

United States Senate

WASHINGTON, DC 20510-0908

March 30, 2023

The Honorable Denis McDonough
Secretary
U.S. Department of Veterans Affairs
810 Vermont Avenue NW
Washington, D.C. 20420

Dear Secretary McDonough:

We write with concern that, starting April 3, the U.S. Department of Veterans Affairs (VA) will begin to disregard current law under the *VA Accountability and Whistleblower Protection Act of 2017* (P.L. 115-41). This bipartisan law protects whistleblowers at the VA and provides the Secretary with the authority to hold bad VA employees accountable by allowing the dismissal of employees for poor performance or misconduct. Our nation's veterans deserve only the best and most qualified employees serving them when they seek assistance from the VA. We are concerned that the VA is making excuses for employees' poor performance and putting bureaucratic interests ahead of veterans' well-being.

As we have said countless times, more often than not, VA facilities are staffed by exceptional employees, who have nobly chosen to pursue a career dedicated to our nation's heroes. Many VA employees are veterans themselves, which speaks to the selfless testament of their service to our nation. The *VA Accountability and Whistleblower Protection Act* stemmed from concerns that we had heard that the VA did not have the authority to hold the small portion of bad employees accountable for their actions. These employees have criminal records, stole medication from VA facilities, or have done other egregious actions that suggest they are unfit to work for the VA, and to serve our veterans, their caregivers, and families. Yet, the VA was stuck in lengthy disciplinary actions that are costly to the taxpayer, and there was need for reform leading to this landmark law.

During consideration of the *VA Accountability and Whistleblower Protection Act*, then-Secretary David Shulkin stated that the VA lacked the authorities needed to punish bad employees, and the VA needed a "new set of tools" to do right by veterans. He stated that new authorities are "necessary" in order to serve our country's veterans.¹ This law was not some partisan play to punish the VA, its employees, or veterans. It's the exact opposite. This law was crafted with support of several veterans' service organizations, from feedback and work with the VA and passed both chambers overwhelmingly. The law cuts the bureaucratic red tape to ensure that the VA does the right thing, holds its employees to the highest standards and removes those who do not put the needs and wellbeing of veterans at the center of their work.

What is most concerning about the VA's move is that recent reporting suggests that the VA will rely on authorities in place prior to enactment of *VA Accountability and Whistleblower*

¹ <https://www.rubio.senate.gov/public/index.cfm/press-releases?id=95CBF301-951B-4DD9-A3EA-956486EFD65A>

Protection Act. The bipartisan consensus in 2017, and the VA's own view of the issue, was that the VA did not have authorities needed to ensure that bad employees could be held accountable for their actions. As we conduct oversight, it is our job to ensure veterans receive the best experience possible at the VA, and we expect that the VA will put veterans first during all decisions about employee management.

To that end, we request the following information:

1. What authorities does the VA believe is sufficient for ensuring that bad employees can swiftly be removed from their position if they are deemed to not be acting in the best interest of veterans in their role?
2. What factors led to VA's decision to no longer abide by the *VA Accountability and Whistleblower Protection Act*?
3. Will previously terminated employees be allowed to return to working at the VA? If so, how did the VA deem that they are suited to return to their role?
4. As the VA has promised to hold employees accountable, what authorities will the VA need following the April 3 cessation in order to do this?

Thank you for your attention to this matter. We look forward to your prompt response.

Sincerely,



Marco Rubio
U.S. Senator



Steve Daines
U.S. Senator