

116TH CONGRESS
2D SESSION

H. R. 8465

To require the Secretary of State to develop policy and procedures on prevention and response to harassment, discrimination, sexual assault, and related retaliation, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 30, 2020

Ms. SPEIER (for herself, Mr. ENGEL, Mr. CASTRO of Texas, Ms. NORTON, Ms. ESCOBAR, Ms. HAALAND, Mr. GONZALEZ of Texas, Mrs. DINGELL, Mr. CARSON of Indiana, Mr. PRICE of North Carolina, Mr. SAN NICOLAS, Mr. KIND, Mrs. WATSON COLEMAN, Mr. LARSON of Connecticut, Ms. PINGREE, Ms. SCHAKOWSKY, and Ms. OMAR) introduced the following bill; which was referred to the Committee on Foreign Affairs, and in addition to the Committees on Education and Labor, Oversight and Reform, House Administration, and the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To require the Secretary of State to develop policy and procedures on prevention and response to harassment, discrimination, sexual assault, and related retaliation, 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; RULE OF**
 2 **CONSTRUCTION.**

3 (a) **SHORT TITLE.**—This Act may be cited as the
 4 “State Harassment and Assault Prevention and Eradi-
 5 cation Act of 2020” or the “SHAPE Act of 2020”.

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

Sec. 1. Short title; table of contents; rule of construction.

Sec. 2. Department of State policy and procedures on prevention and response
 to harassment, discrimination, sexual assault, and related retal-
 iation.

Sec. 3. Reporting, documentation, and investigation procedures.

Sec. 4. Sexual assault protocol and victim care.

Sec. 5. Rights of employees harassed, discriminated against, retaliated against,
 or sexually assaulted.

Sec. 6. Provision of climate surveys.

Sec. 7. Reports to Congress, the Department, and the public.

Sec. 8. Required training for Department personnel.

Sec. 9. Hiring, vetting, and promotion.

Sec. 10. Nondisclosure and nondisparagement agreements.

8 (c) **RULE OF CONSTRUCTION.**—Nothing in this Act
 9 shall be construed to supersede or otherwise affect the dis-
 10 crimination protections or related processes provided
 11 under section 717 of the Civil Rights Act of 1964 (42
 12 U.S.C. 2000e–16) to officers and employees of the Depart-
 13 ment of State or applicants for employment at the Depart-
 14 ment.

1 **SEC. 2. DEPARTMENT OF STATE POLICY AND PROCEDURES**
2 **ON PREVENTION AND RESPONSE TO HARASS-**
3 **MENT, DISCRIMINATION, SEXUAL ASSAULT,**
4 **AND RELATED RETALIATION.**

5 (a) COMPREHENSIVE POLICY ON PREVENTION AND
6 RESPONSE.—Not later than one year after the date of the
7 enactment of this Act, the Secretary of State shall develop
8 a comprehensive policy for the Department of State on
9 the prevention of and response to harassment, discrimina-
10 tion, sexual assault, and related retaliation involving em-
11 ployees, contractors, and officials of the Department.

12 (b) ELEMENTS OF COMPREHENSIVE POLICY.—The
13 policy developed under subsection (a) may include ele-
14 ments as the Secretary deems necessary, but shall include,
15 at a minimum, the following:

16 (1) Prevention measures.

17 (2) Education and training on prevention and
18 response, as provided in this Act.

19 (3) Investigation of complaints.

20 (4) Medical treatment of victims.

21 (5) Mechanisms for confidential reporting of in-
22 cidents by staff and service contractors, to include
23 online and telephonic methods.

24 (6) Victim advocacy, intervention, and coun-
25 seling for covered employees of the Department who
26 are victims of harassment, discrimination, sexual as-

1 sault, and related retaliation that shall be made
2 available, irrespective of where such covered employ-
3 ees are located, to assist and guide such victims.

4 (7) Supportive services, including counseling
5 and victim advocacy, that shall be made available ir-
6 respective of whether the victim identifies the ac-
7 cused individual.

8 (8) Oversight and review of administrative and
9 disciplinary actions, to include termination, for em-
10 ployees and officials of the Department of State.

11 (9) Review by appropriate authority of adminis-
12 trative separation actions involving victims of har-
13 assment, discrimination, sexual assault, and related
14 retaliation.

15 (10) Uniform collection of data on the incidence
16 of violations and on disciplinary actions taken in
17 cases of harassment, discrimination, sexual assault,
18 and related retaliation.

19 (11) Procedures for disciplinary action in cases
20 of harassment, discrimination, sexual assault, and
21 related retaliation by employees or officials of the
22 Department.

23 (12) Workforce communications relating to har-
24 assment, discrimination, sexual assault, and related
25 retaliation prevention, discipline, and reporting, to

1 include printed and electronic materials made avail-
2 able in both English and the working languages at
3 overseas posts, made available for all staff.

4 (13) Acknowledgment of the challenges facing
5 vulnerable groups including women, people of color,
6 entry-level officers, locally employed staff, and the
7 lesbian, gay, bisexual, transgender, and queer
8 (LGBTQ) community.

9 (14) Policies regarding the retention of docu-
10 ments relating to complaints, investigations, and dis-
11 ciplinary action.

12 (c) CLARIFICATION OF VICTIM REPORTING AND
13 CASE RESOLUTION.—The Secretary of State shall review
14 Department of State processes for victim reporting and
15 resolution of complaints, as in effect on the date of enact-
16 ment of this Act, to ensure that the Department’s proce-
17 dures are clear and easily accessible to all covered employ-
18 ees. Such review shall be included in the report to be sub-
19 mitted in section 7.

20 (d) APPLICATION OF COMPREHENSIVE POLICY TO
21 OFFICES IN THE DEPARTMENT OF STATE.—The Sec-
22 retary of State shall ensure that the policy developed
23 under subsection (a) is implemented uniformly by the bu-
24 reaus and offices of the Department of State.

1 (e) COORDINATION WITH OTHER AGENCIES.—The
2 Department of State is directed to coordinate with other
3 United States government agencies which provide per-
4 sonnel to serve in overseas posts under Chief of Mission
5 authority to develop interagency policies for addressing,
6 reporting, and discipline for incidents of harassment, dis-
7 crimination, sexual assault, or related retaliation occurring
8 between covered employees and non-covered employees.

9 **SEC. 3. REPORTING, DOCUMENTATION, AND INVESTIGA-**
10 **TION PROCEDURES.**

11 (a) DEFINITIONS.—In this Act—

12 (1) the term “covered employee” means—

13 (A) any officer or employee (including any
14 temporary, part-time, contract, intermittent em-
15 ployee, interns, fellows, or other unpaid staff;
16 both American citizens and foreign nationals)
17 performing work for or on behalf of the Depart-
18 ment of State;

19 (B) members of the Foreign Service (as
20 that term is defined under section 103 of the
21 Foreign Service Act of 1980 (22 U.S.C. 3903)),
22 to include Foreign Service Officers, Foreign
23 Service Specialists, Locally Employed Staff, and
24 Consular Agents; and

1 (C) an individual who is engaged by an
2 employer or entity as a contractor;

3 (2) the term “Office of Employee Advocacy”
4 means the Office of Employee Advocacy, as estab-
5 lished under subsection (b);

6 (3) the term “Office of Civil Rights” means the
7 Office of Civil Rights within the Department of
8 State;

9 (4) the term “Global Talent Management”
10 means the Bureau of Global Talent Management,
11 Office of Employee Relations, Conduct, Suitability,
12 and Discipline Division within the Department of
13 State; and

14 (5) the term “Diplomatic Security” means the
15 Bureau of Diplomatic Security within the Depart-
16 ment of State.

17 (6) the term “harassment” means—

18 (A) conduct based on race, color, religion,
19 sex (including sexual orientation, gender iden-
20 tity, pregnancy, childbirth, a medical condition
21 related to pregnancy or childbirth, and a sex
22 stereotype), or national origin, regardless of
23 whether it is direct or indirect, or verbal or
24 nonverbal, that unreasonably alters an individ-
25 ual’s terms, conditions, or privileges of employ-

ment, including by creating an intimidating,
hostile, or offensive work environment;

(B) sexual harassment is conduct that
takes place in a circumstance described in sub-
paragraph (C) and that takes the form of—

(i) a sexual advance;

(ii) a request for sexual favors; or

(iii) any other conduct of a sexual na-
ture;

(C) a circumstance described in this sub-
paragraph is a situation in which—

(i) submission to the conduct involved
is made either explicitly or implicitly a
term or condition of employment;

(ii) submission to or rejection of such
conduct is used as the basis for an employ-
ment decision affecting an individual's em-
ployment; or

(iii) such conduct unreasonably alters
an individual's terms, conditions, or privi-
leges of employment, including by creating
an intimidating, hostile, or offensive work
environment; and

(D) in determining whether conduct con-
stitutes harassment because the conduct unrea-

sonably alters an individual's terms, conditions, or privileges of employment, including by creating an intimidating, hostile, or offensive work environment, the following rules shall apply—

(i) that determination shall be made on the basis of the record as a whole, according to the totality of the circumstances. A single incident may constitute workplace harassment;

(ii) incidents that may be workplace harassment shall be considered in the aggregate, with—

(I) conduct of varying types (such as expressions of sex-based hostility, requests for sexual favors, and denial of employment opportunities due to sexual orientation) viewed in totality, rather than in isolation; and

(II) conduct based on multiple protected characteristics (such as sex and race) viewed in totality, rather than in isolation;

(iii) the factors specified in this subparagraph are among the factors to be considered in determining whether conduct

1 constitutes harassment and are not meant
2 to be exhaustive. No one of those factors
3 shall be considered to be determinative in
4 establishing whether conduct constitutes
5 harassment. Such factors are each of the
6 following—

7 (I) the frequency of the conduct;

8 (II) the duration of the conduct;

9 (III) the location where the con-
10 duct occurred;

11 (IV) the number of individuals
12 engaged in the conduct;

13 (V) the nature of the conduct,
14 which may include physical, verbal,
15 pictorial, or visual conduct, and con-
16 duct that occurs in person or is trans-
17 mitted, such as electronically;

18 (VI) whether the conduct is
19 threatening;

20 (VII) any power differential be-
21 tween the alleged harasser and the
22 person allegedly harassed;

23 (VIII) any use of epithets, slurs,
24 or other conduct that is humiliating
25 or degrading; or

1 (IX) whether the conduct reflects
2 stereotypes about individuals in the
3 protected class involved; and

4 (iv) in determining whether conduct
5 constitutes harassment, conduct may be
6 harassment regardless of whether, for ex-
7 ample—

8 (I) the complaining party is not
9 the individual being harassed;

10 (II) the complaining party acqui-
11 esced or otherwise submitted to, or
12 participated in, the conduct;

13 (III) the conduct is also experi-
14 enced by others outside the protected
15 class involved;

16 (IV) the complaining party was
17 able to continue carrying out duties
18 and responsibilities of the party's job
19 despite the conduct;

20 (V) the conduct did not cause a
21 tangible injury or psychological injury;
22 or

23 (VI) the conduct occurred outside
24 of the workplace.

1 (b) ESTABLISHMENT OF OFFICE OF EMPLOYEE AD-
2 VOCACY.—

3 (1) IN GENERAL.—Not later than one year
4 after the date of the enactment of this Act, the Sec-
5 retary shall establish a new office to be the Office
6 of Employee Advocacy, to be headed by a full-time
7 Chief Advocate. Personnel of the Office shall be ap-
8 pointed without regard to political affiliation and
9 solely on the basis of fitness to perform the duties
10 of the position. The Chief Advocate—

11 (A) shall report directly to the Under Sec-
12 retary for Management; and

13 (B) may not have any other duties in the
14 Department of State that are not reasonably
15 connected to employee advocacy.

16 (2) DUTIES OF OFFICE OF EMPLOYEE ADVO-
17 CACY.—

18 (A) Receive complaints from any Depart-
19 ment of State covered employee or eligible fam-
20 ily member (EFM), as defined in the Foreign
21 Affairs Manual, of harassment, discrimination,
22 sexual assault, and related retaliation.

23 (B) Counsel victims of their rights, proce-
24 dures for seeking relief, and available resources,
25 both locally and at headquarters, under this

1 Act, and other employment laws enforced by the
2 Equal Employment Opportunity Commission
3 including the Civil Rights Act of 1964, the
4 Pregnancy Discrimination Act of 1978, the
5 Equal Pay Act of 1963, the Age Discrimination
6 in Employment Act of 1967, the Americans
7 with Disabilities Act of 1990, the Civil Rights
8 Act of 1991, the Rehabilitation Act of 1973,
9 and the Genetic Information Nondiscrimination
10 Act of 2008.

11 (C) Provide confidential support and infor-
12 mation, including referrals to medical and men-
13 tal health care.

14 (D) Refer complaints to the appropriate
15 offices in the Department of State promptly in-
16 cluding—

17 (i) the Office of Civil Rights in in-
18 stances of harassment, discrimination, or
19 related retaliation; and

20 (ii) Bureau of Diplomatic Security in
21 instances of sexual assault or other com-
22 plaints with security clearance implica-
23 tions.

24 (E) For the purposes of receiving com-
25 plaints, operate secure, confidential means of

1 reporting 24 hours a day, including an elec-
2 tronic reporting system and an internationally
3 accessible hotline.

4 (F) Employ Employee Advocates to carry
5 out the duties of the Office and assist those fil-
6 ing or considering filing a complaint.

7 (G) If a victim chooses to file a complaint,
8 such Advocates shall assist the victim in pro-
9 viding information and support until an inves-
10 tigation is completed, and a final agency deci-
11 sion has been made.

12 (H) Employ attorneys licensed to practice
13 law with experience in harassment, discrimina-
14 tion, retaliation, and assault complaints, and
15 provide optional legal assistance, consultation,
16 and representation related to a covered employ-
17 ee's complaint of harassment, discrimination,
18 sexual assault, or related retaliation. In car-
19 rying out this subparagraph, the following shall
20 apply:

21 (i) The relationship between the Of-
22 fice and an employee to whom the Office
23 provides legal assistance, consultation, and
24 representation under this section shall be

1 the relationship between an attorney and
2 client.

3 (ii) Nothing in this section shall pre-
4 clude covered employees from hiring their
5 own attorneys or require them to use at-
6 torneys from the Office.

7 (iii) Notwithstanding any law regard-
8 ing the licensure of attorneys, an attorney
9 who is employed by the Office and is au-
10 thorized to provide legal assistance and
11 representation under this section is author-
12 ized to provide that assistance and rep-
13 resentation in any jurisdiction, subject to
14 such regulations as may be prescribed by
15 the Office.

16 (iv) The Office may not accept any
17 award of attorney fees or other litigation
18 expenses and costs under any hearing or
19 civil action brought.

20 (v) The Office must be empowered to
21 be independent and work on behalf of com-
22 plainants without undue pressure from
23 State Department leadership.

24 (I) Provide routine training to attorneys
25 and advocates on harassment, discrimination,

1 sexual assault, and related retaliation policies
2 and best practices for victim care.

3 (J) Track the stage of reporting, investiga-
4 tion, or disciplinary process a complaint is in.

5 (K) Conduct climate surveys, as specified
6 in section 6.

7 (3) ELECTRONIC REPORTING SYSTEM.—The
8 system established under this subsection shall—

9 (A) include an electronic reporting system
10 under which a complaint may be filed, in addi-
11 tion to a non-electronic system;

12 (B) maintain an electronic record of the
13 date and time at which any complaint is so
14 filed;

15 (C) ensure the security and confidentiality
16 of records; and

17 (D) allow the submission of confidential re-
18 ports that will not prompt individualized inves-
19 tigation, but shall be monitored by the Office
20 to identify trends and determine whether inves-
21 tigation should be undertaken by the Office of
22 Civil Rights.

23 (4) INTERNATIONAL HOTLINE.—The system es-
24 tablished under this subsection shall—

1 (A) include an international toll-free num-
2 ber accessible by all covered employees and
3 EFM both domestic and overseas;

4 (B) be staffed 24 hours day, 7 days a week
5 by Office of Employee Advocacy staff during
6 normal working hours, and by a rotating OEA
7 duty officer or contractor during non-working
8 hours;

9 (C) be entered by OEA staff into the elec-
10 tronic reporting system so that all reported
11 cases are captured in the system; and

12 (D) to the extent practicable, ensure access
13 to the hotline for non-English speakers.

14 (5) OVERSEAS POST REPORTING.—

15 (A) Each overseas post shall notify employ-
16 ees that they may use the electronic reporting
17 system or international hotline as established in
18 paragraphs (3) and (4), or report in person to
19 the Deputy Chief of Mission or other employees
20 designated as Office of Employee Advocacy Li-
21 aisons.

22 (B) The OEA Liaisons may include (but
23 are not limited to) the Equal Employment Op-
24 portunity Counselor, the Community Liaison
25 Officer, the Locally Employed Staff (LES)

1 Equal Employment Opportunity Officer Liai-
2 son, or other staff to be selected by the Deputy
3 Chief of Mission.

4 (C) OEA Liaisons should be provided with
5 educational materials to distribute as well as
6 training on the resources and services provided
7 by the Office of Employee Advocacy, and on the
8 various means of communications that employ-
9 ees can use to reach out to OEA Employee Ad-
10 vocates.

11 (D) The Chief of Mission shall not be noti-
12 fied of the identity of the complainant without
13 the express permission of the complainant.

14 (6) APPLICATION.—This section shall not be
15 construed to preclude, limit, or otherwise effect the
16 rights of a covered employee to file a complaint,
17 based on the alleged harassment, discrimination,
18 sexual assault, and related retaliation that gave rise
19 to the complaint under this subsection, under any
20 other provision of law. This section shall not be con-
21 strued to preclude, limit, or otherwise affect the
22 rights of a covered employee to file a complaint with
23 another office.

24 (7) CONSULTATION; TECHNICAL ASSISTANCE.—
25 In developing the Office of Employee Advocacy, the

1 State Department shall receive technical assistance
2 and consultation from organizations and other pro-
3 fessionals with expertise in victim-centered, trauma-
4 informed care, individuals who have experienced har-
5 assment, discrimination, or retaliation at the State
6 Department, the Equal Employment Opportunity
7 Commission, and other relevant executive agencies.

8 (c) DUTIES OF OFFICE OF CIVIL RIGHTS.—

9 (1) IN GENERAL.—Upon the referral of a com-
10 plaint from the Office of Employee Advocacy to the
11 Office of Civil Rights, the Office of Civil Rights
12 shall—

13 (A) take steps for the initial intake and re-
14 cording of the complaint, including providing
15 the covered employee who filed the complaint
16 with all relevant information with respect to the
17 rights of the covered employee under this Act
18 and other relevant law; and

19 (B) notify the accused covered employee—

20 (i) of the complaint and the right of
21 that covered employee to participate in any
22 mediation, hearing, or civil action under
23 this section and other applicable law with
24 respect to the complaint;

1 (ii) that retention of documents and
2 evidence is crucial, and any unauthorized
3 destruction of documents and evidence may
4 result in additional investigations and po-
5 tential punishment; and

6 (iii) that there is a prohibition on re-
7 taliation against the covered employee who
8 filed the complaint and may be investiga-
9 tion and discipline for retaliation.

10 (2) INVESTIGATION OF COMPLAINTS.—

11 (A) INVESTIGATION.—The Office of Civil
12 Rights shall investigate all complaints in a
13 prompt, thorough, and impartial manner. The
14 Department shall update the Foreign Affairs
15 Manual to enable Office of Civil Rights inves-
16 tigators to travel to the foreign and domestic
17 sites of received complaints in which widespread
18 or pervasive sexual harassment is reported. The
19 Under Secretary for Management shall author-
20 ize sufficient funding for Office of Civil Rights
21 attorney advisors to conduct this travel as nec-
22 essary.

23 (B) INVESTIGATION OF CHIEF OF MIS-
24 SION.—If the Chief of Mission at an overseas
25 post is named as the alleged perpetrator in a

1 complaint, the Office of Civil Rights must no-
2 tify the Secretary of State. The Office of Civil
3 Rights must prioritize the investigation of such
4 cases.

5 (C) REPORT.—Not later than 120 days
6 after a complaint is filed under this section and
7 transmitted to the Office of Civil Rights, the
8 Office of Civil Rights shall conclude the inves-
9 tigation regarding that complaint. On the date
10 the investigation is so concluded, the Office of
11 Civil Rights shall transmit a written report on
12 the results of the investigation to—

13 (i) the covered employee who filed the
14 complaint;

15 (ii) the accused employee and his or
16 her employing office; and

17 (iii) Global Talent Management.

18 (D) EXTENSION.—The Office of Civil
19 Rights may extend the 120 day deadline in sub-
20 paragraph (A) if the Office of Civil Rights de-
21 termines that additional time is necessary to
22 conclude the investigation. The Office of Civil
23 Rights must notify the House Committee on
24 Foreign Affairs and Senate Committee on For-

1 eign Relations of the extension and provide jus-
2 tification for each extension of 30 days.

3 (E) TRANSMISSION TO GLOBAL TALENT
4 MANAGEMENT.—After the Office of Civil Rights
5 concludes the investigation, it shall transmit a
6 report providing a summary of the facts with
7 all investigatory material including transcripts
8 of interviews and evidence to Global Talent
9 Management for consideration of disciplinary
10 action.

11 (F) TRANSMISSION TO SECRETARY OF
12 STATE.—Global Talent Management shall
13 transmit the investigatory report and any re-
14 sulting disciplinary actions to the Secretary of
15 State. Reports shall be transmitted to the Sec-
16 retary no less than quarterly.

17 (G) STAFFING.—If the number of com-
18 plaints received by the Office of Civil Rights ex-
19 ceeds its capacity to respond within 120 days to
20 the majority of cases, the Director of the Office
21 of Civil Rights and Under Secretary for Man-
22 agement shall authorize the hiring of additional
23 attorney advisors or other appropriate staff on
24 a temporary or permanent basis.

25 (H) RECORD RETENTION.—

1 (i) RECORD RETENTION.—Global Tal-
2 ent Management shall keep a record of in-
3 vestigations, hearings, and other pro-
4 ceedings conducted related to complaints of
5 harassment, discrimination, sexual assault,
6 or related retaliation.

7 (ii) PERSONNEL FILES.—Subsequent
8 disciplinary action taken by Global Talent
9 Management in response to the investiga-
10 tion and any EEO settlements or judge-
11 ments of harassment, discrimination, sex-
12 ual assault, or related retaliation shall be
13 documented and kept on file and accessible
14 to the Office of Civil Rights, Diplomatic
15 Security, security clearance investigators,
16 and Federal law enforcement officials.
17 Global Talent Management shall also en-
18 sure that a standalone document con-
19 taining a description of the offense and
20 disciplinary action taken, redacted of any
21 personally identifiable information, shall be
22 provided to and reviewed by all subsequent
23 Department Foreign Service and Civil
24 Service Selection and promotion Boards, to
25 include a permanent notation in the em-

1 ployee’s file, including annual performance
2 assessments or employee evaluations.

3 (d) DISCIPLINARY ACTION.—

4 (1) SUSPENSION.—Section 610 of the Foreign
5 Service Act of 1980 (22 U.S.C. 4010) is amended by
6 adding as follows:

7 “(c)(1) In order to promote the efficiency of the Serv-
8 ice, the Secretary may suspend a member of the Foreign
9 Service without pay when the member’s security clearance
10 is suspended or when there is reasonable cause to believe
11 that the member has committed a crime for which a sen-
12 tence of imprisonment may be imposed or if the member
13 has a history of harassment or Equal Employment Oppor-
14 tunity violations documented and substantiated by Global
15 Talent Management.”.

16 (2) SEPARATION FOR CAUSE.—Section 610 of
17 the Foreign Service Act of 1980 (22 U.S.C. 4010)
18 is amended as follows:

19 “(a)(1) The Secretary may decide to separate any
20 member from the Service for such cause as will promote
21 the efficiency of the service, to include findings by Diplo-
22 matic Security that the member has engaged in criminal
23 misconduct, to include murder, rape, or other sexual as-
24 sault.”.

1 (3) UPDATE TO MANUAL.—Global Talent Man-
2 agement shall update the Foreign Affairs Manual’s
3 “Grounds for Disciplinary Action” and “List of Dis-
4 ciplinary Offenses and Penalties” to reflect the
5 amendments made by this subsection and commu-
6 nicate such amendments to staff via Department
7 Notices.

8 (e) PENALTIES.—Consistent with other civil service
9 and Foreign Service laws and regulations, the Secretary
10 of State shall develop a policy of applying penalties to any
11 covered employee who is determined to have sexual as-
12 sault, harassment, discrimination, or related retaliation
13 complaints against him or her substantiated. Such pen-
14 alties shall include additional mandatory training, suspen-
15 sion with or without pay, demotion in rank, or removal
16 for a period of the Secretary’s choosing.

17 (f) ADDITIONAL DOCUMENTATION.—Global Talent
18 Management shall ensure, to the extent practicable and
19 appropriate, that any third country national or any na-
20 tional of a host country that was assigned to work at a
21 diplomatic facility or employee residence who harasses,
22 discriminates against, sexually assaults, or retaliates
23 against a covered employee is—

1 (1) documented in an appropriate site history
2 file and in a global tracking and recording system,
3 to be coordinated by Global Talent Management;

4 (2) taken into account with respect to deter-
5 minations regarding placements of third country na-
6 tionals or any national of a host country at such
7 post and the provision of any funds or other benefit
8 by the Department; and

9 (3) any covered employee who filed the com-
10 plaint may opt out of having personally identifiable
11 information included in such a report.

12 (g) CASE REVIEW.—

13 (1) IN GENERAL.—The Office of Civil Rights
14 and Diplomatic Security shall conduct case reviews
15 of a statistically significant number of cases on a
16 quarterly basis to determine if proper procedures
17 were followed in accordance with the harassment,
18 discrimination, sexual assault, and related retaliation
19 protocols and guidelines provided under this Act and
20 other applicable laws.

21 (2) REPORTS TO CONGRESS.—An analysis of
22 such case reviews shall be annually reported to the
23 Committee on Oversight and Reform and Committee
24 on Foreign Affairs of the House of Representatives
25 and the Committee on Homeland Security and Gov-

1 ernmental Affairs and Committee on Foreign Rela-
2 tions of the Senate in the report mandated in section
3 7(a).

4 **SEC. 4. SEXUAL ASSAULT PROTOCOL AND VICTIM CARE.**

5 (a) ESTABLISHMENT.—

6 (1) IN GENERAL.—In addition to the other re-
7 quirements of this Act, not later than one year after
8 the date of the enactment of this Act, the Secretary
9 of State shall develop and implement comprehensive
10 sexual assault protocol and guidelines that conform
11 to best practices in the sexual assault field and are
12 applicable to all posts at which covered employees
13 serve.

14 (2) CONSULTATION.—In developing the proto-
15 cols and guidelines under paragraph (1), the Sec-
16 retary shall consult with and incorporate, as appro-
17 priate, the recommendations and views of experts in
18 the sexual assault prevention and response field, vic-
19 tims, victim advocates, and current or former cov-
20 ered employees who have reported sexual assault or
21 related retaliation.

22 (b) ELEMENTS.—The protocols and guidelines under
23 subsection (a)(1) shall include the following services with
24 respect to a covered employee who has made an allegation
25 of sexual assault:

1 (1) Protection of such employee's confiden-
2 tiality.

3 (2) Provision of a victim's advocate, as de-
4 scribed in subsection (e), who is able to refer the vic-
5 tim to supportive services and resources and explain
6 the victim's rights at no cost to the victim.

7 (3) Provision, within 72 hours of a report, of a
8 sexual assault forensic evidence kit to such em-
9 ployee, upon request.

10 (4) Provision of emergency health care to such
11 employee, including, to the greatest extent prac-
12 ticable, a choice of medical providers and a mecha-
13 nism for such employee to evaluate such provider.

14 (5) Provision of comprehensive health services,
15 to the greatest extent practicable, to include physical
16 and mental health services.

17 (6) Nothing in this subsection may be con-
18 strued to authorize the furnishing of any medical
19 benefit that the Secretary of State is not otherwise
20 authorized to reimburse for covered employees who
21 receive treatment for injury or disease proximately
22 caused by their service in the Department of State.

23 (c) NOTIFICATION.—Diplomatic Security Office of
24 Special Investigations shall be notified immediately of any
25 reported sexual assault against any covered employee. For

1 the purposes of maintaining comprehensive records of all
2 incidents of sexual misconduct at the Department of
3 State, if Diplomatic Security receives the initial report of
4 a sexual assault involving a covered employee, Diplomatic
5 Security shall notify the Office of Employee Advocacy.

6 (d) SEXUAL ASSAULT PREVENTION AND RESPONSE
7 VICTIM ADVOCATES.—

8 (1) IN GENERAL.—The Secretary of State shall
9 ensure the Victims’ Resource Advocacy Program, as
10 defined in the Foreign Assistance Manual, includes,
11 in the competitive service in Diplomatic Security
12 within the Department of State, staff formally
13 trained to provide victim-centered, trauma-informed
14 care and advocacy for victims of sexual assault. (In
15 this subsection referred to as the “Advocates”).

16 (2) DUTIES.—The Advocates shall—

17 (A) receive continuous training in victim
18 advocacy;

19 (B) assist the victim in navigating those
20 processes required to obtain care and services
21 needed; and

22 (C) offer trauma-informed care to victims,
23 referrals, and ongoing nonclinical support.

24 (3) LIMITATIONS.—The Advocates shall not
25 be—

1 (A) responsible for providing mental health
2 services or to act as an investigator; or

3 (B) placed under the Department's med-
4 ical offices or be responsible for providing phys-
5 ical health services.

6 (4) PLACEMENT.—The Secretary shall ensure
7 that Advocates are physically present at Department
8 headquarters, major domestic and international fa-
9 cilities and embassies, as determined by the Depart-
10 ment and with logistical consideration to allow for
11 expedient travel to Department facilities without Ad-
12 vocates.

13 (e) OVERSEAS POST.—

14 (1) IN GENERAL.—The Department shall serve
15 as the lead agency for reporting and responding to
16 harassment, discrimination, sexual assault, and re-
17 lated retaliation within an Embassy, Consulate, or
18 other overseas location (in this subsection referred to
19 as an “overseas post”), and shall make Advocates
20 and other resources available to victims of other
21 agencies who fall under Chief of Mission authority at
22 the overseas post.

23 (2) REFERRAL.—The Department shall refer
24 incident reporting to the appropriate agency for any
25 employees working under Chief of Mission authority

1 if the accused is not a covered employee of the De-
2 partment of State.

3 (3) CHIEF OF MISSION AUTHORITY.—If a cred-
4 ible allegation of harassment, discrimination, sexual
5 assault, or related retaliation is made by a covered
6 employee at an overseas post against a non-covered
7 employee serving under Chief of Mission authority,
8 including against an employee of another executive
9 agency or non-executive branch agencies operating
10 under memoranda of understanding, the Chief of
11 Mission may use all authorities at their disposal to
12 include revoking the non-covered employee's permis-
13 sion to be in the country on official business.

14 (4) DIPLOMATIC SECURITY TRAINING.—Diplo-
15 matic Security shall ensure that individuals serving
16 as regional security officers in overseas posts are
17 trained in victim-centered, trauma-informed care
18 and sexual assault investigation techniques.

19 (f) SANE PROGRAM TRAINING.—The Bureau of Med-
20 ical Services within the Department of State shall ensure
21 that to the greatest extent practicable, Sexual Assault
22 Nurse Examiner trained staff shall be placed at Depart-
23 ment headquarters and major domestic and international
24 facilities and embassies.

1 **SEC. 5. RIGHTS OF EMPLOYEES HARASSED, DISCRIMI-**
2 **NATED AGAINST, RETALIATED AGAINST, OR**
3 **SEXUALLY ASSAULTED.**

4 (a) **RIGHT TO LEGAL COUNSEL.**—Any covered em-
5 ployee filing a complaint of harassment, discrimination,
6 sexual assault, or related retaliation may have access to
7 legal counsel as specified in section 3(b).

8 (b) **AVAILABILITY OF MEDIATION DURING HARASS-**
9 **MENT INVESTIGATIONS.**—

10 (1) **AVAILABILITY OF MEDIATION DURING IN-**
11 **VESTIGATION.**—During the complaint intake of a
12 covered employee's complaint under section 3—

13 (A) the Office of Civil Rights may inform
14 the covered employee of the availability of medi-
15 ation;

16 (B) the covered employee who filed the
17 complaint and the accused covered employee
18 may jointly file a request for mediation with the
19 Office of Civil Rights; and

20 (C) the covered employee who filed the
21 complaint and the accused employee may re-
22 quest the presence of an attorney or a victim
23 advocate in the mediation.

24 (2) **REQUIRING PARTIES TO BE SEPARATED**
25 **DURING MEDIATION AT REQUEST OF EMPLOYEE.**—

26 At the request of either party, the parties shall be

1 separated during any mediation proceeding under
2 this subsection.

3 (c) AVAILABILITY OF ALTERNATE WORK ASSIGN-
4 MENT OR PAID LEAVE OF ABSENCE DURING PENDENCY
5 OF PROCEDURES.—

6 (1) OPTIONS FOR EMPLOYEES.—

7 (A) EMERGENCY CURTAILMENT OF OVER-
8 SEAS ASSIGNMENT.—At the request of a cov-
9 ered employee who files a complaint of harass-
10 ment, discrimination, sexual assault, or related
11 retaliation, an employee may request emergency
12 curtailment of his or her tour of duty at no
13 penalty to their career progress and shall be re-
14 assigned. Such requests for emergency curtail-
15 ment shall be approved by the Secretary or
16 their designee, not post management, within 10
17 days. The Department shall develop a process
18 by which covered employees may request this
19 option in a manner which does not inadvert-
20 ently result in retaliation to the employee.

21 (B) ALTERNATE WORK ASSIGNMENT.—At
22 the request of a covered employee who files a
23 complaint, during the pendency of any of the
24 procedures available under this title for consid-
25 eration of the violation, the employing office

1 shall permit the covered employee to carry out
2 the employee's responsibilities from an alternate
3 location where such relocation would have the
4 effect of materially reducing interactions be-
5 tween the covered employee and any person al-
6 leged to have committed the violation, instead
7 of from a location of the employing office.

8 (C) EXCEPTION FOR WORK ASSIGNMENTS
9 REQUIRED TO BE CARRIED OUT ONSITE.—If, in
10 the determination of the covered employee's em-
11 ploying office, a covered employee who makes a
12 request under this subsection cannot carry out
13 the employee's responsibilities from an alternate
14 location or such relocation would not have the
15 effect described in subparagraph (B), the em-
16 ploying office may during the pendency of the
17 procedures described in subparagraph (B)—

18 (i) reassign the covered employee;

19 (ii) make another workplace adjust-
20 ment that would have the effect of reduc-
21 ing interactions between the covered em-
22 ployee and any person alleged to have com-
23 mitted the violation described in subpara-
24 graph (B); or

25 (iii) grant a paid leave of absence.

1 (D) ENSURING NO RETALIATION.—An em-
2 ploying office may not grant a covered employ-
3 ee’s request under this subsection in a manner
4 which would constitute retaliation in violation of
5 any provision of law, including any provision of
6 title 5, United States Code.

7 (E) NO IMPACT ON ANNUAL OR PERSONAL
8 LEAVE.—In granting leave for a paid leave of
9 absence under this section, an employing office
10 shall not require the covered employee to sub-
11 stitute, for that leave, any of the accrued paid
12 annual leave of the covered employee.

13 (F) USE OF DUTY HOURS.—An employee
14 may use up to 16 hours of duty hours to pre-
15 pare for the investigation and resolution of the
16 applicable complaint.

17 (2) EXCEPTION FOR ARRANGEMENTS SUBJECT
18 TO COLLECTIVE BARGAINING AGREEMENTS.—Para-
19 graph (1) does not apply to the extent that it is in-
20 consistent with the terms and conditions of any col-
21 lective bargaining agreement which is in effect with
22 respect to an employing office.

23 (3) PROTECTIONS.—A request under paragraph
24 (1) may not be granted or carried out in a retalia-
25 tory manner, including retaliation for whistleblowing

1 in violation of the provisions of title 5, United States
2 Code, or any other provision of law.

3 (d) EXIT INTERVIEWS.—Departing employees may
4 request the opportunity to be interviewed in person with
5 Global Talent Management or its designee to discuss the
6 circumstances of their departure and should be asked spe-
7 cifically about the prevalence of and incidents of harass-
8 ment, discrimination, sexual assault, and related retalia-
9 tion.

10 **SEC. 6. PROVISION OF CLIMATE SURVEYS.**

11 (a) DEFINITIONS.—In this section—

12 (1) the term “bureaus and offices of the De-
13 partment of State” includes the Foreign Service (as
14 that term is defined in section 102 of the Foreign
15 Service Act of 1980 (22 U.S.C. 3902));

16 (2) the terms “Department of State” and “De-
17 partment” include the Foreign Service; and

18 (3) the terms “employees and officials of the
19 Department of State” includes members of the Serv-
20 ice (as that term is defined in section 103 of the
21 Foreign Service Act of 1980 (22 U.S.C. 3903)).

22 (b) CLIMATE SURVEYS OF EMPLOYEES OF THE DE-
23 PARTMENT OF STATE.—

24 (1) REQUIREMENT TO CONDUCT SURVEYS.—

25 Not later than 180 days after the date of the enact-

1 ment of this Act and every 2 years thereafter, the
2 Office of Employee Advocacy within the Department
3 of State shall conduct a survey of covered employees
4 of the Department of State regarding harassment,
5 discrimination, sexual assault, and related retaliation
6 in Department of State employment, including a
7 survey of the following:

8 (A) The prevalence of perceived violations
9 by employees and officials of the Department of
10 State.

11 (B) The extent to which such violations
12 arise from harassment or discrimination, in-
13 cluding on the basis of sex, race, religion, na-
14 tional origin, disability, genetic information,
15 and other demographic characteristics.

16 (C) The presence of a hostile work environ-
17 ment in the agency.

18 (D) Whether employees are aware of their
19 rights and Department processes and proce-
20 dures, and able to effectively exercise the rights
21 and protections provided under this Act and
22 other applicable laws, including the effectiveness
23 of the procedures applicable under this Act and
24 other applicable laws for investigating and hold-
25 ing accountable violations.

1 (E) The extent to which employees feel
2 comfortable making use of the available report-
3 ing and resolution mechanisms.

4 (F) For employees who have used the re-
5 porting and resolution mechanisms, the extent
6 to which the process was accessible and fair.

7 (2) SPECIAL REQUIREMENTS.—

8 (A) IN GENERAL.—In each survey con-
9 ducted under this section, the Office of Em-
10 ployee Advocacy shall survey respondents re-
11 garding the prevalence of and attitudes regard-
12 ing harassment, discrimination, sexual assault,
13 and related retaliation in Department of State
14 employment.

15 (B) COMPILATION OF INFORMATION BY
16 VARIOUS CATEGORIES.—The Office of Em-
17 ployee Advocacy shall endeavor to compile infor-
18 mation from the survey on the basis of various
19 categories of demographic characteristics, in-
20 cluding gender, race and ethnicity, and age, so
21 that the survey will report on the rates of inci-
22 dents of harassment, discrimination, sexual as-
23 sault, and related retaliation affecting each
24 such demographic category. The provision of

1 such demographic information shall be vol-
2 untary.

3 (C) CONSULTATION; TECHNICAL ASSIST-
4 ANCE.—The Office of Employee Advocacy shall
5 develop the survey in consultation with offices
6 of the executive branch which currently conduct
7 similar surveys of their employees, including the
8 Sexual Assault Prevention and Response Office
9 of the Department of Defense, the Office of Vi-
10 olence Against Women of the Department of
11 Justice, and the Merit Systems Protection
12 Board. Additionally, in developing the survey,
13 the Office of Employee Advocacy shall enter
14 into agreement to receive technical assistance
15 from Workplaces Respond to Domestic and
16 Sexual Violence: A National Resource Center
17 (also known as “Workplaces Respond”), the
18 nonprofit nongovernmental entity described in
19 section of the Violence Against Women Act of
20 1994 (34 U.S.C. 12501).

21 (D) CONFIDENTIALITY.—The underlying
22 data of the climate surveys shall only be avail-
23 able to the Office of Employee Advocacy.

1 (3) METHODOLOGY.—The Office of Employee
2 Advocacy shall conduct each survey under this sec-
3 tion in accordance with the following:

4 (A) All responses to all portions of the sur-
5 vey shall be anonymous and confidential, and
6 each respondent shall be told throughout the
7 survey that all responses shall be anonymous
8 and confidential.

9 (B) The Office of Employee Advocacy shall
10 design the survey so that it will take no more
11 than 15 minutes to complete, and so that it
12 may be taken online through the use of both
13 stationary communication devices (such as
14 desktop computers) and portable communica-
15 tion devices (such as cell phones and tablets).

16 (C) The Office of Employee Advocacy shall
17 include in the survey a list of resources avail-
18 able to respondents who wish to get more infor-
19 mation about harassment, discrimination, sex-
20 ual assault, or related retaliation in Department
21 of State employment, including the services the
22 Department of State provides to individuals
23 who allege violations.

1 **SEC. 7. REPORTS TO CONGRESS, THE DEPARTMENT, AND**
2 **THE PUBLIC.**

3 (a) ANNUAL REPORT.—

4 (1) IN GENERAL.—Not later than one year
5 after the date of enactment, and annually thereafter,
6 the Secretary of State shall submit to the Committee
7 on Foreign Affairs and Committee on Oversight and
8 Reform of the House of Representatives and the
9 Committee on Foreign Relations and Committee on
10 Homeland Security and Governmental Affairs of the
11 Senate a report on allegations of harassment, dis-
12 crimination, sexual assault, and related retaliation
13 involving employees and officials of the Department
14 of State during the preceding year.

15 (2) AVAILABILITY.—Any report submitted
16 under paragraph (1) shall be made available to—

17 (A) Department personnel on internal
18 websites and town hall meetings; and

19 (B) to the general public on the Depart-
20 ment's public website.

21 (b) CONTENTS.—Each report under subsection (a)(1)
22 shall contain the following:

23 (1) The number of instances of harassment,
24 discrimination, sexual assault, and related retaliation
25 against employees and officials of the Department of
26 State, and the number of instances of harassment,

1 discrimination, sexual assault, and related retaliation
2 by employees and officials of the Department, that
3 were reported to the Department during the year
4 covered by such report, and the number of the cases
5 so reported that were substantiated. The types of
6 harassment and discrimination shall be
7 disaggregated by category.

8 (2) A summary of types of charges of, and the
9 disciplinary action taken, in each such resolved case,
10 with identifying information of both the accused and
11 complainant removed.

12 (3) The policies, procedures, and processes im-
13 plemented by the Secretary of State during the year
14 covered by each such report in response to incidents
15 of harassment, discrimination, sexual assault, and
16 related retaliation involving employees and officials
17 of the Department of State.

18 (4) A plan for the actions that are to be taken
19 in the year following the year covered by each such
20 report on the prevention of and response to harass-
21 ment, discrimination, sexual assault, and related re-
22 taliation involving employees and officials of the De-
23 partment of State.

24 (5) Details on the average caseload of Depart-
25 ment investigators handling harassment, discrimina-

1 tion, sexual assault, and related retaliation, to in-
2 clude the number of staff working, the average and
3 median time to investigate cases, and the number of
4 extensions requested by the Office of Civil Rights to
5 conduct investigations past the 120-day timeframe.

6 (6) Details on the average caseload of Office of
7 Employee Advocacy Employee Advocates and staff
8 attorneys.

9 (7) Details on cases of bystander intervention
10 where a bystander assisted to counter or report inci-
11 dents of harassment, discrimination, sexual assault,
12 and related retaliation.

13 (8) Detailed findings and underlying data of
14 the climate surveys required in section 6 of this Act,
15 including an independent assessment by the Chief
16 Advocate, not subject to the Secretary of State, of
17 the current climate at the Department of State with
18 regard to harassment, discrimination, sexual assault,
19 and related retaliation.

20 (9) Frequency with which those alleging harass-
21 ment, discrimination, sexual assault, or related retal-
22 iation took advantage of supportive services, such as
23 medical care or counseling.

24 (c) ASSESSMENT.—Each report under paragraph (1)
25 for each year beginning with 2021 shall also include an

1 assessment by the Secretary of State of the implementa-
2 tion during the preceding fiscal year of the policies and
3 procedures under section 2(a) of the Department of State
4 on the prevention of and response to harassment, discrimi-
5 nation, sexual assault, and related retaliation involving
6 employees and officials of the Department in order to de-
7 termine the effectiveness of such policies and procedures
8 during such fiscal year in providing an appropriate re-
9 sponse to such harassment, discrimination, sexual assault,
10 and related retaliation.

11 (d) ASSESSMENT OF ADDITIONAL AUTHORITIES
12 NEEDED.—Not later than one year after the date of en-
13 actment of this Act, the Secretary of State shall submit
14 to Congress a proposal for such changes and legislation
15 as the Secretary considers necessary to enhance the capa-
16 bility of the Department of State to address matters relat-
17 ing to harassment, discrimination, sexual assault, and re-
18 lated retaliation involving covered employees. The report
19 shall include recommendations for additional appropria-
20 tions, as appropriate, to implement these changes.

21 **SEC. 8. REQUIRED TRAINING FOR DEPARTMENT PER-**
22 **SONNEL.**

23 (a) WHISTLEBLOWER PROTECTION TRAINING.—Not
24 later than one year after the enactment of this Act, and
25 annually thereafter, the Office of Civil Rights shall provide

1 to each covered employee of the Department of State
2 training regarding whistleblower disclosures and protec-
3 tions. Such training shall include instruction and an expla-
4 nation of the rights of such covered employee regarding
5 whistleblowing, including—

6 (1) each method established by law in which a
7 covered employee may file a whistleblower disclosure;

8 (2) the right of the covered employee to petition
9 Congress regarding a whistleblower disclosure; and

10 (3) the fact that the covered employee may not
11 be prosecuted or retaliated against for disclosing in-
12 formation to Congress, the Inspector General, or any
13 other investigatory agency in instances where such
14 disclosure is permitted by law, rule, or regulation.

15 (b) BYSTANDER INTERVENTION TRAINING.—Not
16 later than one year after the enactment of this Act, and
17 annually thereafter, the Office of Civil Rights shall provide
18 to each covered employee of the Department of State
19 training regarding harassment, discrimination, sexual as-
20 sault, and related retaliation, including—

21 (1) describing what such conduct entails;

22 (2) identifying the types of conduct that serve
23 as grounds to report or intervene;

1 (3) training on relevant laws that may require
2 an officer or employee to report or intervene in in-
3 stances of such conduct;

4 (4) reporting and intervening protocols and
5 strategies for such conduct;

6 (5) specific training for covered employees who
7 process allegations of such conduct against other
8 covered employees; and

9 (6) such training must be developed based on
10 consultation with organizations with expertise in
11 trauma-informed care, effective strategies in preven-
12 tion and response, and healthy workplace culture.

13 (c) SUPERVISOR TRAINING.—Not later than one year
14 after the enactment of this Act, and annually thereafter,
15 the Office of Civil Rights shall provide and institute man-
16 datory training on responding to complaints of harass-
17 ment, discrimination, sexual assault, and related retalia-
18 tion to each covered employee of the Department of State
19 who is a supervisor. Such training must be developed
20 based on consultation with organizations with expertise in
21 trauma-informed care, effective strategies in prevention
22 and response, and healthy workplace culture.

23 (d) EXECUTIVE LEADERSHIP TRAINING.—Not later
24 than one year after the enactment of this Act, and annu-
25 ally thereafter, the Office of Civil Rights shall provide and

1 institute mandatory training for each covered employee
2 serving in an executive leadership role, including Chiefs
3 of Mission. The training shall emphasize the statutory re-
4 quirements for reporting and responding to complaints of
5 harassment, discrimination, sexual assault, and related re-
6 taliation, including—

7 (1) understanding the damage and harm har-
8 assment, discrimination, sexual assault, and related
9 retaliation do to the employee and the organization;

10 (2) senior leadership’s responsibility and role to
11 create and foster a work environment free from har-
12 assment, discrimination, sexual assault, and related
13 retaliation; and

14 (3) such training must be developed based on
15 consultation with organizations with expertise in
16 trauma-informed care, effective strategies in preven-
17 tion and response, and healthy workplace culture.

18 (e) POLICIES AND PROCEDURES.—Not later than one
19 year after the enactment of this Act, and annually there-
20 after, the Office of Civil Rights shall provide to each cov-
21 ered employee of the Department of State training on the
22 policies and procedures on harassment, discrimination,
23 sexual assault, and related retaliation applicable by oper-
24 ation of section 2. Employees should receive this training
25 within 30 days of entering on duty. Such training must

1 be developed based on consultation with organizations
2 with expertise in trauma-informed care, effective strate-
3 gies in prevention and response, and healthy workplace
4 culture.

5 (f) **MANAGER’S TOOLKIT.**—The Secretary of State
6 shall establish resources, to be referred to as a “Manager’s
7 Toolkit”, to aid supervisors in understanding rights, re-
8 sponsibilities, and penalties associated with conduct of
9 harassment, discrimination, sexual assault, and related re-
10 taliation.

11 (g) **EQUAL EMPLOYMENT OPPORTUNITY COUNSELOR**
12 **TRAINING.**—The Office of Civil Rights shall revise the 32
13 hours of training provided to Equal Employment Oppor-
14 tunity Counselors to include the resources and responsibil-
15 ities of the Office of Employee Advocacy, as well as the
16 various means of communication available to employees to
17 relay their complaints to OEA.

18 **SEC. 9. HIRING, VETTING, AND PROMOTION.**

19 (a) **IN GENERAL.**—The Secretary of State, in con-
20 sultation with relevant agencies, shall ensure that ques-
21 tions relating to harassment, discrimination, sexual as-
22 sault, and related retaliation complaints are included in
23 any background investigation with respect to a security
24 clearance or access determination and vetting of any cov-
25 ered employee.

1 (b) REQUIREMENTS FOR APPOINTMENT.—Consistent
2 with the civil service and Foreign Service laws and regula-
3 tions, the Secretary of State shall ensure that a back-
4 ground investigation on any potential sexual assault is
5 conducted before an individual is appointed to a position
6 within the Department.

7 (c) REQUIREMENTS FOR PROMOTION INTO THE SEN-
8 IOR FOREIGN SERVICE OR SENIOR EXECUTIVE SERV-
9 ICE.—The Secretary of State shall ensure that potential
10 candidates are vetted for their history of promoting a work
11 environment free from harassment and discrimination.
12 Promotion boards shall take into account whether can-
13 didates have a history of offenses that occurred under
14 their leadership, regardless of whether the candidate was
15 named an offender or not.

16 (d) PROMOTION POLICY OBJECTIVES.—Consistent
17 with the civil service and Foreign Service laws and regula-
18 tions, the Secretary of State shall ensure that promotion
19 precepts and selection panels reward officers who have vol-
20 unteered to serve as Equal Employment Opportunity
21 Counselors, and that documentation of the precepts em-
22 phasize that counseling experience is to be viewed as valu-
23 able experience preparing officers to perform in senior-
24 level positions with respect to the leadership, management,
25 and interpersonal skills precepts.

1 **SEC. 10. NONDISCLOSURE AND NONDISPARAGEMENT**
2 **AGREEMENTS.**

3 (a) DEFINITIONS.—In this section—

4 (1) EMPLOYEE.—The term “employee” means
5 any individual subject to section 717 of the Civil
6 Rights Act of 1964 (42 U.S.C. 2000e–16), section
7 411(c) of title 3, United States Code, or section
8 101(a)(3) of the Congressional Accountability Act of
9 1995.

10 (2) EMPLOYER.—The term “employer” means
11 any employing office referred to in section
12 1301(a)(9) of title 2, United States Code, or section
13 411(c)(2) of title 3, United States Code, or depart-
14 ment, agency, or unit referred to in subsection (a)
15 of section 717 of the Civil Rights Act of 1964 (42
16 U.S.C. 2000e–16).

17 (3) NONDISCLOSURE CLAUSE.—The term “non-
18 disclosure clause” means a provision in a contract or
19 agreement establishing that one or more parties to
20 the contract or agreement agrees not to disclose in-
21 formation covered by the terms and conditions of the
22 contract or agreement.

23 (4) NONDISPARAGEMENT CLAUSE.—The term
24 “nondisparagement clause” means a provision in a
25 contract or agreement requiring one or more parties

1 to the contract or agreement not to make negative
2 statements about another such party.

3 (b) UNLAWFUL PRACTICES.—

4 (1) IN GENERAL.—It shall be an unlawful prac-
5 tice for an employer to enter into a contract or
6 agreement with an employee, as a condition of em-
7 ployment, promotion, compensation, benefits, or
8 change in employment status, or as a term, condi-
9 tion, or privilege of employment, if that contract or
10 agreement contains a nondisparagement clause or
11 nondisclosure clause that covers prohibited discrimi-
12 nation or harassment in employment or contracting,
13 or retaliation for reporting, resisting, opposing, or
14 assisting in the investigation of such discrimination
15 or harassment.

16 (2) ENFORCEMENT.—Notwithstanding any
17 other provision of law, it shall be an unlawful prac-
18 tice for an employer to enforce or attempt to enforce
19 a nondisclosure or nondisparagement clause that
20 covers prohibited discrimination or harassment in
21 employment, or retaliation for reporting, resisting,
22 opposing, or assisting in the investigation of such
23 discrimination or harassment. An employer's en-
24 forcement or attempts to enforce such a nondisclo-

1 sure agreement against an employee shall be deter-
2 mined to be prohibited retaliation.

3 (3) SETTLEMENT OR SEPARATION AGREE-
4 MENTS.—

5 (A) IN GENERAL.—The provisions of para-
6 graphs (1) and (2) do not apply to a nondispar-
7 agement clause or nondisclosure clause con-
8 tained in a settlement agreement or separation
9 agreement that resolves legal claims or disputes
10 if—

11 (i) such legal claims accrued or such
12 disputes arose before the settlement agree-
13 ment or separation agreement was exe-
14 cuted;

15 (ii) the clause involved is mutually
16 agreed upon by and mutually benefits
17 both—

18 (I) the employer, as the case may
19 be; and

20 (II) the employee;

21 (iii) the employee's agreement to such
22 clause is knowing and voluntary, as de-
23 scribed in subparagraph (C); and

24 (iv) the settlement agreement or sepa-
25 ration agreement expressly states that the

1 agreement involved does not prohibit, pre-
2 vent, or otherwise restrict a worker from—

3 (I) reporting the allegations un-
4 derlying those settled claims to the
5 Equal Employment Opportunity Com-
6 mission, any other Federal, State, or
7 local agency with the authority to en-
8 force laws (including regulations) that
9 prohibit discrimination or harassment
10 in employment, as the case may be, or
11 law enforcement;

12 (II) testifying at, assisting, or
13 participating in an investigation or
14 proceeding conducted by the Equal
15 Employment Opportunity Commis-
16 sion, any other Federal, State, or local
17 agency with the authority to enforce
18 laws (including regulations) that pro-
19 hibit discrimination or harassment in
20 employment, as the case may be, or
21 law enforcement; or

22 (III) testifying in a hearing or
23 trial or complying with a request for
24 discovery in relation to civil litigation.

1 (B) PROHIBITION ON SOLE BENEFIT.—For
2 purposes of this paragraph, it shall be an un-
3 lawful practice for an employer to unilaterally
4 include a nondisparagement clause or nondisclo-
5 sure clause that solely benefits the employer in
6 a separation or settlement agreement.

7 (C) KNOWING AND VOLUNTARY AGREE-
8 MENT.—For purposes of this paragraph, agree-
9 ment to a nondisparagement clause or non-
10 disclosure clause may not be considered know-
11 ing and voluntary unless at a minimum—

12 (i) the nondisparagement clause or
13 nondisclosure clause is written in a manner
14 designed to ensure that the employee un-
15 derstands the content of the clause in-
16 volved;

17 (ii) the nondisparagement clause or
18 nondisclosure clause is included only in ex-
19 change for consideration of value provided
20 to the employee, in addition to anything of
21 value to which the employee is already en-
22 titled;

23 (iii) the nondisparagement clause or
24 nondisclosure clause does not apply to any
25 rights or claims that arise after the date

1 the settlement or separation agreement is
2 executed;

3 (iv) the employee is advised in writing
4 to consult with an attorney prior to agree-
5 ing to such an agreement that includes a
6 nondisparagement clause or nondisclosure
7 clause;

8 (v) the employee is given a period of
9 at least 21 days to consider any proposal
10 for a settlement or separation agreement
11 that includes a nondisparagement clause or
12 nondisclosure clause; and

13 (vi) the settlement or separation
14 agreement provides that for a period of at
15 least 7 days following the execution of such
16 agreement the employee may revoke the
17 agreement, and the agreement shall not be-
18 come effective or enforceable until the rev-
19 ocation period has expired.

20 (D) BURDEN OF PROOF.—In any dispute
21 that may arise over whether any of the require-
22 ments of subparagraph (A) have been met, the
23 party asserting the validity of an agreement
24 shall have the burden of proving that the re-
25 quirements of subparagraph (A) have been met.

1 (E) PARTICIPATION IN INVESTIGATIONS OR
2 PROCEEDINGS.—No nondisparagement clause
3 or nondisclosure clause may affect the ability of
4 an employee to testify at, assist, or participate
5 in an investigation or proceeding conducted by
6 the Equal Employment Opportunity Commis-
7 sion, any Federal, State, or local agency with
8 the authority to enforce laws (including regula-
9 tions) that prohibit discrimination in employ-
10 ment, as the case may be, or a law enforcement
11 agency.

12 (F) PROHIBITION ON DAMAGES.—Under
13 no circumstances shall an employee be required
14 to pay damages for breach of a nondisparage-
15 ment clause or nondisclosure clause permitted
16 by this paragraph in excess of an amount equal
17 to the consideration of value provided to the
18 worker in exchange for the workers' agreement
19 to the nondisparagement clause or nondisclo-
20 sure clause.

21 (c) ENFORCEMENT.—

22 (1) ENFORCEMENT POWERS.—With respect to
23 the administration and enforcement of this section
24 in the case of a claim alleged by an employee against
25 an employer for a violation of this section—

1 (A) the Commission shall have the same
2 powers as the Commission has to administer
3 and enforce title VII of the Civil Rights Act of
4 1964 (42 U.S.C. 2000e et seq.);

5 (B) the Librarian of Congress shall have
6 the same powers as the Librarian of Congress
7 has to administer and enforce title VII of the
8 Civil Rights Act of 1964 (42 U.S.C. 2000e et
9 seq.) in the case of a claim alleged by an em-
10 ployee of the employer for a violation of such
11 title;

12 (C) the Board (as defined in section
13 101(a) of the Congressional Accountability Act
14 of 1995 (2 U.S.C. 1301(a))) shall have the
15 same powers as the Board has to administer
16 and enforce the Congressional Accountability
17 Act of 1995 (2 U.S.C. 1301 et seq.) in the case
18 of a claim alleged by an employee of the em-
19 ployer for a violation of section 201(a)(1) of
20 such Act (2 U.S.C. 1311(a)(1));

21 (D) the President, the Commission, and
22 the Merit Systems Protection Board shall have
23 the same powers as the President, the Commis-
24 sion, and the Board, respectively, have to ad-
25 minister and enforce chapter 5 of title 3,

1 United States Code, in the case of a claim al-
2 leged by an employee of the employer for a vio-
3 lation of section 411 of such title; and

4 (E) a court of the United States shall have
5 the same jurisdiction and powers as the court
6 has to enforce—

7 (i) title VII of the Civil Rights Act of
8 1964 (42 U.S.C. 2000e et seq.) in the case
9 of a claim alleged by an employee of the
10 employer for a violation of such title;

11 (ii) the Congressional Accountability
12 Act of 1995 (2 U.S.C. 1301 et seq.) in the
13 case of a claim alleged by an employee of
14 the employer for a violation of section
15 201(a)(1) of such Act (2 U.S.C.
16 1311(a)(1)); and

17 (iii) chapter 5 of title 3, United States
18 Code, in the case of a claim alleged by an
19 employee of the employer for a violation of
20 section 411 of such title.

21 (2) PROCEDURES AND REMEDIES.—The proce-
22 dures and remedies applicable to a claim alleged by
23 an employee against the employer for a violation of
24 this section are—

1 (A) the procedures and remedies applicable
2 for a violation of title VII of the Civil Rights
3 Act of 1964 (42 U.S.C. 2000e et seq.) in the
4 case of a claim alleged by an employee of the
5 employer for a violation of such title;

6 (B) the procedures and remedies applicable
7 for a violation of section 201(a)(1) of the Con-
8 gressional Accountability Act of 1995 (2 U.S.C.
9 1311(a)(1)) in the case of a claim alleged by an
10 employee of the employer for a violation of such
11 section; and

12 (C) the procedures and remedies applicable
13 for a violation of section 411 of title 3, United
14 States Code, in the case of a claim alleged by
15 an employee of the employer for a violation of
16 such section.

17 (d) RIGHT TO REPORT RESERVED.—Notwith-
18 standing signing (before, on, or after the effective date of
19 this Act) any nondisparagement clause or nondisclosure
20 clause, an employee retains—

21 (1) any right that person would otherwise have
22 had to report a concern about harassment, including
23 sexual harassment, in employment or another viola-
24 tion of the law to the Commission, another Federal
25 agency (including an office of the legislative or judi-

1 cial branch), a State or local fair employment prac-
2 tices agency or any other State or local agency, or
3 a law enforcement agency; and

4 (2) any right that person would otherwise have
5 had to bring an action in a court of the United
6 States.

7 (e) REGULATIONS.—

8 (1) IN GENERAL.—Except as provided in para-
9 graphs (2), (3), and (4), the Commission shall have
10 authority to issue regulations to carry out this sec-
11 tion.

12 (2) LIBRARIAN OF CONGRESS.—The Librarian
13 of Congress shall have authority to issue regulations
14 to carry out this section with respect to workers of
15 the Library of Congress.

16 (3) BOARD.—The Board referred to in sub-
17 section (c)(1)(C) shall have authority to issue regu-
18 lations to carry out this section, in accordance with
19 section 304 of the Congressional Accountability Act
20 of 1995 (2 U.S.C. 1384), with respect to employees
21 described in subsection (c)(1)(C).

22 (4) PRESIDENT.—The President shall have au-
23 thority to issue regulations to carry out this section
24 with respect to employees described in subsection
25 (c)(1)(E).

1 (f) REMEDIES.—Notwithstanding any other provision
2 of this Act, in an action or administrative proceeding
3 against the United States for a violation of this section,
4 remedies (including remedies at law and in equity, and
5 interest) are available for the violation to the same extent
6 as the remedies are available for a violation of title VII
7 of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.)
8 by an employer, except that—

9 (1) punitive damages are not available; and

10 (2) compensatory damages are available to the
11 extent specified in section 1977A(b) of the Revised
12 Statutes (42 U.S.C. 1981a(b)).

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