

shall include in the report the Comptroller General's opinion as to the accuracy of the Secretary's determination (and of the data supporting such determination) made under such subsection.

(e) In the case of Department employees not described in subsection (c), the Secretary may not in any fiscal year implement a systematic reduction for the purpose of reducing the average salary cost for such Department employees that will result in a reduction in the number of such Department employees at any specific grade level at a rate greater than the rate of the reductions systematically being made in the numbers of employees at such grade level in all other agencies and departments of the Federal Government combined.

(Added Pub. L. 102-83, §2(a), Aug. 6, 1991, 105 Stat. 396; amended Pub. L. 103-446, title XII, §1201(e)(5), Nov. 2, 1994, 108 Stat. 4685; Pub. L. 104-316, title I, §119, Oct. 19, 1996, 110 Stat. 3836.)

#### PRIOR PROVISIONS

Prior section 711 was renumbered section 1911 of this title.

Provisions similar to those in this section were contained in former section 210(b)(3) of this title prior to repeal by Pub. L. 102-83, §2(a).

#### AMENDMENTS

1996—Subsec. (d). Pub. L. 104-316 inserted “, upon request of either of such Committees,” after “the Comptroller General shall” in first sentence.

1994—Subsec. (d). Pub. L. 103-446 substituted “committees” for “Committees”.

#### **§ 712. Repealed. Pub. L. 107-103, title V, § 509(a)(1), Dec. 27, 2001, 115 Stat. 997]**

Section, added Pub. L. 103-446, title XI, §1102(a), Nov. 2, 1994, 108 Stat. 4680; amended Pub. L. 104-262, title III, §303, Oct. 9, 1996, 110 Stat. 3194; Pub. L. 105-33, title VIII, §8023(e), Aug. 5, 1997, 111 Stat. 667; Pub. L. 105-368, title X, §1005(b)(1), Nov. 11, 1998, 112 Stat. 3364, limited reduction of full-time equivalent positions in the Department of Veterans Affairs during the period beginning on Nov. 2, 1994, and ending on Sept. 30, 1999.

#### PRIOR PROVISIONS

A prior section 712 was renumbered section 1912 of this title.

#### **§ 713. Senior executives: removal based on performance or misconduct**

(a) IN GENERAL.—(1) The Secretary may remove an individual employed in a senior executive position at the Department of Veterans Affairs from the senior executive position if the Secretary determines the performance or misconduct of the individual warrants such removal. If the Secretary so removes such an individual, the Secretary may—

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

(B) in the case of an individual described in paragraph (2), transfer the individual from the senior executive position 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.

(2) An individual described in this paragraph is an individual who—

(A) previously occupied a permanent position within the competitive service (as that term is defined in section 2102 of title 5);

(B) previously occupied a permanent position within the excepted service (as that term is defined in section 2103 of title 5); or

(C) prior to employment in a senior executive position at the Department of Veterans Affairs, did not occupy any position within the Federal Government.

(b) PAY OF TRANSFERRED INDIVIDUAL.—(1) Notwithstanding any other provision of law, including the requirements of section 3594 of title 5, any individual transferred to a General Schedule position under subsection (a)(2) shall, beginning on the date of such transfer, receive the annual rate of pay applicable to such position.

(2) An individual so transferred 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 transferred 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 transferring an individual from a senior executive position 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.

(d) PROCEDURE.—(1) The procedures under section 7543(b) of title 5 shall not apply to a removal or transfer under this section.

(2)(A) Subject to subparagraph (B) and subsection (e), 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 seven days after the date of such removal or transfer.

(e) EXPEDITED REVIEW BY ADMINISTRATIVE JUDGE.—(1) Upon receipt of an appeal under subsection (d)(2)(A), the Merit Systems Protection Board shall refer such appeal to an administrative judge pursuant to section 7701(b)(1) of title 5. The administrative judge shall expedite any such appeal under such section and, in any such case, shall issue a decision not later than 21 days after the date of the appeal.

(2) Notwithstanding any other provision of law, including section 7703 of title 5, the decision of an administrative judge under paragraph (1) shall be final and shall not be subject to any further appeal.

(3) In any case in which the administrative judge cannot issue a decision in accordance with the 21-day requirement under paragraph (1), the removal or transfer is final. In such a case, the Merit Systems Protection Board shall, within 14 days after the date that such removal or transfer 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.

(4) The Merit Systems Protection Board or administrative judge may not stay any removal or transfer under this section.

(5) 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 administrative judge 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.

(6) To the maximum extent practicable, the Secretary shall provide to the Merit Systems Protection Board, and to any administrative judge to whom an appeal under this section is referred, such information and assistance as may be necessary to ensure an appeal under this subsection is expedited.

(f) RELATION TO TITLE 5.—(1) The authority provided by this section 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 does not apply to an action to remove or transfer an individual under this section.

(g) DEFINITIONS.—In this section:

(1) The term “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)(4) of title 5), a Senior Executive Service position (as such term is defined in section 3132(a)(2) of title 5); and

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

(Added Pub. L. 113-146, title VII, §707(a)(1), Aug. 7, 2014, 128 Stat. 1798.)

#### PRIOR PROVISIONS

Prior sections 713 to 729, 740 to 763, 765 to 779, 781 to 788, and 801 to 806 were renumbered sections 1913 to 1929, 1940 to 1963, 1965 to 1979, 1981 to 1988, and 2101 to 2106 of this title, respectively.

#### CONSTRUCTION

Pub. L. 113-146, title VII, §707(d), Aug. 7, 2014, 128 Stat. 1801, provided that:

“(1) IN GENERAL.—Nothing in this section [enacting this section and provisions set out as notes under 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 [Aug. 7, 2014].

“(2) RELATION TO TITLE 5.—With respect to the removal or transfer of an individual (as that term is defined in such section 713) employed at the Department of Veterans Affairs, the authority provided by such section 713 is in addition to the authority provided by sec-

tion 3592 or subchapter V of chapter 75 of title 5, United States Code.”

#### ESTABLISHMENT OF EXPEDITED REVIEW PROCESS

Pub. L. 113-146, title VII, §707(b), Aug. 7, 2014, 128 Stat. 1800, provided that:

“(1) IN GENERAL.—Not later than 14 days after the date of the enactment of this Act [Aug. 7, 2014], 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) WAIVER.—The Merit Systems Protection Board may waive any other regulation in order to provide for the expedited review required under section 713(d) of title 38, United States Code.

“(4) REPORT BY MERIT SYSTEMS PROTECTION BOARD.—Not later than 14 days after the date of the enactment of this Act, the Merit Systems Protection Board shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives 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.”

#### TEMPORARY EXEMPTION FROM CERTAIN LIMITATION ON INITIATION OF REMOVAL FROM SENIOR EXECUTIVE SERVICE

Pub. L. 113-146, title VII, §707(c), Aug. 7, 2014, 128 Stat. 1800, provided that: “During the 120-day period beginning on the date of the enactment of this Act [Aug. 7, 2014], an action to remove an individual from the Senior Executive Service at the Department of Veterans Affairs pursuant to section 7543 of title 5, United States Code, may be initiated, notwithstanding section 3592(b) of such title, or any other provision of law.”

#### CHAPTER 9—SECURITY AND LAW ENFORCEMENT ON PROPERTY UNDER THE JURISDICTION OF THE DEPARTMENT

Sec. 901.	Authority to prescribe rules for conduct and penalties for violations.
902.	Enforcement and arrest authority of Department police officers.
903.	Uniform allowance.
904.	Equipment and weapons.
905.	Use of facilities and services of other law enforcement agencies.

#### § 901. Authority to prescribe rules for conduct and penalties for violations

(a)(1) The Secretary shall prescribe regulations to provide for the maintenance of law and order and the protection of persons and property on Department property.

(2) In this chapter, the term “Department property” means land and buildings that are under the jurisdiction of the Department and are not under control of the Administrator of General Services.

(b) Regulations under subsection (a) shall include—

(1) rules for conduct on Department property; and