

ther of such Committees, submit to such committees a report on the Secretary's compliance with such subsection. The Comptroller General 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 Repealed.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, 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 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.—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.