

S. 1094

One Hundred Fifteenth Congress
of the
United States of America

AT THE FIRST SESSION

*Begun and held at the City of Washington on Tuesday,
the third day of January, two thousand and seventeen*

An Act

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

*Be it enacted by the Senate and House of Representatives of
the United States of America in Congress assembled,*

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

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

(b) **TABLE OF CONTENTS.**—The table of contents for 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.

TITLE I—OFFICE OF ACCOUNTABILITY AND WHISTLEBLOWER PROTECTION

SEC. 101. ESTABLISHMENT OF OFFICE OF ACCOUNTABILITY AND WHISTLEBLOWER PROTECTION.

(a) IN GENERAL.—Chapter 3 of title 38, United States Code, is amended by adding at the end the following new section:

“§ 323. Office of Accountability and Whistleblower Protection

“(a) ESTABLISHMENT.—There is established in the Department an office to be known as the ‘Office of Accountability and Whistleblower Protection’ (in this section referred to as the ‘Office’).

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

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

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

“(4) Notwithstanding section 308(b) of this title, the Secretary may only assign to the Assistant Secretary responsibilities relating to the functions of the Office set forth in subsection (c).

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

“(A) Advising the Secretary on all matters of the Department relating to accountability, including accountability of employees of the Department, retaliation against whistleblowers, and such matters as the Secretary considers similar and affect public trust in the Department.

“(B) Issuing reports and providing recommendations related to the duties described in subparagraph (A).

“(C) Receiving whistleblower disclosures.

“(D) Referring whistleblower disclosures received under subparagraph (C) for investigation to the Office of the Medical Inspector, the Office of Inspector General, or other investigative entity, as appropriate, if the Assistant Secretary has reason to believe the whistleblower disclosure is evidence of a violation of a provision of law, mismanagement, gross waste of funds, abuse of authority, or a substantial and specific danger to public health or safety.

“(E) Receiving and referring disclosures from the Special Counsel for investigation to the Medical Inspector of the Department, the Inspector General of the Department, or such other person with investigatory authority, as the Assistant Secretary considers appropriate.

“(F) Recording, tracking, reviewing, and confirming implementation of recommendations from audits and investigations carried out by the Inspector General of the Department, the Medical Inspector of the Department, the Special Counsel, and the Comptroller General of the United States, including the imposition of disciplinary actions and other corrective actions contained in such recommendations.

“(G) Analyzing data from the Office and the Office of Inspector General telephone hotlines, other whistleblower disclosures, disaggregated by facility and area of health care if appropriate, and relevant audits and investigations to identify

trends and issue reports to the Secretary based on analysis conducted under this subparagraph.

“(H) Receiving, reviewing, and investigating allegations of misconduct, retaliation, or poor performance involving—

“(i) an individual in a senior executive position (as defined in section 713(d) of this title) in the Department;

“(ii) an individual employed in a confidential, policy-making, policy-determining, or policy-advocating position in the Department; or

“(iii) a supervisory employee, if the allegation involves retaliation against an employee for making a whistleblower disclosure.

“(I) Making such recommendations to the Secretary for disciplinary action as the Assistant Secretary considers appropriate after substantiating any allegation of misconduct or poor performance pursuant to an investigation carried out as described in subparagraph (F) or (H).

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

“(3) In any case in which the Assistant Secretary receives a whistleblower disclosure from an employee of the Department under paragraph (1)(C), the Assistant Secretary may not disclose the identity of the employee without the consent of the employee, except in accordance with the provisions of section 552a of title 5, or as required by any other applicable provision of Federal law.

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

“(e) RELATION TO OFFICE OF GENERAL COUNSEL.—The Office shall not be established as an element of the Office of the General Counsel and the Assistant Secretary may not report to the General Counsel.

“(f) REPORTS.—(1)(A) Not later than June 30 of each calendar year, beginning with June 30, 2017, the Assistant Secretary shall submit to the Committee on Veterans’ Affairs of the Senate and the Committee on Veterans’ Affairs of the House of Representatives a report on the activities of the Office during the calendar year in which the report is submitted.

“(B) Each report submitted under subparagraph (A) shall include, for the period covered by the report, the following:

“(i) A full and substantive analysis of the activities of the Office, including such statistical information as the Assistant Secretary considers appropriate.

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

“(iii) Identification of such concerns as the Assistant Secretary may have regarding the size, staffing, and resources of the Office and such recommendations as the Assistant Secretary may have for legislative or administrative action to address such concerns.

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

“(I) the process by which concerns are reported to the Office; and

“(II) the protection of whistleblowers within the Department.

“(v) Such other matters as the Assistant Secretary considers appropriate regarding the functions of the Office or other matters relating to the Office.

“(2) If the Secretary receives a recommendation for disciplinary action under subsection (c)(1)(I) and does not take or initiate the recommended disciplinary action before the date that is 60 days after the date on which the Secretary received the recommendation, the Secretary shall submit to the Committee on Veterans’ Affairs of the Senate and the Committee on Veterans’ Affairs of the House of Representatives a detailed justification for not taking or initiating such disciplinary action.

“(g) DEFINITIONS.—In this section:

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

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

“(3) The term ‘whistleblower disclosure’ means any disclosure of information by an employee of the Department or individual applying to become an employee of the Department which the employee or individual reasonably believes evidences—

“(A) a violation of a law, rule, or regulation; or

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

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

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

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

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

SEC. 102. PROTECTION OF WHISTLEBLOWERS IN DEPARTMENT OF VETERANS AFFAIRS.

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

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

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

(3) by adding at the end the following new sections:

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

“(a) DEVELOPMENT AND USE OF CRITERIA REQUIRED.—The Secretary, in consultation with the Assistant Secretary of Accountability and Whistleblower Protection, shall develop criteria that—

“(1) the Secretary shall use as a critical element in any evaluation of the performance of a supervisory employee; and

“(2) promotes the protection of whistleblowers.

“(b) PRINCIPLES FOR PROTECTION OF WHISTLEBLOWERS.—The criteria required by subsection (a) shall include principles for the protection of whistleblowers, such as the degree to which supervisory employees respond constructively when employees of the Department report concerns, take responsible action to resolve such concerns, and foster an environment in which employees of the Department feel comfortable reporting concerns to supervisory employees or to the appropriate authorities.

“(c) SUPERVISORY EMPLOYEE AND WHISTLEBLOWER DEFINED.—In this section, the terms ‘supervisory employee’ and ‘whistleblower’ have the meanings given such terms in section 323 of this title.

“§ 733. Training regarding whistleblower disclosures

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

“(1) an explanation of each method established by law in which an employee may file a whistleblower disclosure;

“(2) the right of the employee to petition Congress regarding a whistleblower disclosure in accordance with section 7211 of title 5;

“(3) an explanation that the employee may not be prosecuted or reprimed against for disclosing information to Congress, the Inspector General, or another investigatory agency in instances where such disclosure is permitted by law, including under sections 5701, 5705, and 7732 of this title, under section 552a of title 5 (commonly referred to as the Privacy Act), under chapter 93 of title 18, and pursuant to regulations promulgated under section 264(c) of the Health Insurance Portability and Accountability Act of 1996 (Public Law 104–191);

“(4) an explanation of the language that is required to be included in all nondisclosure policies, forms, and agreements pursuant to section 115(a)(1) of the Whistleblower Protection Enhancement Act of 2012 (5 U.S.C. 2302 note); and

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

“(b) MANNER TRAINING IS PROVIDED.—The Secretary shall ensure, to the maximum extent practicable, that training provided under subsection (a) is provided in person.

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

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

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

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

- (1) by striking the items relating to sections 731 through 736; and
- (2) by adding at the end the following new 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.”.

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

(1) in subsection (c)—

(A) in paragraph (1)—

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

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

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

(iii) in subparagraph (B), as redesignated by clause (ii), by striking “complaint in accordance with section 732 or with” and inserting “disclosure made to the Assistant Secretary for Accountability and Whistleblower Protection;” and

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

(2) by adding at the end the following new subsection:

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

SEC. 103. REPORT ON METHODS USED TO INVESTIGATE EMPLOYEES OF DEPARTMENT OF VETERANS AFFAIRS.

(a) REPORT REQUIRED.—Not later than 540 days after the date of the enactment of this Act, the Assistant Secretary for Accountability and Whistleblower Protection shall submit to the Secretary of Veterans Affairs, the Committee on Veterans’ Affairs of the Senate, and the Committee on Veterans’ Affairs of the House of Representatives a report on methods used to investigate employees of the Department of Veterans Affairs and whether such methods are used to retaliate against whistleblowers.

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

(1) An assessment of the use of administrative investigation boards, peer review, searches of medical records, and other methods for investigating employees of the Department.

(2) A determination of whether and to what degree the methods described in paragraph (1) are being used to retaliate against whistleblowers.

(3) Recommendations for legislative or administrative action to implement safeguards to prevent the retaliation described in paragraph (2).

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

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.

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

“§ 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.”

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

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

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

SEC. 202. IMPROVED AUTHORITIES OF SECRETARY OF VETERANS AFFAIRS TO IMPROVE ACCOUNTABILITY OF EMPLOYEES.

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

“§ 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 who is an employee of the Department if the Secretary determines the performance or misconduct of the covered individual warrants such removal, demotion, or suspension.

“(2) If the Secretary so removes, demotes, or suspends such a covered individual, the Secretary may—

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

“(B) demote the covered individual by means of a reduction in grade for which the covered individual is qualified, that

the Secretary determines is appropriate, and that reduces the annual rate of pay of the covered individual; or

“(C) suspend the covered individual.

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

“(2)(A) A covered individual so demoted may not be placed on administrative leave during the period during which an appeal (if any) under this section is ongoing, and may only receive pay if the covered individual reports for duty or is approved to use accrued unused annual, sick, family medical, military, or court leave.

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

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

“(B) The period for the response of a covered individual to a notice of a proposed removal, demotion, or suspension under this section shall be 7 business days.

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

“(D) The procedures in this subsection shall supersede any collective bargaining agreement to the extent that such agreement is inconsistent with such procedures.

“(2) The Secretary shall issue a final decision with respect to a removal, demotion, or suspension under this section not later than 15 business days after the Secretary provides notice, including a file containing all the evidence in support of the proposed action, to the covered individual of the removal, demotion, or suspension. The decision shall be in writing and shall include the specific reasons therefor.

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

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

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

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

“(2)(A) Notwithstanding section 7701(c)(1)(B) of title 5, the administrative judge shall uphold the decision of the Secretary

to remove, demote, or suspend an employee under subsection (a) if the decision is supported by substantial evidence.

“(B) Notwithstanding title 5 or any other provision of law, if the decision of the Secretary is supported by substantial evidence, the administrative judge shall not mitigate the penalty prescribed by the Secretary.

“(3)(A) The decision of the administrative judge under paragraph (1) may be appealed to the Merit Systems Protection Board.

“(B) Notwithstanding section 7701(c)(1)(B) of title 5, the Merit Systems Protection Board shall uphold the decision of the Secretary to remove, demote, or suspend an employee under subsection (a) if the decision is supported by substantial evidence.

“(C) Notwithstanding title 5 or any other provision of law, if the decision of the Secretary is supported by substantial evidence, the Merit Systems Protection Board shall not mitigate the penalty prescribed by the Secretary.

“(4) In any case in which the administrative judge cannot issue a decision in accordance with the 180-day requirement under paragraph (1), the Merit Systems Protection Board shall, not later than 14 business days after the expiration of the 180-day period, submit to the Committee on Veterans’ Affairs of the Senate and the Committee on Veterans’ Affairs of the House of Representatives a report that explains the reasons why a decision was not issued in accordance with such requirement.

“(5)(A) A decision of the Merit Systems Protection Board under paragraph (3) may be appealed to the United States Court of Appeals for the Federal Circuit pursuant to section 7703 of title 5 or to any court of appeals of competent jurisdiction pursuant to subsection (b)(1)(B) of such section.

“(B) Any decision by such Court shall be in compliance with section 7462(f)(2) of this title.

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

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

“(8) To the maximum extent practicable, the Secretary shall provide to the Merit Systems Protection Board such information and assistance as may be necessary to ensure an appeal under this subsection is expedited.

“(9) If an employee prevails on appeal under this section, the employee shall be entitled to backpay (as provided in section 5596 of title 5).

“(10) If an employee who is subject to a collective bargaining agreement chooses to grieve an action taken under this section through a grievance procedure provided under the collective bargaining agreement, the timelines and procedures set forth in subsection (c) and this subsection shall apply.

“(e) WHISTLEBLOWER PROTECTION.—(1) In the case of a covered individual seeking corrective action (or on behalf of whom corrective action is sought) from the Office of Special Counsel based on an

alleged prohibited personnel practice described in section 2302(b) of title 5, the Secretary may not remove, demote, or suspend such covered individual under subsection (a) without the approval of the Special Counsel under section 1214(f) of title 5.

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

“(A) in the case in which the Assistant Secretary determines to refer the whistleblower disclosure under section 323(c)(1)(D) of this title to an office or other investigative entity, a final decision with respect to the whistleblower disclosure has been made by such office or other investigative entity; or

“(B) in the case in which the Assistant Secretary determines not to refer the whistleblower disclosure under such section, the Assistant Secretary makes such determination.

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

“(2) Such statement may not be admissible as evidence in any judicial or administrative proceeding without the consent of such employee or former employee.

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

“(h) DEFINITIONS.—In this section:

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

“(A) an individual occupying a senior executive position (as defined in section 713(d) of this title);

“(B) an individual appointed pursuant to sections 7306, 7401(1), 7401(4), or 7405 of this title;

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

“(D) a political appointee.

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

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

“(4) 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.

“(5) The term ‘political appointee’ means an individual who is—

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

“(B) a limited term appointee, limited emergency appointee, or noncareer appointee in the Senior Executive

Service, as defined under paragraphs (5), (6), and (7), respectively, of section 3132(a) of title 5; or

“(C) employed in a position of a confidential or policy-determining character under schedule C of subpart C of part 213 of title 5, Code of Federal Regulations, or successor regulation.

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

(b) CLERICAL AND CONFORMING AMENDMENTS.—

(1) CLERICAL.—The table of sections at the beginning of chapter 7 of such title is amended by inserting after the item relating to section 713 the following new item:

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

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

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

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

(C) by adding at the end the following:

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

SEC. 203. REDUCTION OF BENEFITS FOR DEPARTMENT OF VETERANS AFFAIRS EMPLOYEES CONVICTED OF CERTAIN CRIMES.

(a) REDUCTION OF BENEFITS.—

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

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

“(a) REDUCTION OF ANNUITY FOR REMOVED EMPLOYEE.—(1) The Secretary shall order that the covered service of an employee of the Department removed from a position for performance or misconduct under section 713, 714, or 7461 of this title or any other provision of law shall not be taken into account for purposes of calculating an annuity with respect to such individual under chapter 83 or chapter 84 of title 5, if—

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

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

“(i) notice of the proposed order; and

“(ii) an opportunity to respond to the proposed order by not later than ten business days following receipt of such notice; and

“(C) the Secretary issues the order—

“(i) in the case of a proposed order to which an individual responds under subparagraph (B)(ii), not later than five business days after receiving the response of the individual; or

“(ii) in the case of a proposed order to which an individual does not respond, not later than 15 business days after the Secretary provides notice to the individual under subparagraph (B)(i).

“(2) Any individual with respect to whom an annuity is reduced under this subsection may appeal the reduction to the Director of the Office of Personnel Management pursuant to such regulations as the Director may prescribe for purposes of this subsection.

“(b) REDUCTION OF ANNUITY FOR RETIRED EMPLOYEE.—(1) The Secretary may order that the covered service of an individual who the Secretary proposes to remove for performance or misconduct under section 713, 714, or 7461 of this title or any other provision of law but who leaves employment at the Department prior to the issuance of a final decision with respect to such action shall not be taken into account for purposes of calculating an annuity with respect to such individual under chapter 83 or chapter 84 of title 5, if—

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

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

“(i) notice of the proposed order;

“(ii) opportunity to respond to the proposed order by not later than ten business days following receipt of such notice; and

“(C) the Secretary issues the order—

“(i) in the case of a proposed order to which an individual responds under subparagraph (B)(ii), not later than five business days after receiving the response of the individual; or

“(ii) in the case of a proposed order to which an individual does not respond, not later than 15 business days after the Secretary provides notice to the individual under subparagraph (B)(i).

“(2) Upon the issuance of an order by the Secretary under paragraph (1), the individual shall have an opportunity to appeal the order to the Director of the Office of Personnel Management before the date that is seven business days after the date of such issuance.

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

“(c) ADMINISTRATIVE REQUIREMENTS.—Not later than 37 business days after the Secretary issues a final order under subsection (a) or (b) with respect to an individual, the Director of the Office of Personnel Management shall recalculate the annuity of the individual.

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

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

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

“(f) DEFINITIONS.—In this section:

“(1) The term ‘covered service’ means, with respect to an individual subject to a removal for performance or misconduct under section 719 or 7461 of this title or any other provision of law, the period of service beginning on the date that the Secretary determines under such applicable provision that the individual engaged in activity that gave rise to such action and ending on the date that the individual is removed from or leaves a position of employment at the Department prior to the issuance of a final decision with respect to such action.

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

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

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 7 of such title is amended by inserting after the item relating to section 717 the following new item:

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

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

SEC. 204. AUTHORITY TO RECOUP BONUSES OR AWARDS PAID TO EMPLOYEES OF DEPARTMENT OF VETERANS AFFAIRS.

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

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

“(a) IN GENERAL.—Notwithstanding any other provision of law, the Secretary may issue an order directing an employee of the Department to repay the amount, or a portion of the amount, of any award or bonus paid to the employee under title 5, including under chapters 45 or 53 of such title, or this title if—

“(1) the Secretary determines that the individual engaged in misconduct or poor performance prior to payment of the award or bonus, and that such award or bonus would not have been paid, in whole or in part, had the misconduct or poor performance been known prior to payment; and

“(2) before such repayment, the employee is afforded—

“(A) notice of the proposed order; and

“(B) an opportunity to respond to the proposed order by not later than 10 business days after the receipt of such notice; and

“(3) the Secretary issues the order—

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

“(B) in the case of a proposed order to which an individual does not respond, not later than 15 business days

after the Secretary provides notice to the individual under paragraph (2)(A).

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

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

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

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

(c) EFFECTIVE DATE.—Section 721 of title 38, United States Code, as added by subsection (a), shall apply with respect to an award or bonus paid by the Secretary of Veterans Affairs to an employee of the Department of Veterans Affairs on or after the date of the enactment of this Act.

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

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

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

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

“(a) IN GENERAL.—Notwithstanding any other provision of law, the Secretary may issue an order directing an employee of the Department to repay the amount, or a portion of the amount, paid to or on behalf of the employee under title 5 for relocation expenses, including any expenses under section 5724 or 5724a of such title, or this title if—

“(1) the Secretary determines that relocation expenses were paid following an act of fraud or malfeasance that influenced the authorization of the relocation expenses;

“(2) before such repayment, the employee is afforded—

“(A) notice of the proposed order; and

“(B) an opportunity to respond to the proposed order not later than ten business days following the receipt of such notice; and

“(3) the Secretary issues the order—

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

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

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

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

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is further amended by inserting after the item relating to section 721, as added by section 204(b), the following new item:

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

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

SEC. 206. TIME PERIOD FOR RESPONSE TO NOTICE OF ADVERSE ACTIONS AGAINST SUPERVISORY EMPLOYEES WHO COMMIT PROHIBITED PERSONNEL ACTIONS.

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

(1) in clause (i), by striking “14 days” and inserting “10 days”; and

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

SEC. 207. DIRECT HIRING AUTHORITY FOR MEDICAL CENTER DIRECTORS AND VISN DIRECTORS.

(a) IN GENERAL.—Section 7401 of title 38, United States Code, is amended by adding at the end the following new paragraph:

“(4) Directors of medical centers and directors of Veterans Integrated Service Networks with demonstrated ability in the medical profession, in health care administration, or in health care fiscal management.”.

(b) CONFORMING AMENDMENTS.—Section 7404(a)(1) of such title is amended—

(1) by inserting “(A)” before “The annual”; and

(2) in subparagraph (A), as designated by paragraph (1)—

(A) by inserting “and 7401(4)” after “7306”; and

(B) by adding at the end the following new subparagraph:

“(B) Section 5377 of title 5 shall apply to a position under section 7401(4) of this title as if such position were included in the definition of ‘position’ in section 5377(a) of title 5.”.

SEC. 208. TIME PERIODS FOR REVIEW OF ADVERSE ACTIONS WITH RESPECT TO CERTAIN EMPLOYEES.

(a) PHYSICIANS, DENTISTS, PODIATRISTS, CHIROPRACTORS, OPTOMETRISTS, REGISTERED NURSES, PHYSICIAN ASSISTANTS, AND EXPANDED-FUNCTION DENTAL AUXILIARIES.—Paragraph (2) of section 7461(b) of title 38, United States Code, is amended to read as follows:

“(2) In any case other than a case described in paragraph (1) that involves or includes a question of professional conduct or competence in which a major adverse action was not taken, such an appeal shall be made through Department grievance procedures under section 7463 of this title.”

(b) MAJOR ADVERSE ACTIONS INVOLVING PROFESSIONAL CONDUCT OR COMPETENCE.—Section 7462(b) of such title is amended—

(1) in paragraph (1)—

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

(B) in subparagraph (A)—

(i) by striking “At least 30 days advance written notice” and inserting “Advance written notice”;

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

(iii) by inserting “and a file containing all the evidence in support of each charge,” after “with respect to each charge,”; and

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

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

“(3) After considering the employee’s answer, if any, and within the time period provided for in paragraph (5)(B), the deciding official shall render a decision on the charges. The decision shall be in writing and shall include the specific reasons therefor.”;

(3) in paragraph (4)—

(A) by striking subparagraph (A) and inserting the following new subparagraph (A):

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

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

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

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

“(B) The deciding official shall render a decision under paragraph (3) on charges under this subsection not later than 15 business days after the Under Secretary provides notice on the charges for purposes of paragraph (1)(A).

“(6) The procedures in this subsection shall supersede any collective bargaining agreement to the extent that such agreement is inconsistent with such procedures.”.

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

(1) in paragraph (1), by striking “the same notice and opportunity to answer with respect to those charges as provided in subparagraphs (A) and (B) of section 7462(b)(1) of this title” and inserting “notice and an opportunity to answer with respect to those charges in accordance with subparagraphs (A) and (B) of section 7462(b)(1) of this title, but within the time periods specified in paragraph (3)”;

(2) in paragraph (2)—

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

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

(C) in subparagraph (B), by striking “a reasonable time” and inserting “time to answer”; and

(3) by adding at the end the following new paragraph

(3):

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

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

“(C) The deciding official shall render a decision on charges under paragraph (1) or (2) not later than 15 business days after notice is provided on the charges for purposes of paragraph (1) or (2)(A), as applicable.”.

SEC. 209. IMPROVEMENT OF TRAINING FOR SUPERVISORS.

(a) **IN GENERAL.**—The Secretary of Veterans Affairs shall provide to each employee of the Department of Veterans Affairs who is employed as a supervisor periodic training on the following:

(1) The rights of whistleblowers and how to address a report by an employee of a hostile work environment, reprisal, or harassment.

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

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

(b) **DEFINITIONS.**—In this section:

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

(2) **WHISTLEBLOWER.**—The term “whistleblower” has the meaning given such term in section 323(g) of title 38, United States Code, as added by section 101.

SEC. 210. ASSESSMENT AND REPORT ON EFFECT ON SENIOR EXECUTIVES AT DEPARTMENT OF VETERANS AFFAIRS.

(a) **IN GENERAL.**—Not later than two years after the date of the enactment of this Act, the Secretary of Veterans Affairs shall—

(1) measure and assess the effect of the enactment of this title on the morale, engagement, hiring, promotion, retention, discipline, and productivity of individuals in senior executive positions at the Department of Veterans Affairs; and

(2) submit to the Committee on Veterans' Affairs of the Senate and the Committee on Veterans' Affairs of the House of Representatives a report on the findings of the Secretary with respect to the measurement and assessment carried out under paragraph (1).

(b) ELEMENTS.—The assessment required by subsection (a)(1) shall include the following:

(1) With respect to engagement, trends in morale of individuals in senior executive positions and individuals aspiring to senior executive positions.

(2) With respect to promotions—

(A) whether the Department is experiencing an increase or decrease in the number of employees participating in leadership development and candidate development programs with the intention of becoming candidates for senior executive positions; and

(B) trends in applications to senior executive positions within the Department.

(3) With respect to retention—

(A) trends in retirement rates of individuals in senior executive positions at the Department;

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

(C) rates of transfer of—

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

(ii) individuals from senior executive positions at the Department to other Federal agencies; and

(D) trends in total loss rates by job function.

(4) With respect to disciplinary processes—

(A) regarding individuals in senior executive positions at the Department who are the subject of disciplinary action—

(i) the length of the disciplinary process in days for such individuals both before the date of the enactment of this Act and under the provisions of this Act described in subsection (a)(1); and

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

(B) the components or offices of the Department which experience the greatest number of proposed adverse actions against individuals in senior executive positions and components and offices which experience the least relative to the size of the components or offices' total number of senior executive positions;

(C) the tenure of individuals in senior executive positions who are the subject of disciplinary action;

(D) whether the individuals in senior executive positions who are the subject of disciplinary action have previously been disciplined; and

(E) the number of instances of disciplinary action taken by the Secretary against individuals in senior executive positions at the Department as compared to government-wide discipline against individuals in Senior Executive Service positions (as defined in section 3132(a) of title 5, United States Code) as a percentage of the total number

of individuals in senior executive positions at the Department and Senior Executive Service positions (as so defined).

(5) With respect to hiring—

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

(B) the types of senior executive positions at the Department most commonly filled under the authorities in the provisions described in subsection (a)(1);

(C) the number of senior executive positions at the Department filled by hires outside of the Department compared to hires from within the Department;

(D) the length of time to fill a senior executive position at the Department and for a new hire to begin working in a new senior executive position;

(E) the mission-critical deficiencies filled by newly hired individuals in senior executive positions and the connection between mission-critical deficiencies filled under the provisions described in subsection (a) and annual performance of the Department;

(F) the satisfaction of applicants for senior executive positions at the Department with the hiring process, including the clarity of job announcements, reasons for withdrawal of applications, communication regarding status of applications, and timeliness of hiring decision; and

(G) the satisfaction of newly hired individuals in senior executive positions at the Department with the hiring process and the process of joining and becoming oriented with the Department.

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

SEC. 211. MEASUREMENT OF DEPARTMENT OF VETERANS AFFAIRS DISCIPLINARY PROCESS OUTCOMES AND EFFECTIVENESS.

(a) MEASURING AND COLLECTING.—

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

(2) ELEMENTS.—In measuring and collecting pursuant to paragraph (1), the Secretary shall measure and collect information regarding the following:

(A) The average time from the initiation of an adverse action against an employee at the Department to the final resolution of that action.

(B) The number of distinct steps and levels of review within the Department involved in the disciplinary process and the average length of time required to complete these steps.

(C) The rate of use of alternate disciplinary procedures compared to traditional disciplinary procedures and the frequency with which employees who are subject to alternative disciplinary procedures commit additional offenses.

(D) The number of appeals from adverse actions filed against employees of the Department, the number of appeals upheld, and the reasons for which the appeals were upheld.

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

(b) REPORT.—

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

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

(A) The information collected under subsection (a).

(B) The findings of the Secretary with respect to the measurement and collection carried out under subsection (a).

(C) An analysis of the disciplinary procedures and actions of the Department.

(D) Suggestions for improving the disciplinary procedures and actions of the Department.

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

(3) APPROPRIATE COMMITTEES OF CONGRESS.—In this subsection, the term “appropriate committees of Congress” means—

(A) the Committee on Appropriations and the Committee on Veterans’ Affairs of the Senate; and

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

Speaker of the House of Representatives.

*Vice President of the United States and
President of the Senate.*