

115TH CONGRESS
1ST SESSION

S. _____

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

IN THE SENATE OF THE UNITED STATES

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

A BILL

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

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

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

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

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

Sec. 1. Short title; table of contents.

TITLE I—OFFICE OF ACCOUNTABILITY AND WHISTLEBLOWER
PROTECTION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 “(C) Receiving whistleblower disclosures.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 “(g) DEFINITIONS.—In this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“733. Training regarding whistleblower disclosures.”.

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

8 (1) in subsection (c)—

9 (A) in paragraph (1)—

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

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

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

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

1 sistant Secretary for Accountability and
2 Whistleblower Protection,”; and
3 (B) in paragraph (2), by striking “through
4 (F)” and inserting “through (E)”; and
5 (2) by adding at the end the following new sub-
6 section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 “(A) advance notice of the action;

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

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

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

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

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

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

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

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

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

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

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

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

9 “(C) unsupported by substantial evidence.

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

14 “(d) DEFINITIONS.—In this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 “(C) suspend the covered individual.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 “(h) DEFINITIONS.—In this section:

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

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

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

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

5 “(D) a political appointee.

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

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

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

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

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

21 “(B) a limited term appointee, limited
22 emergency appointee, or noncareer appointee in
23 the Senior Executive Service, as defined under
24 paragraphs (5), (6), and (7), respectively, of
25 section 3132(a) of title 5; or

1 “(C) employed in a position of a confiden-
2 tial or policy-determining character under
3 schedule C of subpart C of part 213 of title 5,
4 Code of Federal Regulations, or successor regu-
5 lation.

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

9 (b) CLERICAL AND CONFORMING AMENDMENTS.—

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

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

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

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

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

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

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

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

4 (a) REDUCTION OF BENEFITS.—

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

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

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

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

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

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

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

4 “(C) the Secretary issues the order—

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

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

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

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

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

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

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

9 “(i) notice of the proposed order;

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

13 “(C) the Secretary issues the order—

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

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

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

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

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

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

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

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

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

4 “(f) DEFINITIONS.—In this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 “(3) the Secretary issues the order—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 “(3) the Secretary issues the order—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (1) in paragraph (1)—

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

6 (B) in subparagraph (A)—

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

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

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

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

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

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

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

3 (3) in paragraph (4)—

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

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

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

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

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

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

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

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

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

9 (2) in paragraph (2)—

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

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

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

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

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

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

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

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

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

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

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

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

24 (b) DEFINITIONS.—In this section:

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

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

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

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

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

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

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

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

6 (2) With respect to promotions—

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

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

15 (3) With respect to retention—

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

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

21 (C) rates of transfer of—

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

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

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

6 (4) With respect to disciplinary processes—

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

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

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

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

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

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

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

18 (5) With respect to hiring—

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

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

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

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

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

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

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

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

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

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

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

10 (a) MEASURING AND COLLECTING.—

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

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

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

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

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

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

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

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

16 (b) REPORT.—

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

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

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

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

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

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

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

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

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

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