

115TH CONGRESS  
1ST SESSION

**S.** \_\_\_\_\_

To amend title 38, United States Code, to improve the accountability of employees of the Department of Veterans Affairs, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

Mr. RUBIO (for himself, Mr. TESTER, Mr. ISAKSON, Mr. NELSON, Mr. MCCAIN, Mrs. SHAHEEN, Mr. MORAN, and Ms. BALDWIN) introduced the following bill; which was read twice and referred to the Committee on

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**A BILL**

To amend title 38, United States Code, to improve the accountability of employees of the Department of Veterans Affairs, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Department of Veterans Affairs Accountability and  
6 Whistleblower Protection Act of 2017”.

7 (b) TABLE OF CONTENTS.—The table of contents for  
8 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—OFFICE OF ACCOUNTABILITY AND WHISTLEBLOWER  
PROTECTION

- Sec. 101. Establishment of Office of Accountability and Whistleblower Protection.
- Sec. 102. Protection of whistleblowers in Department of Veterans Affairs.
- Sec. 103. Report on methods used to investigate employees of Department of Veterans Affairs.

TITLE II—ACCOUNTABILITY OF SENIOR EXECUTIVES,  
SUPERVISORS, AND OTHER EMPLOYEES

- Sec. 201. Improved authorities of Secretary of Veterans Affairs to improve accountability of senior executives.
- Sec. 202. Improved authorities of Secretary of Veterans Affairs to improve accountability of employees.
- Sec. 203. Reduction of benefits for Department of Veterans Affairs employees convicted of certain crimes.
- Sec. 204. Authority to recoup bonuses or awards paid to employees of Department of Veterans Affairs.
- Sec. 205. Authority to recoup relocation expenses paid to or on behalf of employees of Department of Veterans Affairs.
- Sec. 206. Time period for response to notice of adverse actions against supervisory employees who commit prohibited personnel actions.
- Sec. 207. Direct hiring authority for medical center directors and VISN directors.
- Sec. 208. Time periods for review of adverse actions with respect to certain employees.
- Sec. 209. Improvement of training for supervisors.
- Sec. 210. Assessment and report on effect on senior executives at Department of Veterans Affairs.
- Sec. 211. Measurement of Department of Veterans Affairs disciplinary process outcomes and effectiveness.

1 **TITLE I—OFFICE OF ACCOUNT-**  
2 **ABILITY AND WHISTLE-**  
3 **BLOWER PROTECTION**

4 **SEC. 101. ESTABLISHMENT OF OFFICE OF ACCOUNT-**  
5 **ABILITY AND WHISTLEBLOWER PROTECTION.**

6 (a) IN GENERAL.—Chapter 3 of title 38, United  
7 States Code, is amended by adding at the end the fol-  
8 lowing new section:

1 **“§ 323. Office of Accountability and Whistleblower**  
2 **Protection**

3 “(a) ESTABLISHMENT.—There is established in the  
4 Department an office to be known as the ‘Office of Ac-  
5 countability and Whistleblower Protection’ (in this section  
6 referred to as the ‘Office’).

7 “(b) HEAD OF OFFICE.—(1) The head of the Office  
8 shall be responsible for the functions of the Office and  
9 shall be appointed by the President pursuant to section  
10 308(a) of this title.

11 “(2) The head of the Office shall be known as the  
12 ‘Assistant Secretary for Accountability and Whistleblower  
13 Protection’.

14 “(3) The Assistant Secretary shall report directly to  
15 the Secretary on all matters relating to the Office.

16 “(4) Notwithstanding section 308(b) of this title, the  
17 Secretary may only assign to the Assistant Secretary re-  
18 sponsibilities relating to the functions of the Office set  
19 forth in subsection (c).

20 “(c) FUNCTIONS.—(1) The functions of the Office  
21 are as follows:

22 “(A) Advising the Secretary on all matters of  
23 the Department relating to accountability, including  
24 accountability of employees of the Department, re-  
25 tialiation against whistleblowers, and such matters as

1 the Secretary considers similar and affect public  
2 trust in the Department.

3 “(B) Issuing reports and providing rec-  
4 ommendations related to the duties described in sub-  
5 paragraph (A).

6 “(C) Receiving whistleblower disclosures.

7 “(D) Referring whistleblower disclosures re-  
8 ceived under subparagraph (C) for investigation to  
9 the Office of the Medical Inspector, the Office of In-  
10 spector General, or other investigative entity, as ap-  
11 propriate, if the Assistant Secretary has reason to  
12 believe the whistleblower disclosure is evidence of a  
13 violation of a provision of law, mismanagement,  
14 gross waste of funds, abuse of authority, or a sub-  
15 stantial and specific danger to public health and  
16 safety.

17 “(E) Receiving and referring disclosures from  
18 the Special Counsel for investigation to the Medical  
19 Inspector of the Department, the Inspector General  
20 of the Department, or such other person with inves-  
21 tigatory authority, as the Assistant Secretary con-  
22 siders appropriate.

23 “(F) Recording, tracking, reviewing, and con-  
24 firming implementation of recommendations from  
25 audits and investigations carried out by the Inspec-

1       tor General of the Department, the Medical Inspec-  
2       tor of the Department, the Special Counsel, and the  
3       Comptroller General of the United States, including  
4       the imposition of disciplinary actions and other cor-  
5       rective actions contained in such recommendations.

6           “(G) Analyzing data from the Office and the  
7       Office of Inspector General telephone hotlines, other  
8       whistleblower disclosures, disaggregated by facility  
9       and area of health care if appropriate, and relevant  
10      audits and investigations to identify trends and issue  
11      reports to the Secretary based on analysis conducted  
12      under this subparagraph.

13          “(H) Receiving, reviewing, and investigating al-  
14      legations of misconduct, retaliation, or poor perform-  
15      ance involving—

16           “(i) an individual in a senior executive po-  
17      sition (as defined in section 713(d) of this title)  
18      in the Department;

19           “(ii) an individual employed in a confiden-  
20      tial, policy-making, policy-determining, or pol-  
21      icy-advocating position in the Department; or

22           “(iii) a supervisory employee, if the allega-  
23      tion involves retaliation against an employee for  
24      making a whistleblower disclosure.

1           “(I) Making such recommendations to the Sec-  
2           retary for disciplinary action as the Assistant Sec-  
3           retary considers appropriate after substantiating any  
4           allegation of misconduct or poor performance pursu-  
5           ant to an investigation carried out as described in  
6           subparagraph (F) or (H).

7           “(2) In carrying out the functions of the Office, the  
8           Assistant Secretary shall ensure that the Office maintains  
9           a toll-free telephone number and Internet website to re-  
10          ceive anonymous whistleblower disclosures.

11          “(3) In any case in which the Assistant Secretary re-  
12          ceives a whistleblower disclosure from an employee of the  
13          Department under paragraph (1)(C), the Assistant Sec-  
14          retary may not disclose the identity of the employee with-  
15          out the consent of the employee, except in accordance with  
16          the provisions of section 552a of title 5, or as required  
17          by any other applicable provision of Federal law.

18          “(d) STAFF AND RESOURCES.—The Secretary shall  
19          ensure that the Assistant Secretary has such staff, re-  
20          sources, and access to information as may be necessary  
21          to carry out the functions of the Office.

22          “(e) RELATION TO OFFICE OF GENERAL COUN-  
23          SEL.—The Office shall not be established as an element  
24          of the Office of the General Counsel and the Assistant  
25          Secretary may not report to the General Counsel.

1       “(f) REPORTS.—(1)(A) Not later than June 30 of  
2 each calendar year, beginning with June 30, 2017, the As-  
3 sistant Secretary shall submit to the Committee on Vet-  
4 erans’ Affairs of the Senate and the Committee on Vet-  
5 erans’ Affairs of the House of Representatives a report  
6 on the activities of the Office during the calendar year  
7 in which the report is submitted.

8       “(B) Each report submitted under subparagraph (A)  
9 shall include, for the period covered by the report, the fol-  
10 lowing:

11           “(i) A full and substantive analysis of the ac-  
12 tivities of the Office, including such statistical infor-  
13 mation as the Assistant Secretary considers appro-  
14 priate.

15           “(ii) Identification of any issues reported to the  
16 Secretary under subsection (c)(1)(G), including such  
17 data as the Assistant Secretary considers relevant to  
18 such issues and any trends the Assistant Secretary  
19 may have identified with respect to such issues.

20           “(iii) Identification of such concerns as the As-  
21 sistant Secretary may have regarding the size, staff-  
22 ing, and resources of the Office and such rec-  
23 ommendations as the Assistant Secretary may have  
24 for legislative or administrative action to address  
25 such concerns.

1           “(iv) Such recommendations as the Assistant  
2           Secretary may have for legislative or administrative  
3           action to improve—

4                   “(I) the process by which concerns are re-  
5                   ported to the Office; and

6                   “(II) the protection of whistleblowers with-  
7                   in the Department.

8           “(v) Such other matters as the Assistant Sec-  
9           retary considers appropriate regarding the functions  
10          of the Office or other matters relating to the Office.

11          “(2) If the Secretary receives a recommendation for  
12          disciplinary action under subsection (c)(1)(I) and does not  
13          take or initiate the recommended disciplinary action before  
14          the date that is 60 days after the date on which the Sec-  
15          retary received the recommendation, the Secretary shall  
16          submit to the Committee on Veterans’ Affairs of the Sen-  
17          ate and the Committee on Veterans’ Affairs of the House  
18          of Representatives a detailed justification for not taking  
19          or initiating such disciplinary action.

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

21                   “(1) The term ‘supervisory employee’ means an  
22                   employee of the Department who is a supervisor as  
23                   defined in section 7103(a) of title 5.

24                   “(2) The term ‘whistleblower’ means one who  
25                   makes a whistleblower disclosure.



1           “(3) The term ‘whistleblower disclosure’ means  
2           any disclosure of information by an employee of the  
3           Department or individual applying to become an em-  
4           ployee of the Department which the employee or in-  
5           dividual reasonably believes evidences—

6                   “(A) a violation of a provision of law; or

7                   “(B) gross mismanagement, a gross waste  
8                   of funds, an abuse of authority, or a substantial  
9                   and specific danger to public health or safety.”.

10          (b) CONFORMING AMENDMENT.—Section 308(b) of  
11 such title is amended by adding at the end the following  
12 new paragraph:

13                   “(12) The functions set forth in section 323(c)  
14                   of this title.”.

15          (c) CLERICAL AMENDMENT.—The table of sections  
16 at the beginning of chapter 3 of such title is amended by  
17 adding at the end the following new item:

                  “323. Office of Accountability and Whistleblower Protection.”.

18 **SEC. 102. PROTECTION OF WHISTLEBLOWERS IN DEPART-**  
19 **MENT OF VETERANS AFFAIRS.**

20          (a) IN GENERAL.—Subchapter II of chapter 7 of title  
21 38, United States Code, is amended by—

22                   (1) striking sections 731, 732, 734, 735, and  
23                   736;

24                   (2) by redesignating section 733 as section 731;  
25                   and

1           (3) by adding at the end the following new sec-  
2           tions:

3   **“§ 732. Protection of whistleblowers as criteria in**  
4                           **evaluation of supervisors**

5           “(a) DEVELOPMENT AND USE OF CRITERIA RE-  
6   REQUIRED.—The Secretary, in consultation with the Assist-  
7   ant Secretary of Accountability and Whistleblower Protec-  
8   tion, shall develop criteria that—

9           “(1) the Secretary shall use as a critical ele-  
10          ment in any evaluation of the performance of a su-  
11          pervisory employee; and

12          “(2) promotes the protection of whistleblowers.

13          “(b) PRINCIPLES FOR PROTECTION OF WHISTLE-  
14   BLOWERS.—The criteria required by subsection (a) shall  
15   include principles for the protection of whistleblowers,  
16   such as the degree to which supervisory employees respond  
17   constructively when employees of the Department report  
18   concerns, take responsible action to resolve such concerns,  
19   and foster an environment in which employees of the De-  
20   partment feel comfortable reporting concerns to super-  
21   visory employees or to the appropriate authorities.

22          “(c) SUPERVISORY EMPLOYEE AND WHISTLE-  
23   BLOWER DEFINED.—In this section, the terms ‘super-  
24   visory employee’ and ‘whistleblower’ have the meanings  
25   given such terms in section 323 of this title.

1 **“§ 733. Training regarding whistleblower disclosures**

2       “(a) TRAINING.—Not less frequently than once every  
3 two years, the Secretary, in coordination with the Whistle-  
4 blower Protection Ombudsman designated under section  
5 3(d)(1)(C) of the Inspector General Act of 1978 (5 U.S.C.  
6 App.), shall provide to each employee of the Department  
7 training regarding whistleblower disclosures, including—

8           “(1) an explanation of each method established  
9 by law in which an employee may file a whistle-  
10 blower disclosure;

11           “(2) the right of the employee to petition Con-  
12 gress regarding a whistleblower disclosure in accord-  
13 ance with section 7211 of title 5;

14           “(3) an explanation that the employee may not  
15 be prosecuted or reprimed against for disclosing in-  
16 formation to Congress, the Inspector General, or an-  
17 other investigatory agency in instances where such  
18 disclosure is permitted by law, including under sec-  
19 tions 5701, 5705, and 7732 of this title, under sec-  
20 tion 552a of title 5 (commonly referred to as the  
21 Privacy Act), under chapter 93 of title 18, and pur-  
22 suant to regulations promulgated under section  
23 264(c) of the Health Insurance Portability and Ac-  
24 countability Act of 1996 (Public Law 104–191);

25           “(4) an explanation of the language that is re-  
26 quired to be included in all nondisclosure policies,

1 forms, and agreements pursuant to section  
2 115(a)(1) of the Whistleblower Protection Enhance-  
3 ment Act of 2012 (5 U.S.C. 2302 note); and

4 “(5) the right of contractors to be protected  
5 from reprisal for the disclosure of certain informa-  
6 tion under section 4705 or 4712 of title 41.

7 “(b) MANNER TRAINING IS PROVIDED.—The Sec-  
8 retary shall ensure, to the maximum extent practicable,  
9 that training provided under subsection (a) is provided in  
10 person.

11 “(c) CERTIFICATION.—Not less frequently than once  
12 every two years, the Secretary shall provide training on  
13 merit system protection in a manner that the Special  
14 Counsel certifies as being satisfactory.

15 “(d) PUBLICATION.—The Secretary shall publish on  
16 the Internet website of the Department, and display  
17 prominently at each facility of the Department, the rights  
18 of an employee to make a whistleblower disclosure, includ-  
19 ing the information described in paragraphs (1) through  
20 (5) of subsection (a).

21 “(e) WHISTLEBLOWER DISCLOSURE DEFINED.—In  
22 this section, the term ‘whistleblower disclosure’ has the  
23 meaning given such term in section 323 of this title.”.

24 (b) CLERICAL AMENDMENTS.—The table of sections  
25 at the beginning of such chapter is amended—

1           (1) by striking the items relating to sections  
2       731 through 736; and

3           (2) by adding at the end the following new  
4       items:

“731. Adverse actions against supervisory employees who commit prohibited personnel actions relating to whistleblower complaints.

“732. Protection of whistleblowers as criteria in evaluation of supervisors.

“733. Training regarding whistleblower disclosures.”.

5       (c) CONFORMING AMENDMENTS.—Section 731 of  
6 such title, as redesignated by subsection (a)(2), is amended—  
7 ed—

8           (1) in subsection (c)—

9               (A) in paragraph (1)—

10                   (i) by striking subparagraphs (A) and  
11                   (B) and inserting the following:

12                       “(A) making a whistleblower disclosure to  
13                   the Assistant Secretary for Accountability and  
14                   Whistleblower Protection, the Inspector General  
15                   of the Department, the Special Counsel, or  
16                   Congress;” and

17                       (ii) by redesignating subparagraphs  
18                   (C) through (F) as subparagraphs (B)  
19                   through (E), respectively; and

20                       (iii) in subparagraph (B), as redesignated by clause (ii), by striking “complaint in accordance with section 732 or with”  
21                   and inserting “disclosure made to the As-  
22                   and inserting “disclosure made to the As-  
23

1                   sistant Secretary for Accountability and  
2                   Whistleblower Protection,”; and

3                   (B) in paragraph (2), by striking “through  
4                   (F)” and inserting “through (E)”;

5                   (2) by adding at the end the following new sub-  
6                   section:

7                   “(d) WHISTLEBLOWER DISCLOSURE DEFINED.—In  
8                   this section, the term ‘whistleblower disclosure’ has the  
9                   meaning given such term in section 323(g) of this title.”.

10   **SEC. 103. REPORT ON METHODS USED TO INVESTIGATE EM-**  
11                   **PLOYEES OF DEPARTMENT OF VETERANS AF-**  
12                   **FAIRS.**

13                   (a) REPORT REQUIRED.—Not later than 540 days  
14                   after the date of the enactment of this Act, the Assistant  
15                   Secretary for Accountability and Whistleblower Protection  
16                   shall submit to the Secretary of Veterans Affairs, the  
17                   Committee on Veterans’ Affairs of the Senate, and the  
18                   Committee on Veterans’ Affairs of the House of Rep-  
19                   resentatives a report on methods used to investigate em-  
20                   ployees of the Department of Veterans Affairs and wheth-  
21                   er such methods are used to retaliate against whistle-  
22                   blowers.

23                   (b) CONTENTS.—The report required by subsection  
24                   (a) shall include the following:

1           (1) An assessment of the use of administrative  
2 investigation boards, peer review, searches of med-  
3 ical records, and other methods for investigating em-  
4 ployees of the Department.

5           (2) A determination of whether and to what de-  
6 gree the methods described in paragraph (1) are  
7 being used to retaliate against whistleblowers.

8           (3) Recommendations for legislative or adminis-  
9 trative action to implement safeguards to prevent  
10 the retaliation described in paragraph (2).

11       (c) WHISTLEBLOWER DEFINED.—In this section, the  
12 term “whistleblower” has the meaning given such term in  
13 section 323 of title 38, United States Code, as added by  
14 section 101.

15 **TITLE II—ACCOUNTABILITY OF**  
16 **SENIOR EXECUTIVES, SUPER-**  
17 **VISORS, AND OTHER EMPLOY-**  
18 **EES**

19 **SEC. 201. IMPROVED AUTHORITIES OF SECRETARY OF VET-**  
20 **ERANS AFFAIRS TO IMPROVE ACCOUNT-**  
21 **ABILITY OF SENIOR EXECUTIVES.**

22       (a) IN GENERAL.—Section 713 of title 38, United  
23 States Code, is amended to read as follows:

1 **“§ 713. Senior executives: removal, demotion, or sus-**  
2 **pension based on performance or mis-**  
3 **conduct**

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

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

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

16 “(A) advance notice of the action;

17 “(B) be represented by an attorney or other  
18 representative of the covered individual’s choice; and

19 “(C) grieve the action in accordance with an in-  
20 ternal grievance process that the Secretary, in con-  
21 sultation with the Assistant Secretary for Account-  
22 ability and Whistleblower Protection, shall establish  
23 for purposes of this subsection.

24 “(2)(A) The aggregate period for notice, response,  
25 and decision on an action under subsection (a) may not  
26 exceed 15 business days.



1           “(B) The period for the response of a covered indi-  
2           vidual to a notice under paragraph (1)(A) of an action  
3           under subsection (a) shall be 7 business days.

4           “(C) A decision under this paragraph on an action  
5           under subsection (a) shall be issued not later than 15 busi-  
6           ness days after notice of the action is provided to the cov-  
7           ered individual under paragraph (1)(A). The decision shall  
8           be in writing, and shall include the specific reasons there-  
9           for and a file containing all evidence in support of the pro-  
10          posed action.

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

14          “(B) The Secretary shall ensure that grievances  
15          under this subsection are reviewed only by employees of  
16          the Department.

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

20          “(5) A covered individual adversely affected by a deci-  
21          sion under paragraph (2) that is not grieved, or by a griev-  
22          ance decision under paragraph (3), may obtain judicial re-  
23          view of such decision.

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

4           “(A) arbitrary, capricious, an abuse of discre-  
5 tion, or otherwise not in accordance with a provision  
6 of law;

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

9           “(C) unsupported by substantial evidence.

10       “(c) RELATION TO OTHER PROVISIONS OF LAW.—  
11 Section 3592(b)(1) of title 5 and the procedures under  
12 section 7543(b) of such title do not apply to an action  
13 under subsection (a).

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

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

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

18               “(B) any individual who occupies an ad-  
19 ministrative or executive position and who was  
20 appointed under section 7306(a) or section  
21 7401(1) of this title.

22           “(2) The term ‘misconduct’ includes neglect of  
23 duty, malfeasance, or failure to accept a directed re-  
24 assignment or to accompany a position in a transfer  
25 of function.

1           “(3) The term ‘senior executive position’  
2 means—

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

7           “(B) with respect to a covered individual  
8 appointed under section 7306(a) or section  
9 7401(1) of this title, an administrative or execu-  
10 tive position.”.

11       (b) CONFORMING AMENDMENT.—Section 7461(c)(1)  
12 of such title is amended by inserting “employees in senior  
13 executive positions (as defined in section 713(d) of this  
14 title) and” before “interns”.

15       (c) CLERICAL AMENDMENT.—The table of sections  
16 at the beginning of chapter 7 of such title is amended by  
17 striking the item relating to section 713 and inserting the  
18 following new item:

          “713. Senior executives: removal, demotion, or suspension based on performance  
          or misconduct.”.

19 **SEC. 202. IMPROVED AUTHORITIES OF SECRETARY OF VET-**  
20 **ERANS AFFAIRS TO IMPROVE ACCOUNT-**  
21 **ABILITY OF EMPLOYEES.**

22       (a) IN GENERAL.—Subchapter I of chapter 7 of title  
23 38, United States Code, is amended by inserting after sec-  
24 tion 713 the following new section:

1 **“§ 714. Employees: removal, demotion, or suspension**  
2 **based on performance or misconduct**

3 “(a) IN GENERAL.—(1) The Secretary may remove,  
4 demote, or suspend a covered individual who is an em-  
5 ployee of the Department if the Secretary determines the  
6 performance or misconduct of the covered individual war-  
7 rants such removal, demotion, or suspension.

8 “(2) If the Secretary so removes, demotes, or sus-  
9 pends such a covered individual, the Secretary may—

10 “(A) remove the covered individual from the  
11 civil service (as defined in section 2101 of title 5);

12 “(B) demote the covered individual by means of  
13 a reduction in grade for which the covered individual  
14 is qualified, that the Secretary determines is appro-  
15 priate, and that reduces the annual rate of pay of  
16 the covered individual; or

17 “(C) suspend the covered individual.

18 “(b) PAY OF CERTAIN DEMOTED INDIVIDUALS.—(1)  
19 Notwithstanding any other provision of law, any covered  
20 individual subject to a demotion under subsection (a)(2)  
21 shall, beginning on the date of such demotion, receive the  
22 annual rate of pay applicable to such grade.

23 “(2)(A) A covered individual so demoted may not be  
24 placed on administrative leave during the period during  
25 which an appeal (if any) under this section is ongoing,  
26 and may only receive pay if the covered individual reports

1 for duty or is approved to use accrued unused annual,  
2 sick, family medical, military, or court leave.

3 “(B) If a covered individual so demoted does not re-  
4 port for duty or receive approval to use accrued unused  
5 leave, such covered individual shall not receive pay or  
6 other benefits pursuant to subsection (d)(5).

7 “(c) PROCEDURE.—(1)(A) The aggregate period for  
8 notice, response, and final decision in a removal, demotion,  
9 or suspension under this section may not exceed 15 busi-  
10 ness days.

11 “(B) The period for the response of a covered indi-  
12 vidual to a notice of a proposed removal, demotion, or sus-  
13 pension under this section shall be 7 business days.

14 “(C) Paragraph (3) of subsection (b) of section 7513  
15 of title 5 shall apply with respect to a removal, demotion,  
16 or suspension under this section.

17 “(D) The procedures in this subsection shall super-  
18 sede any collective bargaining agreement to the extent that  
19 such agreement is inconsistent with such procedures.

20 “(2) The Secretary shall issue a final decision with  
21 respect to a removal, demotion, or suspension under this  
22 section not later than 15 business days after the Secretary  
23 provides notice, including a file containing all the evidence  
24 in support of the proposed action, to the covered individual  
25 of the removal, demotion, or suspension. The decision shall

1 be in writing and shall include the specific reasons there-  
2 for.

3 “(3) The procedures under chapter 43 of title 5 shall  
4 not apply to a removal, demotion, or suspension under this  
5 section.

6 “(4)(A) Subject to subparagraph (B) and subsection  
7 (d), any removal or demotion under this section, and any  
8 suspension of more than 14 days under this section, may  
9 be appealed to the Merit Systems Protection Board, which  
10 shall refer such appeal to an administrative judge pursu-  
11 ant to section 7701(b)(1) of title 5.

12 “(B) An appeal under subparagraph (A) of a re-  
13 moval, demotion, or suspension may only be made if such  
14 appeal is made not later than 10 business days after the  
15 date of such removal, demotion, or suspension.

16 “(d) EXPEDITED REVIEW.—(1) Upon receipt of an  
17 appeal under subsection (c)(4)(A), the administrative  
18 judge shall expedite any such appeal under section  
19 7701(b)(1) of title 5 and, in any such case, shall issue  
20 a final and complete decision not later than 180 days after  
21 the date of the appeal.

22 “(2)(A) Notwithstanding section 7701(c)(1)(B) of  
23 title 5, the administrative judge shall uphold the decision  
24 of the Secretary to remove, demote, or suspend an em-

1 ployee under subsection (a) if the decision is supported  
2 by substantial evidence.

3 “(B) If the decision of the Secretary is supported by  
4 substantial evidence, the administrative judge shall not  
5 mitigate the penalty prescribed by the Secretary.

6 “(3) The decision of the administrative judge under  
7 paragraph (1) may be appealed to the Merit Systems Pro-  
8 tection Board.

9 “(4) In any case in which the administrative judge  
10 cannot issue a decision in accordance with the 180-day  
11 requirement under paragraph (1), the Merit Systems Pro-  
12 tection Board shall, not later than 14 business days after  
13 the expiration of the 180-day period, submit to the Com-  
14 mittee on Veterans’ Affairs of the Senate and the Com-  
15 mittee on Veterans’ Affairs of the House of Representa-  
16 tives a report that explains the reasons why a decision was  
17 not issued in accordance with such requirement.

18 “(5)(A) A decision of the Merit Systems Protection  
19 Board under paragraph (3) may be appealed to the United  
20 States Court of Appeals for the Federal Circuit pursuant  
21 to section 7703 of title 5.

22 “(B) Any decision by such Court shall be in compli-  
23 ance with section 7462(f)(2) of this title.

1       “(6) The Merit Systems Protection Board may not  
2 stay any removal or demotion under this section, except  
3 as provided in section 1214(b) of title 5.

4       “(7) During the period beginning on the date on  
5 which a covered individual appeals a removal from the civil  
6 service under subsection (c) and ending on the date that  
7 the United States Court of Appeals for the Federal Circuit  
8 issues a final decision on such appeal, such covered indi-  
9 vidual may not receive any pay, awards, bonuses, incen-  
10 tives, allowances, differentials, student loan repayments,  
11 special payments, or benefits related to the employment  
12 of the individual by the Department.

13       “(8) To the maximum extent practicable, the Sec-  
14 retary shall provide to the Merit Systems Protection  
15 Board such information and assistance as may be nec-  
16 essary to ensure an appeal under this subsection is expe-  
17 dited.

18       “(9) If an employee prevails on appeal under this sec-  
19 tion, the employee shall be entitled to backpay (as pro-  
20 vided in section 5596 of title 5).

21       “(10) If an employee who is subject to a collective  
22 bargaining agreement chooses to grieve an action taken  
23 under this section through a grievance procedure provided  
24 under the collective bargaining agreement, the timelines



1 and procedures set forth in subsection (c) and this sub-  
2 section shall apply.

3 “(e) WHISTLEBLOWER PROTECTION.—(1) In the  
4 case of a covered individual seeking corrective action (or  
5 on behalf of whom corrective action is sought) from the  
6 Office of Special Counsel based on an alleged prohibited  
7 personnel practice described in section 2302(b) of title 5,  
8 the Secretary may not remove, demote, or suspend such  
9 covered individual under subsection (a) without the ap-  
10 proval of the Special Counsel under section 1214(f) of title  
11 5.

12 “(2) In the case of a covered individual who has made  
13 a whistleblower disclosure to the Assistant Secretary for  
14 Accountability and Whistleblower Protection, the Sec-  
15 retary may not remove, demote, or suspend such covered  
16 individual under subsection (a) until—

17 “(A) in the case in which the Assistant Sec-  
18 retary determines to refer the whistleblower disclo-  
19 sure under section 323(c)(1)(D) of this title to an  
20 office or other investigative entity, a final decision  
21 with respect to the whistleblower disclosure has been  
22 made by such office or other investigative entity; or

23 “(B) in the case in which the Assistant Sec-  
24 retary determines not to the refer the whistleblower

1 disclosure under such section, the Assistant Sec-  
2 retary makes such determination.

3 “(f) TERMINATION OF INVESTIGATIONS BY OFFICE  
4 OF SPECIAL COUNSEL.—(1) Notwithstanding any other  
5 provision of law, the Special Counsel (established by sec-  
6 tion 1211 of title 5) may terminate an investigation of  
7 a prohibited personnel practice alleged by an employee or  
8 former employee of the Department after the Special  
9 Counsel provides to the employee or former employee a  
10 written statement of the reasons for the termination of  
11 the investigation.

12 “(2) Such statement may not be admissible as evi-  
13 dence in any judicial or administrative proceeding without  
14 the consent of such employee or former employee.

15 “(g) VACANCIES.—In the case of a covered individual  
16 who is removed or demoted under subsection (a), to the  
17 maximum extent feasible, the Secretary shall fill the va-  
18 cancy arising as a result of such removal or demotion.

19 “(h) DEFINITIONS.—In this section:

20 “(1) The term ‘covered individual’ means an in-  
21 dividual occupying a position at the Department, but  
22 does not include—

23 “(A) an individual occupying a senior execu-  
24 tive position (as defined in section 713(d) of  
25 this title);

1           “(B) an individual appointed pursuant to  
2 sections 7306, 7401(1), or 7405 of this title;

3           “(C) an individual who has not completed  
4 a probationary or trial period; or

5           “(D) a political appointee.

6           “(2) The term ‘suspend’ means the placing of  
7 an employee, for disciplinary reasons, in a temporary  
8 status without duties and pay for a period in excess  
9 of 14 days.

10          “(3) The term ‘grade’ has the meaning given  
11 such term in section 7511(a) of title 5.

12          “(4) The term ‘misconduct’ includes neglect of  
13 duty, malfeasance, or failure to accept a directed re-  
14 assignment or to accompany a position in a transfer  
15 of function.

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

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

21           “(B) a limited term appointee, limited  
22 emergency appointee, or noncareer appointee in  
23 the Senior Executive Service, as defined under  
24 paragraphs (5), (6), and (7), respectively, of  
25 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           Code of Federal Regulations, or successor regu-  
5           lation.

6           “(6) The term ‘whistleblower disclosure’ has the  
7           meaning given such term in section 323(g) of this  
8           title.”.

9           (b) CLERICAL AND CONFORMING AMENDMENTS.—

10           (1) CLERICAL.—The table of sections at the be-  
11           ginning of chapter 7 of such title is amended by in-  
12           serting after the item relating to section 713 the fol-  
13           lowing new item:

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

14           (2) CONFORMING.—Section 4303(f) of title 5,  
15           United States Code, is amended—

16           (A) in paragraph (2), by striking “or” at  
17           the end;

18           (B) in paragraph (3), by striking the pe-  
19           riod at the end and inserting “, or”; and

20           (C) by adding at the end the following:

21           “(4) any removal or demotion under section  
22           714 of title 38.”.

1 **SEC. 203. REDUCTION OF BENEFITS FOR DEPARTMENT OF**  
2 **VETERANS AFFAIRS EMPLOYEES CONVICTED**  
3 **OF CERTAIN CRIMES.**

4 (a) REDUCTION OF BENEFITS.—

5 (1) IN GENERAL.—Subchapter I of chapter 7 of  
6 title 38, United States Code, is amended by adding  
7 at the end the following new section:

8 **“§ 719. Reduction of benefits of employees convicted**  
9 **of certain crimes**

10 “(a) REDUCTION OF ANNUITY FOR REMOVED EM-  
11 PLOYEE.—(1) The Secretary shall order that the covered  
12 service of an employee of the Department removed from  
13 a position for performance or misconduct under section  
14 719 or 7461 of this title or any other provision of law  
15 shall not be taken into account for purposes of calculating  
16 an annuity with respect to such individual under chapter  
17 83 or chapter 84 of title 5, if—

18 “(A) the Secretary determines that the indi-  
19 vidual is convicted of a felony (and the conviction is  
20 final) that influenced the individual’s performance  
21 while employed in the position; and

22 “(B) before such order is made, the individual  
23 is afforded—

24 “(i) notice of the proposed order; and

1           “(ii) an opportunity to respond to the pro-  
2           posed order by not later than ten business days  
3           following receipt of such notice; and

4           “(C) the Secretary issues the order—

5           “(i) in the case of a proposed order to  
6           which an individual responds under subpara-  
7           graph (B)(ii), not later than five business days  
8           after receiving the response of the individual; or

9           “(ii) in the case of a proposed order to  
10          which an individual does not respond, not later  
11          than 15 business days after the Secretary pro-  
12          vides notice to the individual under subpara-  
13          graph (B)(i).

14          “(2) Any individual with respect to whom an annuity  
15          is reduced under this subsection may appeal the reduction  
16          to the Director of the Office of Personnel Management  
17          pursuant to such regulations as the Director may pre-  
18          scribe for purposes of this subsection.

19          “(b) REDUCTION OF ANNUITY FOR RETIRED EM-  
20          PLOYEE.—(1) The Secretary may order that the covered  
21          service of an individual who is removed for performance  
22          or misconduct under section 719 or 7461 of this title or  
23          any other provision of law but who leaves employment at  
24          the Department prior to the issuance of a final decision  
25          with respect to such action shall not be taken into account

1 for purposes of calculating an annuity with respect to such  
2 individual under chapter 83 or chapter 84 of title 5, if—

3 “(A) the Secretary determines that individual is  
4 convicted of a felony (and the conviction is final)  
5 that influenced the individual’s performance while  
6 employed in the position; and

7 “(B) before such order is made, the individual  
8 is afforded—

9 “(i) notice of the proposed order;

10 “(ii) opportunity to respond to the pro-  
11 posed order by not later than ten business days  
12 following receipt of such notice; and

13 “(C) the Secretary issues the order—

14 “(i) in the case of a proposed order to  
15 which an individual responds under subpara-  
16 graph (B)(ii), not later than five business days  
17 after receiving the response of the individual; or

18 “(ii) in the case of a proposed order to  
19 which an individual does not respond, not later  
20 than 15 business days after the Secretary pro-  
21 vides notice to the individual under subpara-  
22 graph (B)(i).

23 “(2) Upon the issuance of an order by the Secretary  
24 under paragraph (1), the individual shall have an oppor-  
25 tunity to appeal the order to the Director of the Office

1 of Personnel Management before the date that is seven  
2 business days after the date of such issuance.

3 “(3) The Director of the Office of Personnel Manage-  
4 ment shall make a final decision with respect to an appeal  
5 under paragraph (2) within 30 business days of receiving  
6 the appeal.

7 “(c) ADMINISTRATIVE REQUIREMENTS.—Not later  
8 than 37 business days after the Secretary issues a final  
9 order under subsection (a) or (b) with respect to an indi-  
10 vidual, the Director of the Office of Personnel Manage-  
11 ment shall recalculate the annuity of the individual.

12 “(d) LUMP-SUM ANNUITY CREDIT.—Any individual  
13 with respect to whom an annuity is reduced under sub-  
14 section (a) or (b) shall be entitled to be paid so much of  
15 such individual’s lump-sum credit as is attributable to the  
16 period of covered service.

17 “(e) SPOUSE OR CHILDREN EXCEPTION.—(1) The  
18 Secretary, in consultation with the Director of the Office  
19 of Personnel Management, shall prescribe regulations that  
20 may provide for the payment to the spouse or children  
21 of any individual referred to in subsection (a) or (b) of  
22 any amounts which (but for this subsection) would other-  
23 wise have been nonpayable by reason of such subsections.



1       “(2) Regulations prescribed under paragraph (1)  
2 shall be consistent with the requirements of section  
3 8332(o)(5) and 8411(l)(5) of title 5, as the case may be.

4       “(f) DEFINITIONS.—In this section:

5           “(1) The term ‘covered service’ means, with re-  
6 spect to an individual subject to a removal for per-  
7 formance or misconduct under section 719 or 7461  
8 of this title or any other provision of law, the period  
9 of service beginning on the date that the Secretary  
10 determines under such applicable provision that the  
11 individual engaged in activity that gave rise to such  
12 action and ending on the date that the individual is  
13 removed from or leaves a position of employment at  
14 the Department prior to the issuance of a final deci-  
15 sion with respect to such action.

16           “(2) The term ‘lump-sum credit’ has the mean-  
17 ing given such term in section 8331(8) or section  
18 8401(19) of title 5, as the case may be.

19           “(3) The term ‘service’ has the meaning given  
20 such term in section 8331(12) or section 8401(26)  
21 of title 5, as the case may be.”.

22           “(2) CLERICAL AMENDMENT.—The table of sec-  
23 tions at the beginning of chapter 7 of such title is  
24 amended by inserting after the item relating to sec-  
25 tion 717 the following new item:

“719. Reduction of benefits of employees convicted of certain crimes.”.

1 (b) APPLICATION.—Section 719 of title 38, United  
2 States Code, as added by subsection (a)(1), shall apply  
3 to any action of removal of an employee of the Department  
4 of Veterans Affairs under section 719 or 7461 of such title  
5 or any other provision of law, commencing on or after the  
6 date of the enactment of this Act.

7 **SEC. 204. AUTHORITY TO RECOUP BONUSES OR AWARDS**  
8 **PAID TO EMPLOYEES OF DEPARTMENT OF**  
9 **VETERANS AFFAIRS.**

10 (a) IN GENERAL.—Subchapter I of chapter 7 of title  
11 38, United States Code, as amended by section 203, is  
12 further amended by adding at the end the following new  
13 section:

14 **“§ 721. Recoupment of bonuses or awards paid to em-**  
15 **ployees of Department**

16 **“(a) IN GENERAL.—**Notwithstanding any other pro-  
17 vision of law, the Secretary may issue an order directing  
18 an employee of the Department to repay the amount, or  
19 a portion of the amount, of any award or bonus paid to  
20 the employee under title 5, including under chapters 45  
21 or 53 of such title, or this title if—

22 **“(1) the Secretary determines that the indi-**  
23 **vidual engaged in misconduct or poor performance**  
24 **prior to payment of the award or bonus, and that**  
25 **such award or bonus would not have been paid, in**

1 whole or in part, had the misconduct or poor per-  
2 formance been known prior to payment; and

3 “(2) before such repayment, the employee is af-  
4 fforded—

5 “(A) notice of the proposed order; and

6 “(B) an opportunity to respond to the pro-  
7 posed order by not later than 10 business days  
8 after the receipt of such notice; and

9 “(3) the Secretary issues the order—

10 “(A) in the case of a proposed order to  
11 which an individual responds under paragraph  
12 (2)(B), not later than five business days after  
13 receiving the response of the individual; or

14 “(B) in the case of a proposed order to  
15 which an individual does not respond, not later  
16 than 15 business days after the Secretary pro-  
17 vides notice to the individual under paragraph  
18 (2)(A).

19 “(b) APPEAL OF ORDER OF SECRETARY.—(1) Upon  
20 the issuance of an order by the Secretary under subsection  
21 (a) with respect to an individual, the individual shall have  
22 an opportunity to appeal the order to the Director of the  
23 Office of Personnel Management before the date that is  
24 seven business days after the date of such issuance.

1           “(2) The Director shall make a final decision with  
2 respect to an appeal under paragraph (1) within 30 busi-  
3 ness days after receiving such appeal.

4           “(c) APPEAL OF FINAL DECISION ON APPEAL OF  
5 ORDER.—An individual may appeal a final decision on an  
6 appeal under subsection (b) to the Merit Systems Protec-  
7 tion Board under section 7701 of title 5.”.

8           (b) CLERICAL AMENDMENT.—The table of sections  
9 at the beginning of such chapter, as amended by section  
10 203(a)(2), is further amended by inserting after the item  
11 relating to section 719 the following new item:

“721. Recoupment of bonuses or awards paid to employees of Department.”.

12           (c) EFFECTIVE DATE.—Section 721 of title 38,  
13 United States Code, as added by subsection (a), shall  
14 apply with respect to an award or bonus paid by the Sec-  
15 retary of Veterans Affairs to an employee of the Depart-  
16 ment of Veterans Affairs on or after the date of the enact-  
17 ment of this Act.

18           (d) CONSTRUCTION.—Nothing in this Act or the  
19 amendments made by this Act may be construed to modify  
20 the certification issued by the Office of Personnel Manage-  
21 ment and the Office of Management and Budget regarding  
22 the performance appraisal system of the Senior Executive  
23 Service of the Department of Veterans Affairs.

1 **SEC. 205. AUTHORITY TO RECOUP RELOCATION EXPENSES**  
2 **PAID TO OR ON BEHALF OF EMPLOYEES OF**  
3 **DEPARTMENT OF VETERANS AFFAIRS.**

4 (a) IN GENERAL.—Subchapter I of chapter 7 of title  
5 38, United States Code, as amended by section 204, is  
6 further amended by adding at the end the following new  
7 section:

8 **“§ 723. Recoupment of relocation expenses paid on**  
9 **behalf of employees of Department**

10 “(a) IN GENERAL.—Notwithstanding any other pro-  
11 vision of law, the Secretary may issue an order directing  
12 an employee of the Department to repay the amount, or  
13 a portion of the amount, paid to or on behalf of the em-  
14 ployee under title 5 for relocation expenses, including any  
15 expenses under section 5724 or 5724a of such title, or  
16 this title if—

17 “(1) the Secretary determines that relocation  
18 expenses were paid following an act of fraud or mal-  
19 feasance that influenced the authorization of the re-  
20 location expenses;

21 “(2) before such repayment, the employee is af-  
22 forded—

23 “(A) notice of the proposed order; and

24 “(B) an opportunity to respond to the pro-  
25 posed order not later than ten business days  
26 following the receipt of such notice; and

1 “(3) the Secretary issues the order—

2 “(A) in the case of a proposed order to  
3 which an individual responds under paragraph  
4 (2)(B), not later than five business days after  
5 receiving the response of the individual; or

6 “(B) in the case of a proposed order to  
7 which an individual does not respond, not later  
8 than 15 business days after the Secretary pro-  
9 vides notice to the individual under paragraph  
10 (2)(A).

11 “(b) APPEAL OF ORDER OF SECRETARY.—(1) Upon  
12 the issuance of an order by the Secretary under subsection  
13 (a) with respect to an individual, the individual shall have  
14 an opportunity to appeal the order to the Director of the  
15 Office of Personnel Management before the date that is  
16 seven business days after the date of such issuance.

17 “(2) The Director shall make a final decision with  
18 respect to an appeal under paragraph (1) within 30 days  
19 after receiving such appeal.

20 “(c) APPEAL OF FINAL DECISION ON APPEAL OF  
21 ORDER.—An individual may appeal a final decision on an  
22 appeal under subsection (b) to the Merit Systems Protec-  
23 tion Board under section 7701 of title 5.”.

24 (b) CLERICAL AMENDMENT.—The table of sections  
25 at the beginning of such chapter is further amended by

1 inserting after the item relating to section 721, as added  
2 by section 204(b), the following new item:

“723. Recoupment of relocation expenses paid on behalf of employees of Department.”.

3 (c) **EFFECTIVE DATE.**—Section 723 of title 38,  
4 United States Code, as added by subsection (a), shall  
5 apply with respect to an amount paid by the Secretary  
6 of Veterans Affairs to or on behalf of an employee of the  
7 Department of Veterans Affairs for relocation expenses on  
8 or after the date of the enactment of this Act.

9 **SEC. 206. TIME PERIOD FOR RESPONSE TO NOTICE OF AD-**  
10 **VERSE ACTIONS AGAINST SUPERVISORY EM-**  
11 **PLOYEES WHO COMMIT PROHIBITED PER-**  
12 **SONNEL ACTIONS.**

13 Section 731(a)(2)(B) of title 38, United States Code,  
14 as redesignated by section 102(a)(2), is amended—

15 (1) in clause (i), by striking “14 days” and in-  
16 serting “10 days”; and

17 (2) in clause (ii), by striking “14-day period”  
18 and inserting “10-day period”.

19 **SEC. 207. DIRECT HIRING AUTHORITY FOR MEDICAL CEN-**  
20 **TER DIRECTORS AND VISN DIRECTORS.**

21 (a) **IN GENERAL.**—Section 7401 of title 38, United  
22 States Code, is amended by adding at the end the fol-  
23 lowing new paragraph:

1           “(4) Directors of medical centers and directors  
2           of Veterans Integrated Service Networks with dem-  
3           onstrated ability in the medical profession, in health  
4           care administration, or in health care fiscal manage-  
5           ment.”.

6           (b) CONFORMING AMENDMENT.—Section 7404(a)(1)  
7           of such title is amended by inserting “and 7401(4)” after  
8           “7306”.

9           **SEC. 208. TIME PERIODS FOR REVIEW OF ADVERSE AC-**  
10                           **TIONS WITH RESPECT TO CERTAIN EMPLOY-**  
11                           **EES.**

12           (a) PHYSICIANS, DENTISTS, PODIATRISTS, CHIRO-  
13           PRACTORS, OPTOMETRISTS, REGISTERED NURSES, PHY-  
14           SICIAN ASSISTANTS, AND EXPANDED-FUNCTION DENTAL  
15           AUXILIARIES.—Paragraph (2) of section 7461(b) of title  
16           38, United States Code, is amended to read as follows:

17           “(2) In any case other than a case described in para-  
18           graph (1) that involves or includes a question of profes-  
19           sional conduct or competence in which a major adverse  
20           action was not taken, such an appeal shall be made  
21           through Department grievance procedures under section  
22           7463 of this title.”.

23           (b) MAJOR ADVERSE ACTIONS INVOLVING PROFES-  
24           SIONAL CONDUCT OR COMPETENCE.—Section 7462(b) of  
25           such title is amended—



1 (1) in paragraph (1)—

2 (A) in the matter preceding subparagraph  
3 (A), by inserting “, within the aggregate time  
4 period specified in paragraph (5)(A),” after “is  
5 entitled”;

6 (B) in subparagraph (A)—

7 (i) by striking “At least 30 days ad-  
8 vance written notice” and inserting “Ad-  
9 vance written notice”;

10 (ii) by striking “and a statement” and  
11 inserting “a statement”; and

12 (iii) by inserting “and a file con-  
13 taining all the evidence in support of each  
14 charge,” after “with respect to each  
15 charge,”; and

16 (C) in subparagraph (B), by striking “A  
17 reasonable time, but not less than seven days”  
18 and inserting “The opportunity, within the time  
19 period provided for in paragraph (4)(A)”;

20 (2) by striking paragraph (3) and inserting the  
21 following new paragraph (3):

22 “(3) After considering the employee’s answer, if any,  
23 and within the time period provided for in paragraph  
24 (5)(B), the deciding official shall render a decision on the

1 charges. The decision shall be in writing and shall include  
2 the specific reasons therefor.”;

3 (3) in paragraph (4)—

4 (A) by striking subparagraph (A) and in-  
5 serting the following new subparagraph (A):

6 “(A) The period for the response of an employee  
7 under paragraph (1)(B) to advance written under para-  
8 graph (1)(A) shall be seven business days.”; and

9 (B) in subparagraph (B), by striking “30  
10 days” and inserting “seven business days”; and

11 (4) by adding at the end the following new  
12 paragraphs:

13 “(5)(A) The aggregate period for the resolution of  
14 charges against an employee under this subsection may  
15 not exceed 15 business days.

16 “(B) The deciding official shall render a decision  
17 under paragraph (3) on charges under this subsection not  
18 later than 15 business days after the Under Secretary pro-  
19 vides notice on the charges for purposes of paragraph  
20 (1)(A).

21 “(6) The procedures in this subsection shall super-  
22 sede any collective bargaining agreement to the extent that  
23 such agreement is inconsistent with such procedures.”.

24 (c) OTHER ADVERSE ACTIONS.—Section 7463(c) of  
25 such title is amended—

1           (1) in paragraph (1), by striking “the same no-  
2           tice and opportunity to answer with respect to those  
3           charges as provided in subparagraphs (A) and (B)  
4           of section 7462(b)(1) of this title” and inserting  
5           “notice and an opportunity to answer with respect to  
6           those charges in accordance with subparagraphs (A)  
7           and (B) of section 7462(b)(1) of this title, but with-  
8           in the time periods specified in paragraph (3)”;

9           (2) in paragraph (2)—

10           (A) in the matter preceding subparagraph  
11           (A), by inserting “, within the aggregate time  
12           period specified in paragraph (3)(A),” after “is  
13           entitled”;

14           (B) in subparagraph (A), by striking “an  
15           advance written notice” and inserting “written  
16           notice”; and

17           (C) in subparagraph (B), by striking “a  
18           reasonable time” and inserting “time to an-  
19           swer”; and

20           (3) by adding at the end the following new  
21           paragraph (3):

22           “(3)(A) The aggregate period for the resolution of  
23           charges against an employee under paragraph (1) or (2)  
24           may not exceed 15 business days.

1       “(B) The period for the response of an employee  
2 under paragraph (1) or (2)(B) to written notice of charges  
3 under paragraph (1) or (2)(A), as applicable, shall be  
4 seven business days.

5       “(C) The deciding official shall render a decision on  
6 charges under paragraph (1) or (2) not later than 15 busi-  
7 ness days after notice is provided on the charges for pur-  
8 poses of paragraph (1) or (2)(A), as applicable.”.

9 **SEC. 209. IMPROVEMENT OF TRAINING FOR SUPERVISORS.**

10       (a) IN GENERAL.—The Secretary of Veterans Affairs  
11 shall provide to each employee of the Department of Vet-  
12 erans Affairs who is employed as a supervisor periodic  
13 training on the following:

14           (1) The rights of whistleblowers and how to ad-  
15 dress a report by an employee of a hostile work envi-  
16 ronment, reprisal, or harassment.

17           (2) How to effectively motivate, manage, and  
18 reward the employees who report to the supervisor.

19           (3) How to effectively manage employees who  
20 are performing at an unacceptable level and access  
21 assistance from the human resources office of the  
22 Department and the Office of the General Counsel  
23 of the Department with respect to those employees.

24       (b) DEFINITIONS.—In this section:

1           (1) SUPERVISOR.—The term “supervisor” has  
2           the meaning given such term in section 7103(a) of  
3           title 5, United States Code.

4           (2) WHISTLEBLOWER.—The term “whistle-  
5           blower” has the meaning given such term in section  
6           323(g) of title 38, United States Code, as added by  
7           section 101.

8   **SEC. 210. ASSESSMENT AND REPORT ON EFFECT ON SEN-**  
9                           **IOR EXECUTIVES AT DEPARTMENT OF VET-**  
10                          **ERANS AFFAIRS.**

11          (a) IN GENERAL.—Not later than two years after the  
12          date of the enactment of this Act, the Secretary of Vet-  
13          erans Affairs shall—

14               (1) measure and assess the effect of the enact-  
15               ment of this title on the morale, engagement, hiring,  
16               promotion, retention, discipline, and productivity of  
17               individuals in senior executive positions at the De-  
18               partment of Veterans Affairs; and

19               (2) submit to the Committee on Veterans’ Af-  
20               fairs of the Senate and the Committee on Veterans’  
21               Affairs of the House of Representatives a report on  
22               the findings of the Secretary with respect to the  
23               measurement and assessment carried out under  
24               paragraph (1).

1 (b) ELEMENTS.—The assessment required by sub-  
2 section (a)(1) shall include the following:

3 (1) With respect to engagement, trends in mo-  
4 rale of individuals in senior executive positions and  
5 individuals aspiring to senior executive positions.

6 (2) With respect to promotions—

7 (A) whether the Department is experi-  
8 encing an increase or decrease in the number of  
9 employees participating in leadership develop-  
10 ment and candidate development programs with  
11 the intention of becoming candidates for senior  
12 executive positions; and

13 (B) trends in applications to senior execu-  
14 tive positions within the Department.

15 (3) With respect to retention—

16 (A) trends in retirement rates of individ-  
17 uals in senior executive positions at the Depart-  
18 ment;

19 (B) trends in quit rates of individuals in  
20 senior executive positions at the Department;

21 (C) rates of transfer of—

22 (i) individuals from other Federal  
23 agencies into senior executive positions at  
24 the Department; and

1 (ii) individuals from senior executive  
2 positions at the Department to other Fed-  
3 eral agencies; and

4 (D) trends in total loss rates by job func-  
5 tion.

6 (4) With respect to disciplinary processes—

7 (A) regarding individuals in senior execu-  
8 tive positions at the Department who are the  
9 subject of disciplinary action—

10 (i) the length of the disciplinary proc-  
11 ess in days for such individuals both before  
12 the date of the enactment of this Act and  
13 under the provisions of this Act described  
14 in subsection (a)(1); and

15 (ii) the extent to which appeals by  
16 such individuals are upheld under such  
17 provisions as compared to before the date  
18 of the enactment of this Act;

19 (B) the components or offices of the De-  
20 partment which experience the greatest number  
21 of proposed adverse actions against individuals  
22 in senior executive positions and components  
23 and offices which experience the least relative to  
24 the size of the components or offices' total  
25 number of senior executive positions;

1 (C) the tenure of individuals in senior ex-  
2 ecutive positions who are the subject of discipli-  
3 nary action;

4 (D) whether the individuals in senior execu-  
5 tive positions who are the subject of discipli-  
6 nary action have previously been disciplined;  
7 and

8 (E) the number of instances of disciplinary  
9 action taken by the Secretary against individ-  
10 uals in senior executive positions at the Depart-  
11 ment as compared to governmentwide discipline  
12 against individuals in Senior Executive Service  
13 positions (as defined in section 3132(a) of title  
14 5, United States Code) as a percentage of the  
15 total number of individuals in senior executive  
16 positions at the Department and Senior Execu-  
17 tive Service positions (as so defined).

18 (5) With respect to hiring—

19 (A) the degree to which the skills of newly  
20 hired individuals in senior executive positions at  
21 the Department are appropriate with respect to  
22 the needs of the Department;

23 (B) the types of senior executive positions  
24 at the Department most commonly filled under



1 the authorities in the provisions described in  
2 subsection (a)(1);

3 (C) the number of senior executive posi-  
4 tions at the Department filled by hires outside  
5 of the Department compared to hires from  
6 within the Department;

7 (D) the length of time to fill a senior execu-  
8 tive position at the Department and for a new  
9 hire to begin working in a new senior executive  
10 position;

11 (E) the mission-critical deficiencies filled  
12 by newly hired individuals in senior executive  
13 positions and the connection between mission-  
14 critical deficiencies filled under the provisions  
15 described in subsection (a) and annual perform-  
16 ance of the Department;

17 (F) the satisfaction of applicants for senior  
18 executive positions at the Department with the  
19 hiring process, including the clarity of job an-  
20 nouncements, reasons for withdrawal of applica-  
21 tions, communication regarding status of appli-  
22 cations, and timeliness of hiring decision; and

23 (G) the satisfaction of newly hired individ-  
24 uals in senior executive positions at the Depart-  
25 ment with the hiring process and the process of

1           joining and becoming oriented with the Depart-  
2           ment.

3           (c) SENIOR EXECUTIVE POSITION DEFINED.—In  
4 this section, the term “senior executive position” has the  
5 meaning given such term in section 713 of title 38, United  
6 States Code.

7 **SEC. 211. MEASUREMENT OF DEPARTMENT OF VETERANS**  
8                           **AFFAIRS DISCIPLINARY PROCESS OUTCOMES**  
9                           **AND EFFECTIVENESS.**

10          (a) MEASURING AND COLLECTING.—

11               (1) IN GENERAL.—The Secretary of Veterans  
12          Affairs shall measure and collect information on the  
13          outcomes of disciplinary actions carried out by the  
14          Department of Veterans Affairs during the three-  
15          year period ending on the date of the enactment of  
16          this Act and the effectiveness of such actions.

17               (2) ELEMENTS.—In measuring and collecting  
18          pursuant to paragraph (1), the Secretary shall meas-  
19          ure and collect information regarding the following:

20                       (A) The average time from the initiation of  
21          an adverse action against an employee at the  
22          Department to the final resolution of that ac-  
23          tion.

24                       (B) The number of distinct steps and lev-  
25          els of review within the Department involved in

1 the disciplinary process and the average length  
2 of time required to complete these steps.

3 (C) The rate of use of alternate discipli-  
4 nary procedures compared to traditional dis-  
5 ciplinary procedures and the frequency with  
6 which employees who are subject to alternative  
7 disciplinary procedures commit additional of-  
8 fenses.

9 (D) The number of appeals from adverse  
10 actions filed against employees of the Depart-  
11 ment, the number of appeals upheld, and the  
12 reasons for which the appeals were upheld.

13 (E) The use of paid administrative leave  
14 during the disciplinary process and the length  
15 of such leave.

16 (b) REPORT.—

17 (1) IN GENERAL.—Not later than December 31,  
18 2017, the Secretary shall submit to the appropriate  
19 committees of Congress a report on the disciplinary  
20 procedures and actions of the Department.

21 (2) CONTENTS.—The report submitted under  
22 paragraph (1) shall include the following:

23 (A) The information collected under sub-  
24 section (a).

1           (B) The findings of the Secretary with re-  
2           spect to the measurement and collection carried  
3           out under subsection (a).

4           (C) An analysis of the disciplinary proce-  
5           dures and actions of the Department.

6           (D) Suggestions for improving the discipli-  
7           nary procedures and actions of the Department.

8           (E) Such other matters as the Secretary  
9           considers appropriate.

10          (3) APPROPRIATE COMMITTEES OF CON-  
11          GRESS.—In this subsection, the term “appropriate  
12          committees of Congress” means—

13               (A) the Committee on Appropriations and  
14               the Committee on Veterans’ Affairs of the Sen-  
15               ate; and

16               (B) the Committee on Appropriations and  
17               the Committee on Veterans’ Affairs of the  
18               House of Representatives.