

[§ 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 Repealed.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, demotion, or suspension based on performance or misconduct

(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) advance notice of the action and a file containing all evidence in support of the proposed action;

(B) be represented by an attorney or other representative of the covered individual's choice; 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 aggregate period for notice, response, and decision on an action under subsection (a) may not exceed 15 business days.

(B) The period for the response of a covered individual to a notice under paragraph (1)(A) of an action under subsection (a) shall be 7 business days.

(C) A decision under this paragraph on an action under subsection (a) shall be issued not later than 15 business days after notice of the action is provided to the covered individual under paragraph (1)(A). The decision shall be in writing, and shall include the specific reasons therefor.

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

(4) A decision under paragraph (2) that is not grieved, and a grievance decision under paragraph (3), shall be final and conclusive.

(5) A covered individual adversely affected by a decision under paragraph (2) that is not grieved, or by a grievance decision under paragraph (3), may obtain judicial review of such decision.

(6) In any case in which judicial review is sought under paragraph (5), the court shall re-

view 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.—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), section 7401(1), or section 7401(4) 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.

(Added Pub. L. 113-146, title VII, § 707(a)(1), Aug. 7, 2014, 128 Stat. 1798; amended Pub. L. 115-41, title II, § 201(a), June 23, 2017, 131 Stat. 868.)

PRIOR PROVISIONS

A prior section 713 was renumbered section 1913 of this title.

AMENDMENTS

2017—Pub. L. 115-41 amended section generally. Prior to amendment, section related to removal of senior executives based on performance or misconduct.

CONSTRUCTION

Pub. L. 113-146, title VII, § 707(d), Aug. 7, 2014, 128 Stat. 1801, provided a rule of construction related to appeal of a removal, transfer, or other personnel action that was pending before Aug. 7, 2014, and provided that the authority provided by former section 713 of this title would be in addition to the authority provided by section 3592 or subchapter V of chapter 75 of title 5.

ESTABLISHMENT OF EXPEDITED REVIEW PROCESS

Pub. L. 113-146, title VII, § 707(b), Aug. 7, 2014, 128 Stat. 1800, related to the establishment by the Merit Systems Protection Board of a process to conduct expedited reviews in accordance with former subsec. (d) of this section.

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 for a 120-day exemption, starting on Aug. 7, 2014, from certain limitations on the initiation of removals from the Senior Executive Service.

§ 714. Employees: removal, demotion, or suspension based on performance or misconduct

(a) IN GENERAL.—(1) The Secretary may remove, demote, or suspend a covered individual