

Calendar No. 103115TH CONGRESS
1ST SESSION**S. 1094**

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

IN THE SENATE OF THE UNITED STATES

MAY 11, 2017

Mr. RUBIO (for himself, Mr. TESTER, Mr. ISAKSON, Mr. NELSON, Mr. MCCAIN, Mrs. SHAHEEN, Mr. MORAN, Ms. BALDWIN, Mr. HELLER, Mr. FLAKE, Mr. BOOZMAN, Mr. COTTON, Mr. INHOFE, Mr. KENNEDY, Mrs. CAPITO, Mr. COCHRAN, Mr. SULLIVAN, Mr. CORNYN, Mr. CASSIDY, Mr. PERDUE, Mr. TILLIS, Mr. WICKER, Mr. DAINES, and Mr. ROUNDS) introduced the following bill; which was read twice and referred to the Committee on Veterans' Affairs

MAY 24, 2017

Reported by Mr. ISAKSON, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italie*]

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,*

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

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

5 (b) **TABLE OF CONTENTS.**—The table of contents for
 6 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 Protec-
 tion.

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 ac-
 countability of senior executives.

Sec. 202. Improved authorities of Secretary of Veterans Affairs to improve ac-
 countability 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 Depart-
 ment of Veterans Affairs.

Sec. 205. Authority to recoup relocation expenses paid to or on behalf of em-
 ployees of Department of Veterans Affairs.

Sec. 206. Time period for response to notice of adverse actions against super-
 visory employees who commit prohibited personnel actions.

Sec. 207. Direct hiring authority for medical center directors and VISN direc-
 tors.

Sec. 208. Time periods for review of adverse actions with respect to certain em-
 ployees.

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:

9 **“§ 323. Office of Accountability and Whistleblower**
 10 **Protection**

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

15 “(b) HEAD OF OFFICE.—(1) The head of the Office
 16 shall be responsible for the functions of the Office and
 17 shall be appointed by the President pursuant to section
 18 308(a) of this title.

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

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

24 “(4) Notwithstanding section 308(b) of this title, the
 25 Secretary may only assign to the Assistant Secretary re-

1 sponibilities relating to the functions of the Office set
2 forth in subsection (e).

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

5 “(A) Advising the Secretary on all matters of
6 the Department relating to accountability, including
7 accountability of employees of the Department, re-
8 tiation against whistleblowers, and such matters as
9 the Secretary considers similar and affect public
10 trust in the Department.

11 “(B) Issuing reports and providing re-
12 ommendations related to the duties described in sub-
13 paragraph (A).

14 “(C) Receiving whistleblower disclosures.

15 “(D) Referring whistleblower disclosures re-
16 ceived under subparagraph (C) for investigation to
17 the Office of the Medical Inspector, the Office of In-
18 spector General, or other investigative entity, as ap-
19 propriate, if the Assistant Secretary has reason to
20 believe the whistleblower disclosure is evidence of a
21 violation of a provision of law, mismanagement,
22 gross waste of funds, abuse of authority, or a sub-
23 stantial and specific danger to public health and
24 safety.

1 ~~“(E) Receiving and referring disclosures from~~
2 ~~the Special Counsel for investigation to the Medical~~
3 ~~Inspector of the Department, the Inspector General~~
4 ~~of the Department, or such other person with inves-~~
5 ~~tigatory authority, as the Assistant Secretary con-~~
6 ~~siders appropriate.~~

7 ~~“(F) Recording, tracking, reviewing, and con-~~
8 ~~firming implementation of recommendations from~~
9 ~~audits and investigations carried out by the Inspee-~~
10 ~~tor General of the Department, the Medical Inspee-~~
11 ~~tor of the Department, the Special Counsel, and the~~
12 ~~Comptroller General of the United States, including~~
13 ~~the imposition of disciplinary actions and other cor-~~
14 ~~rective actions contained in such recommendations.~~

15 ~~“(G) Analyzing data from the Office and the~~
16 ~~Office of Inspector General telephone hotlines, other~~
17 ~~whistleblower disclosures, disaggregated by facility~~
18 ~~and area of health care if appropriate, and relevant~~
19 ~~audits and investigations to identify trends and issue~~
20 ~~reports to the Secretary based on analysis conducted~~
21 ~~under this subparagraph.~~

22 ~~“(H) Receiving, reviewing, and investigating al-~~
23 ~~legations of misconduct, retaliation, or poor perform-~~
24 ~~ance involving—~~

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

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

7 “(iii) a supervisory employee, if the allega-
8 tion involves retaliation against an employee for
9 making a whistleblower disclosure.

10 “(I) Making such recommendations to the Sec-
11 retary for disciplinary action as the Assistant Sec-
12 retary considers appropriate after substantiating any
13 allegation of misconduct or poor performance pursu-
14 ant to an investigation carried out as described in
15 subparagraph (F) or (H).

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

20 “(3) In any case in which the Assistant Secretary re-
21 ceives a whistleblower disclosure from an employee of the
22 Department under paragraph (1)(C), the Assistant Sec-
23 retary may not disclose the identity of the employee with-
24 out the consent of the employee, except in accordance with

1 the provisions of section 552a of title 5, or as required
2 by any other applicable provision of Federal law.

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

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

11 “(f) REPORTS.—(1)(A) Not later than June 30 of
12 each calendar year, beginning with June 30, 2017, the As-
13 sistant Secretary shall submit to the Committee on Vet-
14 erans’ Affairs of the Senate and the Committee on Vet-
15 erans’ Affairs of the House of Representatives a report
16 on the activities of the Office during the calendar year
17 in which the report is submitted.

18 “(B) Each report submitted under subparagraph (A)
19 shall include, for the period covered by the report, the fol-
20 lowing:

21 “(i) A full and substantive analysis of the ac-
22 tivities of the Office, including such statistical infor-
23 mation as the Assistant Secretary considers appro-
24 priate.

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

6 “(iii) Identification of such concerns as the As-
7 sistant Secretary may have regarding the size, staff-
8 ing, and resources of the Office and such rec-
9 ommendations as the Assistant Secretary may have
10 for legislative or administrative action to address
11 such concerns.

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

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

17 “(II) the protection of whistleblowers with-
18 in the Department.

19 “(v) Such other matters as the Assistant Sec-
20 retary considers appropriate regarding the functions
21 of the Office or other matters relating to the Office.

22 “(2) If the Secretary receives a recommendation for
23 disciplinary action under subsection (e)(1)(I) and does not
24 take or initiate the recommended disciplinary action before
25 the date that is 60 days after the date on which the Sec-

1 retary received the recommendation, the Secretary shall
 2 submit to the Committee on Veterans' Affairs of the Sen-
 3 ate and the Committee on Veterans' Affairs of the House
 4 of Representatives a detailed justification for not taking
 5 or initiating such disciplinary action.

6 “(g) DEFINITIONS.—In this section:

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

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

12 “(3) The term ‘whistleblower disclosure’ means
 13 any disclosure of information by an employee of the
 14 Department or individual applying to become an em-
 15 ployee of the Department which the employee or in-
 16 dividual reasonably believes evidences—

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

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

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

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

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

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

4 **SEC. 102. PROTECTION OF WHISTLEBLOWERS IN DEPART-**
 5 **MENT OF VETERANS AFFAIRS.**

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

8 (1) striking sections 731, 732, 734, 735, and
 9 736;

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

12 (3) by adding at the end the following new sec-
 13 tions:

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

16 “(a) DEVELOPMENT AND USE OF CRITERIA RE-
 17 QUIRED.—The Secretary, in consultation with the Assist-
 18 ant Secretary of Accountability and Whistleblower Protec-
 19 tion, shall develop criteria that—

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

23 “(2) promotes the protection of whistleblowers.

24 “(b) PRINCIPLES FOR PROTECTION OF WHISTLE-
 25 BLOWERS.—The criteria required by subsection (a) shall

1 include principles for the protection of whistleblowers,
2 such as the degree to which supervisory employees respond
3 constructively when employees of the Department report
4 concerns; take responsible action to resolve such concerns;
5 and foster an environment in which employees of the De-
6 partment feel comfortable reporting concerns to super-
7 visory employees or to the appropriate authorities.

8 “(e) SUPERVISORY EMPLOYEE AND WHISTLE-
9 BLOWER DEFINED.—In this section, the terms ‘super-
10 visory employee’ and ‘whistleblower’ have the meanings
11 given such terms in section 323 of this title.

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

13 “(a) TRAINING.—Not less frequently than once every
14 two years, the Secretary, in coordination with the Whistle-
15 blower Protection Ombudsman designated under section
16 3(d)(1)(C) of the Inspector General Act of 1978 (5 U.S.C.
17 App.); shall provide to each employee of the Department
18 training regarding whistleblower disclosures, including—

19 “(1) an explanation of each method established
20 by law in which an employee may file a whistle-
21 blower disclosure;

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

1 “(3) an explanation that the employee may not
2 be prosecuted or reprimed against for disclosing in-
3 formation to Congress, the Inspector General, or an-
4 other investigatory agency in instances where such
5 disclosure is permitted by law, including under sec-
6 tions 5701, 5705, and 7732 of this title; under sec-
7 tion 552a of title 5 (commonly referred to as the
8 Privacy Act); under chapter 93 of title 18, and pur-
9 suant to regulations promulgated under section
10 264(e) of the Health Insurance Portability and Ac-
11 countability Act of 1996 (Public Law 104–191);

12 “(4) an explanation of the language that is re-
13 quired to be included in all nondisclosure policies,
14 forms, and agreements pursuant to section
15 115(a)(1) of the Whistleblower Protection Enhance-
16 ment Act of 2012 (5 U.S.C. 2302 note); and

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

20 “(b) MANNER TRAINING IS PROVIDED.—The Sec-
21 retary shall ensure, to the maximum extent practicable,
22 that training provided under subsection (a) is provided in
23 person.

24 “(c) CERTIFICATION.—Not less frequently than once
25 every two years, the Secretary shall provide training on

1 merit system protection in a manner that the Special
2 Counsel certifies as being satisfactory.

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

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

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

14 (1) by striking the items relating to sections
15 731 through 736; and

16 (2) by adding at the end the following new
17 items:

“731. Adverse actions against supervisory employees who commit prohibited per-
sonnel actions relating to whistleblower complaints.

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

“733. Training regarding whistleblower disclosures.”.

18 (c) CONFORMING AMENDMENTS.—Section 731 of
19 such title, as redesignated by subsection (a)(2), is amend-
20 ed—

21 (1) in subsection (c)—

22 (A) in paragraph (1)—

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

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

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

11 (iii) in subparagraph (B), as redesignated
12 by clause (ii), by striking “complaint
13 in accordance with section 732 or with”
14 and inserting “disclosure made to the As-
15 sistant Secretary for Accountability and
16 Whistleblower Protection;” and

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

19 (2) by adding at the end the following new sub-
20 section:

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

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

5 **TITLE II—ACCOUNTABILITY OF**
 6 **SENIOR EXECUTIVES, SUPER-**
 7 **VISORS, AND OTHER EMPLOY-**
 8 **EES**

9 **SEC. 201. IMPROVED AUTHORITIES OF SECRETARY OF VET-**
 10 **ERANS AFFAIRS TO IMPROVE ACCOUNT-**
 11 **ABILITY OF SENIOR EXECUTIVES.**

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

14 **“§ 713. Senior executives: removal, demotion, or sus-**
 15 **pension based on performance or mis-**
 16 **conduct**

17 “(a) AUTHORITY.—(1) The Secretary may, as pro-
 18 vided in this section, reprimand or suspend, involuntarily
 19 reassign, demote, or remove a covered individual from a
 20 senior executive position at the Department if the Sec-
 21 retary determines that the misconduct or performance of
 22 the covered individual warrants such action.

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

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

4 “(A) advance notice of the action;

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

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

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

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

18 “(C) A decision under this paragraph on an action
19 under subsection (a) shall be issued not later than 15 busi-
20 ness days after notice of the action is provided to the cov-
21 ered individual under paragraph (1)(A). The decision shall
22 be in writing, and shall include the specific reasons there-
23 for and a file containing all evidence in support of the pro-
24 posed action.

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

4 “(B) The Secretary shall ensure that grievances
5 under this subsection are reviewed only by employees of
6 the Department.

7 “(4) A decision under paragraph (2) that is not
8 grieved, and a grievance decision under paragraph (3),
9 shall be final and conclusive.

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

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

17 “(A) arbitrary, capricious, an abuse of discre-
18 tion, or otherwise not in accordance with a provision
19 of law;

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

22 “(C) unsupported by substantial evidence.

23 “(e) RELATION TO OTHER PROVISIONS OF LAW.—
24 Section 3592(b)(1) of title 5 and the procedures under

1 section 7543(b) of such title do not apply to an action
2 under subsection (a).

3 “(d) DEFINITIONS.—In this section:

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

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

7 “(B) any individual who occupies an ad-
8 ministrative or executive position and who was
9 appointed under section 7306(a) or section
10 7401(1) of this title.

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

15 “(3) The term ‘senior executive position’
16 means—

17 “(A) with respect to a career appointee (as
18 that term is defined in section 3132(a) of title
19 5); a Senior Executive Service position (as such
20 term is defined in such section); and

21 “(B) with respect to a covered individual
22 appointed under section 7306(a) or section
23 7401(1) of this title, an administrative or execu-
24 tive position.”.

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

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

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

9 **SEC. 202. IMPROVED AUTHORITIES OF SECRETARY OF VET-**
 10 **ERANS AFFAIRS TO IMPROVE ACCOUNT-**
 11 **ABILITY OF EMPLOYEES.**

12 (a) IN GENERAL.—Subchapter I of chapter 7 of title
 13 38, United States Code, is amended by inserting after sec-
 14 tion 713 the following new section:

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

17 “(a) IN GENERAL.—(1) The Secretary may remove,
 18 demote, or suspend a covered individual who is an em-
 19 ployee of the Department if the Secretary determines the
 20 performance or misconduct of the covered individual war-
 21 rants such removal, demotion, or suspension.

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

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

3 “(B) demote the covered individual by means of
4 a reduction in grade for which the covered individual
5 is qualified, that the Secretary determines is appro-
6 priate, and that reduces the annual rate of pay of
7 the covered individual; or

8 “(C) suspend the covered individual.

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

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

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

24 “(c) PROCEDURE.—(1)(A) The aggregate period for
25 notice, response, and final decision in a removal, demotion,

1 or suspension under this section may not exceed 15 busi-
2 ness days.

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

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

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

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

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

23 “(4)(A) Subject to subparagraph (B) and subsection
24 (d), any removal or demotion under this section, and any
25 suspension of more than 14 days under this section, may

1 be appealed to the Merit Systems Protection Board, which
2 shall refer such appeal to an administrative judge pursu-
3 ant to section 7701(b)(1) of title 5.

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

8 “(d) EXPEDITED REVIEW.—(1) Upon receipt of an
9 appeal under subsection (c)(4)(A), the administrative
10 judge shall expedite any such appeal under section
11 7701(b)(1) of title 5 and, in any such case, shall issue
12 a final and complete decision not later than 180 days after
13 the date of the appeal.

14 “(2)(A) Notwithstanding section 7701(e)(1)(B) of
15 title 5, the administrative judge shall uphold the decision
16 of the Secretary to remove, demote, or suspend an em-
17 ployee under subsection (a) if the decision is supported
18 by substantial evidence.

19 “(B) If the decision of the Secretary is supported by
20 substantial evidence, the administrative judge shall not
21 mitigate the penalty prescribed by the Secretary.

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

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

10 “(5)(A) A decision of the Merit Systems Protection
11 Board under paragraph (3) may be appealed to the United
12 States Court of Appeals for the Federal Circuit pursuant
13 to section 7703 of title 5.

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

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

19 “(7) During the period beginning on the date on
20 which a covered individual appeals a removal from the civil
21 service under subsection (c) and ending on the date that
22 the United States Court of Appeals for the Federal Circuit
23 issues a final decision on such appeal, such covered indi-
24 vidual may not receive any pay, awards, bonuses, incen-
25 tives, allowances, differentials, student loan repayments,

1 special payments, or benefits related to the employment
2 of the individual by the Department.

3 “(8) To the maximum extent practicable, the Sec-
4 retary shall provide to the Merit Systems Protection
5 Board such information and assistance as may be nec-
6 essary to ensure an appeal under this subsection is expe-
7 dited.

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

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

17 “(e) WHISTLEBLOWER PROTECTION.—(1) In the
18 case of a covered individual seeking corrective action (or
19 on behalf of whom corrective action is sought) from the
20 Office of Special Counsel based on an alleged prohibited
21 personnel practice described in section 2302(b) of title 5,
22 the Secretary may not remove, demote, or suspend such
23 covered individual under subsection (a) without the ap-
24 proval of the Special Counsel under section 1214(f) of title
25 5.

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

6 ~~“(A) in the case in which the Assistant Sec-~~
 7 retary determines to refer the whistleblower disclo-
 8 sure under section ~~323(e)(1)(D)~~ of this title to an
 9 office or other investigative entity, a final decision
 10 with respect to the whistleblower disclosure has been
 11 made by such office or other investigative entity; or

12 ~~“(B) in the case in which the Assistant Sec-~~
 13 retary determines not to refer the whistleblower
 14 disclosure under such section, the Assistant Sec-
 15 retary makes such determination.

16 ~~“(f) TERMINATION OF INVESTIGATIONS BY OFFICE~~
 17 ~~OF SPECIAL COUNSEL.—(1) Notwithstanding any other~~
 18 ~~provision of law, the Special Counsel (established by sec-~~
 19 ~~tion 1211 of title 5) may terminate an investigation of~~
 20 a prohibited personnel practice alleged by an employee or
 21 former employee of the Department after the Special
 22 Counsel provides to the employee or former employee a
 23 written statement of the reasons for the termination of
 24 the investigation.

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

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

8 “(h) DEFINITIONS.—In this section:

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

12 “(A) an individual occupying a senior execu-
13 tive position (as defined in section 713(d) of
14 this title);

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

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

19 “(D) a political appointee.

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

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

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

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

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

10 “(B) a limited term appointee, limited
11 emergency appointee, or noncareer appointee in
12 the Senior Executive Service, as defined under
13 paragraphs (5), (6), and (7), respectively, of
14 section 3132(a) of title 5; or

15 “(C) employed in a position of a confiden-
16 tial or policy-determining character under
17 schedule C of subpart C of part 213 of title 5,
18 Code of Federal Regulations, or successor regu-
19 lation.

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

23 (b) CLERICAL AND CONFORMING AMENDMENTS.—

24 (1) CLERICAL.—The table of sections at the be-
25 ginning of chapter 7 of such title is amended by in-

1 serting after the item relating to section 713 the fol-
 2 lowing new item:

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

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

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

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

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

10 “(4) any removal or demotion under section
 11 714 of title 38.”.

12 **SEC. 203. REDUCTION OF BENEFITS FOR DEPARTMENT OF**
 13 **VETERANS AFFAIRS EMPLOYEES CONVICTED**
 14 **OF CERTAIN CRIMES.**

15 (a) REDUCTION OF BENEFITS.—

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

19 **“§ 719. Reduction of benefits of employees convicted**
 20 **of certain crimes**

21 “(a) REDUCTION OF ANNUITY FOR REMOVED EM-
 22 PLOYEE.—(1) The Secretary shall order that the covered
 23 service of an employee of the Department removed from
 24 a position for performance or misconduct under section

1 ~~719 or 7461~~ of this title or any other provision of law
2 shall not be taken into account for purposes of calculating
3 an annuity with respect to such individual under chapter
4 ~~83~~ or chapter 84 of title 5, if—

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

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

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

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

15 “(C) the Secretary issues the order—

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

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

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

6 “(b) REDUCTION OF ANNUITY FOR RETIRED EM-
 7 PLOYEE.—(1) The Secretary may order that the covered
 8 service of an individual who is removed for performance
 9 or misconduct under section 719 or 7461 of this title or
 10 any other provision of law but who leaves employment at
 11 the Department prior to the issuance of a final decision
 12 with respect to such action shall not be taken into account
 13 for purposes of calculating an annuity with respect to such
 14 individual under chapter 83 or chapter 84 of title 5, if—

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

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

21 “(i) notice of the proposed order;

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

25 “(C) the Secretary issues the order—

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

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

10 “(2) Upon the issuance of an order by the Secretary
11 under paragraph (1), the individual shall have an oppor-
12 tunity to appeal the order to the Director of the Office
13 of Personnel Management before the date that is seven
14 business days after the date of such issuance.

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

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

24 “(d) LUMP-SUM ANNUITY CREDIT.—Any individual
25 with respect to whom an annuity is reduced under sub-

1 section (a) or (b) shall be entitled to be paid so much of
2 such individual's lump-sum credit as is attributable to the
3 period of covered service.

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

11 “(2) Regulations prescribed under paragraph (1)
12 shall be consistent with the requirements of section
13 8332(o)(5) and 8411(1)(5) of title 5, as the case may be.

14 “(f) DEFINITIONS.—In this section:

15 “(1) The term ‘covered service’ means, with re-
16 spect to an individual subject to a removal for per-
17 formance or misconduct under section 719 or 7461
18 of this title or any other provision of law, the period
19 of service beginning on the date that the Secretary
20 determines under such applicable provision that the
21 individual engaged in activity that gave rise to such
22 action and ending on the date that the individual is
23 removed from or leaves a position of employment at
24 the Department prior to the issuance of a final deci-
25 sion with respect to such action.

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

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

9 “(1) the Secretary determines that the indi-
 10 vidual engaged in misconduct or poor performance
 11 prior to payment of the award or bonus, and that
 12 such award or bonus would not have been paid, in
 13 whole or in part, had the misconduct or poor per-
 14 formance been known prior to payment; and

15 “(2) before such repayment, the employee is af-
 16 forded—

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

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

21 “(3) the Secretary issues the order—

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

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

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

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

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

19 (b) CLERICAL AMENDMENT.—The table of sections
 20 at the beginning of such chapter, as amended by section
 21 203(a)(2), is further amended by inserting after the item
 22 relating to section 719 the following new item:

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

23 (c) EFFECTIVE DATE.—Section 721 of title 38,
 24 United States Code, as added by subsection (a), shall
 25 apply with respect to an award or bonus paid by the Sec-

1 retary of Veterans Affairs to an employee of the Depart-
 2 ment of Veterans Affairs on or after the date of the enact-
 3 ment of this Act.

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

10 **SEC. 205. AUTHORITY TO RECOUP RELOCATION EXPENSES**

11 **PAID TO OR ON BEHALF OF EMPLOYEES OF**

12 **DEPARTMENT OF VETERANS AFFAIRS.**

13 (a) IN GENERAL.—Subchapter I of chapter 7 of title
 14 38, United States Code, as amended by section 204, is
 15 further amended by adding at the end the following new
 16 section:

17 **“§ 723. Recoupment of relocation expenses paid on**

18 **behalf of employees of Department**

19 **“(a) IN GENERAL.—**Notwithstanding any other pro-
 20 vision of law, the Secretary may issue an order directing
 21 an employee of the Department to repay the amount, or
 22 a portion of the amount, paid to or on behalf of the em-
 23 ployee under title 5 for relocation expenses, including any
 24 expenses under section 5724 or 5724a of such title, or
 25 this title if—

1 ~~“(1) the Secretary determines that relocation~~
2 ~~expenses were paid following an act of fraud or mal-~~
3 ~~feasance that influenced the authorization of the re-~~
4 ~~location expenses;~~

5 ~~“(2) before such repayment, the employee is af-~~
6 ~~forded—~~

7 ~~“(A) notice of the proposed order; and~~

8 ~~“(B) an opportunity to respond to the pro-~~
9 ~~posed order not later than ten business days~~
10 ~~following the receipt of such notice; and~~

11 ~~“(3) the Secretary issues the order—~~

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

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

21 ~~“(b) APPEAL OF ORDER OF SECRETARY.—(1) Upon~~
22 ~~the issuance of an order by the Secretary under subsection~~
23 ~~(a) with respect to an individual, the individual shall have~~
24 ~~an opportunity to appeal the order to the Director of the~~

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

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

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

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

“723. Recoupment of relocation expenses paid on behalf of employees of Depart-
 ment.”.

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

1 **SEC. 206. TIME PERIOD FOR RESPONSE TO NOTICE OF AD-**
 2 **VERSE ACTIONS AGAINST SUPERVISORY EM-**
 3 **PLOYEES WHO COMMIT PROHIBITED PER-**
 4 **SONNEL ACTIONS.**

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

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

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

11 **SEC. 207. DIRECT HIRING AUTHORITY FOR MEDICAL CEN-**
 12 **TER DIRECTORS AND VISN DIRECTORS.**

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

16 “(4) Directors of medical centers and directors
 17 of Veterans Integrated Service Networks with dem-
 18 onstrated ability in the medical profession, in health
 19 care administration, or in health care fiscal manage-
 20 ment.”.

21 (b) CONFORMING AMENDMENT.—Section 7404(a)(1)
 22 of such title is amended by inserting “and 7401(4)” after
 23 “7306”.

1 **SEC. 208. TIME PERIODS FOR REVIEW OF ADVERSE AC-**
 2 **TIONS WITH RESPECT TO CERTAIN EMPLOY-**
 3 **EES.**

4 (a) PHYSICIANS, DENTISTS, PODIATRISTS, CHIRO-
 5 PRACTORS, OPTOMETRISTS, REGISTERED NURSES, PHY-
 6 SICIAN ASSISTANTS, AND EXPANDED-FUNCTION DENTAL
 7 AUXILIARIES.—Paragraph (2) of section 7461(b) of title
 8 38, United States Code, is amended to read as follows:

9 “(2) In any case other than a case described in para-
 10 graph (1) that involves or includes a question of profes-
 11 sional conduct or competence in which a major adverse
 12 action was not taken, such an appeal shall be made
 13 through Department grievance procedures under section
 14 7463 of this title.”.

15 (b) MAJOR ADVERSE ACTIONS INVOLVING PROFES-
 16 SIONAL CONDUCT OR COMPETENCE.—Section 7462(b) of
 17 such title is amended—

18 (1) in paragraph (1)—

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

23 (B) in subparagraph (A)—

24 (i) by striking “At least 30 days ad-
 25 vance written notice” and inserting “Ad-
 26 vance written notice”;

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

3 (iii) by inserting “and a file con-
 4 taining all the evidence in support of each
 5 charge,” after “with respect to each
 6 charge,”; and

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

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

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

18 (3) in paragraph (4)—

19 (A) by striking subparagraph (A) and in-
 20 serting the following new subparagraph (A):

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

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

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

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

6 “~~(B)~~ The deciding official shall render a decision
7 under paragraph ~~(3)~~ on charges under this subsection not
8 later than 15 business days after the Under Secretary pro-
9 vides notice on the charges for purposes of paragraph
10 ~~(1)(A)~~.

11 “~~(6)~~ The procedures in this subsection shall super-
12 sede any collective bargaining agreement to the extent that
13 such agreement is inconsistent with such procedures.”.

14 (e) OTHER ADVERSE ACTIONS.—Section 7463(e) of
15 such title is amended—

16 (1) in paragraph (1), by striking “the same no-
17 tice and opportunity to answer with respect to those
18 charges as provided in subparagraphs (A) and (B)
19 of section 7462(b)(1) of this title” and inserting
20 “notice and an opportunity to answer with respect to
21 those charges in accordance with subparagraphs (A)
22 and (B) of section 7462(b)(1) of this title, but with-
23 in the time periods specified in paragraph ~~(3)~~”;

24 (2) in paragraph (2)—

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

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

8 (C) in subparagraph (B), by striking “a
9 reasonable time” and inserting “time to an-
10 swer”; and

11 (3) by adding at the end the following new
12 paragraph (3):

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

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

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

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

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

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

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

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

16 (b) **DEFINITIONS.**—In this section:

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

20 (2) **WHISTLEBLOWER.**—The term “whistle-
21 blower” has the meaning given such term in section
22 323(g) of title 38, United States Code, as added by
23 section 101.

1 **SEC. 210. ASSESSMENT AND REPORT ON EFFECT ON SEN-**
2 **IOR EXECUTIVES AT DEPARTMENT OF VET-**
3 **ERANS AFFAIRS.**

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

7 (1) measure and assess the effect of the enact-
8 ment of this title on the morale, engagement, hiring,
9 promotion, retention, discipline, and productivity of
10 individuals in senior executive positions at the De-
11 partment of Veterans Affairs; and

12 (2) submit to the Committee on Veterans' Af-
13 fairs of the Senate and the Committee on Veterans'
14 Affairs of the House of Representatives a report on
15 the findings of the Secretary with respect to the
16 measurement and assessment carried out under
17 paragraph (1).

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

20 (1) With respect to engagement, trends in mo-
21 rale of individuals in senior executive positions and
22 individuals aspiring to senior executive positions.

23 (2) With respect to promotions—

24 (A) whether the Department is experi-
25 encing an increase or decrease in the number of
26 employees participating in leadership develop-

1 ment and candidate development programs with
2 the intention of becoming candidates for senior
3 executive positions; and

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

6 (3) With respect to retention—

7 (A) trends in retirement rates of individ-
8 uals in senior executive positions at the Depart-
9 ment;

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

12 (C) rates of transfer of—

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

16 (ii) individuals from senior executive
17 positions at the Department to other Fed-
18 eral agencies; and

19 (D) trends in total loss rates by job func-
20 tion.

21 (4) With respect to disciplinary processes—

22 (A) regarding individuals in senior execu-
23 tive positions at the Department who are the
24 subject of disciplinary action—

1 (i) the length of the disciplinary proc-
2 ess in days for such individuals both before
3 the date of the enactment of this Act and
4 under the provisions of this Act described
5 in subsection (a)(1); and

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

10 (B) the components or offices of the De-
11 partment which experience the greatest number
12 of proposed adverse actions against individuals
13 in senior executive positions and components
14 and offices which experience the least relative to
15 the size of the components or offices' total
16 number of senior executive positions;

17 (C) the tenure of individuals in senior ex-
18 ecutive positions who are the subject of discipli-
19 nary action;

20 (D) whether the individuals in senior exec-
21 utive positions who are the subject of discipli-
22 nary action have previously been disciplined;
23 and

24 (E) the number of instances of disciplinary
25 action taken by the Secretary against individ-

1 uals in senior executive positions at the Depart-
2 ment as compared to governmentwide discipline
3 against individuals in Senior Executive Service
4 positions (as defined in section 3132(a) of title
5 5, United States Code) as a percentage of the
6 total number of individuals in senior executive
7 positions at the Department and Senior Execu-
8 tive Service positions (as so defined).

9 (5) With respect to hiring—

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

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

18 (C) the number of senior executive posi-
19 tions at the Department filled by hires outside
20 of the Department compared to hires from
21 within the Department;

22 (D) the length of time to fill a senior execu-
23 tive position at the Department and for a new
24 hire to begin working in a new senior executive
25 position;

1 (E) the mission-critical deficiencies filled
 2 by newly hired individuals in senior executive
 3 positions and the connection between mission-
 4 critical deficiencies filled under the provisions
 5 described in subsection (a) and annual perform-
 6 ance of the Department;

7 (F) the satisfaction of applicants for senior
 8 executive positions at the Department with the
 9 hiring process, including the clarity of job an-
 10 nouncements, reasons for withdrawal of applica-
 11 tions, communication regarding status of appli-
 12 cations, and timeliness of hiring decision; and

13 (G) the satisfaction of newly hired individ-
 14 uals in senior executive positions at the Depart-
 15 ment with the hiring process and the process of
 16 joining and becoming oriented with the Depart-
 17 ment.

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

22 **SEC. 211. MEASUREMENT OF DEPARTMENT OF VETERANS**
 23 **AFFAIRS DISCIPLINARY PROCESS OUTCOMES**
 24 **AND EFFECTIVENESS.**

25 (a) MEASURING AND COLLECTING.—

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

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

10 (A) The average time from the initiation of
11 an adverse action against an employee at the
12 Department to the final resolution of that ac-
13 tion.

14 (B) The number of distinct steps and lev-
15 els of review within the Department involved in
16 the disciplinary process and the average length
17 of time required to complete these steps.

18 (C) The rate of use of alternate discipli-
19 nary procedures compared to traditional dis-
20 ciplinary procedures and the frequency with
21 which employees who are subject to alternative
22 disciplinary procedures commit additional of-
23 fenses.

24 (D) The number of appeals from adverse
25 actions filed against employees of the Depart-

1 ment, the number of appeals upheld, and the
2 reasons for which the appeals were upheld.

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

6 ~~(b)~~ REPORT.—

7 ~~(1)~~ IN GENERAL.—Not later than December 31,
8 2017, the Secretary shall submit to the appropriate
9 committees of Congress a report on the disciplinary
10 procedures and actions of the Department.

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

13 ~~(A)~~ The information collected under sub-
14 section ~~(a)~~.

15 ~~(B)~~ The findings of the Secretary with re-
16 spect to the measurement and collection carried
17 out under subsection ~~(a)~~.

18 ~~(C)~~ An analysis of the disciplinary proce-
19 dures and actions of the Department.

20 ~~(D)~~ Suggestions for improving the discipli-
21 nary procedures and actions of the Department.

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

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

4 ~~(A)~~ the Committee on Appropriations and
 5 the Committee on Veterans’ Affairs of the Sen-
 6 ate; and

7 ~~(B)~~ the Committee on Appropriations and
 8 the Committee on Veterans’ Affairs of the
 9 House of Representatives.

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

11 ~~(a)~~ *SHORT TITLE.*—*This Act may be cited as the “De-*
 12 *partment of Veterans Affairs Accountability and Whistle-*
 13 *blower Protection Act of 2017”.*

14 ~~(b)~~ *TABLE OF CONTENTS.*—*The table of contents for*
 15 *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 ACCOUNTABILITY**
 5 **AND WHISTLEBLOWER PROTECTION.**

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

9 **“§ 323. Office of Accountability and Whistleblower**
 10 **Protection**

11 “(a) *ESTABLISHMENT.*—There is established in the De-
 12 partment an office to be known as the ‘Office of Account-
 13 ability and Whistleblower Protection’ (in this section re-
 14 ferred to as the ‘Office’).

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

1 “(2) *The head of the Office shall be known as the ‘As-*
2 *sistant Secretary for Accountability and Whistleblower Pro-*
3 *tection’.*

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

6 “(4) *Notwithstanding section 308(b) of this title, the*
7 *Secretary may only assign to the Assistant Secretary re-*
8 *sponsibilities relating to the functions of the Office set forth*
9 *in subsection (c).*

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

12 “(A) *Advising the Secretary on all matters of the*
13 *Department relating to accountability, including ac-*
14 *countability of employees of the Department, retali-*
15 *ation against whistleblowers, and such matters as the*
16 *Secretary considers similar and affect public trust in*
17 *the Department.*

18 “(B) *Issuing reports and providing recommenda-*
19 *tions related to the duties described in subparagraph*
20 *(A).*

21 “(C) *Receiving whistleblower disclosures.*

22 “(D) *Referring whistleblower disclosures received*
23 *under subparagraph (C) for investigation to the Of-*
24 *fice of the Medical Inspector, the Office of Inspector*
25 *General, or other investigative entity, as appropriate,*

1 *if the Assistant Secretary has reason to believe the*
2 *whistleblower disclosure is evidence of a violation of*
3 *a provision of law, mismanagement, gross waste of*
4 *funds, abuse of authority, or a substantial and spe-*
5 *cific danger to public health or safety.*

6 *“(E) Receiving and referring disclosures from*
7 *the Special Counsel for investigation to the Medical*
8 *Inspector of the Department, the Inspector General of*
9 *the Department, or such other person with investiga-*
10 *tory authority, as the Assistant Secretary considers*
11 *appropriate.*

12 *“(F) Recording, tracking, reviewing, and con-*
13 *firming implementation of recommendations from au-*
14 *dits and investigations carried out by the Inspector*
15 *General of the Department, the Medical Inspector of*
16 *the Department, the Special Counsel, and the Comp-*
17 *troller General of the United States, including the im-*
18 *position of disciplinary actions and other corrective*
19 *actions contained in such recommendations.*

20 *“(G) Analyzing data from the Office and the Of-*
21 *fice of Inspector General telephone hotlines, other*
22 *whistleblower disclosures, disaggregated by facility*
23 *and area of health care if appropriate, and relevant*
24 *audits and investigations to identify trends and issue*

1 *reports to the Secretary based on analysis conducted*
2 *under this subparagraph.*

3 *“(H) Receiving, reviewing, and investigating al-*
4 *legations of misconduct, retaliation, or poor perform-*
5 *ance involving—*

6 *“(i) an individual in a senior executive po-*
7 *sition (as defined in section 713(d) of this title)*
8 *in the Department;*

9 *“(ii) an individual employed in a confiden-*
10 *tial, policy-making, policy-determining, or pol-*
11 *icy-advocating position in the Department; or*

12 *“(iii) a supervisory employee, if the allega-*
13 *tion involves retaliation against an employee for*
14 *making a whistleblower disclosure.*

15 *“(I) Making such recommendations to the Sec-*
16 *retary for disciplinary action as the Assistant Sec-*
17 *retary considers appropriate after substantiating any*
18 *allegation of misconduct or poor performance pursu-*
19 *ant to an investigation carried out as described in*
20 *subparagraph (F) or (H).*

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

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

8 “(d) *STAFF AND RESOURCES.—The Secretary shall en-*
9 *sure that the Assistant Secretary has such staff, resources,*
10 *and access to information as may be necessary to carry out*
11 *the functions of the Office.*

12 “(e) *RELATION TO OFFICE OF GENERAL COUNSEL.—*
13 *The Office shall not be established as an element of the Of-*
14 *fice of the General Counsel and the Assistant Secretary may*
15 *not report to the General Counsel.*

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

23 “(B) *Each report submitted under subparagraph (A)*
24 *shall include, for the period covered by the report, the fol-*
25 *lowing:*

1 “(i) A full and substantive analysis of the activi-
2 ties of the Office, including such statistical informa-
3 tion as the Assistant Secretary considers appropriate.

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

9 “(iii) Identification of such concerns as the As-
10 sistant Secretary may have regarding the size, staff-
11 ing, and resources of the Office and such rec-
12 ommendations as the Assistant Secretary may have
13 for legislative or administrative action to address
14 such concerns.

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

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

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

22 “(v) Such other matters as the Assistant Sec-
23 retary considers appropriate regarding the functions
24 of the Office or other matters relating to the Office.

1 “(2) *If the Secretary receives a recommendation for*
2 *disciplinary action under subsection (c)(1)(I) and does not*
3 *take or initiate the recommended disciplinary action before*
4 *the date that is 60 days after the date on which the Sec-*
5 *retary received the recommendation, the Secretary shall*
6 *submit to the Committee on Veterans’ Affairs of the Senate*
7 *and the Committee on Veterans’ Affairs of the House of Rep-*
8 *resentatives a detailed justification for not taking or initi-*
9 *ating such disciplinary action.*

10 “(g) *DEFINITIONS.—In this section:*

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

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

16 “(3) *The term ‘whistleblower disclosure’ means*
17 *any disclosure of information by an employee of the*
18 *Department or individual applying to become an em-*
19 *ployee of the Department which the employee or indi-*
20 *vidual reasonably believes evidences—*

21 “(A) *a violation of a law, rule, or regula-*
22 *tion; or*

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

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

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

6 (c) *CLERICAL AMENDMENT.*—The table of sections at
 7 the beginning of chapter 3 of such title is amended by add-
 8 ing at the end the following new item:

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

9 **SEC. 102. PROTECTION OF WHISTLEBLOWERS IN DEPART-**
 10 **MENT OF VETERANS AFFAIRS.**

11 (a) *IN GENERAL.*—Subchapter II of chapter 7 of title
 12 38, United States Code, is amended by—

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

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

15 and

16 (3) by adding at the end the following new sec-
 17 tions:

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

20 “(a) *DEVELOPMENT AND USE OF CRITERIA RE-*
 21 *QUIRED.*—The Secretary, in consultation with the Assistant
 22 Secretary of Accountability and Whistleblower Protection,
 23 shall develop criteria that—

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

4 “(2) *promotes the protection of whistleblowers.*

5 “(b) *PRINCIPLES FOR PROTECTION OF WHISTLE-*
6 *BLOWERS.—The criteria required by subsection (a) shall in-*
7 *clude principles for the protection of whistleblowers, such*
8 *as the degree to which supervisory employees respond con-*
9 *structively when employees of the Department report con-*
10 *cerns, take responsible action to resolve such concerns, and*
11 *foster an environment in which employees of the Depart-*
12 *ment feel comfortable reporting concerns to supervisory em-*
13 *ployees or to the appropriate authorities.*

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

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

19 “(a) *TRAINING.—Not less frequently than once every*
20 *two years, the Secretary, in coordination with the Whistle-*
21 *blower Protection Ombudsman designated under section*
22 *3(d)(1)(C) of the Inspector General Act of 1978 (5 U.S.C.*
23 *App.), shall provide to each employee of the Department*
24 *training regarding whistleblower disclosures, including—*

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

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

7 “(3) an explanation that the employee may not
8 be prosecuted or reprimed against for disclosing infor-
9 mation to Congress, the Inspector General, or another
10 investigatory agency in instances where such disclo-
11 sure is permitted by law, including under sections
12 5701, 5705, and 7732 of this title, under section 552a
13 of title 5 (commonly referred to as the Privacy Act),
14 under chapter 93 of title 18, and pursuant to regula-
15 tions promulgated under section 264(c) of the Health
16 Insurance Portability and Accountability Act of 1996
17 (Public Law 104–191);

18 “(4) an explanation of the language that is re-
19 quired to be included in all nondisclosure policies,
20 forms, and agreements pursuant to section 115(a)(1)
21 of the Whistleblower Protection Enhancement Act of
22 2012 (5 U.S.C. 2302 note); and

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

1 “(b) *MANNER TRAINING IS PROVIDED.*—*The Secretary*
 2 *shall ensure, to the maximum extent practicable, that train-*
 3 *ing provided under subsection (a) is provided in person.*

4 “(c) *CERTIFICATION.*—*Not less frequently than once*
 5 *every two years, the Secretary shall provide training on*
 6 *merit system protection in a manner that the Special Coun-*
 7 *sel certifies as being satisfactory.*

8 “(d) *PUBLICATION.*—*The Secretary shall publish on*
 9 *the Internet website of the Department, and display promi-*
 10 *nently at each facility of the Department, the rights of an*
 11 *employee to make a whistleblower disclosure, including the*
 12 *information described in paragraphs (1) through (5) of sub-*
 13 *section (a).*

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

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

19 (1) *by striking the items relating to sections 731*
 20 *through 736; and*

21 (2) *by adding at the end the following new items:*

“731. *Adverse actions against supervisory employees who commit prohibited per-*
sonnel actions relating to whistleblower complaints.

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

“733. *Training regarding whistleblower disclosures.”.*

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

1 (1) *in subsection (c)—*

2 (A) *in paragraph (1)—*

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

5 “(A) *making a whistleblower disclosure to*
6 *the Assistant Secretary for Accountability and*
7 *Whistleblower Protection, the Inspector General*
8 *of the Department, the Special Counsel, or Con-*
9 *gress;”;* and

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

13 (iii) *in subparagraph (B), as redesign-*
14 *ated by clause (ii), by striking “complaint*
15 *in accordance with section 732 or with”*
16 *and inserting “disclosure made to the As-*
17 *stant Secretary for Accountability and*
18 *Whistleblower Protection,”;* and

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

21 (2) *by adding at the end the following new sub-*
22 *section:*

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

1 *section 323 of title 38, United States Code, as added by*
 2 *section 101.*

3 **TITLE II—ACCOUNTABILITY OF**
 4 **SENIOR EXECUTIVES, SUPER-**
 5 **VISORS, AND OTHER EMPLOY-**
 6 **EES**

7 **SEC. 201. IMPROVED AUTHORITIES OF SECRETARY OF VET-**
 8 **ERANS AFFAIRS TO IMPROVE ACCOUNT-**
 9 **ABILITY OF SENIOR EXECUTIVES.**

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

12 **“§713. Senior executives: removal, demotion, or sus-**
 13 **pension based on performance or mis-**
 14 **conduct**

15 *“(a) AUTHORITY.—(1) The Secretary may, as pro-*
 16 *vided in this section, reprimand or suspend, involuntarily*
 17 *reassign, demote, or remove a covered individual from a*
 18 *senior executive position at the Department if the Secretary*
 19 *determines that the misconduct or performance of the cov-*
 20 *ered individual warrants such action.*

21 *“(2) If the Secretary so removes such an individual,*
 22 *the Secretary may remove the individual from the civil*
 23 *service (as defined in section 2101 of title 5).*

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

4 “(A) *advance notice of the action and a file con-*
5 *taining all evidence in support of the proposed action;*

6 “(B) *be represented by an attorney or other rep-*
7 *resentative of the covered individual’s choice; and*

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

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

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

19 “(C) *A decision under this paragraph on an action*
20 *under subsection (a) shall be issued not later than 15 busi-*
21 *ness days after notice of the action is provided to the covered*
22 *individual under paragraph (1)(A). The decision shall be*
23 *in writing, and shall include the specific reasons therefor.*

1 “(3) *The Secretary shall ensure that the grievance*
 2 *process established under paragraph (1)(C) takes fewer than*
 3 *21 days.*

4 “(4) *A decision under paragraph (2) that is not*
 5 *grieved, and a grievance decision under paragraph (3),*
 6 *shall be final and conclusive.*

7 “(5) *A covered individual adversely affected by a deci-*
 8 *sion under paragraph (2) that is not grieved, or by a griev-*
 9 *ance decision under paragraph (3), may obtain judicial re-*
 10 *view of such decision.*

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

14 “(A) *arbitrary, capricious, an abuse of discre-*
 15 *tion, or otherwise not in accordance with a provision*
 16 *of law;*

17 “(B) *obtained without procedures required by a*
 18 *provision of law having been followed; or*

19 “(C) *unsupported by substantial evidence.*

20 “(c) *RELATION TO OTHER PROVISIONS OF LAW.—Sec-*
 21 *tion 3592(b)(1) of title 5 and the procedures under section*
 22 *7543(b) of such title do not apply to an action under sub-*
 23 *section (a).*

24 “(d) *DEFINITIONS.—In this section:*

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

1 “(A) a career appointee (as that term is de-
2 fined in section 3132(a)(4) of title 5); or

3 “(B) any individual who occupies an ad-
4 ministrative or executive position and who was
5 appointed under section 7306(a), section
6 7401(1), or section 7401(4) of this title.

7 “(2) The term ‘misconduct’ includes neglect of
8 duty, malfeasance, or failure to accept a directed re-
9 assignment or to accompany a position in a transfer
10 of function.

11 “(3) The term ‘senior executive position’
12 means—

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

17 “(B) with respect to a covered individual
18 appointed under section 7306(a) or section
19 7401(1) of this title, an administrative or execu-
20 tive position.”.

21 (b) *CONFORMING AMENDMENT.*—Section 7461(c)(1) of
22 such title is amended by inserting “employees in senior ex-
23 ecutive positions (as defined in section 713(d) of this title)
24 and” before “interns”.

1 (c) *CLERICAL AMENDMENT.*—*The table of sections at*
 2 *the beginning of chapter 7 of such title is amended by strik-*
 3 *ing the item relating to section 713 and inserting the fol-*
 4 *lowing new item:*

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

5 **SEC. 202. IMPROVED AUTHORITIES OF SECRETARY OF VET-**
 6 **ERANS AFFAIRS TO IMPROVE ACCOUNT-**
 7 **ABILITY OF EMPLOYEES.**

8 (a) *IN GENERAL.*—*Subchapter I of chapter 7 of title*
 9 *38, United States Code, is amended by inserting after sec-*
 10 *tion 713 the following new section:*

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

13 “(a) *IN GENERAL.*—(1) *The Secretary may remove,*
 14 *demote, or suspend a covered individual who is an employee*
 15 *of the Department if the Secretary determines the perform-*
 16 *ance or misconduct of the covered individual warrants such*
 17 *removal, demotion, or suspension.*

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

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

22 “(B) *demote the covered individual by means of*
 23 *a reduction in grade for which the covered individual*
 24 *is qualified, that the Secretary determines is appro-*

1 *priate, and that reduces the annual rate of pay of the*
2 *covered individual; or*

3 *“(C) suspend the covered individual.*

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

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

15 *“(B) If a covered individual so demoted does not report*
16 *for duty or receive approval to use accrued unused leave,*
17 *such covered individual shall not receive pay or other bene-*
18 *fits pursuant to subsection (d)(5).*

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

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

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

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

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

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

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

23 “(B) An appeal under subparagraph (A) of a removal,
24 demotion, or suspension may only be made if such appeal

1 *is made not later than 10 business days after the date of*
2 *such removal, demotion, or suspension.*

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

9 “(2)(A) *Notwithstanding section 7701(c)(1)(B) of title*
10 *5, the administrative judge shall uphold the decision of the*
11 *Secretary to remove, demote, or suspend an employee under*
12 *subsection (a) if the decision is supported by substantial*
13 *evidence.*

14 “(B) *Notwithstanding title 5 or any other provision*
15 *of law, if the decision of the Secretary is supported by sub-*
16 *stantial evidence, the administrative judge shall not miti-*
17 *gate the penalty prescribed by the Secretary.*

18 “(3)(A) *The decision of the administrative judge under*
19 *paragraph (1) may be appealed to the Merit Systems Pro-*
20 *tection Board.*

21 “(B) *Notwithstanding section 7701(c)(1)(B) of title 5,*
22 *the Merit Systems Protection Board shall uphold the deci-*
23 *sion of the Secretary to remove, demote, or suspend an em-*
24 *ployee under subsection (a) if the decision is supported by*
25 *substantial evidence.*

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

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

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

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

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

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

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

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

17 “(10) *If an employee who is subject to a collective bar-*
18 *gaining agreement chooses to grieve an action taken under*
19 *this section through a grievance procedure provided under*
20 *the collective bargaining agreement, the timelines and pro-*
21 *cedures set forth in subsection (c) and this subsection shall*
22 *apply.*

23 “(e) *WHISTLEBLOWER PROTECTION.—(1) In the case*
24 *of a covered individual seeking corrective action (or on be-*
25 *half of whom corrective action is sought) from the Office*

1 of Special Counsel based on an alleged prohibited personnel
2 practice described in section 2302(b) of title 5, the Secretary
3 may not remove, demote, or suspend such covered indi-
4 vidual under subsection (a) without the approval of the
5 Special Counsel under section 1214(f) of title 5.

6 “(2) In the case of a covered individual who has made
7 a whistleblower disclosure to the Assistant Secretary for Ac-
8 countability and Whistleblower Protection, the Secretary
9 may not remove, demote, or suspend such covered indi-
10 vidual under subsection (a) until—

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

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

21 “(f) *TERMINATION OF INVESTIGATIONS BY OFFICE OF*
22 *SPECIAL COUNSEL.*—(1) Notwithstanding any other provi-
23 sion of law, the Special Counsel (established by section 1211
24 of title 5) may terminate an investigation of a prohibited
25 personnel practice alleged by an employee or former em-

1 *ployee of the Department after the Special Counsel provides*
2 *to the employee or former employee a written statement of*
3 *the reasons for the termination of the investigation.*

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

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

11 “(h) *DEFINITIONS.—In this section:*

12 “(1) *The term ‘covered individual’ means an in-*
13 *dividual occupying a position at the Department, but*
14 *does not include—*

15 “(A) *an individual occupying a senior exec-*
16 *utive position (as defined in section 713(d) of*
17 *this title);*

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

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

23 “(D) *a political appointee.*

24 “(2) *The term ‘suspend’ means the placing of an*
25 *employee, for disciplinary reasons, in a temporary*

1 *status without duties and pay for a period in excess*
2 *of 14 days.*

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

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

9 “(5) *The term ‘political appointee’ means an in-*
10 *dividual who is—*

11 “(A) *employed in a position described*
12 *under sections 5312 through 5316 of title 5 (re-*
13 *lating to the Executive Schedule);*

14 “(B) *a limited term appointee, limited*
15 *emergency appointee, or noncareer appointee in*
16 *the Senior Executive Service, as defined under*
17 *paragraphs (5), (6), and (7), respectively, of sec-*
18 *tion 3132(a) of title 5; or*

19 “(C) *employed in a position of a confiden-*
20 *tial or policy-determining character under sched-*
21 *ule C of subpart C of part 213 of title 5, Code*
22 *of Federal Regulations, or successor regulation.*

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

1 **(b) CLERICAL AND CONFORMING AMENDMENTS.—**

2 **(1) CLERICAL.—***The table of sections at the be-*
 3 *ginning of chapter 7 of such title is amended by in-*
 4 *serting after the item relating to section 713 the fol-*
 5 *lowing new item:*

“714. Employees: removal, demotion, or suspension based on performance or mis-
conduct.”.

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

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

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

12 **(C)** *by adding at the end the following:*

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

15 **SEC. 203. REDUCTION OF BENEFITS FOR DEPARTMENT OF**
 16 **VETERANS AFFAIRS EMPLOYEES CONVICTED**
 17 **OF CERTAIN CRIMES.**

18 **(a) REDUCTION OF BENEFITS.—**

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

1 **“§ 719. Reduction of benefits of employees convicted of**
2 ***certain crimes***

3 “(a) *REDUCTION OF ANNUITY FOR REMOVED EM-*
4 *PLOYEE.—(1) The Secretary shall order that the covered*
5 *service of an employee of the Department removed from a*
6 *position for performance or misconduct under section 713,*
7 *714, or 7461 of this title or any other provision of law shall*
8 *not be taken into account for purposes of calculating an*
9 *annuity with respect to such individual under chapter 83*
10 *or chapter 84 of title 5, if—*

11 “(A) *the Secretary determines that the indi-*
12 *vidual is convicted of a felony (and the conviction is*
13 *final) that influenced the individual’s performance*
14 *while employed in the position; and*

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

17 “(i) *notice of the proposed order; and*

18 “(ii) *an opportunity to respond to the pro-*
19 *posed order by not later than ten business days*
20 *following receipt of such notice; and*

21 “(C) *the Secretary issues the order—*

22 “(i) *in the case of a proposed order to which*
23 *an individual responds under subparagraph*
24 *(B)(ii), not later than five business days after re-*
25 *ceiving the response of the individual; or*

1 “(ii) in the case of a proposed order to
2 which an individual does not respond, not later
3 than 15 business days after the Secretary pro-
4 vides notice to the individual under subpara-
5 graph (B)(i).

6 “(2) Any individual with respect to whom an annuity
7 is reduced under this subsection may appeal the reduction
8 to the Director of the Office of Personnel Management pur-
9 suant to such regulations as the Director may prescribe for
10 purposes of this subsection.

11 “(b) *REDUCTION OF ANNUITY FOR RETIRED EM-*
12 *PLOYEE.—(1) The Secretary may order that the covered*
13 *service of an individual who the Secretary proposes to re-*
14 *move for performance or misconduct under section 713, 714,*
15 *or 7461 of this title or any other provision of law but who*
16 *leaves employment at the Department prior to the issuance*
17 *of a final decision with respect to such action shall not be*
18 *taken into account for purposes of calculating an annuity*
19 *with respect to such individual under chapter 83 or chapter*
20 *84 of title 5, if—*

21 “(A) the Secretary determines that individual is
22 convicted of a felony (and the conviction is final) that
23 influenced the individual’s performance while em-
24 ployed in the position; and

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

3 “(i) notice of the proposed order;

4 “(ii) opportunity to respond to the proposed
5 order by not later than ten business days fol-
6 lowing receipt of such notice; and

7 “(C) the Secretary issues the order—

8 “(i) in the case of a proposed order to which
9 an individual responds under subparagraph
10 (B)(ii), not later than five business days after re-
11 ceiving the response of the individual; or

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

17 “(2) Upon the issuance of an order by the Secretary
18 under paragraph (1), the individual shall have an oppor-
19 tunity to appeal the order to the Director of the Office of
20 Personnel Management before the date that is seven business
21 days after the date of such issuance.

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

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

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

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

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

21 “(f) *DEFINITIONS.*—In this section:

22 “(1) The term ‘covered service’ means, with re-
23 spect to an individual subject to a removal for per-
24 formance or misconduct under section 719 or 7461 of
25 this title or any other provision of law, the period of

1 *service beginning on the date that the Secretary deter-*
2 *mines under such applicable provision that the indi-*
3 *vidual engaged in activity that gave rise to such ac-*
4 *tion and ending on the date that the individual is re-*
5 *moved from or leaves a position of employment at the*
6 *Department prior to the issuance of a final decision*
7 *with respect to such action.*

8 “(2) *The term ‘lump-sum credit’ has the mean-*
9 *ing given such term in section 8331(8) or section*
10 *8401(19) of title 5, as the case may be.*

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

14 (2) *CLERICAL AMENDMENT.—The table of sec-*
15 *tions at the beginning of chapter 7 of such title is*
16 *amended by inserting after the item relating to sec-*
17 *tion 717 the following new item:*

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

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

1 **SEC. 204. AUTHORITY TO RECOUP BONUSES OR AWARDS**
2 **PAID TO EMPLOYEES OF DEPARTMENT OF**
3 **VETERANS AFFAIRS.**

4 (a) *IN GENERAL.*—Subchapter I of chapter 7 of title
5 38, United States Code, as amended by section 203, is fur-
6 ther amended by adding at the end the following new sec-
7 tion:

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

10 *“(a) IN GENERAL.*—Notwithstanding any other provi-
11 sion of law, the Secretary may issue an order directing an
12 employee of the Department to repay the amount, or a por-
13 tion of the amount, of any award or bonus paid to the em-
14 ployee under title 5, including under chapters 45 or 53 of
15 such title, or this title if—

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

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

24 *“(A) notice of the proposed order; and*

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

4 “(3) the Secretary issues the order—

5 “(A) in the case of a proposed order to
6 which an individual responds under paragraph
7 (2)(B), not later than five business days after re-
8 ceiving the response of the individual; or

9 “(B) 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 paragraph
13 (2)(A).

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

20 “(2) The Director shall make a final decision with re-
21 spect to an appeal under paragraph (1) within 30 business
22 days after receiving such appeal.”.

23 (b) *CLERICAL AMENDMENT.*—The table of sections at
24 the beginning of such chapter, as amended by section

1 203(a)(2), is further amended by inserting after the item
 2 relating to section 719 the following new item:

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

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

8 (d) *CONSTRUCTION.*—Nothing in this Act or the
 9 amendments made by this Act may be construed to modify
 10 the certification issued by the Office of Personnel Manage-
 11 ment and the Office of Management and Budget regarding
 12 the performance appraisal system of the Senior Executive
 13 Service of the Department of Veterans Affairs.

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

17 (a) *IN GENERAL.*—Subchapter I of chapter 7 of title
 18 38, United States Code, as amended by section 204, is fur-
 19 ther amended by adding at the end the following new sec-
 20 tion:

21 **“§ 723. Recoupment of relocation expenses paid on be-**
 22 **half of employees of Department**

23 “(a) *IN GENERAL.*—Notwithstanding any other provi-
 24 sion of law, the Secretary may issue an order directing an
 25 employee of the Department to repay the amount, or a por-

1 *tion of the amount, paid to or on behalf of the employee*
 2 *under title 5 for relocation expenses, including any expenses*
 3 *under section 5724 or 5724a of such title, or this title if—*

4 “(1) *the Secretary determines that relocation ex-*
 5 *penditures were paid following an act of fraud or malfea-*
 6 *rance that influenced the authorization of the reloca-*
 7 *tion expenses;*

8 “(2) *before such repayment, the employee is af-*
 9 *forded—*

10 “(A) *notice of the proposed order; and*

11 “(B) *an opportunity to respond to the pro-*
 12 *posed order not later than ten business days fol-*
 13 *lowing the receipt of such notice; and*

14 “(3) *the Secretary issues the order—*

15 “(A) *in the case of a proposed order to*
 16 *which an individual responds under paragraph*
 17 *(2)(B), not later than five business days after re-*
 18 *ceiving the response of the individual; or*

19 “(B) *in the case of a proposed order to*
 20 *which an individual does not respond, not later*
 21 *than 15 business days after the Secretary pro-*
 22 *vides notice to the individual under paragraph*
 23 *(2)(A).*

24 “(b) *APPEAL OF ORDER OF SECRETARY.—(1) Upon*
 25 *the issuance of an order by the Secretary under subsection*

1 (a) *with respect to an individual, the individual shall have*
 2 *an opportunity to appeal the order to the Director of the*
 3 *Office of Personnel Management before the date that is seven*
 4 *business days after the date of such issuance.*

5 “(2) *The Director shall make a final decision with re-*
 6 *spect to an appeal under paragraph (1) within 30 days*
 7 *after receiving such appeal.”*

8 (b) *CLERICAL AMENDMENT.—The table of sections at*
 9 *the beginning of such chapter is further amended by insert-*
 10 *ing after the item relating to section 721, as added by sec-*
 11 *tion 204(b), the following new item:*

“723. *Recoupment of relocation expenses paid on behalf of employees of Depart-*
ment.”

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

18 **SEC. 206. TIME PERIOD FOR RESPONSE TO NOTICE OF AD-**
 19 **VERSE ACTIONS AGAINST SUPERVISORY EM-**
 20 **PLOYEES WHO COMMIT PROHIBITED PER-**
 21 **SONNEL ACTIONS.**

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

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

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

5 **SEC. 207. DIRECT HIRING AUTHORITY FOR MEDICAL CEN-**
 6 **TER DIRECTORS AND VISN DIRECTORS.**

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

10 “(4) *Directors of medical centers and directors of*
 11 *Veterans Integrated Service Networks with dem-*
 12 *onstrated ability in the medical profession, in health*
 13 *care administration, or in health care fiscal manage-*
 14 *ment.”.*

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

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

18 (2) *in subparagraph (A), as designated by para-*
 19 *graph (1)—*

20 (A) *by inserting “and 7401(4)” after*
 21 *“7306”; and*

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

24 “(B) *Section 5377 of title 5 shall apply to a position*
 25 *under section 7401(4) of this title as if such position were*

1 *included in the definition of ‘position’ in section 5377(a)*
 2 *of title 5.”*

3 **SEC. 208. TIME PERIODS FOR REVIEW OF ADVERSE AC-**
 4 **TIONS WITH RESPECT TO CERTAIN EMPLOY-**
 5 **EES.**

6 (a) *PHYSICIANS, DENTISTS, PODIATRISTS, CHIRO-*
 7 *PRACTORS, OPTOMETRISTS, REGISTERED NURSES, PHYSI-*
 8 *CIAN ASSISTANTS, AND EXPANDED-FUNCTION DENTAL AUX-*
 9 *ILIARIES.—Paragraph (2) of section 7461(b) of title 38,*
 10 *United States Code, is amended to read as follows:*

11 “(2) *In any case other than a case described in para-*
 12 *graph (1) that involves or includes a question of profes-*
 13 *sional conduct or competence in which a major adverse ac-*
 14 *tion was not taken, such an appeal shall be made through*
 15 *Department grievance procedures under section 7463 of this*
 16 *title.”*

17 (b) *MAJOR ADVERSE ACTIONS INVOLVING PROFES-*
 18 *SIONAL CONDUCT OR COMPETENCE.—Section 7462(b) of*
 19 *such title is amended—*

20 (1) *in paragraph (1)—*

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

25 (B) *in subparagraph (A)—*

1 (i) by striking “At least 30 days ad-
2 vance written notice” and inserting “Ad-
3 vance written notice”;

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

6 (iii) by inserting “and a file con-
7 taining all the evidence in support of each
8 charge,” after “with respect to each
9 charge,”; and

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

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

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

21 (3) in paragraph (4)—

22 (A) by striking subparagraph (A) and in-
23 serting the following new subparagraph (A):

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

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

6 *(4) by adding at the end the following new para-*
7 *graphs:*

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

11 “(B) *The deciding official shall render a decision*
12 *under paragraph (3) on charges under this subsection not*
13 *later than 15 business days after the Under Secretary pro-*
14 *vides notice on the charges for purposes of paragraph*
15 *(1)(A).*

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

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

21 *(1) in paragraph (1), by striking “the same no-*
22 *tice and opportunity to answer with respect to those*
23 *charges as provided in subparagraphs (A) and (B) of*
24 *section 7462(b)(1) of this title” and inserting “notice*
25 *and an opportunity to answer with respect to those*

1 *charges in accordance with subparagraphs (A) and*
2 *(B) of section 7462(b)(1) of this title, but within the*
3 *time periods specified in paragraph (3)”;*

4 *(2) in paragraph (2)—*

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

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

12 *(C) in subparagraph (B), by striking “a*
13 *reasonable time” and inserting “time to an-*
14 *swer”; and*

15 *(3) by adding at the end the following new para-*
16 *graph (3):*

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

20 *“(B) The period for the response of an employee under*
21 *paragraph (1) or (2)(B) to written notice of charges under*
22 *paragraph (1) or (2)(A), as applicable, shall be seven busi-*
23 *ness days.*

24 *“(C) The deciding official shall render a decision on*
25 *charges under paragraph (1) or (2) not later than 15 busi-*

1 ness days after notice is provided on the charges for pur-
2 poses of paragraph (1) or (2)(A), as applicable.”.

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

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

8 (1) *The rights of whistleblowers and how to ad-*
9 *dress a report by an employee of a hostile work envi-*
10 *ronment, reprisal, or harassment.*

11 (2) *How to effectively motivate, manage, and re-*
12 *ward the employees who report to the supervisor.*

13 (3) *How to effectively manage employees who are*
14 *performing at an unacceptable level and access assist-*
15 *ance from the human resources office of the Depart-*
16 *ment and the Office of the General Counsel of the De-*
17 *partment with respect to those employees.*

18 (b) *DEFINITIONS.*—In this section:

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

22 (2) *WHISTLEBLOWER.*—The term “whistle-
23 blower” has the meaning given such term in section
24 323(g) of title 38, United States Code, as added by
25 section 101.

1 **SEC. 210. ASSESSMENT AND REPORT ON EFFECT ON SEN-**
2 **IOR EXECUTIVES AT DEPARTMENT OF VET-**
3 **ERANS AFFAIRS.**

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

7 (1) *measure and assess the effect of the enactment*
8 *of this title on the morale, engagement, hiring, pro-*
9 *motion, retention, discipline, and productivity of in-*
10 *dividuals in senior executive positions at the Depart-*
11 *ment of Veterans Affairs; and*

12 (2) *submit to the Committee on Veterans' Affairs*
13 *of the Senate and the Committee on Veterans' Affairs*
14 *of the House of Representatives a report on the find-*
15 *ings of the Secretary with respect to the measurement*
16 *and assessment carried out under paragraph (1).*

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

19 (1) *With respect to engagement, trends in morale*
20 *of individuals in senior executive positions and indi-*
21 *viduals aspiring to senior executive positions.*

22 (2) *With respect to promotions—*

23 (A) *whether the Department is experiencing*
24 *an increase or decrease in the number of employ-*
25 *ees participating in leadership development and*
26 *candidate development programs with the inten-*

1 *tion of becoming candidates for senior executive*
2 *positions; and*

3 *(B) trends in applications to senior execu-*
4 *tive positions within the Department.*

5 *(3) With respect to retention—*

6 *(A) trends in retirement rates of individ-*
7 *uals in senior executive positions at the Depart-*
8 *ment;*

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

11 *(C) rates of transfer of—*

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

15 *(ii) individuals from senior executive*
16 *positions at the Department to other Fed-*
17 *eral agencies; and*

18 *(D) trends in total loss rates by job func-*
19 *tion.*

20 *(4) With respect to disciplinary processes—*

21 *(A) regarding individuals in senior execu-*
22 *tive positions at the Department who are the*
23 *subject of disciplinary action—*

24 *(i) the length of the disciplinary proc-*
25 *ess in days for such individuals both before*

1 *the date of the enactment of this Act and*
2 *under the provisions of this Act described in*
3 *subsection (a)(1); and*

4 *(ii) the extent to which appeals by such*
5 *individuals are upheld under such provi-*
6 *sions as compared to before the date of the*
7 *enactment of this Act;*

8 *(B) the components or offices of the Depart-*
9 *ment which experience the greatest number of*
10 *proposed adverse actions against individuals in*
11 *senior executive positions and components and*
12 *offices which experience the least relative to the*
13 *size of the components or offices' total number of*
14 *senior executive positions;*

15 *(C) the tenure of individuals in senior execu-*
16 *utive positions who are the subject of discipli-*
17 *nary action;*

18 *(D) whether the individuals in senior execu-*
19 *tive positions who are the subject of disciplinary*
20 *action have previously been disciplined; and*

21 *(E) the number of instances of disciplinary*
22 *action taken by the Secretary against individ-*
23 *uals in senior executive positions at the Depart-*
24 *ment as compared to governmentwide discipline*
25 *against individuals in Senior Executive Service*

1 *positions (as defined in section 3132(a) of title*
2 *5, United States Code) as a percentage of the*
3 *total number of individuals in senior executive*
4 *positions at the Department and Senior Execu-*
5 *tive Service positions (as so defined).*

6 *(5) With respect to hiring—*

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

11 *(B) the types of senior executive positions at*
12 *the Department most commonly filled under the*
13 *authorities in the provisions described in sub-*
14 *section (a)(1);*

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

19 *(D) the length of time to fill a senior execu-*
20 *tive position at the Department and for a new*
21 *hire to begin working in a new senior executive*
22 *position;*

23 *(E) the mission-critical deficiencies filled by*
24 *newly hired individuals in senior executive posi-*
25 *tions and the connection between mission-critical*

1 *deficiencies filled under the provisions described*
 2 *in subsection (a) and annual performance of the*
 3 *Department;*

4 *(F) the satisfaction of applicants for senior*
 5 *executive positions at the Department with the*
 6 *hiring process, including the clarity of job an-*
 7 *nouncements, reasons for withdrawal of applica-*
 8 *tions, communication regarding status of appli-*
 9 *cations, and timeliness of hiring decision; and*

10 *(G) the satisfaction of newly hired individ-*
 11 *uals in senior executive positions at the Depart-*
 12 *ment with the hiring process and the process of*
 13 *joining and becoming oriented with the Depart-*
 14 *ment.*

15 *(c) SENIOR EXECUTIVE POSITION DEFINED.—In this*
 16 *section, the term “senior executive position” has the mean-*
 17 *ing given such term in section 713 of title 38, United States*
 18 *Code.*

19 **SEC. 211. MEASUREMENT OF DEPARTMENT OF VETERANS**
 20 **AFFAIRS DISCIPLINARY PROCESS OUTCOMES**
 21 **AND EFFECTIVENESS.**

22 *(a) MEASURING AND COLLECTING.—*

23 *(1) IN GENERAL.—The Secretary of Veterans Af-*
 24 *airs shall measure and collect information on the*
 25 *outcomes of disciplinary actions carried out by the*

1 *Department of Veterans Affairs during the three-year*
2 *period ending on the date of the enactment of this Act*
3 *and the effectiveness of such actions.*

4 (2) *ELEMENTS.—In measuring and collecting*
5 *pursuant to paragraph (1), the Secretary shall meas-*
6 *ure and collect information regarding the following:*

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

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

14 (C) *The rate of use of alternate disciplinary*
15 *procedures compared to traditional disciplinary*
16 *procedures and the frequency with which employ-*
17 *ees who are subject to alternative disciplinary*
18 *procedures commit additional offenses.*

19 (D) *The number of appeals from adverse ac-*
20 *tions filed against employees of the Department,*
21 *the number of appeals upheld, and the reasons*
22 *for which the appeals were upheld.*

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

1 **(b) REPORT.—**

2 **(1) IN GENERAL.—***Not later than December 31,*
3 *2017, the Secretary shall submit to the appropriate*
4 *committees of Congress a report on the disciplinary*
5 *procedures and actions of the Department.*

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

8 **(A)** *The information collected under sub-*
9 *section (a).*

10 **(B)** *The findings of the Secretary with re-*
11 *spect to the measurement and collection carried*
12 *out under subsection (a).*

13 **(C)** *An analysis of the disciplinary proce-*
14 *dures and actions of the Department.*

15 **(D)** *Suggestions for improving the discipli-*
16 *nary procedures and actions of the Department.*

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

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

22 **(A)** *the Committee on Appropriations and*
23 *the Committee on Veterans’ Affairs of the Senate;*
24 *and*

1 *(B) the Committee on Appropriations and*
2 *the Committee on Veterans' Affairs of the House*
3 *of Representatives.*

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115TH CONGRESS
1ST Session

S. 1094

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.

MAY 24, 2017

Reported with an amendment