the President or the VA—determine whether a law meets constitutional muster.

I am concerned that the strict and arbitrary time limits in section 3 of H.R. 5620 violate constitutional due process and notions of basic fairness.

The lack of any clear standard of misbehavior by a VA employee that would trigger the Secretary's new firing authority also concerns me. Courts have allowed less notice if the behavior of a civil servant threatens the safety of others, but due process may not be limited simply to make it more convenient for Federal managers to get rid of employees they don't like.

That is why my amendment would pass constitutional muster and achieve the chairman's stated policy outcome more effectively than section 3 of H.R. 5620. It would give the Secretary a brand new authority to immediately remove, without pay, any VA employee whose behavior threatens veterans.

My amendment would address many of the egregious examples of terrible VA employees whose behavior has literally threatened veterans' lives, like the employee who took a veteran to a crack house. Under my alternative, that VA employee would be immediately suspended without pay and fired after a fair investigation.

The problem with passing a bill that limits due process is that if it were to become law, a VA employee fired under this new authority would inevitably sue. By the time the case wound its way through the court system and potentially found to be an unconstitutional violation of due process, the VA would have to reinstate with back pay any employee fired under the authority.

Instead, I would urge us to replace section 3 with my amendment language, or the Senate's language in the Veterans First Act, which contains more fairness and due process while still bringing accountability to the VA.

In our criminal justice system, we are innocent until proven guilty. The same concept applies to due process for VA employees. They should get to tell their side of the story before losing their jobs for what could be a miscommunication, or worse, discrimination or retaliation on the part of their supervisor.

H.R. 5620 is bad policy that sets the VA apart from all other Federal agencies and will make it harder for the VA to recruit exceptional medical providers and managers.

H.R. 5620 would return us to the political spoils system that was so problematic before the advent of civil service protections.

I reserve the balance of my time.

Mr. MILLER of Florida. Mr. Chairman, I agree wholeheartedly with Mr. TAKANO that it is the courts of the United States of America that would rule something unconstitutional and not the Attorney General of this country.

Mr. Chairman, I yield 1½ minutes to the gentleman from the Third District of Louisiana (Mr. BOUSTANY).

Mr. BOUSTANY. Mr. Chairman, I have long fought for the highest quality health care for our veterans and accountability, and I applaud Chairman MILLER for bringing H.R. 5620 to the floor for a vote. It is long overdue.

This will not only provide greater options for veterans going through the VA's broken appeals process, but it also makes vital reforms to the Department's employee performance policies.

This is commonsense legislation. It will improve outcomes for veterans in my home State of Louisiana, where the VA has a long history of very poor performance.

The bill's provisions will make it easier for the VA Secretary to fire, demote, and recoup bonuses from employees who don't do their job.

Veterans in Louisiana have dealt with the VA's ineffective bureaucracy—and, in some cases, downright wrongdoing—for far too long. We desperately need more stringent accountability measures in place for the agency charged with caring for America's veterans.

This has gone on far too long. Chairman MILLER and I have fought with others for a very long time to do the very best for our veterans. Enough is enough. Enough is enough. It is time for a change. It is time for true accountability.

I am proud to stand with Chairman MILLER and others to support this legislation, and I urge all my colleagues to support it. It is urgently needed.

Mr. TAKANO. Mr. Chairman, I yield myself such time as I may consume.

I think it is important that we consider the impact our actions will have on the hardworking frontline VA employees, many of whom are veterans themselves and even whom my friend from Florida, Chairman MILLER, says the vast majority of whom are very good employees.

I include in the RECORD a letter from the American Federation of Government Employees.

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL–CIO,
Washington, DC, September 9, 2016.

Re AFGE Opposition to H.R. 5620.

DEAR REPRESENTATIVE: I am writing on behalf of nearly 700,000 federal employees represented by the American Federation of Government Employees, AFL–CIO (AFGE), including 230,000 employees of the Department of Veterans Affairs (VA) to urge you to oppose H.R. 5620, a bill introduced by Representative Jeff Miller (R–FL) to provide for removal or demotion of VA employees, and for other purposes. The drastic reductions in due process rights for every frontline VA employee proposed by this bill represents another familiar attempt to weaken the VA by weakening its dedicated workforce.

Changes proposed by H.R. 5620, including reduced time to respond to notices of proposed removals, reduced time to appeal to the Merit System Protection Board (MSPB), the loss of MSPB rights if that agency is backlogged, and unfair processes for recouping bonuses and work expenses, will decrease accountability by subjecting vocal employees who speak up against mismanagement and patient harm to more retaliation and harassment. The bill also would directly undermine the Department's progress in filling vacancies and recruiting and retaining a strong VA workforce.

Shorter Notice of Proposed Removal: Under current law, VA employees, like most government employees, are entitled to at least thirty days' advance written notice before they are terminated or demoted (See 5 U.S.C. 7513(b)(1)). H.R. 5620 would reduce that notice period by two-thirds to only ten days. A ten-day period is completely inadequate for allowing an employee to respond to a notice of proposed removal or demotion, receive his or her evidence file, present an effective answer with supporting evidence and secure representation.

Loss of Additional Rights for Petformance-Based Removals: VA employees facing removal on poor performance would lose additional due process rights under this bill, making it nearly impossible to prepare an effective response. Currently, management

must inform employees of specific instances of unacceptable performance and the critical elements for the position involved. (See 5 CFR 1201.22(b)(1).) The bill eliminates both these rights to essential information to prepare one's answer.

Reduced Time to File MSPB Appeal: Currently, employees seeking MSPB review of the agency's decision have 30 calendar days from effective date of the action or within 30 days of receipt of agency decision, whichever is later to file an MSPB appeal. H.R. 5620 would reduce that filing deadline by more than 75 percent to only 7 days after the date of the removal or demotion. This extremely tight filing deadline is likely to have a disproportionate effect on lower wage employees who cannot afford representation.

Loss of All MSPB Appeal Rights if MSPB Fails to Meet Shorter Timeframe: MSPB suffers from a chronic shortage of staff and other resources. Like H.R. 1994, Representative Miller's 2015 ''firing bill'' to eliminate the due process rights of every front-line VA employee, this bill would take away all MSPB appeal rights if a decision is not issued within 60 days, and instead, the VA's final decision would stand. AFGE is very concerned that this may violate constitutional due process. In addition, this is an extremely unrealistic time frame and employees will be the ones to suffer as a result. Recent MSPB data indicates an average processing time for initial Administrative Judge appeals of 93 days and average of 281 days for Board review.

''Safe Harbor'' for Whistleblower Claims Will Overburden the Office of Special Counsel and Harm Whistleblowers: Like H.R. 1994, this bill requires the Office of Special Counsel (OSC) to review all agency decisions of employees who file OSC whistleblower complaints. OSC is already facing a significant increase in claims and does not currently review agency decisions to remove or demote employees. This added responsibility will increase the OSC's backlog and encourage the filing of less meritorious whistleblower complaints. Complainants with more meritorious matters will be adversely affected by additional delays.

Reductions in Senior Executive Retirement Annuities: AFGE also urges you oppose this provision that would remove covered service in calculating the annuities of VA senior executives who have been convicted of certain crimes. Pension recoupment is unnecessary and punitive, and would set an extremely dangerous precedent throughout the federal government for requiring forfeiture of earned compensation.

Unfair Bonus Recoupment Process: H.R. 5620 provides the VA Secretary with unfettered discretion to set the criteria for recoupment of bonuses already paid to employees. In addition, the bill is ambiguous about the appeals process that employees could utilize to challenge an unfair bonus recoupment decision.

Unfair Process for Recoupment of Payments for Relocation and Other Work Expenses: H.R. 5620 would give management overly broad authority to recoup allegedly improper reimbursements of work-related expenses. This overly broad and possibly unconstitutional provision could lead to more mismanagement and targeting of employees. VA already has ample authority to recoup improper payments, and payments made through misfeasance and malfeasance. In addition, the Department already addressed abuse of relocation bonuses by eliminating its Appraised Value Offer program. The lack of appeal rights in the bill is likely to give rise to an unconstitutional taking. This provision would further erode the morale of the VA workforce and discourage employees from relocating to hard-to-recruit locations to fill vacancies.

Thank you for considering the views of AFGE. If you need more information, please contact Marilyn Park of my staff.

Sincerely yours,

J. DAVID COX, Sr.,
National President.

Mr. TAKANO. The letter reads: ''The drastic reductions in due process rights for every frontline VA employee proposed by this bill represents another familiar attempt to weaken the VA by weakening its dedicated workforce.

''Changes proposed by H.R. 5620, including reduced time to respond to notices of proposed removals, reduced time to appeal to the Merit System Protection Board (MSPB), the loss of MSPB rights if that agency is backlogged, and unfair processes for recouping bonuses and work expenses, will decrease accountability by subjecting vocal employees who speak up against mismanagement and patient harm to more retaliation and harassment. The bill also would directly undermine the Department's progress in filling vacancies and recruiting and retaining a strong VA workforce.''

I reserve the balance of my time.

Mr. MILLER of Florida. Mr. Chairman, I yield myself such time as I may consume.

I include in the RECORD the letters from five veterans service organizations in support of this legislation, H.R. 5620.

THE AMERICAN LEGION,
July 12, 2016.

Hon. JEFF MILLER,
Chairman, Committee on Veterans' Affairs, House of Representatives, Washington, DC.

CHAIRMAN MILLER: On behalf of the more than 2 million members of The American Legion, I express qualified support for H.R. 5620, the VA Accountability First and Appeals Modernization Act of 2016. The bill would bring additional accountability measures to the Department of Veterans Affairs while strengthening protections for whistleblowers. Additionally, the bill would reform the department's disability benefits appeals process—a top priority for VA leaders and many veterans service organizations.

Veterans deserve a first rate agency to provide for their needs, and the VA is an excellent agency that is unfortunately marred from time to time by bad actors that the complicated system of discipline makes difficult to remove. Legislation to improve that process and make it easier to deal with these few, problem employees would help restore trust in what is otherwise an excellent system. However, we cannot support the prohibition on VA senior executives from receiving awards or bonuses over the next five years. This overly punitive form of collective punishment is unfair and counterproductive to efforts to rebuild a leadership cadre after the extensive turnover experienced since the 2014 wait time scandal.

We wholeheartedly support the appeals modernization provisions in this legislation. They represent a combined team effort between VA, Congress, and the Veteran Service Organizations to produce highly needed reforms to the complex disability claims appeals system and The American Legion is proud of the work accomplished here.

The American Legion thanks you for the leadership you have shown to bring improvement and more accountability to VA. We are committed to working with you and your House and Senate colleagues to shepherd a veterans benefits legislative package before this session ends that we can all be proud of.

Sincerely,

DALE BARNETT,
National Commander.

DAV,
July 14, 2016.

Hon. JEFF MILLER,
Chairman, House Committee on Veterans' Affairs, Washington, DC.

DEAR CHAIRMAN MILLER: On behalf of DAV and our 1.3 million members, all of whom were injured or made ill during wartime service, I write to offer our support for H.R. 5620, the ''VA Accountability First and Appeals Modernization Act of 2016.'' This legislation could significantly improve the ability of veterans to receive more timely and accurate decisions on their claims and appeals for earned benefits.

As you know, the number of appeals awaiting decisions has risen dramatically—to almost 450,000—and the average time for an appeal decision is between three and five years, a delay that is simply unacceptable. To address this challenge, VA convened a workgroup in March consisting of DAV, other stakeholders and VA officials in order to seek common ground on a new framework for appeals. After months of intensive efforts, the workgroup reached consensus on a new framework for the appeals process that could offer veterans quicker decisions, while protecting their rights and prerogatives.

H.R. 5620, which contains the new appeals framework, would make fundamental changes to the appeals process by creating multiple options to appeal or reconsider claims' decisions, either formally to the Board or informally within the Veterans Benefits Administration. The central feature of the legislation would provide veterans three options, or ''lanes,'' to appeal unfavorable claims decisions; and if they were not satisfied with their decisions, they could continue to pursue one of the other two options. As long as a veteran continuously pursues a new appeals option within one year of the last decision, they would be able to preserve their earliest effective date. This legislation also allows veterans to present new evidence and have a hearing before the Board or VBA if they so desire.

If faithfully implemented as designed by the workgroup, and if fully funded by Congress and VA in the years ahead, H.R. 5620 would make a marked improvement in the ability of veterans to get timely and accurate decisions on appeals of their claims. We urge the House to swiftly approve this legislation and then work with the Senate to reach agreement on final legislation that can be sent to the President to sign this year.

Respectfully,

GARRY J. AUGUSTINE,
Executive Director, Washington Headquarters.

VETERANS OF FOREIGN WARS,
September 6, 2016.

Hon. JEFF MILLER,
Chairman, House Veterans' Affairs Committee, Washington, DC.

DEAR CHAIRMAN MILLER: On behalf of the men and women of the Veterans of Foreign Wars of the United States (VFW) and our Auxiliaries, we are pleased to offer our support for H.R. 5620, the VA Accountability First and Appeals Modernization Act of 2016.

Your legislation would allow the Secretary of the Department of Veterans Affairs (VA) to expeditiously remove or demote any VA employee based on poor performance or misconduct. For far too long, under performing employees have been allowed to continue working at VA, simply because the processes for removal are so protracted. The VFW believes that employees should have some

layer of protection, but that true accountability must be enforced for those who willfully fail to meet the standard. This is critical to ensuring that VA consistently provides the highest quality services, as well as continuing to restore veterans' faith in the Department.

Additionally, your legislation works to address concerns related to the appeal of a veteran's disability compensation claim. Today, there are more than 450,000 appeals awaiting the years-long process to a final decision by the Board of Veterans' Appeals. While the VFW insists that the right of the veteran to appeal must be continued and protected, common sense changes like those included in this legislation will help to eliminate backlogs, reduce the amount of time that veterans wait for their earned benefits, and still ensure that veterans receive the assistance needed when completing such appeals.

The VFW commends your leadership on this issue and your commitment to meaningful VA reforms. We look forward to working with you to ensure the passage of this important legislation.

Sincerely,

RAYMOND C. KELLEY,
Director, VFW National Legislative Service.

PARALYZED VETERANS OF AMERICA,
July 11, 2016.

Hon. JEFF MILLER,
Chairman, House Committee on Veterans' Affairs, Washington, DC.

DEAR CHAIRMAN MILLER: On behalf of Paralyzed Veterans of America (PVA), I would like to offer our support for H.R. 5620, the ''VA Accountability First and Appeals Modernization Act.'' This important legislation focuses on two important issues that must be addressed within the Department of Veterans Affairs (VA)—accountability at all levels and reform of the veterans' claims appeals process.

As you are aware, PVA has supported efforts to ensure proper accountability at all levels of the Department of Veterans Affairs (VA). Unfortunately, in recent years there have been numerous accounts of bad actors in VA senior management (and frankly lower level management) who have failed to fulfill the responsibility of their positions and in some cases arguably violated the law. The focus on accountability in this proposal strikes a reasonable balance to ensure VA leadership has the ability to manage personnel while affording due process protections to VA employees.

Additionally, while work remains to ensure appropriate implementation, this legislation advances critically needed appeals reform. PVA, and our partners in the veterans' service organization community, has been directly engaged with VA to affect meaningful appeals reform. This legislation reflects much of that work. However, we must emphasize that VA needs a definitive plan to address implementation, specifically a plan to deal with the current inventory of appeals.

Mr. Chairman, we applaud your commitment to strong accountability and meaningful appeals reform at the VA. We hope that the Committee will consider and approve this important legislation expeditiously.

Respectfully,

SHERMAN GILLUMS, Jr.,
Executive Director,
Paralyzed Veterans of America

MILITARY OFFICERS
ASSOCIATION OF AMERICA,
August 16, 2016.

Hon. JEFF MILLER,
Chairman, Committee on Veterans' Affairs,
House of Representatives, Washington, DC.

DEAR CHAIRMAN MILLER: On behalf of MOAA's more than 390,000 members, I am writing to express our appreciation for your continuing efforts to improve accountability across the Department of Veterans Affairs (VA) and modernize the disability claims system through sponsorship of H.R. 5620, the VA Accountability First and Appeals Modernization Act of 2016.

This bill builds upon your earlier legislation, H.R. 1994, the VA Accountability Act of 2015, by further strengthening protections for whistleblowers, providing for removal or demotion of employees based on performance or misconduct, and reforming the disability benefits appeals process.

MOAA appreciates your commitment to providing the Secretary of Veterans Affairs the additional authority to remove employees for sub-standard performance and misconduct. However, we do have some concerns about setting a long-term prohibition on Senior Executive Service employee bonuses for the period 2017 to 2021, mentioned in Section 10. MOAA anticipates VA employees, who are striving to solve these very difficult problems, should have the ability to be rewarded for making progress. MOAA would prefer to see conditions placed on receipt of bonuses rather than implement a blanket prohibition.

MOAA believes the result of change should be outcome-driven. That is, accountability mechanisms should be placed on achieving a desired outcome versus prescribing each step taken to reach that outcome. We support the restructuring of the VA claims adjudication process and the goal of providing veterans with more expeditious claim resolution. That said, we are concerned the proposed bill appears to eliminate the VA's duty to assist veterans with their claims during the appeal process. MOAA believes continuing the VA's duty to assist veterans during the appeal will be important to fair resolution of the claim.

In closing, MOAA urges the House and Senate Committees on Veterans' Affairs to work together to reach agreement on how best to move forward on H.R. 5620 and S. 2921, the Veterans First Act, incorporating the necessary elements of accountability and appeals in order to achieve meaningful and substantive reform before Congress adjourns this year.

We deeply appreciate your support of our nation's servicemembers, veterans and their families. MOAA looks forward to continuing cooperation with you in helping to resolve these important issues.

Sincerely,

LT. GEN. DANA T. ATKINS, USAF (RET),
President and CEO.

Mr. MILLER of Florida. I reserve the balance of my time.

Mr. TAKANO. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, for all of the foregoing arguments that were made today, I urge all of my colleagues to vote ''no'' on H.R. 5620.

I yield back the balance of my time.

Mr. MILLER of Florida. Mr. Chairman, I yield myself such time as I may consume.

I urge all Members to support H.R. 5620, and I yield back the balance of my time.

The Acting CHAIR (Mr. MOONEY of West Virginia). All time for general debate has expired.

Pursuant to the rule, the bill shall be considered for amendment under the 5-minute rule. The bill shall be considered as read.

The text of the bill is as follows:

H.R. 5620

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 2016''.

(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. Senior executives: personnel actions based on performance or misconduct.
Sec. 8. Treatment of whistleblower complaints in Department of Veterans Affairs.
Sec. 9. Appeals reform.
Sec. 10. 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 by adding at the end the following new section:

''§ 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 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 so demoted 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 pay or other benefits pursuant to subsection (e)(5).

''(c) NOTICE TO CONGRESS.—Not later than 30 days after removing or demoting an individual under subsection (a), the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and 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 a 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 MSPB.—(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 Committees on Veterans' Affairs of the Senate and 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.

''(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 741 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 disciplining 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)(1); or

''(B) a political appointee.

''(2) The term 'grade' has the meaning given such term in section 7511(a) of title 5.

''(3) The term 'misconduct' includes neglect of duty, malfeasance, or failure to accept a directed reassignment or to accompany a position in a transfer of function.

''(4) The term 'political appointee' means an individual 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.''.

(b) CLERICAL AND CONFORMING AMENDMENTS.—

(1) CLERICAL.—The table of sections at the beginning of chapter 7 is amended by inserting after the item relating to section 713 the following new item:

''715. Employees: removal or demotion based on performance or misconduct.''.

(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 notice and 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 referred to 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 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 which (but for this subsection)

would otherwise have been nonpayable by reason of such subsections. 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 of such title is 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 chapters 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 further appeal.

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

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter, as amended by section 4, is amended by inserting after the item relating to section 717 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 Secretary of Veterans Affairs to an employee of the Department of Veterans Affairs on or after the date of the enactment of this Act.

(d) CONSTRUCTION.—Nothing in this Act or the amendments made by this Act 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 adding at the end the following new section:

''§ 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 under title 5 for relocation expenses, 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

''(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 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 such chapter is further amended by adding at the end the following new item:

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

(c) 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. SENIOR EXECUTIVES: PERSONNEL ACTIONS BASED ON PERFORMANCE OR MISCONDUCT.

(a) EXPANSION OF COVERED PERSONNEL ACTIONS.—Section 713 is amended in subsection (a)(1) by inserting after ''such removal.'' the following: ''If the Secretary determines that the performance or misconduct of such an individual does not merit removal from the senior executive service position, the Secretary may suspend, reprimand, or admonish the individual.''.

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

(1) in subsection (a)—

(A) in paragraph (1), by striking ''so removes'' and inserting ''removes''; and

(B) by adding at the end the following:

''(3) On the date that is 5 days before taking any personnel action against a senior executive under paragraph (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 5-day period.'';

(2) in subsection (b)(2)—

(A) by striking ''under this section'' and inserting ''under section 723''; and

(B) by striking the second sentence;

(3) in subsection (c)—

(A) by striking ''30'' and inserting ''5''; and

(B) by striking ''and the reason for such removal or transfer'' and inserting '', the reason for such removal or transfer, the name and position of the employee, and all charging documents 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) A personnel action under this section—

''(A) may be appealed to the Senior Executive Disciplinary Appeals Board under section 723; and

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

(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 Accountability Act of 2014 (38 U.S.C. 713 note) is amended by—

(1) striking subsection (b); and

(2) 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) The Secretary shall from time to time appoint a board to hear appeals of any personnel action taken under section 713. Such board shall be known as the Senior Executive Disciplinary Appeals Board (hereinafter referred to as the 'Board'). Each Board shall

consist of 3 employees of the Department. The Board shall have exclusive jurisdiction to review any personnel action under section 713.

''(b) Upon an appeal of such a personnel action, the Senior Executive Disciplinary Appeals 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) 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) 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) 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) 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) 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) During the period beginning on the date on which an individual appeals a removal from the civil service under section 713(d) 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.''.

(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 contents for such chapter is further amended—

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

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

and

(B) by adding at the end the following:

''723. Senior Executive Disciplinary Appeals Board.''.

(f) RULE OF CONSTRUCTION.—Nothing in this section or section 731 of title 38, United States Code, (as added by subsection (c)) 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.

SEC. 8. TREATMENT OF WHISTLEBLOWER COMPLAINTS IN DEPARTMENT OF VETERANS AFFAIRS.

(a) IN GENERAL.—Chapter 7 is further amended by adding at the end the following new subchapter:

''SUBCHAPTER II—WHISTLEBLOWER COMPLAINTS

''§ 741. Whistleblower complaint defined

''In this subchapter, the term 'whistleblower complaint' means a complaint by an employee of the Department disclosing, or assisting another employee to disclose, a potential violation of any law, rule, or regulation, or gross mismanagement, gross waste of funds, abuse of authority, or substantial and specific danger to public health and safety.

''§ 742. Treatment of whistleblower complaints

''(a) FILING.—(1) In addition to any other method established by law in which an employee may file a whistleblower complaint, an employee of the Department may file a whistleblower complaint in accordance with subsection (g) with a supervisor of the employee.

''(2) Except as provided by subsection (d)(1), in making a whistleblower complaint under paragraph (1), an employee shall file the initial complaint with the immediate supervisor of the employee.

''(b) NOTIFICATION.—(1) Not later than four business days after the date on which a supervisor receives a whistleblower complaint by an employee under this section, the supervisor shall notify, in writing, the employee of whether the supervisor determines that there is a reasonable likelihood that the complaint discloses a violation of any law, rule, or regulation, or gross mismanagement, gross waste of funds, abuse of authority, or substantial and specific danger to public health and safety. The supervisor shall retain written documentation regarding the whistleblower complaint and shall submit to the next-level supervisor a written report on the complaint.

''(2) On a monthly basis, the supervisor shall submit to the appropriate director or other official who is superior to the supervisor a written report that includes the number of whistleblower complaints received by the supervisor under this section during the month covered by the report, the disposition of such complaints, and any actions taken because of such complaints pursuant to subsection (c). In the case in which such a director or official carries out this paragraph, the director or official shall submit such monthly report to the supervisor of the director or official.

''(c) POSITIVE DETERMINATION.—If a supervisor makes a positive determination under subsection (b)(1) regarding a whistleblower complaint of an employee, the supervisor shall include in the notification to the employee under such subsection the specific actions that the supervisor will take to address the complaint.

''(d) FILING COMPLAINT WITH NEXT-LEVEL SUPERVISORS.—(1) If any circumstance described in paragraph (3) is met, an employee may file a whistleblower complaint in accordance with subsection (g) with the next-level supervisor who shall treat such complaint in accordance with this section.

''(2) An employee may file a whistleblower complaint with the Secretary if the employee has filed the whistleblower complaint to each level of supervisors between the employee and the Secretary in accordance with paragraph (1).

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

''(A) A supervisor does not make a timely determination under subsection (b)(1) regarding a whistleblower complaint.

''(B) The employee who made a whistleblower complaint determines that the supervisor did not adequately address the complaint pursuant to subsection (c).

''(C) The immediate supervisor of the employee is the basis of the whistleblower complaint.

''(e) TRANSFER OF EMPLOYEE WHO FILES WHISTLEBLOWER COMPLAINT.—If a supervisor makes a positive determination under subsection (b)(1) regarding a whistleblower complaint filed by an employee, the Secretary shall—

''(1) inform the employee of the ability to volunteer for a transfer in accordance with section 3352 of title 5; and

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

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

''(g) WHISTLEBLOWER COMPLAINT FORM.—(1) A whistleblower complaint filed by an employee under subsection (a) or (d) shall consist of the form described in paragraph (2) and any supporting materials or documentation the employee determines necessary.

''(2) The form described in this paragraph is a form developed by the Secretary, in consultation with the Special Counsel, that includes the following:

''(A) An explanation of the purpose of the whistleblower complaint form.

''(B) Instructions for filing a whistleblower complaint as described in this section.

''(C) An explanation that filing a whistleblower complaint under this section does not preclude the employee from any other method established by law in which an employee may file a whistleblower complaint.

''(D) A statement directing the employee to information accessible on the Internet website of the Department as described in section 745(c).

''(E) Fields for the employee to provide—

''(i) the date that the form is submitted;

''(ii) the name of the employee;

''(iii) the contact information of the employee;

''(iv) a summary of the whistleblower complaint (including the option to append supporting documents pursuant to paragraph (1)); and

''(v) proposed solutions to complaint.

''(F) Any other information or fields that the Secretary determines appropriate.

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

''§ 743. Adverse actions against supervisory employees who commit prohibited personnel actions relating to whistleblower complaints

''(a) IN GENERAL.—(1) In accordance with paragraph (2), the Secretary shall carry out the following adverse actions against supervisory employees whom the Secretary, an administrative judge, the Merit Systems Protection Board, the Office of Special Counsel, an adjudicating body provided under a union contract, a Federal judge, or the Inspector General of the Department determines committed a prohibited personnel action described in subsection (c):

''(A) With respect to the first offense, an adverse action that is not less than a 14-day suspension and not more than removal.

''(B) With respect to the second offense, removal.

''(2)(A) Except as provided by subparagraph (B), and notwithstanding subsections (b) and (c) of section 7513 and section 7543 of title 5, the provisions of subsections (d) and (e) of section 713 of this title shall apply with respect to an adverse action carried out under paragraph (1).

''(B) An employee who is notified of being the subject of a proposed adverse action under paragraph (1) may not be given more than five days following such notification to provide evidence to dispute such proposed adverse action. If the employee does not provide any such evidence, or if the Secretary

determines that such evidence is not sufficient to reverse the determination to propose the adverse action, the Secretary shall carry out the adverse action following such five-day period.

''(b) LIMITATION ON OTHER ADVERSE ACTIONS.—With respect to a prohibited personnel action described in subsection (c), if the Secretary carries out an adverse action against a supervisory employee, the Secretary may carry out an additional adverse action under this section based on the same prohibited personnel action if the total severity of the adverse actions do not exceed the level specified in subsection (a).

''(c) PROHIBITED PERSONNEL ACTION DESCRIBED.—A prohibited personnel action described in this subsection is any of the following actions:

''(1) Taking or failing to take a personnel action in violation of section 2302 of title 5 against an employee relating to the employee—

''(A) filing a whistleblower complaint in accordance with section 742 of this title;

''(B) filing a whistleblower complaint with the Inspector General of the Department, the Special Counsel, or Congress;

''(C) providing information or participating as a witness in an investigation of a whistleblower complaint in accordance with section 742 or with the Inspector General of the Department, the Special Counsel, or Congress;

''(D) participating in an audit or investigation by the Comptroller General of the United States;

''(E) refusing to perform an action that is unlawful or prohibited by the Department; or

''(F) engaging in communications that are related to the duties of the position or are otherwise protected.

''(2) Preventing or restricting an employee from making an action described in any of subparagraphs (A) through (F) of paragraph (1).

''(3) Conducting a peer review or opening a retaliatory investigation relating to an activity of an employee that is protected by section 2302 of title 5.

''(4) Requesting a contractor to carry out an action that is prohibited by section 4705(b) or section 4712(a)(1) of title 41, as the case may be.

''§ 744. Evaluation criteria of supervisors and treatment of bonuses

''(a) EVALUATION CRITERIA.—(1) In evaluating the performance of supervisors of the Department, the Secretary shall include the criteria described in paragraph (2).

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

''(A) Whether the supervisor treats whistleblower complaints in accordance with section 742.

''(B) Whether the appropriate deciding official, performance review board, or performance review committee determines that the supervisor was found to have committed a prohibited personnel action described in section 743(b) by an administrative judge, the Merit Systems Protection Board, the Office of Special Counsel, an adjudicating body provided under a union contract, a Federal judge, or, in the case of a settlement of a whistleblower complaint (regardless of whether any fault was assigned under such settlement), the Secretary.

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

''(2) Notwithstanding any other provision of law, the Secretary shall issue an order directing a supervisor described in subsection (a)(2)(B) to repay the amount of any award or bonus paid under this title or title 5, including under chapter 45 or 53 of such title, if—

''(A) such award or bonus was paid for performance during a period in which the supervisor committed a prohibited personnel action as determined pursuant to such subsection (a)(2)(B);

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

''(C) before such order is made, the supervisor is afforded—

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

''(ii) an opportunity to appeal the order to another department or agency of the Federal Government, except that any such department or agency shall issue a final decision with respect to such appeal not later than the date that is 30 days after the date the department or agency received such appeal.

''§ 745. Training regarding whistleblower complaints

''(a) TRAINING.—The Secretary, in coordination with the Whistleblower Protection Ombudsman designated under section 3(d)(1)(C) of the Inspector General Act of 1978 (5 U.S.C. App.), shall annually provide to each employee of the Department training regarding whistleblower complaints, including—

''(1) an explanation of each method established by law in which an employee may file a whistleblower complaint;

''(2) an explanation of prohibited personnel actions described by section 743(c) of this title;

''(3) with respect to supervisors, how to treat whistleblower complaints in accordance with section 742 of this title;

''(4) the right of the employee to petition Congress regarding a whistleblower complaint in accordance with section 7211 of title 5;

''(5) an explanation that the employee may not be prosecuted or reprised against for disclosing information to Congress in instances where such disclosure is permitted by law, including under sections 5701, 5705, and 7742 of this title, under section 552a of title 5 (commonly referred to as the Privacy Act), under chapter 93 of title 18, and pursuant to regulations promulgated under section 264(c) of the Health Insurance Portability and Accountability Act of 1996 (Public Law 104–191);

''(6) an explanation of the language that is required to be included in all nondisclosure policies, forms, and agreements pursuant to section 115(a)(1) of the Whistleblower Protection Enhancement Act of 2012 (5 U.S.C. 2302 note); and

''(7) the right of contractors to be protected from reprisal for the disclosure of certain information under section 4705 or 4712 of title 41.

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

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

''(2) The Secretary shall publish on the Internet website of the Department, the whistleblower complaint form described in section 742(g)(2).

''§ 746. Notice to Congress

''Not later than 30 days after the date on which the Secretary receives from the Special Counsel information relating to a whistleblower complaint pursuant to section 1213 of title 5, the Secretary shall notify the Committees on Veterans' Affairs of the House of Representatives and the Senate, the Committee on Oversight and Government Reform of the House of Representatives, and the Committee on Homeland Security and Governmental Affairs of the Senate of such information, including the determination made by the Special Counsel.''.

(b) CONFORMING AND CLERICAL AMENDMENTS.—

(1) CONFORMING AMENDMENT.—Such chapter is further amended by inserting before section 701 the following:

''SUBCHAPTER I—GENERAL EMPLOYEE MATTERS''.

(2) CLERICAL AMENDMENTS.—The table of sections at the beginning of such chapter is amended—

(A) by inserting before the item relating to section 701 the following new item:

''SUBCHAPTER I—GENERAL EMPLOYEE MATTERS'';

and

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

''SUBCHAPTER II—WHISTLEBLOWER COMPLAINTS

''741. Whistleblower complaint defined.
''742. Treatment of whistleblower complaints.
''743. Adverse actions against supervisory employees who commit prohibited personnel actions relating to whistleblower complaints.
''744. Evaluation criteria of supervisors and treatment of bonuses.
''745. Training regarding whistleblower complaints.
''746. Notice to Congress.''.

SEC. 9. APPEALS REFORM.

(a) DEFINITIONS.—Section 101 of title 38, United States Code, 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 this title.

''(35) The term 'relevant evidence' means evidence that tends to prove or disprove a matter in issue.''.

(b) NOTICE TO CLAIMANTS OF REQUIRED INFORMATION AND EVIDENCE.—Section 5103 of title 38, United States Code, is amended—

(1) in subsection (a)(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

(2) in subsection (b) by adding at the end the following new paragraph:

''(6) Nothing in this section shall require notice to be sent for a supplemental claim that is filed within the timeframe set forth in subsections (a)(2)(B) and (a)(2)(D) of section 5110 of this title.''.

(c) RULE WITH RESPECT TO DISALLOWED CLAIMS.—Section 5103A(f) of title 38, United States Code, is amended to read as follows:

''(f) RULE WITH RESPECT TO DISALLOWED CLAIMS.—Nothing in this section shall be construed to require the Secretary to readjudicate a claim that has been disallowed except when new and relevant evidence is presented or secured, as described in section 5108 of this title.''.

(d) OTHER MATTERS.—Chapter 51 of title 38, United States Code, is amended by inserting after section 5103A the following new sections:

''§ 5103B. Applicability of duty to assist

''(a) TIME FRAME.—The Secretary's duty to assist under section 5103A of this title 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 decision with respect to such claim, or supplemental claim, under section 5104 of this title.

''(b) NON-APPLICABILITY TO CERTAIN REVIEWS AND APPEALS.—The Secretary's duty to assist under section 5103A of this title shall not apply to higher-level review by the agency of original jurisdiction, pursuant to section 5104B of this title, or to review on appeal by the Board of Veterans' Appeals.

''(c) CORRECTION OF DUTY TO ASSIST ERRORS.—(1) If, during review of the decision of the agency of original jurisdiction 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 section 5103A of this title, and that error occurred prior to the decision of the agency of original jurisdiction being reviewed, the higher-level reviewer shall return the claim for correction of such error and readjudication unless the claim can be granted in full.

''(2) If the Board, during review on appeal of a decision of the agency of original jurisdiction decision, 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, the Board shall remand the claim to the agency of original jurisdiction for correction of such error and readjudication unless the claim can be granted in full. Remand for correction of such error may include directing the agency of original jurisdiction to obtain an advisory medical opinion under section 5109 of this title.

''§ 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.

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

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

''(b) TIME AND MANNER OF REQUEST.—A request for higher-level review by the agency of original jurisdiction must be in writing in the form prescribed by the Secretary and made within one year of the notice of the decision of the agency of original jurisdiction. 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 decision of the agency of original jurisdiction being reviewed.

''(e) DE NOVO REVIEW.—Higher-level review under this section shall be de novo.''.

(e) NOTICE OF DECISIONS.—Section 5104(b) of title 38, United States Code, 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—

''(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; and

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

(f) SUPPLEMENTAL CLAIMS.—Section 5108 of title 38, United States Code, 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 evidence added to the record prior to the former disposition of the claim.''.

(g) REMANDS FOR MEDICAL OPINIONS.—Section 5109 of title 38, United States Code, 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 Board's remand instructions shall include the questions to be posed to the independent medical expert providing the advisory medical opinion.''.

(h) EFFECTIVE DATES OF AWARDS.—Section 5110 of title 38, United States Code, is amended—

(1) by striking subsection (a) and inserting the following new subsection (a):

''(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, dependency 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 applying the effective date rules in this section, the date of application shall be considered the date of the filing of the initial application for a benefit provided that 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 within one year of an agency of original jurisdiction decision.

''(B) A supplemental claim under section 5108 of this title within one year of an agency of original jurisdiction decision.

''(C) A notice of disagreement within one year of an agency of original jurisdiction decision.

''(D) A supplemental claim under section 5108 of this title within one year of a decision of the Board of Veterans' Appeals.

''(3) Except as otherwise provided in this section, for supplemental claims received more than one year after an agency of original jurisdiction decision or a decision by the Board of Veterans' Appeals, 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) by—

(A) striking ''reopened'' and inserting ''readjudicated'';

(B) striking ''material'' and inserting ''relevant''; and

(C) striking ''reopening'' and inserting ''readjudication''.

(i) DEFINITION OF AWARD OR INCREASED REWARD.—Section 5111(d)(1) of title 38, United States Code, is amended by striking ''or reopened award;'' and inserting ''award or award based on a supplemental claim;''.

(j) RECOGNITION OF AGENTS AND ATTORNEYS GENERALLY.—Section 5904 of title 38, United States Code, is amended—

(1) in subsection (c)(1) by striking ''notice of disagreement is filed'' and inserting ''claimant is provided notice of the initial decision of the agency of original jurisdiction under section 5104 of this title''; and

(2) in subsection (c)(2) by striking ''notice of disagreement is filed'' and inserting ''claimant is provided notice of the initial decision of the agency of original jurisdiction under section 5104 of this title''.

(k) CORRECTION OF OBVIOUS ERRORS.—Section 7103 of title 38, United States Code, is amended—

(1) in subsection (b)(1)(A) by striking ''heard'' and inserting ''decided''; and

(2) in subsection (b)(1)(B) by striking ''heard'' and inserting ''decided''.

(l) JURISDICTION OF BOARD.—Section 7104(b) of title 38, United States Code, is amended by striking ''reopened'' and inserting ''readjudicated''.

(m) FILING OF APPEAL.—Section 7105 of title 38, United States Code, is amended—

(1) in subsection (a)—

(A) by striking the first sentence and inserting ''Appellate review will be initiated by the filing of a notice of disagreement in the form prescribed by the Secretary.''; and

(B) by striking ''hearing and'';

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

''(b)(1) 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 under section 5104, 5104B, or 5108 of this title. A notice of disagreement postmarked before the expiration of the one-year period will be accepted as timely filed. A question as to timeliness or adequacy of the notice of disagreement shall be decided by the Board.

''(2) Notices of disagreement must be in writing, must 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. Not more than one recognized organization, attorney, or agent will be recognized at any one time in the prosecution of a claim. Notices of disagreement must be filed with the Board.

''(3) The notice of disagreement shall indicate whether the claimant requests a hearing before the Board, requests an opportunity to submit additional evidence without a Board hearing, or requests review by the Board without a hearing or submission of additional evidence. If the claimant does not expressly request a Board hearing in the notice of disagreement, no Board hearing will be held.'';

(3) 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 will not thereafter be readjudicated or allowed, except as may otherwise be provided by section 5104B or 5108 of this title or regulations not inconsistent with this title.'';

(4) by striking subsections (d)(1) through (d)(5);

(5) by adding a new subsection (d) to read as follows:

''(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.''; and

(6) by striking subsection (e).

(n) SIMULTANEOUSLY CONTESTED CLAIMS.—Subsection (b) of section 7105A of title 38, United States Code, is amended to read as follows:

''(b) The substance of the notice of disagreement shall be communicated to the other party or parties in interest and a period of 30 days shall be allowed for filing a brief or argument in response thereto. 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.''.

(o) ADMINISTRATIVE APPEALS.—Strike section 7106 of title 38, United States Code.

(p) DOCKETS AND HEARINGS.—Section 7107 of title 38, United States Code, is amended—

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

''(a) The Board shall maintain two separate dockets. A non-hearing option docket shall be maintained for cases in which no Board hearing is requested and no additional evidence will be submitted. 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. 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.'';

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

''(b) 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. Any such motion shall set forth succinctly the grounds upon which the motion is based. Such a motion may be granted only—

''(1) if the case involves interpretation of law of general application affecting other claims;

''(2) if the appellant is seriously ill or is under severe financial hardship; or

''(3) for other sufficient cause shown.'';

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

''(c)(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 subsection (c)(1)(A) of this section, the appellant may alternatively request a hearing as described in subsection (c)(1)(B) of this section. If so requested, the Board shall grant such request.

''(B) Upon notification of a Board hearing by picture and voice transmission as described in subsection (c)(1)(B) of this section, the appellant may alternatively request a hearing as described in subsection (c)(1)(A) of this section. If so requested, the Board shall grant such request.''; and

(4) by striking subsections (d) and (e) and redesignating subsection (f) as subsection (d).

(q) INDEPENDENT MEDICAL OPINIONS.—Strike section 7109 of title 38, United States Code.

(r) REVISION OF DECISIONS ON GROUNDS OF CLEAR AND UNMISTAKABLE ERROR.—Section 7111(e) of title 38, United States Code, is amended by striking ''merits, without referral to any adjudicative or hearing official acting on behalf of the Secretary.'' and inserting ''merits.''.

(s) EVIDENTIARY RECORD.—Chapter 71 of title 38, United States Code, is amended by adding the following new section:

''§ 7113. Evidentiary record before the board

''(a) NON-HEARING OPTION DOCKET.—For cases in which a Board hearing 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 agency of original jurisdiction decision on appeal.

''(b) HEARING OPTION DOCKET.—(1) Except as provided in paragraph (2), 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 agency of original jurisdiction decision on appeal.

''(2) 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—

''(A) evidence submitted by the appellant and his or her representative, if any, at the Board hearing; and

''(B) evidence submitted by the appellant and his or her representative, if any, within 90 days following the Board hearing.

''(3)(A) Except as provided in subparagraph (B) of this paragraph, 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; and

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

(t) CONFORMING AMENDMENT.—The heading of section 7105 is amended by striking ''notice of disagreement and''.

(u) CLERICAL AMENDMENTS.—

(1) CHAPTER 51.—The table of sections at the beginning of chapter 51 of title 38, United States Code, is amended—

(A) by inserting after the item relating to section 5103A the following new item:

''5103B. Applicability of duty to assist.'';

and

(B) by inserting after the item relating to section 5104 the following new items:

''5104A. Binding nature of favorable findings.
''5104B. Higher-level review by the agency of original jurisdiction.'';

and

(C) by striking the item relating to section 5108 and inserting the following new item:

''5108. Supplemental claims.''.

(2) CHAPTER 71.—The table of sections at the beginning of chapter 71 of title 38, United States Code, is amended—

(A) by striking the item relating to section 7105 and inserting the following new item:

''7105. Filing of appeal.'';

(B) by striking the item relating to section 7106;

(C) by striking the item relating to section 7109; and

(D) by adding at the end the following new item:

''7113. Evidentiary record before the Board.''.

SEC. 10. 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 by striking the period at the end and inserting the following: '', except that 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 a member of the Senior Executive Service.''.

The Acting CHAIR. No amendment to the bill shall be in order except those printed in House Report 114–742. Each such amendment may be offered only in the order printed in the report, by a Member designated in the report, shall be considered as read, shall be debatable for the time specified in the report, equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for division of the question.

AMENDMENT NO. 1 OFFERED BY MR. MILLER OF FLORIDA

The Acting CHAIR. It is now in order to consider amendment No. 1 printed in House Report 114–742.

Mr. MILLER of Florida. Mr. Chairman, I rise to offer an amendment.

The Acting CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Page 4, beginning on line 16, strike ''under section 7701 of title 5''.

Page 11, strike lines 11 through 14 and insert the following:

''(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 to appeal the order to another department or agency of the Federal Government.''.

Page 14, strike lines 20 through 23 and insert the following:

''(2) before such repayment, the employee is afforded—

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

''(B) an opportunity to appeal the order to another department or agency of the Federal Government.''.

Page 20, line 8, insert ''consistent with paragraph (3),'' before ''may''.

Page 20, after line 11, insert the following:

''(3) An appeal of a personnel action pursuant to paragraph (2)(A) must be filed with the Senior Executive Disciplinary Appeals Board not later than the date that is seven days after the date of such action. If such appeal is not made within the seven-day period, the personnel action shall be final and not subject to further appeal.''.

Page 29, strike lines 13 through 18 and insert the following:

''(2)(A) Except as provided by subparagraph (B), with respect to a supervisory employee subject to an adverse action under this section who is—

''(i) an individual as that term is defined in section 715(i)(1) of this title, the procedures under subsections (d) and (e) of section 715 of this title shall apply; and

''(ii) an individual as that term is defined in section 713(g)(1) of this title, the procedures under section 713(d) of this title shall apply.''.

Page 29, line 21, strike ''five days'' and insert ''ten days''.

Page 30, line 2, strike ''five-day'' and insert ''ten-day''.

Page 33, line 17, strike ''except that'' and all that follows through the period on line 21 and insert ''except that—''

(I) any such department or agency shall issue a final decision with respect to such appeal not later than the date that is 30 days after the date the department or agency received such appeal; and

(II) if such a final decision is not made by the applicable department or agency within 30 days after receiving such appeal, the order of the Secretary shall be final and not subject to further appeal.

Page 34, line 19, strike ''7742'' and insert ''7332''.

The Acting CHAIR. Pursuant to House Resolution 859, the gentleman from Florida (Mr. MILLER) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Florida.

Mr. MILLER of Florida. Mr. Chairman, specifically, this would provide technical, conforming, and clarifying language changes to the bill while not changing the substance of the bill. It would also align the pre-notice and due process language on three of the sections relating to bonus, pension, and relocation expenses. And it would also align the pre-notice requirements for whistleblower retaliators who are receiving an adverse action to the same amount of time as other disciplinary actions in the bill.

This amendment is noncontroversial, it doesn't cost a penny, and it doesn't change any of the underlying policy.

I urge adoption of the amendment.

I reserve the balance of my time.

Mr. TAKANO. Mr. Chair, I rise in opposition to the amendment.

The Acting CHAIR. The gentleman from California is recognized for 5 minutes.

Mr. TAKANO. Mr. Chair, this amendment really changes nothing favorably, from our point of view, in H.R. 5620. It does not cure the fundamental flaws in the bill which relate to its possible unconstitutionality, and, therefore, I will oppose the amendment.

I reserve the balance of my time.

Mr. MILLER of Florida. Mr. Chairman, I am very sorry that my good friend would oppose something as simple as a technical and conforming amendment, but I accept this opposition.

I reserve the balance of my time.

Mr. TAKANO. Mr. Chair, I have no further comments, and I yield back the balance of my time.

Mr. MILLER of Florida. Mr. Chair, I urge adoption of my amendment, and I yield back the balance of my time.

The Acting CHAIR. The question is on the amendment offered by the gentleman from Florida (Mr. MILLER).

The amendment was agreed to.

□ 1815

AMENDMENT NO. 2 OFFERED BY MR. WALZ

The Acting CHAIR. It is now in order to consider amendment No. 2 printed in House Report 114–742.

Mr. WALZ. Mr. Chair, I have an amendment at the desk.

The Acting CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Page 1, line 5, strike ''VA Accountability First and''.

Page 2, beginning line 3, strike sections 2 through 8.

Page 53, beginning line 14, strike section 10.

The Acting CHAIR. Pursuant to House Resolution 859, the gentleman from Minnesota (Mr. WALZ) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Minnesota.

Mr. WALZ. Mr. Chairman, I have three amendments that are coming up. On this first one, I am going to yield time to my colleague, who is the author of the original bill.

I just wanted to say, first of all, in appreciation to the chairman of the full committee, the bipartisan manner of approaching this is in the long tradition of the House Veterans' Affairs Committee. It is also in the long tradition of the chairman himself, welcoming ideas, trying to strike balances, having legitimate differences that are meant to be discussed—for that, I am grateful—and also for restoring regular order.

Making our amendments in order to try to improve upon a bill is something that is a time-honored tradition here. Unfortunately, it has not been the norm. So the chairman's leadership on that issue is greatly appreciated.

This amendment I want to be very clear about when the gentlewoman from Nevada (Ms. TITUS) talks about it.

The amendment does not disagree with the basic premise of the reform. There are legitimate differences amongst us here. We will work those out. But it is a harsh reality that we don't have a Senate companion on this. The chance that the White House is going to sign the reform piece into law is nonexistent. But there is a piece of this that is noncontroversial that is critically important, and that is the appeals process.

The ranking member, under the leadership of Ms. TITUS, has recognized this as an issue, brought about bipartisan solutions to it; and it can be passed and be signed by the President and be positively affecting veterans right away.

That doesn't diminish the need for the reforms. It doesn't question the value of the things that are being brought forward. It is a political reality that we are better off to move on a piece we know can be signed into law than to wait for something that can't.

Mr. Chair, I yield such time as she may consume to the gentlewoman from Nevada (Ms. TITUS), the author of this legislation.

Ms. TITUS. I thank my friend from Minnesota (Mr. WALZ) for yielding to me and for helping me with this amendment.

Mr. Chair, this is very simple. It would just remove all of the accountability provisions from the bill and give the House an opportunity to send a clean reform bill to the Senate.

While we all agree that accountability for employees at the VA is critical, we should separate these two issues, pass appeals reform, and then work in a bipartisan manner on the accountability issues.

Rather than send another accountability bill to the Senate, which is opposed by the administration, we should pass this amendment and send to the President a clean bill that can be signed right away and fix this deeply flawed, old, outdated appeals process.

I am proud to have worked with various VSOs and the VA to develop the overhaul of appealing VA benefits claims. As I said earlier, the current system is broken, and every day it gets worse. More appeals are added to the backlog. It has ballooned to 450,000 claims. If we don't act now, veterans will soon have to wait a decade before their appeals can be adjudicated.

Passing this amendment will allow us to address this growing problem now instead of subjecting our veterans not to good policy, but to bad politics.

Mr. WALZ. Mr. Chair, I want to, again, thank the chairman.

This is not an attempt to derail the reforms. It is an attempt to try to get something passed and done immediately. I certainly welcome the chairman's advice, guidance, suggestions on ways that we can make that happen in the most expedient manner.

Mr. Chair, I yield back the balance of my time.

Mr. MILLER of Florida. Mr. Chairman, I rise in opposition to the amendment.

The Acting CHAIR. The gentleman is recognized for 5 minutes.

Mr. MILLER of Florida. Mr. Chairman, I yield myself such time as I may consume.

Before I begin, let me say I believe that there is only one piece of legislation that has been filed at this point in the Senate that deals with—I know there are folks that have been talking about it—appeals reform, and that is Senator RUBIO. Senator RUBIO has the companion to this piece of legislation that has been filed in the Senate.

As has already been stated, this removes every section from the underlying bill, except for the appeals modernization. It would strike out all the accountability provisions, many of which have already passed this House of Representatives.

The underlying bill already includes revised accountability language that would make significant concessions towards the minority's position as it relates to due process. And I don't believe anybody on the minority side can say that this doesn't.

I believe that any reform that passes this Congress is doomed to fail if we don't provide the Secretary of the Department of Veterans Affairs with the

authority he needs to swiftly and fairly discipline employees.

If this amendment passes, the same antiquated and broken civil service system will remain in place.

As I have already said, 18 VSOs believe the accountability provisions are critical to the success of reforming the Department of Veterans Affairs.

From the VFW:

For far too long, underperforming employees have been allowed to continue working at VA simply because the processes for removal are so protracted.

The VFW believes that employees should have some layer of protection, but that true accountability must be enforced for those who willfully fail to meet the standard.

This is critical to ensuring that VA consistently provides the highest quality services, as continuing to restore veterans' faith in the Department.

From the American Legion:

Veterans deserve a first-rate agency to provide for their needs, and the VA is an excellent agency that is, unfortunately, marred from time to time by bad actors that the complicated system of discipline makes it difficult to remove.

Legislation to improve that process and make it easier to deal with these few problem employees would help restore trust.

In short, our VSOs understand how critical both of the appeals and accountability provisions are, and we should listen to them.

Mr. Chair, I yield back the balance of my time.

The Acting CHAIR. The question is on the amendment offered by the gentleman from Minnesota (Mr. WALZ).

The question was taken; and the Acting Chair announced that the noes appeared to have it.

Mr. TAKANO. Mr. Chair, I demand a recorded vote.

The Acting CHAIR. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from Minnesota will be postponed.

AMENDMENT NO. 3 OFFERED BY MR. TAKANO

The Acting CHAIR. It is now in order to consider amendment No. 3 printed in House Report 114–742.

Mr. TAKANO. Mr. Chair, I have an amendment at the desk.

The Acting CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Strike section 3 and insert the following:

SEC. 3. SUSPENSION AND REMOVAL OF DEPARTMENT OF VETERANS AFFAIRS EMPLOYEES FOR PERFORMANCE OR MISCONDUCT THAT IS A THREAT TO PUBLIC HEALTH OR SAFETY.

(a) IN GENERAL.—Chapter 7 of title 38, United States Code, is amended by adding after section 713 the following new section:

"§ 715. Employees: suspension and removal for performance or misconduct that is a threat to public health or safety

"(a) SUSPENSION AND REMOVAL.—Subject to subsections (b) and (c), the Secretary may—

"(1) suspend without pay an employee of the Department of Veterans Affairs if the Secretary determines the performance or misconduct of the employee is a threat to public health or safety, including the health and safety of veterans; and

"(2) remove an employee suspended under paragraph (1) when, after such investigation and review as the Secretary considers necessary, the Secretary determines that removal is necessary in the interests of public health or safety.

"(b) PROCEDURE.—An employee suspended under subsection (a)(1) is entitled, after suspension and before removal, to—

"(1) within 30 days after suspension, a written statement of the specific charges against the employee, which may be amended within 30 days thereafter;

"(2) an opportunity within 30 days thereafter, plus an additional 30 days if the charges are amended, to answer the charges and submit affidavits;

"(3) a hearing, at the request of the employee, by a Department authority duly constituted for this purpose;

"(4) a review of the case by the Secretary, before a decision adverse to the employee is made final; and

"(5) written statement of the decision of the Secretary.

"(c) RELATION TO OTHER DISCIPLINARY RULES.—The authority provided under this section shall be in addition to the authority provided under section 713 and title 5 with respect to disciplinary actions for performance or misconduct.

"(d) BACK PAY FOR WHISTLEBLOWERS.—If any employee of the Department of Veterans Affairs is subject to a suspension or removal under this section and such suspension or removal is determined by an appropriate authority under applicable law, rule, regulation, or collective bargaining agreement to be a prohibited personnel practice described under section 2302(b)(8) or (9) of title 5, such employee shall receive back pay equal to the total amount of basic pay that such employee would have received during the period that the suspension and removal (as the case may be) was in effect, less any amounts earned by the employee through other employment during that period.

"(e) DEFINITIONS.—In this section, the term 'employee' means any individual occupying a position within the Department of Veterans Affairs under a permanent or indefinite appointment and who is not serving a probationary or trial period.".

(b) CLERICAL AND CONFORMING AMENDMENTS.—

(1) CLERICAL.—The table of sections at the beginning of such chapter is amended by adding after the item relating to section 713 the following new item:

"715. Employees: suspension and removal for performance or misconduct that is a threat to public health or safety.".

(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 suspension or removal under section 715 of title 38.".

(c) REPORT ON SUSPENSIONS AND REMOVALS.—Not later than one year after the date of the enactment of this Act, the Inspector General of the Department of Veterans Affairs shall submit to the Committees on Veterans' Affairs of the House of Representatives and the Senate a report on suspensions and removals of employees of the Department made under section 715 of title 38, United States Code, as added by subsection (a). Such report shall include, with respect to the period covered by the report, the following:

(1) The number of employees who were suspended under such section.

(2) The number of employees who were removed under such section.

(3) A description of the threats to public health or safety that caused such suspensions and removals.

(4) The number of such suspensions or removals, or proposed suspensions or removals, that were of employees who filed a complaint regarding—

(A) an alleged prohibited personnel practice committed by an officer or employee of the Department and described in section 2302(b)(8) or 2302(b)(9)(A)(i), (B), (C), or (D) of title 5, United States Code; or

(B) the safety of a patient at a medical facility of the Department.

(5) Of the number of suspensions and removals listed under paragraph (4), the number that the Inspector General considers to be retaliation for whistleblowing.

(6) The number of such suspensions or removals that were of an employee who was the subject of a complaint made to the Department regarding the health or safety of a patient at a medical facility of the Department.

(7) Any recommendations by the Inspector General, based on the information described in paragraphs (1) through (6), to improve the authority to make such suspensions and removals.

The Acting CHAIR. Pursuant to House Resolution 859, the gentleman from California (Mr. TAKANO) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from California.

Mr. TAKANO. Mr. Chair, I rise in support of my amendment, which would ensure that any VA employee whose performance or misconduct threatens public health or safety, including the health and safety of veterans, be immediately suspended without pay.

Specifically, it replaces section 3 of H.R. 5620 with a new provision allowing the Secretary to take lawful and abrupt action in extreme cases in which immediate action is warranted.

My amendment would also give the Secretary the authority to remove a suspended employee, after a thorough investigation and review, if the Secretary determines removal is in the interest of public health and safety.

Both parties share the desire to protect veterans from mistreatment or harm, especially when they are seeking medical care at a VA hospital, but the current language in this bill will not accomplish that goal.

The process for removing dangerous employees in H.R. 5620 is unconstitutional, and any action it authorized against underperforming VA employees would not hold up in court. Instead of achieving the majority's stated outcome of removing VA employees whose misconduct harms veterans, this bill would produce expensive legal costs, and it would fail to hold bad employees accountable.

My amendment is specifically designed to make sure the Secretary has the authority to immediately suspend any VA employee whose behavior threatens the health and safety of veterans and that the suspended employee receives no pay while the investigation is carried out.

I urge my colleagues to support the amendment.

Mr. Chair, I reserve the balance of my time.

Mr. MILLER of Florida. Mr. Chairman, I rise in opposition to the amendment.

The Acting CHAIR. The gentleman is recognized for 5 minutes.

Mr. MILLER of Florida. Mr. Chairman, I yield myself such time as I may consume.

I appreciate the ranking member's attempt to insert what he thinks is the appropriate balance of due process and accountability, but this confusing language fails to achieve a balance. What it actually does is it strikes the entire accountability section and inserts an entirely new process for the discipline of non-SES employees.

It would be convoluted, at best, and seemingly stricter than current law, but the most troubling change that this amendment would make would be to change the standard to discipline VA employees from performance or misconduct.

The amendment would change it to a direct threat to public health or safety, which it would be nearly unobtainable, if not an immeasurable bar to reach.

It would also, more than likely, not apply to some of the employees who have been associated with VA's most egregious scandals recently. It would not do anything for those who were involved in the bloated Denver, Colorado, hospital construction project which was over $1 billion over budget, or the data manipulation at the Philadelphia regional office, or the $2.5 billion budget shortfall for fiscal year 2015, or the cost overruns of the Orlando VA Medical Center, or the allegations of inappropriate use of government purchase cards to the tune of $6 billion, and many, many others. These are the types of employees that our constituents and our veterans expect to be held accountable, but this amendment would not cover disciplinary action against them.

It would allow for employees to be on indefinite suspension for months, if not years, awaiting the Secretary's final decision, which is not fair to the veterans, the employee, the good-performing employees, or our taxpayers. VA is unable to backfill while the disciplinary actions are on appeal.

In the end, the question is clear: Do we want to stand with the veterans and the taxpayers and provide the VA the appropriate tools to hold employees accountable, or do we want to give in to special interest groups and unions that support only the status quo?

I would hope that for all Members, that is an easy question to answer.

I urge all Members to oppose the Takano amendment and support the underlying bill.

Mr. Chair, I reserve the balance of my time.

Mr. TAKANO. Mr. Chair, I would like to say that we on this side of the aisle do stand with veterans, and we do stand for accountability, and we do stand with the taxpayers. And that is precisely why we must oppose the unconstitutional provisions in H.R. 5620 for removing dangerous employees.

The current provisions we do believe are unconstitutional; and that is why, in the end, it will not protect veterans. Actually, it harms them more because these employees will be reinstated after the courts find the provisions that they were dismissed under—this bill, under this law, would be found unconstitutional, and they would be reinstated and a lot of taxpayer money would be wasted.

Yes, we stand with the veteran. Yes, we stand for the taxpayer. Yes, we stand for accountability.

I urge my colleagues to support my amendment, therefore, because we replace it with a constitutional alternative.

Mr. Chair, I yield back the balance of my time.

Mr. MILLER of Florida. Mr. Chairman, I yield back the balance of my time.

The Acting CHAIR. The question is on the amendment offered by the gentleman from California (Mr. TAKANO).

The question was taken; and the Acting Chair announced that the noes appeared to have it.

Mr. TAKANO. Mr. Chair, I demand a recorded vote.

The Acting CHAIR. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from California will be postponed.

□ 1830

AMENDMENT NO. 4 OFFERED BY MS. MICHELLE LUJAN GRISHAM OF NEW MEXICO

The Acting CHAIR. It is now in order to consider amendment No. 4 printed in House Report 114–742.

Ms. MICHELLE LUJAN GRISHAM of New Mexico. Mr. Chairman, I have an amendment at the desk.

The Acting CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Page 4, line 2, after ''Representatives'' insert the following: ''and to each Member of Congress representing a district in the State or territory where the facility where the individual was employed immediately before being removed or demoted is located''.

Page 5, line 22, after ''Representatives'' insert the following: ''and to each Member of Congress representing a district in the State or territory where the facility where the individual was employed immediately before being removed or demoted is located''.

Page 25, line 17, strike ''to the supervisor of the director or official.'' and insert ''to— ''

''(A) the supervisor of the director or official;

''(B) the Committees on Veterans' Affairs of the Senate and House or Representatives; and

''(C) each Member of Congress representing a district in the State or territory where the facility where the supervisor is employed is located.''.

Page 36, line 5, after ''Senate'' insert the following: ''and each Member of Congress representing a district in the State or territory where a facility relevant to the whistleblower complaint is located''.

The Acting CHAIR. Pursuant to House Resolution 859, the gentlewoman from New Mexico (Ms. MICHELLE LUJAN GRISHAM) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentlewoman from New Mexico.

Ms. MICHELLE LUJAN GRISHAM of New Mexico. Mr. Chairman, as I am sure you have heard, my amendment, as many others, is simple. It ensures that, one, Members of Congress know when Veterans Administration employees are fired or demoted at VA facilities in their district for misconduct or poor performance; and, two, that Members are aware of whistleblowers' complaints from VA employees in their districts and how they are, in fact, being handled.

Congress cannot solve the issues at the VA that it does not know about. Even though I have met with and listened to countless VA employees, veterans, and family members since I was elected to Congress, my office not only continues to hear about the same problems that have gone unaddressed, but also about new issues all the time. In fact, I have more constituent casework regarding issues at the VA than any other Federal agency, and there are likely many more veterans and VA employees who are dealing with serious issues that I may never hear about.

Lastly, I share frustrations with Members on both sides of the aisle for the lack of followup about what the VA is doing to both investigate allegations about misconduct and hold responsible employees accountable.

Members of Congress deserve to know about potential issues at VA health facilities in their communities and what the VA is doing to address them. My amendment would increase congressional oversight and transparency of the VA. It also helps to ensure that veterans receive the timely, quality care that they have earned.

Mr. Chairman, I yield back the balance of my time.

Mr. MILLER of Florida. Mr. Chairman, I ask unanimous consent to claim the time in opposition, although I am not opposed to the amendment.

The Acting CHAIR. Is there objection to the request of the gentleman from Florida?

There was no objection.

The Acting CHAIR. The gentleman is recognized for 5 minutes.

Mr. MILLER of Florida. Mr. Chair, I yield myself such time as I may consume.

Mr. Chair, again, as has already been stated by the author of the amendment, this would require VA to notify the appropriate Member of Congress when the new accountability process is used or to remove or demote an employee who works for the VA at a facility in that Member's district.

I think this is an excellent suggestion that would improve transparency,

something that is most needed at the Department of Veterans Affairs. It has my full support.

I yield back the balance of my time.

The Acting CHAIR. The question is on the amendment offered by the gentlewoman from New Mexico (Ms. MICHELLE LUJAN GRISHAM).

The amendment was agreed to.

AMENDMENT NO. 5 OFFERED BY MS. KUSTER

The Acting CHAIR. It is now in order to consider amendment No. 5 printed in House Report 114–742.

Ms. KUSTER. Mr. Chair, I rise to speak in favor of my amendment No. 5, to improve the accountability provisions found within H.R. 5620.

The Acting CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Strike section 7 and insert the following:

SEC. 7. IMPROVED AUTHORITIES OF SECRETARY OF VETERANS AFFAIRS TO IMPROVE ACCOUNTABILITY OF SENIOR EXECUTIVES.

(a) ACCOUNTABILITY OF SENIOR EXECUTIVES.—

(1) IN GENERAL.—Section 713 of title 38, United States Code, is amended to read as follows:

''§ 713. Accountability of senior executives

''(a) AUTHORITY.—(1) The Secretary may, as provided in this section, reprimand or suspend, involuntarily reassign, demote, or remove a covered individual from a senior executive position at the Department if the Secretary determines that the misconduct or performance of the covered individual warrants such action.

''(2) If the Secretary so removes such an individual, the Secretary may remove the individual from the civil service (as defined in section 2101 of title 5).

''(b) RIGHTS AND PROCEDURES.—(1) A covered individual who is the subject of an action under subsection (a) is entitled to—

''(A) be represented by an attorney or other representative of the covered individual's choice;

''(B) not fewer than 10 business days advance written notice of the charges and evidence supporting the action and an opportunity to respond, in a manner prescribed by the Secretary, before a decision is made regarding the action; and

''(C) grieve the action in accordance with an internal grievance process that the Secretary, in consultation with the Assistant Secretary for Accountability and Whistleblower Protection, shall establish for purposes of this subsection.

''(2)(A) The Secretary shall ensure that the grievance process established under paragraph (1)(C) takes fewer than 21 days.

''(B) The Secretary shall ensure that, under the process established pursuant to paragraph (1)(C), grievances are reviewed only by employees of the Department.

''(3) A decision or grievance decision under paragraph (1)(C) shall be final and conclusive.

''(4) A covered individual adversely affected by a final decision under paragraph (1)(C) may obtain judicial review of the decision.

''(5) In any case in which judicial review is sought under paragraph (4), the court shall review the record and may set aside any Department action found to be—

''(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with a provision of law;

''(B) obtained without procedures required by a provision of law having been followed; or

''(C) unsupported by substantial evidence.

''(c) RELATION TO OTHER PROVISIONS OF LAW.—(1) The authority provided by subsection (a) is in addition to the authority provided by section 3592 or subchapter V of chapter 75 of title 5.

''(2) Section 3592(b)(1) of title 5 and the procedures under section 7543(b) of such title do not apply to an action under subsection (a).

''(d) DEFINITIONS.—In this section:

''(1) The term 'covered individual' means—

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

''(B) any individual who occupies an administrative or executive position and who was appointed under section 7306(a) or section 7401(1) of this title.

''(2) The term 'misconduct' includes neglect of duty, malfeasance, or failure to accept a directed reassignment or to accompany a position in a transfer of function.

''(3) The term 'senior executive position' means—

''(A) with respect to a career appointee (as that term is defined in section 3132(a) of title 5), a Senior Executive Service position (as such term is defined in such section); and

''(B) with respect to a covered individual appointed under section 7306(a) or section 7401(1) of this title, an administrative or executive position.''.

(2) CONFORMING AMENDMENT.—Section 7461(c)(1) of such title is amended by inserting ''employees in senior executive positions (as defined in section 713(d) of this title) and'' before ''interns''.

(b) PERFORMANCE MANAGEMENT.—

(1) IN GENERAL.—The Secretary of Veterans Affairs shall establish a performance management system for employees in senior executive positions, as defined in section 713(d) of title 38, United States Code, as amended by subsection (a), that ensures performance ratings and awards given to such employees—

(A) meaningfully differentiate extraordinary from satisfactory contributions; and

(B) substantively reflect organizational achievements over which the employee has responsibility and control.

(2) REGULATIONS.—The Secretary shall prescribe regulations to carry out paragraph (1).

The Acting CHAIR. Pursuant to House Resolution 859, the gentlewoman from New Hampshire (Ms. KUSTER) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentlewoman from New Hampshire.

Ms. KUSTER. Mr. Chair, I believe accountability of senior executives at the VA is of great importance.

In recent years, administration of the Department of Veterans Affairs has come under intense public scrutiny. What Congress and the American people learned was that, while the vast majority of officials at the VA are selfless public servants who do their utmost to deliver quality health care to our veterans, there are some who hamper our ability as a country to care for our veterans.

It is our duty to ensure that our veterans receive the best possible care and benefits they have earned through their service to our country. My amendment seeks to strengthen the legislation to ensure that we truly are improving accountability at the VA.

This amendment is the result of a bipartisan process that gives the VA appropriate tools to keep senior executives accountable in a way that is fair and constitutional. My amendment utilizes bipartisan language developed in the Senate for the Veterans First Act, which was supported by veterans service organizations, including the American Legion.

It is important to note that my amendment is not a significant departure from Chairman MILLER's language found in section 7 of the bill. Indeed, it also eliminates the expedited appeals process passed in the 2014 Veterans Choice Act, and it establishes stricter standards that require the VA to take more immediate action against senior executives that the agency has found to be incompetent or otherwise negligent in their duties to deliver high-quality services to our Nation's veterans.

However, there are some legal concerns about aspects of section 7 of the bill that could prevent it from passing future legal scrutiny. My amendment ensures our intention to enforce accountability is not derailed by constitutionality issues.

Unfortunately, the bill would enable an ad hoc disciplinary appeals board to hear an appeal to an adverse action. This section also contains an arbitrary deadline for the decision, which would impact an employee's due process rights as afforded by the U.S. Constitution.

My amendment would resolve this issue by making the VA Secretary responsible for ensuring the appeals process takes less than 21 days and by making the Secretary of the VA directly responsible. My amendment strengthens transparency of the process without compromising accountability.

I am additionally concerned that this same section of the bill could be leveraged against whistleblowers of the Department who are critical to bring about change in an agency that serves millions of veterans. The ad hoc nature of the board could be used to pick officials that might have predispositions against a potential whistleblower.

The requirement that this individual answer their notice of adverse action within 5 calendar days could be used strategically to make an honest and meritorious appeal harder to achieve. My amendment replaces the 5-calendar-day standard with a 10-business-day standard.

The lack of transparency and accountability in the VA is truly worrisome, and I share Chairman MILLER's concern that it is worrisome to the American public. I thank Mr. MILLER and my committee colleagues for tackling this issue with forthrightness.

My amendment seeks to improve the bill and ensures its efficacy in law. For those reasons, I urge my colleagues to vote in favor of the Kuster amendment.

I yield back the balance of my time.

Mr. MILLER of Florida. Mr. Chair, while I understand what the gentlewoman is trying to accomplish, I do have to rise in opposition.

The Acting CHAIR. The gentleman is recognized for 5 minutes.

Mr. MILLER of Florida. Mr. Chair, first of all, I have to rise in opposition because it doesn't provide the appropriate level of accountability for SES employees. It largely mimics the same SES accountability language that is already in the bill, with just a few exceptions.

The open-ended timeline defies the intent to quickly adjudicate these cases within a clear and concrete timeline to benefit both the VA and the employee, and that is what we are trying to get at.

The pre-decision due process that would be required would actually exceed the current practice of 5 days that the VA enacted after passage of the Choice Act. And I remind my good friend that the Choice Act passed both Chambers with a huge bipartisan majority.

When the President signed the bill, he said: ''Now, finally, we're giving the VA Secretary more authority to hold people accountable. We've got to give Bob the authority so that he can move quickly to remove senior executives who fail to meet the standards of conduct and competence that the American people demand. If you engage in an unethical practice, if you cover up a serious problem, you should be fired. Period. It shouldn't be that difficult.''

We should be trying to improve the culture at VA by increasing accountability, not by weakening it.

I urge all Members to oppose this amendment.

I yield back the balance of my time.

The Acting CHAIR. The question is on the amendment offered by the gentlewoman from New Hampshire (Ms. KUSTER).

The question was taken; and the Acting Chair announced that the noes appeared to have it.

Ms. KUSTER. Mr. Chair, I demand a recorded vote.

The Acting CHAIR. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentlewoman from New Hampshire will be postponed.

AMENDMENT NO. 6 OFFERED BY MR. TAKANO

The Acting CHAIR. It is now in order to consider amendment No. 6 printed in House Report 114–742.

Mr. TAKANO. Mr. Chair, as the designee of the gentlewoman from Arizona (Mrs. KIRKPATRICK), I offer amendment No. 6.

The Acting CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Strike section 8 and insert the following:

SEC. 8. OFFICE OF ACCOUNTABILITY AND WHISTLEBLOWER PROTECTION.

(a) IN GENERAL.—Chapter 3 of title 38, United States Code, is amended by adding at the end the following new section:

''§ 323. Office of Accountability and Whistleblower Protection

''(a) ESTABLISHMENT.—There is established in the Department an office to be known as the Office of Accountability and Whistleblower Protection (in this section referred to as the 'Office').

''(b) HEAD OF OFFICE.—(1) The head of the Office shall be responsible for the functions of the Office and shall be appointed by the President pursuant to section 308(a) of this title.

''(2) The head of the Office shall be known as the 'Assistant Secretary for Accountability and Whistleblower Protection'.

''(3) The Assistant Secretary shall report directly to the Secretary on all matters relating to the Office.

''(4) Notwithstanding section 308(b) of this title, the Secretary may only assign to the Assistant Secretary responsibilities relating to the functions of the Office set forth in subsection (c).

''(c) FUNCTIONS.—(1) The functions of the Office are as follows:

''(A) Advising the Secretary on all matters of the Department relating to accountability, including accountability of employees of the Department, retaliation against whistleblowers, and such matters as the Secretary considers similar and affect public trust in the Department.

''(B) Issuing reports and providing recommendations related to the duties described in subparagraph (A).

''(C) Receiving whistleblower disclosures.

''(D) Referring whistleblower disclosures received under subparagraph (C) for investigation to the Office of the Medical Inspector, the Office of Inspector General, or other investigative entity, as appropriate, if the Assistant Secretary has reason to believe the whistleblower disclosure is evidence of a violation of a provision of law, mismanagement, gross waste of funds, abuse of authority, or a substantial and specific danger to public health and safety.

''(E) Receiving and referring disclosures from the Special Counsel for investigation to the Medical Inspector of the Department, the Inspector General of the Department, or such other person with investigatory authority, as the Assistant Secretary considers appropriate.

''(F) Recording, tracking, reviewing, and confirming implementation of recommendations from audits and investigations carried out by the Inspector General of the Department, the Medical Inspector of the Department, the Special Counsel, and the Comptroller General of the United States, including the imposition of disciplinary actions and other corrective actions contained in such recommendations.

''(G) Analyzing data from the Office and the Office of Inspector General telephone hotlines, other whistleblower disclosures, disaggregated by facility and area of health care if appropriate, and relevant audits and investigations to identify trends and issue reports to the Secretary based on analysis conducted under this subparagraph.

''(H) Receiving, reviewing, and investigating allegations of misconduct, retaliation, or poor performance involving—

''(i) an individual in a senior executive position (as defined in section 713(d) of this title) in the Department;

''(ii) an individual employed in a confidential, policy-making, policy-determining, or policy-advocating position in the Department; or

''(iii) a supervisory employee, if the allegation involves retaliation against an employee for making a whistleblower disclosure.

''(I) Making such recommendations to the Secretary for disciplinary action as the Assistant Secretary considers appropriate after substantiating any allegation of misconduct or poor performance pursuant to an investigation carried out as described in subparagraph (F) or (H).

''(2) In carrying out the functions of the Office, the Assistant Secretary shall ensure that the Office maintains a toll-free telephone number and Internet website to receive anonymous whistleblower disclosures.

''(3) In any case in which the Assistant Secretary receives a whistleblower disclosure from an employee of the Department under paragraph (1)(C), the Assistant Secretary may not disclose the identity of the employee without the consent of the employee, except in accordance with the provisions of section 552a of title 5, or as required by any other applicable provision of Federal law.

''(d) STAFF AND RESOURCES.—The Secretary shall ensure that the Assistant Secretary has such staff, resources, and access to information as may be necessary to carry out the functions of the Office.

''(e) RELATION TO OFFICE OF GENERAL COUNSEL.—The Office shall not be established as an element of the Office of the General Counsel and the Assistant Secretary may not report to the General Counsel.

''(f) REPORTS.—(1)(A) Not later than June 30 of each calendar year, beginning with June 30, 2017, the Assistant Secretary shall submit to the Committee on Veterans' Affairs of the Senate and the Committee on Veterans' Affairs of the House of Representatives a report on the activities of the Office during the calendar year in which the report is submitted.

''(B) Each report submitted under subparagraph (A) shall include, for the period covered by the report, the following:

''(i) A full and substantive analysis of the activities of the Office, including such statistical information as the Assistant Secretary considers appropriate.

''(ii) Identification of any issues reported to the Secretary under subsection (c)(1)(G), including such data as the Assistant Secretary considers relevant to such issues and any trends the Assistant Secretary may have identified with respect to such issues.

''(iii) Identification of such concerns as the Assistant Secretary may have regarding the size, staffing, and resources of the Office and such recommendations as the Assistant Secretary may have for legislative or administrative action to address such concerns.

''(iv) Such recommendations as the Assistant Secretary may have for legislative or administrative action to improve—

''(I) the process by which concerns are reported to the Office; and

''(II) the protection of whistleblowers within the Department.

''(v) Such other matters as the Assistant Secretary considers appropriate regarding the functions of the Office or other matters relating to the Office.

''(2) If the Secretary receives a recommendation for disciplinary action under subsection (c)(1)(I) and does not take or initiate the recommended disciplinary action before the date that is 60 days after the date on which the Secretary received the recommendation, the Secretary shall submit to the Committee on Veterans' Affairs of the Senate and the Committee on Veterans' Affairs of the House of Representatives a detailed justification for not taking or initiating such disciplinary action.

''(g) DEFINITIONS.—In this section:

''(1) The term 'supervisory employee' means an employee of the Department who is a supervisor as defined in section 7103(a) of title 5.

''(2) The term 'whistleblower' means one who makes a whistleblower disclosure.

''(3) The term 'whistleblower disclosure' means any disclosure of information by an employee of the Department or individual applying to become an employee of the Department which the employee or individual reasonably believes evidences—

''(A) a violation of a provision of law; or

''(B) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.''.

(b) CONFORMING AMENDMENT.—Section 308(b) of such title is amended by adding at the end the following new paragraph:

''(12) The functions set forth in section 323(c) of this title.''.

(c) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 3 of such title is amended by adding at the end the following new item:

''323. Office of Accountability and Whistleblower Protection.''.

SEC. 9. PROTECTION OF WHISTLEBLOWERS IN DEPARTMENT OF VETERANS AFFAIRS.

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

''§ 725. Protection of whistleblowers as criteria in evaluation of supervisors

''(a) DEVELOPMENT AND USE OF CRITERIA REQUIRED.—The Secretary, in consultation with the Assistant Secretary of Accountability and Whistleblower Protection, shall develop criteria that—

''(1) the Secretary shall use as a critical element in any evaluation of the performance of a supervisory employee; and

''(2) promotes the protection of whistleblowers.

''(b) PRINCIPLES FOR PROTECTION OF WHISTLEBLOWERS.—The criteria required by subsection (a) shall include principles for the protection of whistleblowers, such as the degree to which supervisory employees respond constructively when employees of the Department report concerns, take responsible action to resolve such concerns, and foster an environment in which employees of the Department feel comfortable reporting concerns to supervisory employees or to the appropriate authorities.

''(c) SUPERVISORY EMPLOYEE AND WHISTLEBLOWER DEFINED.—In this section, the terms 'supervisory employee' and 'whistleblower' have the meanings given such terms in section 323 of this title.

''§ 727. Training regarding whistleblower disclosures

''(a) TRAINING.—Not less frequently than once every two years, the Secretary, in coordination with the Whistleblower Protection Ombudsman designated under section 3(d)(1)(C) of the Inspector General Act of 1978 (5 U.S.C. App.), shall provide to each employee of the Department training regarding whistleblower disclosures, including—

''(1) an explanation of each method established by law in which an employee may file a whistleblower disclosure;

''(2) the right of the employee to petition Congress regarding a whistleblower disclosure in accordance with section 7211 of title 5;

''(3) an explanation that the employee may not be prosecuted or reprised against for disclosing information to Congress, the Inspector General, or another investigatory agency in instances where such disclosure is permitted by law, including under sections 5701, 5705, and 7732 of this title, under section 552a of title 5 (commonly referred to as the Privacy Act), under chapter 93 of title 18, and pursuant to regulations promulgated under section 264(c) of the Health Insurance Portability and Accountability Act of 1996 (Public Law 104–191);

''(4) an explanation of the language that is required to be included in all nondisclosure policies, forms, and agreements pursuant to section 115(a)(1) of the Whistleblower Protection Enhancement Act of 2012 (5 U.S.C. 2302 note); and

''(5) the right of contractors to be protected from reprisal for the disclosure of certain information under section 4705 or 4712 of title 41.

''(b) MANNER TRAINING IS PROVIDED.—The Secretary shall ensure, to the maximum extent practicable, that training provided under subsection (a) is provided in person.

''(c) CERTIFICATION.—Not less frequently than once every two years, the Secretary shall provide training on merit system protection in a manner that the Special Counsel certifies as being satisfactory.

''(d) PUBLICATION.—The Secretary shall publish on the Internet website of the Department, and display prominently at each facility of the Department, the rights of an employee to make a whistleblower disclosure, including the information described in paragraphs (1) through (5) of subsection (a).

''(e) WHISTLEBLOWER DISCLOSURE DEFINED.—In this section, the term 'whistleblower disclosure' has the meaning given such term in section 323 of this title.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is further amended by adding at the end the following new items:

''725. Protection of whistleblowers as criteria in evaluation of supervisors.

''727. Training regarding whistleblower disclosures.''.

SEC. 10. TREATMENT OF CONGRESSIONAL TESTIMONY BY DEPARTMENT OF VETERANS AFFAIRS EMPLOYEES AS OFFICIAL DUTY.

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

''§ 729. Congressional testimony by employees: treatment as official duty

''(a) CONGRESSIONAL TESTIMONY.—An employee of the Department is performing official duty during the period with respect to which the employee is testifying in an official capacity in front of either chamber of Congress, a committee of either chamber of Congress, or a joint or select committee of Congress.

''(b) TRAVEL EXPENSES.—The Secretary shall provide travel expenses, including per diem in lieu of subsistence, in accordance with applicable provisions under subchapter I of chapter 57 of title 5, to any employee of the Department of Veterans Affairs performing official duty described under subsection (a).''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter, as amended by section 102, is further amended by inserting after the item relating to section 721 the following new item:

''Sec. 729. Congressional testimony by employees: treatment as official duty.''.

SEC. 11. REPORT ON METHODS USED TO INVESTIGATE EMPLOYEES OF DEPARTMENT OF VETERANS AFFAIRS.

(a) REPORT REQUIRED.—Not later than 540 days after the date of the enactment of this Act, the Assistant Secretary for Accountability and Whistleblower Protection shall submit to the Secretary, the Committee on Veterans' Affairs of the Senate, and the Committee on Veterans' Affairs of the House of Representatives a report on methods used to investigate employees of the Department of Veterans Affairs and whether such methods are used to retaliate against whistleblowers.

(b) CONTENTS.—The report required by subsection (a) shall include the following:

(1) An assessment of the use of administrative investigation boards, peer review, searches of medical records, and other methods for investigating employees of the Department.

(2) A determination of whether and to what degree the methods described in paragraph (1) are being used to retaliate against whistleblowers.

(3) Recommendations for legislative or administrative action to implement safeguards to prevent the retaliation described in paragraph (2).

(c) WHISTLEBLOWER DEFINED.—In this section, the term ''whistleblower'' has the meaning given such term in section 323 of title 38, United States Code, as added by section 8.

The Acting CHAIR. Pursuant to House Resolution 859, the gentleman from California (Mr. TAKANO) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from California.

MODIFICATION TO AMENDMENT NO. 6 OFFERED BY MR. TAKANO

Mr. TAKANO. Mr. Chairman, I ask unanimous consent that the amendment be modified in the form I have placed at the desk.

The Acting CHAIR. The Clerk will report the modification.

The Clerk read as follows:

Modification to amendment No. 6 offered by Mr. TAKANO of California:

Page 23, after line 17, insert the following:

SEC. 8. OFFICE OF ACCOUNTABILITY AND WHISTLEBLOWER PROTECTION.

(a) IN GENERAL.—Chapter 3 of title 38, United States Code, is amended by adding at the end the following new section:

''§ 323. Office of Accountability and Whistleblower Protection

''(a) ESTABLISHMENT.—There is established in the Department an office to be known as the Office of Accountability and Whistleblower Protection (in this section referred to as the 'Office').

''(b) HEAD OF OFFICE.—(1) The head of the Office shall be responsible for the functions of the Office and shall be appointed by the President pursuant to section 308(a) of this title.

''(2) The head of the Office shall be known as the 'Assistant Secretary for Accountability and Whistleblower Protection'.

''(3) The Assistant Secretary shall report directly to the Secretary on all matters relating to the Office.

''(4) Notwithstanding section 308(b) of this title, the Secretary may only assign to the Assistant Secretary responsibilities relating to the functions of the Office set forth in subsection (c).

''(c) FUNCTIONS.—(1) The functions of the Office are as follows:

''(A) Advising the Secretary on all matters of the Department relating to accountability, including accountability of employees of the Department, retaliation against whistleblowers, and such matters as the Secretary considers similar and affect public trust in the Department.

''(B) Issuing reports and providing recommendations related to the duties described in subparagraph (A).

''(C) Receiving whistleblower complaints.

''(D) Referring whistleblower complaints received under subparagraph (C) for investigation to the Office of the Medical Inspector, the Office of Inspector General, or other investigative entity, as appropriate, if the Assistant Secretary has reason to believe the whistleblower complaint is evidence of a violation of a provision of law, mismanagement, gross waste of funds, abuse of authority, or a substantial and specific danger to public health and safety.

''(E) Receiving and referring complaints from the Special Counsel for investigation to the Medical Inspector of the Department, the Inspector General of the Department, or such other person with investigatory authority, as the Assistant Secretary considers appropriate.

''(F) Recording, tracking, reviewing, and confirming implementation of recommendations from audits and investigations carried out by the Inspector General of the Department, the Medical Inspector of the Department, the Special Counsel, and the Comptroller General of the United States, including the imposition of disciplinary actions and other corrective actions contained in such recommendations.

''(G) Analyzing data from the Office and the Office of Inspector General telephone hotlines, other whistleblower complaints, disaggregated by facility and area of health care if appropriate, and relevant audits and investigations to identify trends and issue reports to the Secretary based on analysis conducted under this subparagraph.

''(H) Receiving, reviewing, and investigating allegations of misconduct, retaliation, or poor performance involving—

''(i) an individual in a senior executive position (as defined in section 713(d) of this title) in the Department;

''(ii) an individual employed in a confidential, policy-making, policy-determining, or policy-advocating position in the Department; or

''(iii) a supervisory employee.

''(I) Making such recommendations to the Secretary for disciplinary action as the Assistant Secretary considers appropriate after substantiating any allegation of misconduct or poor performance pursuant to an investigation carried out as described in subparagraph (F) or (H).

''(2) In carrying out the functions of the Office, the Assistant Secretary shall ensure that the Office maintains a toll-free telephone number and Internet website to receive anonymous whistleblower complaints.

''(3) In any case in which the Assistant Secretary receives a whistleblower complaint from an employee of the Department under paragraph (1)(C), the Assistant Secretary may not disclose the identity of the employee without the consent of the employee, except in accordance with the provisions of section 552a of title 5, or as required by any other applicable provision of Federal law.

''(d) RELATION TO OFFICE OF GENERAL COUNSEL.—The Office shall not be established as an element of the Office of the General Counsel and the Assistant Secretary may not report to the General Counsel.

''(e) REPORTS.—(1)(A) Not later than June 30 of each calendar year, beginning with June 30, 2017, the Assistant Secretary shall submit to the Committee on Veterans' Affairs of the Senate and the Committee on Veterans' Affairs of the House of Representatives a report on the activities of the Office during the calendar year in which the report is submitted.

''(B) Each report submitted under subparagraph (A) shall include, for the period covered by the report, the following:

''(i) A full and substantive analysis of the activities of the Office, including such statistical information as the Assistant Secretary considers appropriate.

''(ii) Identification of any issues reported to the Secretary under subsection (c)(1)(G), including such data as the Assistant Secretary considers relevant to such issues and any trends the Assistant Secretary may have identified with respect to such issues.

''(iii) Identification of such concerns as the Assistant Secretary may have regarding the size, staffing, and resources of the Office and such recommendations as the Assistant Secretary may have for legislative or administrative action to address such concerns.

''(iv) Such recommendations as the Assistant Secretary may have for legislative or administrative action to improve—

''(I) the process by which concerns are reported to the Office; and

''(II) the protection of whistleblowers within the Department.

''(v) Such other matters as the Assistant Secretary considers appropriate regarding the functions of the Office or other matters relating to the Office.

''(2) If the Secretary receives a recommendation for disciplinary action under subsection (c)(1)(I) and does not take or initiate the recommended disciplinary action before the date that is 60 days after the date on which the Secretary received the recommendation, the Secretary shall submit to the Committee on Veterans' Affairs of the Senate and the Committee on Veterans' Affairs of the House of Representatives a detailed justification for not taking or initiating such disciplinary action.

''(f) DEFINITIONS.—In this section:

''(1) The term 'supervisory employee' means an employee of the Department who is a supervisor as defined in section 7103(a) of title 5.

''(2) The term 'whistleblower' means one who makes a whistleblower complaint.

''(3) The term 'whistleblower complaint' means any disclosure of information by an employee of the Department or individual applying to become an employee of the Department which the employee or individual reasonably believes evidences—

''(A) a violation of a provision of law; or

''(B) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.''.

(b) CONFORMING AMENDMENT.—Section 308(b) of such title is amended by adding at the end the following new paragraph:

''(12) The functions set forth in section 323(c) of this title.''.

(c) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 3 of such title is amended by adding at the end the following new item:

''323. Office of Accountability and Whistleblower Protection.''.

Mr. MILLER of Florida (during the reading). Mr. Chairman, I ask unanimous consent that the reading be dispensed with.

The Acting CHAIR. Is there objection to the request of the gentleman from Florida?

There was no objection.

The Acting CHAIR. Without objection, the amendment is modified.

There was no objection.

Mr. TAKANO. Mr. Chairman, I express my full support of Representative KIRKPATRICK's amendment to H.R. 5620. I would like to thank Chairman MILLER for working with Representative KIRKPATRICK to develop a bipartisan amendment we all can support.

Whistleblowers are critical to uncovering and eliminating misconduct and wrongdoing at the Department of Veterans Affairs. Without them, serious issues like those discovered at the Phoenix VA facility may never have been brought to our attention. The courageous VA employees who chose to speak out deserve our respect and protection. We must create an environment in which whistleblowers expect appreciation, not retribution. Representative KIRKPATRICK's amendment, which would create the VA Office of Accountability and Whistleblower Protection, will help us achieve that goal.

Representative KIRKPATRICK's amendment has been developed in consultation with the Office of Special Counsel and includes language from the Senate's bipartisan Veterans First Act. The amendment would create an independent VA Office of Accountability and Whistleblower Protection, which would report directly to the VA Secretary. The office would staff an anonymous hotline and refer whistleblower complaints to the appropriate office or entity for investigation and investigate allegations of misconduct, retaliation, or poor performance of senior executives and supervisors.

Mr. Chairman, this amendment will create an environment in which whistleblowers are protected and misconduct is more quickly discovered and eliminated. I urge my colleagues to support Representative KIRKPATRICK's amendment to H.R. 5620.

I yield back the balance of my time.

Mr. MILLER of Florida. Mr. Chairman, I ask unanimous consent to claim the time in opposition, although I am not opposed to the amendment.

The Acting CHAIR. Is there objection to the request of the gentleman from Florida?

There was no objection.

The Acting CHAIR. The gentleman is recognized for 5 minutes.

Mr. MILLER of Florida. Mr. Chairman, I appreciate the gentlewoman from Arizona (Mrs. KIRKPATRICK) working with us to add the Office of Whistleblower Protection. It also does create an assistant secretary that would oversee this brand-new office.

I appreciate Mrs. KIRKPATRICK working with us on this amendment to better align it with the protections that are already in the bill. A portion of this amendment to create the new office already passed the House in H.R. 1994. This amendment now has my full support.

I urge my colleagues to agree and support it.

I yield back the balance of my time.

The Acting CHAIR. The question is on the amendment, as modified, offered by the gentleman from California (Mr. TAKANO).

The amendment, as modified, was agreed to.

AMENDMENT NO. 7 OFFERED BY MR. NEWHOUSE

The Acting CHAIR. It is now in order to consider amendment No. 7 printed in House Report 114–742.

Mr. NEWHOUSE. Mr. Chair, I have an amendment at the desk.

The Acting CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Add at the end the following new section:

SEC. 11. CLARIFICATION OF EMERGENCY HOSPITAL CARE FURNISHED BY THE SECRETARY OF VETERANS AFFAIRS TO CERTAIN VETERANS.

(a) IN GENERAL.—Chapter 17 of title 38, United States Code, is amended by inserting

after section 1730A the following new section:

"§ 1730B. Examination and treatment for emergency medical conditions and women in labor

"(a) MEDICAL SCREENING EXAMINATIONS.—In carrying out this chapter, if any enrolled veteran requests, or a request is made on behalf of the veteran, for examination or treatment for a medical condition, regardless of whether such condition is service-connected, at a hospital emergency department of a medical facility of the Department, the Secretary shall ensure that the veteran is provided an appropriate medical screening examination within the capability of the emergency department, including ancillary services routinely available to the emergency department, to determine whether an emergency medical condition exists.

"(b) NECESSARY STABILIZING TREATMENT FOR EMERGENCY MEDICAL CONDITIONS AND LABOR.—(1) If an enrolled veteran comes to a medical facility of the Department and the Secretary determines that the veteran has an emergency medical condition, the Secretary shall provide either—

"(A) such further medical examination and such treatment as may be required to stabilize the medical condition; or

"(B) for the transfer of the veteran to another medical facility of the Department or a non-Department facility in accordance with subsection (c).

"(2) The Secretary is deemed to meet the requirement of paragraph (1)(A) with respect to an enrolled veteran if the Secretary offers the veteran the further medical examination and treatment described in such paragraph and informs the veteran (or an individual acting on behalf of the veteran) of the risks and benefits to the veteran of such examination and treatment, but the veteran (or individual) refuses to consent to the examination and treatment. The Secretary shall take all reasonable steps to secure the written informed consent of such veteran (or individual) to refuse such examination and treatment.

"(3) The Secretary is deemed to meet the requirement of paragraph (1) with respect to an enrolled veteran if the Secretary offers to transfer the individual to another medical facility in accordance with subsection (c) of this section and informs the veteran (or an individual acting on behalf of the veteran) of the risks and benefits to the veteran of such transfer, but the veteran (or individual) refuses to consent to the transfer. The hospital shall take all reasonable steps to secure the written informed consent of such veteran (or individual) to refuse such transfer.

"(c) RESTRICTION OF TRANSFERS UNTIL VETERAN STABILIZED.—(1) If an enrolled veteran at a medical facility of the Department has an emergency medical condition that has not been stabilized, the Secretary may not transfer the veteran to another medical facility of the Department or a non-Department facility unless—

"(A)(i) the veteran (or a legally responsible individual acting on behalf of the veteran), after being informed of the obligation of the Secretary under this section and of the risk of transfer, requests in writing a transfer to another medical facility;

"(ii) a physician has signed a certification (including a summary of the risks and benefits) that, based upon the information available at the time of transfer, the medical benefits reasonably expected from the provision of appropriate medical treatment at another medical facility outweigh the increased risks to the veteran and, in the case of labor, to the unborn child from effecting the transfer; or

"(iii) if a physician is not physically present in the emergency department at the time a veteran is transferred, a qualified medical person (as defined by the Secretary in regulations) has signed a certification described in clause (ii) after a physician, in consultation with the person, has made the determination described in such clause, and subsequently countersigns the certification; and

"(B) the transfer is an appropriate transfer as described in paragraph (2).

"(2) An appropriate transfer to a medical facility is a transfer—

"(A) in which the transferring medical facility provides the medical treatment within the capacity of the facility that minimizes the risks to the health of the enrolled veteran and, in the case of a woman in labor, the health of the unborn child;

"(B) in which the receiving facility—

"(i) has available space and qualified personnel for the treatment of the veteran; and

"(ii) has agreed to accept transfer of the veteran and to provide appropriate medical treatment;

"(C) in which the transferring facility sends to the receiving facility all medical records (or copies thereof), related to the emergency condition for which the veteran has presented, available at the time of the transfer, including records related to the emergency medical condition of the veteran, observations of signs or symptoms, preliminary diagnosis, treatment provided, results of any tests and the informed written consent or certification (or copy thereof) provided under paragraph (1)(A), and the name and address of any on-call physician (described in subsection (d)(1)(C) of this section) who has refused or failed to appear within a reasonable time to provide necessary stabilizing treatment;

"(D) in which the transfer is effected through qualified personnel and transportation equipment, as required including the use of necessary and medically appropriate life support measures during the transfer; and

"(E) that meets such other requirements as the Secretary may find necessary in the interest of the health and safety of veterans transferred.

"(d) CHARGES.—(1) Nothing in this section may be construed to affect any charges that the Secretary may collect from a veteran or third party.

"(2) The Secretary shall treat any care provided by a non-Department facility pursuant to this section as care otherwise provided by a non-Department facility pursuant to this chapter for purposes of paying such non-Department facility for such care.

"(e) NONDISCRIMINATION.—A medical facility of the Department or a non-Department facility, as the case may be, that has specialized capabilities or facilities (such as burn units, shock-trauma units, neonatal intensive care units, or (with respect to rural areas) regional referral centers as identified by the Secretary in regulation) shall not refuse to accept an appropriate transfer of an enrolled veteran who requires such specialized capabilities or facilities if the facility has the capacity to treat the veteran.

"(f) NO DELAY IN EXAMINATION OR TREATMENT.—A medical facility of the Department or a non-Department facility, as the case may be, may not delay provision of an appropriate medical screening examination required under subsection (a) or further medical examination and treatment required under subsection (b) of this section in order to inquire about the method of payment or insurance status of an enrolled veteran.

"(g) WHISTLEBLOWER PROTECTIONS.—The Secretary may not take adverse action against an employee of the Department because the employee refuses to authorize the transfer of an enrolled veteran with an emergency medical condition that has not been stabilized or because the employee reports a violation of a requirement of this section.

"(h) DEFINITIONS.—In this section:

"(1) The term 'emergency medical condition' means—

"(A) a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in—

"(i) placing the health of the enrolled veteran (or, with respect to an enrolled veteran who is a pregnant woman, the health of the woman or her unborn child) in serious jeopardy;

"(ii) serious impairment to bodily functions; or

"(iii) serious dysfunction of any bodily organ or part; or

"(B) with respect to an enrolled veteran who is a pregnant woman having contractions—

"(i) that there is inadequate time to effect a safe transfer to another hospital before delivery; or

"(ii) that transfer may pose a threat to the health or safety of the woman or the unborn child.

"(2) The term 'enrolled veteran' means a veteran who is enrolled in the health care system established under section 1705(a) of this title.

"(3) The term 'to stabilize' means, with respect to an emergency medical condition described in paragraph (1)(A), to provide such medical treatment of the condition as may be necessary to assure, within reasonable medical probability, that no material deterioration of the condition is likely to result from or occur during the transfer of the enrolled veteran from a facility, or, with respect to an emergency medical condition described in paragraph (1)(B), to deliver (including the placenta).

"(4) The term 'stabilized' means, with respect to an emergency medical condition described in paragraph (1)(A), that no material deterioration of the condition is likely, within reasonable medical probability, to result from or occur during the transfer of the individual from a facility, or, with respect to an emergency medical condition described in paragraph (1)(B), that the woman has delivered (including the placenta).

"(5) The term 'transfer' means the movement (including the discharge) of an enrolled veteran outside the facilities of a medical facility of the Department at the direction of any individual employed by (or affiliated or associated, directly or indirectly, with) the Department, but does not include such a movement of an individual who—

"(A) has been declared dead; or

"(B) leaves the facility without the permission of any such person.".

(b) CLERICAL AMENDMENT.—The table of sections of such chapter is amended by inserting after the item relating to section 1730A the following new item:

"1730B. Examination and treatment for emergency medical conditions and women in labor.".

The Acting CHAIR. Pursuant to House Resolution 859, the gentleman from Washington (Mr. NEWHOUSE) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Washington.

□ 1845

Mr. NEWHOUSE. Mr. Chairman, first of all, I include in the RECORD six letters from various veterans service organizations in support of H.R. 5620, as amended.

MILITARY ORDER OF THE PURPLE HEART,
Springfield, VA, July 14, 2016.

Hon. JEFF MILLER,
Chairman, House Committee on Veterans' Affairs, Washington, DC.

DEAR CHAIRMAN MILLER: On behalf of the Military Order of the Purple Heart (MOPH), whose membership is comprised entirely of combat wounded veterans, I am pleased to offer our support for sections 1 through 8 and 10 of H.R. 5620, the VA Accountability First and Appeals Modernization Act of 2016. If enacted, this legislation would establish reasonable accountability measures for Department of Veterans Affairs (VA) employees.

The ability to reward good employees and hold poor employees accountable is essential to any high-performing organization. Unfortunately, events of the past two years have made it clear to MOPH that VA lacks the necessary authority to punish, remove, and recoup the performance bonuses of employees who were found to have endangered veterans, misused government funds, and otherwise underperformed in their duties. While we understand that VA cannot simply fire its way to success, we feel that improvements to these authorities made by this legislation are critical to allowing VA to function as it should, while also maintaining veterans' trust in their VA. Furthermore, these reforms would send the right message to the vast majority of VA employees who do an exemplary job every day that their good performance is truly appreciated. MOPH is also pleased that this legislation contains robust whistleblower protections, as no VA employee should ever fear reprisal for identifying deficiencies that could endanger veterans in any way.

MOPH is still evaluating section 9, which makes substantive changes to the VA appeals process, and takes no position on this section at this time.

MOPH thanks you for your leadership on this issue and your commitment to veteran-centric VA reform. We look forward to working with you to ensure the passage of this important legislation.

Respectfully,

ROBERT PUSKAR,
National Commander.

FLEET RESERVE ASSOCIATION,
Alexandria, VA, July 26, 2016.

Hon. JEFF MILLER,
Chairman, House Veterans' Affairs Committee, House of Representatives, Washington, DC.

DEAR CHAIRMAN MILLER: The Fleet Reserve Association (FRA) supports the ''VA Accountability First and Appeals Modernization Act'' (H.R. 5620) that would reform the VA's disability benefits appeals process—a top priority for FRA. The bill also strengthens protections for whistleblowers and enforces accountability for unprofessional employees.

The Association appreciates your strong leadership on this issue and stands ready to provide assistance in advancing this legislation. The FRA point of contact is John Davis, Director of Legislative Programs.

Sincerely,

THOMAS J. SNEE,
National Executive Director.

ENLISTED ASSOCIATION OF THE NATIONAL GUARD OF THE UNITED STATES,
Alexandria, VA, July 21, 2016.

Hon. JEFF MILLER,
Chairman, Committee on Veterans' Affairs, House of Representatives, Washington, DC.

DEAR CHAIRMAN MILLER: On behalf of the Enlisted Association of the National Guard of the United States (EANGUS) which represents the interests of over 400,000 enlisted men and women of the Army and Air National Guard, we are pleased to offer our full support for H.R. 5620, the VA Accountability First and Appeals Modernization Act of 2016. This bill combines much needed accountability measures for the employees of the Department of Veterans Affairs (VA), with long overdue reforms to the personal appeals process.

We believe your legislation gives the VA the power it needs to hold its employees accountable, while strengthening protection for whistleblowers. This is crucial, as the events of the past two years have made it clear to our organization that the VA is unable to remove employees that are negligent, underperforming, and don't serve in the best interest of veterans. We also believe the robust protections for whistleblowers contained in this legislation are critical. Employees that do the right thing should not fear reprisals for identifying deficiencies that could endanger veterans.

EANGUS thanks you for your continued leadership on this issue and your commitment to bring improvements and accountability to the VA. We stand ready to work with you and your staff to ensure the passage of this important piece of legislation.

Sincerely,

FRANK YOAKUM,
Sgt. Maj., U.S. Army (retired), Executive Director.

From: CVA—Press.
Date: Thursday, July 7, 2016.
To: CVA HQ.
For Immediate Release: July 7, 2016.

CONCERNED VETERANS FOR AMERICA ANNOUNCES SUPPORT FOR MILLER VA ACCOUNTABILITY BILL

ARLINGTON, VA.—Concerned Veterans for America (CVA) Vice President for Legislative and Political Action Dan Caldwell released the following statement today in support of House Veterans' Affairs Committee Chairman Miller's introduction of the 'VA Accountability First and Appeals Modernization Act of 2016:'

''Concerned Veterans for America applauds Chairman Miller for introducing H.R. 5620, the VA Accountability First and Appeals Modernization Act of 2016: This legislation would go a long way in addressing the lack of accountability plaguing the VA and impeding the timely delivery of health care and other benefits to eligible veterans. From providing meaningful limits on how long VA employees can appeal administrative actions, to giving the VA secretary the authority to recoup bonuses and salary awarded to unethical employees, this bill is full of the reforms that will rid the department of its accountability crisis. Importantly, its removal of the Merit Systems Protection Board (MSPB) from the appeals process for senior executives is a critical component to ensuring that top leaders are held accountable for their actions and kept from negatively influencing veterans' care in the future. We urge the VA committees of both houses of Congress to move quickly on this legislation, and deliver the reform veterans deserve.''

ASSOCIATION OF THE UNITED STATES NAVY,
August 10, 2016.

Hon. JEFF MILLER,
Cannon House Office Building, Washington, DC.

DEAR CONGRESSMAN MILLER: The Association for the United States Navy strongly supports HR 5620, which combines VA accountability provisions with appeals reform. The VA has had a history of committing crimes without anything more than a slap on the wrist, leaving it to veterans to suffer from lesser care. With HR 5620, the accountability that veterans have been looking for in order to require that the VA give the proper care would finally occur. We at AUSN greatly appreciate your introduction of this bill and look forward to seeing it gain traction in the House and Senate.

HR 5620 helps outline both accountability measures and appeals reform together, which benefit veterans as well as VA leadership give better care. Both sections 3 and 7 help hold individuals, not just the entire organization or leadership, accountable for their actions. The expedited system would allow employees who had misbehaved to appeal within 10 days and then have their appeal decided within 60 days, which is a much quicker, cleaner version to the system we currently have. This would help bring in better individuals rather than new leadership every time there is a problem, and would allow for expedited reprimand of the individuals by streamlining the discipline process. The appeals reform section of the bill is also impressive, giving veterans three different avenues to go about their appeals process rather than just one and consistently having the same problem. This bill is one that really focuses on the individual rather than the collective, which makes it beneficial for veterans to receive the best quality care possible.

It is crucial that accountability and appeal reform occurs within the VA. The current system is too rigid for real reform to occur, and by having initiatives that are introduced in this bill, it would help make last change within the VA and finally give veterans the care they deserve for serving our country.

Sincerely

MICHAEL LITTLE.

AUGUST 31, 2016.

Hon. JEFF MILLER,
Chairman, House Committee on Veterans' Affairs, House of Representatives, Washington, DC.

DEAR MR. MILLER: AMVETS (American Veterans) is pleased to support your bill, H.R. 5620, the VA Accountability First and Appeals Modernization Act of 2016, which seeks to provide for the removal or demotion of employees of the Department of Veterans Affairs (VA) based on performance or misconduct, and to reform the Veterans Benefits Administration (VBA) appeals process.

The intent of this bill is in line with two of our National Resolutions, which dictate our legislative priorities, that our members voted on and passed at the AMVETS 72nd National Convention in Reno, Nevada in August. The first Resolution is related to the need for, and importance of, improved VA accountability. It states, in part, that until each and every VA employee can be held accountable for their actions, or lack thereof, the VA system will remain broken, unsatisfactory, and unsafe. The second Resolution is related to fixing the VBA claims processing and appeals systems. It states, in part, that AMVETS continues to monitor the progress of the veteran claims processing system, and working as a stakeholder, seeks to address the shortcomings. For these reasons we stand ready to help you gain passage of H.R. 5620.

AMVETS appreciates your leadership in introducing this important legislation and in striving to improve the lives of all veterans.

Sincerely,

JOSEPH R. CHENELLY,
Executive Director.

Mr. NEWHOUSE. Mr. Chairman, I believe one of the Federal Government's most important functions is to support those who have sacrificed so much in the defense of our Nation. Whenever

our government fails to meet this responsibility, swift action must be taken.

We have heard far too many distressing stories in recent years about the Department of Veterans Affairs failing to provide our veterans the care they deserve. My amendment seeks to address one of these problems by adding the text of H.R. 3216, the Veterans Emergency Treatment Act, to this bill. This language is supported by the Veterans of Foreign Wars, the American Legion, and the Disabled American Veterans.

In short, my amendment would ensure that every enrolled veteran who arrives at an emergency department of a VA medical facility and indicates an emergency condition exists is assessed and treated in an effort to prevent further injury or death. This is accomplished by applying the statutory requirements of the Emergency Medical Treatment and Labor Act, or EMTALA, to emergency care furnished by the VA to enrolled veterans.

Mr. Chairman, my attention was drawn to this issue by one of my own constituents. In February of 2015, a 64-year-old Army veteran arrived at the Seattle VA emergency room in severe pain with a broken foot that had swollen to the size of a football. No longer able to walk, he requested emergency room staff assist him in traveling the 10 feet from his car to the ER entrance. Hospital personnel promptly hung up on him after instructing him he would need to call 911 to assist him at his own expense. He was eventually helped into the emergency room by a Seattle fire captain as well as three firefighters.

Another notable incident occurred in New Mexico in 2014, when a veteran collapsed in the cafeteria of a VA facility and ultimately died when the VA refused to transport him 500 yards across the campus to the emergency room.

EMTALA is a Federal statute that supersedes State and local laws and grants every individual a Federal right to emergency care. It was enacted by Congress in 1986 and is designed to prevent hospitals from transferring, or dumping, uninsured or Medicaid patients to public hospitals. EMTALA requires a hospital to conduct a medical examination to determine if an emergency medical condition exists. If one does, then the hospital must either stabilize the patient or effectuate a proper transfer at the patient's request. Currently, the VA hospitals are considered to be nonparticipating hospitals and are therefore not obligated to fulfill the requirements instituted by EMTALA. This amendment will revise current law to remove the nonparticipating designation and require them to fulfill requirements of EMTALA, just as every other hospital does.

Mr. Chairman, it is actually the Veterans Health Administration's stated policy that all transfers in and out of VA facilities of patients in the emergency department or urgent care units are accomplished in a manner that ensures maximum patient safety and is in compliance with the transfer provisions of EMTALA and its implementing regulations.

However, unfortunately, this policy is not always followed, and occasionally locally designed transfer policies undermine efforts to provide emergency care to veterans. Additionally, in some of these instances there was clear confusion on the part of the VA facilities about their own transfer policies. This is why we must act now.

Mr. Chairman, I urge the House to support and pass my amendment to H.R. 5620. It is time we ensure our veterans receive proper medical care during emergency medical situations, all without requiring additional spending.

Mr. Chairman, I reserve the balance of my time.

Mr. MILLER of Florida. Mr. Chairman, I ask unanimous consent to claim the time in opposition, although I am not opposed.

The Acting CHAIR. Is there objection to the request of the gentleman from Florida?

There was no objection.

The Acting CHAIR. The gentleman is recognized for 5 minutes.

Mr. MILLER of Florida. Mr. Chairman, as the sponsor has already said, it clarifies and strengthens VA's responsibility with regard to emergency care. It has been drafted very well in response to a recent, very tragic incident where a veteran died in a VA parking lot in very close proximity to a VA emergency room. It is supported by numerous veterans service organizations.

I am grateful to the gentleman from Washington (Mr. NEWHOUSE), my good friend, and urge all of my colleagues to join me in supporting this amendment.

Mr. Chairman, I yield back the balance of my time.

Mr. NEWHOUSE. Mr. Chairman, I yield back the balance of my time.

The Acting CHAIR. The question is on the amendment offered by the gentleman from Washington (Mr. NEWHOUSE).

The amendment was agreed to.

AMENDMENT NO. 8 OFFERED BY MR. SCHWEIKERT

The Acting CHAIR. It is now in order to consider amendment No. 8 printed in House Report 114–742.

Mr. SCHWEIKERT. Mr. Chairman, I have an amendment at the desk.

The Acting CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Add at the end the following new section:

SEC. 11. USE OF DISTRIBUTED LEDGER TECHNOLOGY TO SCHEDULE APPOINTMENTS.

(a) USE OF DISTRIBUTED LEDGER TECHNOLOGY.—

(1) IN GENERAL.—Beginning not later than one year after the date of the enactment of this Act, the Secretary of Veterans Affairs shall ensure that veterans seeking health care appointments at medical facilities of the Department are able to use an Internet website, a mobile application, or other similar electronic method to use distributed ledger technology to view such appointments and ascertain whether an employee of the Department of Veterans Affairs has modified such appointments.

(2) CONTRACTS.—The Secretary shall carry out paragraph (1) by seeking to enter into one or more contracts with appropriate entities to develop the appointment distributed ledger technology system described in such paragraph.

(3) PRIVACY AND OWNERSHIP OF INFORMATION.—Any information relating to a veteran that is used or transmitted pursuant to this section—

(A) shall be treated in accordance with section 552a of title 5, United States Code (commonly referred to as the ''Privacy Act'') and other applicable laws and regulations relating to the privacy of the veteran;

(B) may only be used by an employee or contractor of the Department of Veterans Affairs to carry out paragraph (1); and

(C) may not be disclosed to any person who is not the veteran or such an employee or contractor unless the veteran provides consent to such disclosure.

(b) REPORT.—Not later than 180 days after the date on which the Secretary commences subsection (a)(1), the Secretary shall submit to Congress a report on the implementation of this section.

(c) DEFINITIONS.—In this section:

(1) The term ''distributed ledger technology'' means technology using a consensus of replicated, shared, and synchronized digital data that is geographically spread across multiple digital systems.

(2) The term ''mobile application'' means a software program that runs on the operating system of a mobile device.

(3) The term ''mobile device'' means a smartphone, tablet computer, or similar portable computing device that transmits data over a wireless connection.

The Acting CHAIR. Pursuant to House Resolution 859, the gentleman from Arizona (Mr. SCHWEIKERT) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Arizona.

Mr. SCHWEIKERT. Mr. Chairman, to our friends on the other side, I will let you know, I am going to move to withdraw the amendment, but I do want to share a little bit of an explanation of why I am taking this approach.

I am blessed to represent much of the Phoenix area, the epicenter of where the calendar, where the scheduling system was manipulated. For those of us who are in this body who have had the opportunity to sit across from a widow who cannot stop crying because she is telling you that, in everything she believes, the VA took the life of her husband by the delays, after the delays, after functionally being lied to and the delays.

I accept in this body I may be bordering on being sort of a techno-utopian, but I have a belief that there is technology out there that is already widely adopted in the rest of the world. I mean, there are countries that the entire nation's database system is run this way, something called a distributive ledger, a blockchain.

The beauty of what we were trying to weave into this is the concept of, hey, they are already working on a scheduling software. If you enable it across the server network, no one can manipulate it. You can't sit there and slip in

and change the dates and the times without it being date-stamped. That is the beauty of a distributive ledger model, and you don't have to custom design the software to do this. Basically, you are already using the capital you have already spent on the series of servers you have, and then it distributes it across it.

This is today's technology—in a world where we step up and say we are going to custom-design a software solution for scheduling, that is brilliant if it were still the 1990s; it is not—our ability to use a type of technology where the veteran can log in through secure passwords, see their own records, see their history, see their schedules, and know that it is bulletproof, that no one can manipulate it; and if there was a change, they can see when and who did it, and they get to participate in the scheduling of their own health care. This will work on apps. It will work on a home computer. It will work on the servers at the VA.

I have to reach out and say thank you to the chairman and to his staff because I know some of this is new technology, and rolling it out in a very specific fashion is sort of disharmonious when you are moving forward with a reform bill of this nature, but I am hopeful that many of us are going to sell you the idea that there is little technological improvements that can be woven in and actually solve many of the structural problems, crises, concerns that all of us have had to face at the VA over the last few years.

Mr. Chairman, I ask unanimous consent to withdraw the amendment enumerated as No. 8.

The Acting CHAIR. Is there objection to the request of the gentleman from Arizona?

There was no objection.

The Acting CHAIR. The amendment is withdrawn.

It is now in order to consider amendment No. 9 printed in House Report 114–742.

It is now in order to consider amendment No. 10 printed in House Report 114–742.

PARLIAMENTARY INQUIRY

Mr. MILLER of Florida. Mr. Chair, parliamentary inquiry.

The Acting CHAIR. The gentleman from Florida will state his parliamentary inquiry.

Mr. MILLER of Florida. Will the Chair state the amendment number. I think you said amendment No. 10. Should it be No. 9?

The Acting CHAIR. Amendment No. 9 was not offered.

Mr. MILLER of Florida. I apologize, I was not informed.

AMENDMENT NO. 10 OFFERED BY MR. TAKANO

Mr. TAKANO. Mr. Chair, as the designee of the gentlewoman from Florida (Ms. FRANKEL), I have an amendment at the desk.

The Acting CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Page 54, after line 2, insert the following:

SEC. 11. SENSE OF CONGRESS REGARDING AMERICAN VETERANS DISABLED FOR LIFE.

(a) FINDINGS.—Congress finds the following:

(1) There are at least 3,600,000 veterans currently living with service-connected disabilities.

(2) As a result of their service, many veterans are permanently disabled throughout their lives and in many cases must rely on the support of their families and friends when these visible and invisible burdens become too much to bear alone.

(3) October 5, which is the anniversary of the dedication of the American Veterans Disabled for Life Memorial, has been recognized as an appropriate day on which to honor American veterans disabled for life each year.

(b) SENSE OF CONGRESS.—Congress—

(1) expresses its appreciation to the men and women left permanently wounded, ill, or injured as a result of their service in the Armed Forces;

(2) supports the annual recognition of American veterans disabled for life; and

(3) encourages the American people to honor American veterans disabled for life each year with appropriate programs and activities.

The Acting CHAIR. Pursuant to House Resolution 859, the gentleman from California (Mr. TAKANO) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from California.

Mr. TAKANO. Mr. Chairman, I rise to offer the amendment on behalf of the gentlewoman from Florida (Ms. FRANKEL).

Congresswoman FRANKEL's amendment would honor American veterans disabled for life and support annual recognition of our Nation's servicemen and -women left permanently wounded, ill, or injured as a result of their service. If passed, it would recognize October 5 as an appropriate day to honor disabled veterans each year. This date coincides with the anniversary of the dedication of the American Veterans Disabled for Life Memorial in Washington, D.C.

The amendment is supported by the Disabled American Veterans and the Paralyzed Veterans of America. It was included in a House concurrent resolution that I was proud to cosponsor alongside Chairman JEFF MILLER. It also passed the House as part of this Chamber's National Defense Authorization Act.

America's 3.6 million disabled veterans have honored us with their service and selfless duty. It is now our turn to honor them, and passing this amendment is one way to do so. I urge my colleagues to support this amendment.

Mr. Chairman, I reserve the balance of my time.

Mr. MILLER of Florida. Mr. Chairman, I ask unanimous consent to claim the time in opposition, even though I do not oppose the amendment.

The Acting CHAIR. Is there objection to the request of the gentleman from Florida?

There was no objection.

The Acting CHAIR. The gentleman is recognized for 5 minutes.

Mr. MILLER of Florida. Mr. Chairman, this is a very worthy cause that is due our respect, as we often forget the veterans that have been wounded, disabled for life in battle.

I was proud to attend the dedication of the American Veterans Disabled for Life Memorial service just a couple of years ago right outside of this Capitol Building, and I want to thank Representative FRANKEL and urge all of my colleagues to join me in supporting this amendment.

Mr. Chairman, I yield back the balance of my time.

Mr. TAKANO. Mr. Chairman, I have no further speakers, and again, I urge my colleagues to support Representative FRANKEL's amendment.

I yield back the balance of my time.

The Acting CHAIR. The question is on the amendment offered by the gentleman from California (Mr. TAKANO).

The amendment was agreed to.

AMENDMENT NO. 11 OFFERED BY MR. TAKANO

The Acting CHAIR. It is now in order to consider amendment No. 11 printed in House Report 114–742.

Mr. TAKANO. Mr. Chairman, as the designee of the gentleman from Arizona (Mr. GALLEGO), I offer amendment No. 11.

The Acting CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Page 54, after line 2, insert the following:

SEC. 11. ESTABLISHMENT OF POSITIONS OF DIRECTORS OF VETERANS INTEGRATED SERVICE NETWORKS IN OFFICE OF UNDER SECRETARY FOR HEALTH OF DEPARTMENT OF VETERANS AFFAIRS AND MODIFICATION OF QUALIFICATIONS FOR MEDICAL DIRECTORS.

Section 7306(a)(4) of title 38, United States Code, is amended—

(1) by inserting "and Directors of Veterans Integrated Service Networks" after "Such Medical Directors"; and

(2) by striking ", who shall be either a qualified doctor of medicine or a qualified doctor of dental surgery or dental medicine".

The Acting CHAIR. Pursuant to House Resolution 859, the gentleman from California (Mr. TAKANO) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from California.

Mr. TAKANO. Mr. Chairman, I rise to offer the amendment on behalf of my colleague from Arizona (Mr. GALLEGO).

Representative GALLEGO's amendment establishes the position of Director of Veterans Integrated Service Networks within the Office of the Under Secretary for Health in the VA.

Leadership vacancies are prevalent across the VA, particularly in terms of network and facility directors, and this amendment will provide the VA with additional flexibility to recruit medical center directors and VISN directors.

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Within the 21 VISNs, there are 151 medical centers, 985 outpatient clinics,

135 community living centers, 103 domiciliary rehabilitation treatment programs, 300 readjustment counseling centers, and 70 mobile vet centers. Network directors have oversight of healthcare delivery for as many as 10 VA medical centers and numerous community-based outpatient clinics, nursing homes, and domiciliary centers.

Ensuring that the VA has all the tools necessary to fill and retain these leadership positions is critical to fulfilling the VHA's mission and providing quality, timely care to our veterans.

This amendment is included in H.R. 4011, the Delivering Opportunities for Care and Services for Veterans Act, otherwise known as DOCS for Vets Act, which the VA Secretary recently included amongst his top legislative priorities for the remainder of this Congress. The language also passed unanimously in the Senate Veterans Affairs' Committee as part of the bipartisan Vets First Act.

I urge my colleagues to support this amendment.

Mr. Chair, I reserve the balance of my time.

Mr. MILLER of Florida. Mr. Chair, I ask unanimous consent to claim the time in opposition, even though I am not opposed.

The Acting Chair. Is there objection to the request of the gentleman from Florida?

There was no objection.

The Acting CHAIR. The gentleman is recognized for 5 minutes.

Mr. MILLER of Florida. Mr. Chairman, this, in fact, would make it easier for VA to recruit and retain its VISN directors. It is a legislative proposal of the Department of Veterans Affairs included in the committee-drafted H.R. 5526, sponsored by Mr. WENSTRUP.

I am grateful to Representative GALLEGO. I urge all of my colleagues to join me in supporting this amendment.

Mr. Chair, I yield back the balance of my time.

Mr. TAKANO. Mr. Chairman, I urge my colleagues to support Representative GALLEGO's amendment.

Mr. Chairman, I yield back the balance of my time.

The Acting CHAIR. The question is on the amendment offered by the gentleman from California (Mr. TAKANO).

The amendment was agreed to.

AMENDMENT NO. 12 OFFERED BY MR. KEATING

The Acting CHAIR. It is now in order to consider amendment No. 12 printed in House Report 114–742.

Mr. KEATING. Mr. Chairman, I have an amendment at the desk.

The Acting CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Add at the end the following new section:

SEC. 11. CONTINUING EDUCATION REQUIREMENT FOR EMPLOYEES OF DEPARTMENT OF VETERANS AFFAIRS AUTHORIZED TO PRESCRIBE MEDICATION.

(a) IN GENERAL.—Subchapter I of chapter 74 of title 38, United States Code, is amended by adding at the end the following new section:

"§ 7413. Continuing education requirement for employees authorized to prescribe medication

"(a) REQUIREMENT.—(1) Except as provided in paragraph (2), the Secretary shall require each covered employee of the Department to complete not less than one accredited course of continuing education on pain management once every two years. Such course shall include information on safe prescribing practices and disposal of controlled substances, principles of pain management, identification of potential substance use disorders and addiction treatment.

"(2) Paragraph (1) shall not apply to a covered employee if the covered employee is licensed or certified by a State licensure or specialty board that requires the completion of continuing education relative to pain management or substance use disorder management.

"(b) DEFINITIONS.—In this section:

"(1) The term 'covered employee' means any employee of the Department authorized to prescribe any controlled substance, including an employee hired under section 7405 of this title.

"(2) The term 'controlled substance' has the meaning given such term in section 102 of the Controlled Substances Act (21 U.S.C. 802).

"(c) APPLICABILITY.—The requirement under subsection (a) shall apply with respect to a covered employee for any 24-month period during which the covered employee is employed by the Department for at least 180 days.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end of the items relating to subchapter I of such chapter the following new item:

"7413. Continuing education requirement for employees authorized to prescribe medication.".

(c) APPLICABILITY.—Section 7413 of title 38, United States Code, as added by subsection (a) shall apply with respect to a 12-month period that begins on or after the date of the enactment of this Act.

The Acting CHAIR. Pursuant to House Resolution 859, the gentleman from Massachusetts (Mr. KEATING) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Massachusetts.

Mr. KEATING. Mr. Chairman, I would like to thank Chairman MILLER of Florida for his assistance with this amendment, as well as the gentleman from California (Mr. TAKANO).

I rise to offer an amendment to H.R. 5620 that would direct healthcare providers with VA affiliation to take continuing education courses specific to pain management, opioids, and substance abuse.

Nationally, about 30 percent of Americans have some type of chronic pain that they report. However, for veterans—and our elderly veterans—that number escalates dramatically, with 50 percent reporting chronic pain. And it is even more—almost double that—as 60 percent of veterans returning from the current conflict in the Middle East report some type of chronic pain that needs administration. In fact, this type of malady is the most common medical problem experienced by returning combat veterans in the entire last decade. So it is the number one reported problem that our veterans returning home from combat have to endure.

According to VA data, over half a million veterans are receiving prescriptions for opioids. The number of veterans with opioid use disorders has grown 55 percent over the last 5 years alone. Additionally, the American Public Health Association found that veterans are twice as likely to overdose on prescription opioids as are members of the general population.

Of course, pain management isn't just a stand-alone problem for our veterans. The injury leads to co-occurring mental health disorders like brain trauma or post-traumatic stress disorder. Approximately one out of every three veterans seeking treatment for substance use disorders also have brain trauma or PTSD.

The amendment incorporates language that I have introduced earlier in the year, the Safe Prescribing for Veterans Act. It will help those who provide healthcare services to veterans learn the latest in pain management techniques, understand safe prescription practices, and spot the signs of potential substance use disorders.

In our country, some of the States have moved ahead already with what this amendment does. There are 14 States in the country that require continuing education so that their physicians are schooled and kept up to speed with the most modern techniques in dealing with opioid abuse disorders. Even though there are 14, that number decreases in some of those States for the people administering these drugs, including nurse practitioners, physician assistants, dentists, and others. So this is a problem that some States are addressing, but we are not addressing as a country to help our veterans.

In those States that have this, they have that requirement for continuing education as part of treating those people who are seeking treatment. But in the remaining States, even if they have some kind of recommendations, there is no guarantee. And for our veterans nationwide, there is no guarantee.

So this is something, I think, that is essential and that we do the most we can do to help the veterans and the heroes that have served us so well as they come back dealing with some of the effects and aftereffects of their combat, to be able to help them and be there for them the way that they were there for us.

This Congress has already acted, in terms of the appropriations process, for the implementation of the costs attendant to this kind of support. This bill will be a corollary bill that deals with guaranteeing that that occurs.

In my own area, just to show you the conflicts of treatment and the diversity of treatment, the Commonwealth of Massachusetts is one of those 14 States that requires all medical personnel, all doctors, to able to have this continuing education requirement. That includes those doctors that serve the Veterans Administration.

However, in my district in the southeast portion of Massachusetts, most of the veterans in my area go to Providence, Rhode Island, for their treatment, which does not have that guarantee. Just to show an example, they have recommendations of what to do, but they don't have that guarantee.

So in my own State, one portion of the State and the veterans served mostly in that portion has that requirement to make sure that is the case. The other doesn't.

I want to thank Mr. ROTHFUS of Pennsylvania for joining me as a cosponsor of this amendment. I want to thank my colleagues for this.

Mr. Chair, I yield back the balance of my time.

Mr. MILLER of Florida. Mr. Chair, I ask unanimous consent to claim the time in opposition, even though I am not opposed to the amendment.

The Acting CHAIR. Is there objection to the request of the gentleman from Florida?

There was no objection.

The Acting CHAIR. The gentleman is recognized for 5 minutes.

Mr. MILLER of Florida. Mr. Chair, I do want to thank Mr. KEATING for coming up with this outstanding amendment to our bill. It does require VA employees to receive continuing education and courses on pain management, safe prescribing practices, disposal of controlled substances, and addiction treatment. It is critical for VA providers to know the best practices for pain management and substance use disorder.

I want to thank Mr. KEATING for his words tonight, and Mr. ROTHFUS, and I my colleagues in supporting this amendment.

Mr. Chair, I yield back the balance of my time.

The Acting CHAIR. The question is on the amendment offered by the gentleman from Massachusetts (Mr. KEATING).

The amendment was agreed to.

AMENDMENT NO. 13 OFFERED BY MR. LOWENTHAL

The Acting CHAIR. It is now in order to consider amendment No. 13 printed in House Report 114–742.

Mr. LOWENTHAL. Mr. Chairman, I have an amendment at the desk.

The Acting CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Page 54, add after line 2 the following:

SECTION 11. REVIEW OF WHISTLEBLOWER COMPLAINTS.

(a) IN GENERAL.—Chapter 7 of title 38, United States Code, is amended by inserting after section 711 the following new section:

"§ 712. Review of whistleblower complaints

"(a) IN GENERAL.—During each calendar quarter, the Secretary shall review each covered whistleblower complaint that is filed during the previous calendar quarter.

"(b) DELEGATION.—The Secretary may only delegate the authority of the Secretary under subsection (a) to review a covered whistleblower complaint, without further delegation, to—

"(1) the Deputy Secretary of Veterans Affairs;

"(2) the Under Secretary for Health;

"(3) the Under Secretary for Benefits;

"(4) the Under Secretary for Memorial Affairs;

"(5) an Assistant Secretary of Veterans Affairs;

"(6) a Deputy Assistant Secretary of Veterans Affairs; or

"(7) a director of the Veterans Integrated Service Network.

"(c) COVERED WHISTLEBLOWER COMPLAINT DEFINED.—In this section, the term 'covered whistleblower complaint' means any complaint filed with the Office of the Special Counsel under subchapter II of chapter 12 of title 5 with respect to a prohibited personnel practice committed by an officer or employee of the Department of Veterans Affairs and described in section 2302(b)(8) or 2302(b)(9)(A)(i), (B), (C), or (D) of such title.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 711 the following new item:

"712. Review of whistleblower complaints.".

The Acting CHAIR. Pursuant to House Resolution 859, the gentleman from California (Mr. LOWENTHAL) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from California.

Mr. LOWENTHAL. Mr. Chair, I yield myself such time as I may consume.

Mr. Chair, I am very pleased to have the opportunity to offer this simple, nonpartisan amendment today.

Like many of my colleagues here, I am determined to do whatever I can to ensure the best possible care for our veterans. And I can tell you that I see all the time just how important the services are in my hometown at the Long Beach Veterans Administration to veterans in my district.

It is absolutely essential our veterans receive the quality of care that they have earned and that we owe them. I believe everyone here agrees on that. The question is: How can we ensure that our veterans receive the best quality care?

One straightforward, but important way is to make sure that whistleblowers are adequately protected.

When problems emerge, as they certainly will in any complicated system such as health care, it is vital that the VA employees feel that they can bring forward complaints and they will be properly considered without fear of retaliation.

VA employees are key potential partners in making sure the system is responsive, honest, and efficient. And if they have any doubts or concerns about their whistleblower protections, then we lose the insights, their expertise, and the inside view that they bring to the VA's day-to-day operations. That would be bad for the veterans and bad for our VA system.

My simple amendment helps to guarantee whistleblower protections are acted upon by requiring the Secretary of Veterans Affairs or his or her designee to conduct a quarterly review of covered whistleblower complaints from the preceding quarter. This brings the necessary prompt attention and senior level VA oversight to whistleblower complaints.

I believe this is nonpartisan, noncontroversial, and I hope that the majority goes along with my colleagues in the minority and will support it. I urge its adoption.

Mr. Chair, I reserve the balance of my time.

Mr. MILLER of Florida. Mr. Chair, I ask unanimous consent to claim the time in opposition, even though I am not opposed to the amendment.

The Acting CHAIR. Is there objection to the request of the gentleman from Florida?

There was no objection.

The Acting CHAIR. The gentleman is recognized for 5 minutes.

Mr. MILLER of Florida. Mr. Chair, I want to thank Mr. LOWENTHAL for his very simple, nonpartisan amendment that has been provided tonight requiring political appointees at VA review whistleblower complaints at every level. I am grateful to him for bringing this forward. I urge all of my colleagues to support his amendment.

Mr. Chair, I yield back the balance of my time.

Mr. LOWENTHAL. Mr. Chair, I thank and appreciate the leader from the majority party.

Mr. Chair, I yield back the balance of my time.

The Acting CHAIR. The question is on the amendment offered by the gentleman from California (Mr. LOWENTHAL).

The amendment was agreed to.

Mr. MILLER of Florida. Mr. Chairman, I move that the Committee do now rise.

The motion was agreed to.

Accordingly, the Committee rose; and the Speaker pro tempore (Mr. MILLER of Florida) having assumed the chair, Mr. MOONEY of West Virginia, Acting Chair of the Committee of the Whole House on the state of the Union, reported that that Committee, having had under consideration the bill (H.R. 5620) 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, had come to no resolution thereon.

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SUICIDE PREVENTION MONTH

The SPEAKER pro tempore (Mr. MOONEY of West Virginia). Under the Speaker's announced policy of January 6, 2015, the gentlewoman from Arizona (Ms. SINEMA) is recognized for 60 minutes as the designee of the minority leader.

GENERAL LEAVE

Ms. SINEMA. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks and include extraneous material on the subject of my Special Order.