

**AMENDMENT TO RULES COMMITTEE PRINT 115-**

**7**

**OFFERED BY MR. WALZ OF MINNESOTA**

Strike section 3 and insert the following new section

3:

1 **SEC. 3. IMPROVED AUTHORITIES OF SECRETARY OF VET-**  
2 **ERANS AFFAIRS TO IMPROVE ACCOUNT-**  
3 **ABILITY OF SENIOR EXECUTIVES.**

4 (a) ACCOUNTABILITY OF SENIOR EXECUTIVES.—

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

7 **“§ 713. Accountability of senior executives**

8 “(a) AUTHORITY.—(1) The Secretary may, as pro-  
9 vided in this section, reprimand or suspend, involuntarily  
10 reassign, demote, or remove a covered individual from a  
11 senior executive position at the Department if the Sec-  
12 retary determines that the misconduct or performance of  
13 the covered individual warrants such action.

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

1           “(b) RIGHTS AND PROCEDURES.—(1) A covered indi-  
2     vidual who is the subject of an action under subsection  
3     (a) is entitled to—

4           “(A) be represented by an attorney or other  
5     representative of the covered individual’s choice;

6           “(B) not fewer than 10 business days advance  
7     written notice of the charges and evidence sup-  
8     porting the action and an opportunity to respond, in  
9     a manner prescribed by the Secretary, before a deci-  
10    sion is made regarding the action; and

11          “(C) grieve the action in accordance with an in-  
12    ternal grievance process that the Secretary, in con-  
13    sultation with the Assistant Secretary for Account-  
14    ability and Whistleblower Protection, shall establish  
15    for purposes of this subsection.

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

19          “(B) The Secretary shall ensure that, under the proc-  
20    ess established pursuant to paragraph (1)(C), grievances  
21    are reviewed only by employees of the Department.

22          “(3) A decision or grievance decision under para-  
23    graph (1)(C) shall be final and conclusive.

1           “(4) A covered individual adversely affected by a final  
2 decision under paragraph (1)(C) may obtain judicial re-  
3 view of the decision.

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

7                   “(A) arbitrary, capricious, an abuse of discre-  
8 tion, or otherwise not in accordance with a provision  
9 of law;

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

12                   “(C) unsupported by substantial evidence.

13           “(c) RELATION TO OTHER PROVISIONS OF LAW.—

14 (1) The authority provided by subsection (a) is in addition  
15 to the authority provided by section 3592 or subchapter  
16 V of chapter 75 of title 5.

17           “(2) Section 3592(b)(1) of title 5 and the procedures  
18 under section 7543(b) of such title do not apply to an ac-  
19 tion under subsection (a).

20           “(d) DEFINITIONS.—In this section:

21                   “(1) The term ‘covered individual’ means—

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

24                           “(B) any individual who occupies an ad-  
25 ministrative or executive position and who was

1 appointed under section 7306(a) or section  
2 7401(1) of this title.

3 “(2) The term ‘misconduct’ includes neglect of  
4 duty, malfeasance, or failure to accept a directed re-  
5 assignment or to accompany a position in a transfer  
6 of function.

7 “(3) The term ‘senior executive position’  
8 means—

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

13 “(B) with respect to a covered individual  
14 appointed under section 7306(a) or section  
15 7401(1) of this title, an administrative or execu-  
16 tive position.”.

17 (2) CONFORMING AMENDMENT.—Section  
18 7461(c)(1) of such title is amended by inserting  
19 “employees in senior executive positions (as defined  
20 in section 713(d) of this title) and” before “interns”.

21 (b) PERFORMANCE MANAGEMENT.—

22 (1) IN GENERAL.—The Secretary of Veterans  
23 Affairs shall establish a performance management  
24 system for employees in senior executive positions,  
25 as defined in section 713(d) of title 38, United

1 States Code, as amended by subsection (a), that en-  
2 sures performance ratings and awards given to such  
3 employees—

4 (A) meaningfully differentiate extraor-  
5 dinary from satisfactory contributions; and

6 (B) substantively reflect organizational  
7 achievements over which the employee has re-  
8 sponsibility and control.

9 (2) REGULATIONS.—The Secretary shall pre-  
10 scribe regulations to carry out paragraph (1).

Strike section 9 and insert the following new section

9:

11 **SEC. 9. REMOVAL OF EMPLOYEES OF DEPARTMENT OF**  
12 **VETERANS AFFAIRS BASED ON PERFORM-**  
13 **ANCE OR MISCONDUCT.**

14 (a) IN GENERAL.—Subchapter I of chapter 7 of title  
15 38, United States Code, is further amended by inserting  
16 after section 713 the following new section:

17 **“§ 714. Employees: removal based on performance or**  
18 **misconduct**

19 “(a) IN GENERAL.—(1) The Secretary may remove  
20 a covered individual who is an employee of the Department  
21 if the Secretary determines that—

22 “(A) the performance or misconduct of the cov-  
23 ered individual warrants such removal; and

1           “(B) in the case of removal for performance, a  
2           portion of such performance occurred during the  
3           two-year period ending on the date of the determina-  
4           tion.

5           “(2) If the Secretary removes a covered individual  
6           under paragraph (1), the Secretary may remove the cov-  
7           ered individual from the civil service (as defined in section  
8           2101 of title 5).

9           “(3) Nothing in this section may be construed to au-  
10          thorize a finalized performance appraisal of an employee  
11          to be retroactively amended.

12          “(b) NOTICE TO CONGRESS.—Not later than 30 days  
13          after removing a covered individual under subsection (a),  
14          the Secretary shall submit to the Committees on Veterans’  
15          Affairs of the Senate and House of Representatives notice  
16          in writing of such removal and the reason for such re-  
17          moval.

18          “(c) PROCEDURE.—(1) An employee removed under  
19          subsection (a) is entitled, before removal, to—

20                 “(A) at least 10 business days written notice  
21                 (which, in the case of removal for performance, shall  
22                 identify specific instances as described in clause (i)  
23                 of section 4303(b)(1)(A) of title 5 and critical ele-  
24                 ments as described in clause (ii) of such section),  
25                 unless there is reasonable cause to believe that the

1 employee committed a crime for which a sentence of  
2 imprisonment can be imposed—

3 “(i) stating the specific reasons for the  
4 proposed action; and

5 “(ii) including a file containing all evidence  
6 in support of the proposed action;

7 “(B) 10 business days to answer the charges  
8 orally and in writing and to furnish affidavits and  
9 other documentary evidence in support of the an-  
10 swer;

11 “(C) be represented by an attorney or other  
12 representative;

13 “(D) a review of the case by the Secretary be-  
14 fore a decision adverse to the employee is made  
15 final;

16 “(E) as soon as practicable, a decision of the  
17 Secretary with respect to the charges of the em-  
18 ployee; and

19 “(F) a written statement of the decision of the  
20 Secretary that—

21 “(i) includes the specific reasons of the de-  
22 cision; and

23 “(ii) in the case of a removal based on per-  
24 formance, complies with section 4303(b)(1)(D)  
25 of title 5.

1           “(2)(A) Subject to subparagraph (B) and subsection  
2 (e), any final decision of the Secretary regarding removal  
3 under subsection (a) may be appealed to the Merit Sys-  
4 tems Protection Board.

5           “(B) An appeal under subparagraph (A) of a removal  
6 may only be made if such appeal is made not later than  
7 10 business days after the date of such removal.

8           “(C)(i) Subject to clause (ii), the decision of the Sec-  
9 retary shall be sustained under subparagraph (A) only if  
10 the Secretary’s decision—

11                 “(I) in the case of an action based on perform-  
12                 ance, is supported by substantial evidence; or

13                 “(II) in any other case, is supported by a pre-  
14                 ponderance of the evidence.

15           “(ii) Notwithstanding clause (i), the Secretary’s deci-  
16 sion may not be sustained under subparagraph (A) if the  
17 covered individual—

18                 “(I) shows harmful error in the application of  
19                 the Secretary’s procedures in arriving at such deci-  
20                 sion;

21                 “(II) shows that the decision was based on any  
22                 prohibited personnel practice described in section  
23                 2302(b) of title 5; or

24                 “(III) shows that the decision was not in ac-  
25                 cordance with law.



1           “(3) The procedures under section 7513(b) of title  
2 5 and chapter 43 of such title shall not apply to a removal  
3 under this section.

4           “(d) EXPEDITED REVIEW.—(1) The Merit Systems  
5 Protection Board shall promulgate such rules as the  
6 Board considers appropriate to expedite appeals under  
7 subsection (c)(2).

8           “(2) The Board shall ensure that a final decision on  
9 an appeal described in paragraph (1) is issued not later  
10 than 90 days after the appeal is made.

11           “(3) During the period beginning on the date on  
12 which a covered individual appeals a removal from the civil  
13 service under subsection (c)(2) and ending on the date  
14 that the Board issues a final decision on such appeal, such  
15 covered individual may not receive any pay, awards, bo-  
16 nuses, incentives, allowances, differentials, student loan  
17 repayments, special payments, or benefits.

18           “(4) To the maximum extent practicable, the Sec-  
19 retary shall provide to the Merit Systems Protection  
20 Board such information and assistance as may be nec-  
21 essary to ensure an appeal under subsection (c)(2) is expe-  
22 dited.

23           “(e) RELATION TO TITLE 5.—The authority provided  
24 by this section is in addition to the authority provided by

1 subchapter V of chapter 75 of title 5 and chapter 43 of  
2 such title.

3 “(f) DEFINITIONS.—In this section:

4 “(1) The term ‘covered individual’ means an in-  
5 dividual occupying a position at the Department but  
6 does not include—

7 “(A) an individual, as that term is defined  
8 in section 713(d); or

9 “(B) a political appointee.

10 “(2) The term ‘misconduct’ includes a violation  
11 of paragraph (8) or (9) of section 2302(b) of title  
12 5, neglect of duty, malfeasance, or failure to accept  
13 a directed reassignment or to accompany a position  
14 in a transfer of function.

15 “(3) The term ‘political appointee’ means an in-  
16 dividual who is—

17 “(A) employed in a position described  
18 under sections 5312 through 5316 of title 5  
19 (relating to the Executive Schedule);

20 “(B) a limited term appointee, limited  
21 emergency appointee, or noncareer appointee in  
22 the Senior Executive Service, as defined under  
23 paragraphs (5), (6), and (7), respectively, of  
24 section 3132(a) of title 5; or

1           “(C) employed in a position of a confiden-  
2           tial or policy-determining character under  
3           schedule C of subpart C of part 213 of title 5  
4           of the Code of Federal Regulations.”.

5           (b) CLERICAL AND CONFORMING AMENDMENTS.—

6           (1) CLERICAL.—The table of sections at the be-  
7           ginning of such chapter is amended by inserting  
8           after the item relating to section 713 the following  
9           new item:

          “714. Employees: removal based on performance or misconduct.”.

10          (2) CONFORMING.—

11           (A) TITLE 5.—Section 4303(f) of title 5,  
12           United States Code, is amended—

13                 (i) in paragraph (2), by striking “or”  
14                 at the end;

15                 (ii) in paragraph (3), by striking the  
16                 period at the end and inserting “, or”; and

17                 (iii) by adding at the end the fol-  
18                 lowing:

19           “(4) any removal under section 714 of title  
20           38.”.

21           (B) TITLE 38.—Subchapter V of chapter  
22           74 of title 38, United States Code, is amend-  
23           ed—

1 (i) in section 7461(b)(1), by striking  
2 “If the” and inserting “Except as provided  
3 in section 714 of this title, if the”; and  
4 (ii) in section 7462—  
5 (I) in subsection (a)(1), by strik-  
6 ing “Disciplinary” and inserting “Ex-  
7 cept as provided in section 714 of this  
8 title, the Disciplinary”; and  
9 (II) in subsection (b)(1), by  
10 striking “In any case” and inserting  
11 “Except as provided in section 714 of  
12 this title, in any case”.

