

## **SEC. 409. REMOVAL OF SENIOR EXECUTIVE SERVICE EMPLOYEES OF THE DEPARTMENT OF VETERANS AFFAIRS FOR PERFORMANCE.**

(a) Removal or Transfer-

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

### **Sec. 713. Senior Executive Service: removal based on performance**

(a) In General- The Secretary may remove any individual from the Senior Executive Service if the Secretary determines the performance of the individual warrants such removal. If the Secretary so removes such an individual, the Secretary may--

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

(2) transfer the individual to a General Schedule position at any grade of the General Schedule for which the individual is qualified and that the Secretary determines is appropriate.

(b) Notice to Congress- Not later than 30 days after removing or transferring an individual from the Senior Executive Service 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 transfer and the reason for such removal or transfer.

(c) Procedure- (1) The procedures under section 7543 of title 5 shall not apply to a removal or transfer under this section.

(2)(A) Subject to subparagraph (B), any removal or transfer 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 transfer may only be made if such appeal is made not later than 7 days after the date of such removal or transfer.

(d) Expedited Review by Merit Systems Protection Board- (1) The Merit Systems Protection Board shall expedite any appeal under section 7701 of title 5 of a removal or transfer under subsection (a) and, in any such case, shall issue a decision not later than 21 days after the date of the appeal.

(2) In any case in which the Merit Systems Protection Board determines that it cannot issue a decision in accordance with the 21-day requirement under paragraph (1), the Merit Systems Protection Board shall submit to Congress a report that explains the reason why the Merit Systems Protection Board is unable to issue a decision in accordance with such requirement in such case.

` (3) There is authorized to be appropriated such sums as may be necessary for the Merit Systems Protection Board to expedite appeals under paragraph (1).

` (4) The Merit Systems Protection Board may not stay any personnel action taken under this section.

` (5) A person who appeals under section 7701 of title 5 a removal under subsection (a)(1) may not receive any pay, awards, bonuses, incentives, allowances, differentials, student loan repayments, special payments, or benefits from the Secretary until the Merit Systems Protection Board has made a final decision on such appeal.

` (6) A decision made by the Merit Systems Protection Board with respect to a removal or transfer under subsection (a) shall not be subject to any further appeal.'

(2) CLERICAL AMENDMENT- The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

` 713. Senior Executive Service: removal based on performance.'

(b) Establishment of Expedited Review Process-

(1) IN GENERAL- Not later than 30 days after the date of the enactment of this Act, the Merit Systems Protection Board shall establish and put into effect a process to conduct expedited reviews in accordance with section 713(d) of title 38, United States Code.

(2) INAPPLICABILITY OF CERTAIN REGULATIONS- Section 1201.22 of title 5, Code of Federal Regulations, as in effect on the day before the date of the enactment of this Act, shall not apply to expedited reviews carried out under section 713(d) of title 38, United States Code.

(3) REPORT BY MERIT SYSTEMS PROTECTION BOARD- Not later than 30 days after the date of the enactment of this Act, the Merit Systems Protection Board shall submit to Congress a report on the actions the Board plans to take to conduct expedited reviews under section 713(d) of title 38, United States Code, as added by subsection (a). Such report shall include a description of the resources the Board determines will be necessary to conduct such reviews and a description of whether any resources will be necessary to conduct such reviews that were not available to the Board on the day before the date of the enactment of this Act.

(c) Temporary Exemption From Certain Limitation on Initiation of Removal From Senior Executive Service- During the 120-day period beginning on the date of the enactment of this Act, an action to remove an individual from the Senior Executive Service at the

Department of Veterans Affairs pursuant to section 713 of title 38, United States Code, as added by subsection (a), or section 7543 of title 5, United States Code, may be initiated, notwithstanding section 3592(b) of title 5, United States Code, or any other provision of law.

(d) Construction- Nothing in this section or section 713 of title 38, United States Code, as added by subsection (a), 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.