

115TH CONGRESS  
1ST SESSION

# S. 1094

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## AN ACT

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

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

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

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

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

Sec. 1. Short title; table of contents.

TITLE I—OFFICE OF ACCOUNTABILITY AND WHISTLEBLOWER  
 PROTECTION

Sec. 101. Establishment of Office of Accountability and Whistleblower Protec-  
 tion.

Sec. 102. Protection of whistleblowers in Department of Veterans Affairs.

Sec. 103. Report on methods used to investigate employees of Department of  
 Veterans Affairs.

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

Sec. 201. Improved authorities of Secretary of Veterans Affairs to improve ac-  
 countability of senior executives.

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

Sec. 203. Reduction of benefits for Department of Veterans Affairs employees  
 convicted of certain crimes.

Sec. 204. Authority to recoup bonuses or awards paid to employees of Depart-  
 ment of Veterans Affairs.

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

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

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

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

Sec. 209. Improvement of training for supervisors.

Sec. 210. Assessment and report on effect on senior executives at Department  
 of Veterans Affairs.

Sec. 211. Measurement of Department of Veterans Affairs disciplinary process  
 outcomes and effectiveness.

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

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

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

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

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

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

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

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

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

1 sponsibilities relating to the functions of the Office set  
2 forth in subsection (c).

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

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

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

14 “(C) Receiving whistleblower disclosures.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17               “(A) a violation of a law, rule, or regula-  
18               tion; or

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

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

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

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

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

6 **SEC. 102. PROTECTION OF WHISTLEBLOWERS IN DEPART-**  
7 **MENT OF VETERANS AFFAIRS.**

8           (a) IN GENERAL.—Subchapter II of chapter 7 of title  
9 38, United States Code, is amended by—

10           (1) striking sections 731, 732, 734, 735, and  
11 736;

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

14           (3) by adding at the end the following new sec-  
15 tions:

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

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

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

25           “(2) promotes the protection of whistleblowers.

1       “(b) PRINCIPLES FOR PROTECTION OF WHISTLE-  
2 BLOWERS.—The criteria required by subsection (a) shall  
3 include principles for the protection of whistleblowers,  
4 such as the degree to which supervisory employees respond  
5 constructively when employees of the Department report  
6 concerns, take responsible action to resolve such concerns,  
7 and foster an environment in which employees of the De-  
8 partment feel comfortable reporting concerns to super-  
9 visory employees or to the appropriate authorities.

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

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

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

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

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

4           “(3) an explanation that the employee may not  
5           be prosecuted or reprimed against for disclosing in-  
6           formation to Congress, the Inspector General, or an-  
7           other investigatory agency in instances where such  
8           disclosure is permitted by law, including under sec-  
9           tions 5701, 5705, and 7732 of this title, under sec-  
10          tion 552a of title 5 (commonly referred to as the  
11          Privacy Act), under chapter 93 of title 18, and pur-  
12          suant to regulations promulgated under section  
13          264(c) of the Health Insurance Portability and Ac-  
14          countability Act of 1996 (Public Law 104–191);

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

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

23          “(b) MANNER TRAINING IS PROVIDED.—The Sec-  
24          retary shall ensure, to the maximum extent practicable,

1 that training provided under subsection (a) is provided in  
2 person.

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

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

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

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

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

20 (2) by adding at the end the following new  
21 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.”.

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

4 (1) in subsection (c)—

5 (A) in paragraph (1)—

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

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

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

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

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

24 (2) by adding at the end the following new sub-  
25 section:



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

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

8           **TITLE II—ACCOUNTABILITY OF**  
9           **SENIOR EXECUTIVES, SUPER-**  
10          **VISORS, AND OTHER EMPLOY-**  
11          **EES**

12          **SEC. 201. IMPROVED AUTHORITIES OF SECRETARY OF VET-**  
13                           **ERANS AFFAIRS TO IMPROVE ACCOUNT-**  
14                           **ABILITY OF SENIOR EXECUTIVES.**

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

17          **“§ 713. Senior executives: removal, demotion, or sus-**  
18                           **pension based on performance or mis-**  
19                           **conduct**

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

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

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

7           “(A) advance notice of the action and a file  
8 containing all evidence in support of the proposed  
9 action;

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

12          “(C) grieve the action in accordance with an in-  
13 ternal grievance process that the Secretary, in con-  
14 sultation with the Assistant Secretary for Account-  
15 ability and Whistleblower Protection, shall establish  
16 for purposes of this subsection.

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

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

23       “(C) A decision under this paragraph on an action  
24 under subsection (a) shall be issued not later than 15 busi-  
25 ness days after notice of the action is provided to the cov-

1 ered individual under paragraph (1)(A). The decision shall  
2 be in writing, and shall include the specific reasons there-  
3 for.

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

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

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

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

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

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

22 “(C) unsupported by substantial evidence.

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

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

3 “(d) DEFINITIONS.—In this section:

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

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

7 “(B) any individual who occupies an ad-  
8 ministrative or executive position and who was  
9 appointed under section 7306(a), section  
10 7401(1), or section 7401(4) of this title.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8           “(C) suspend the covered individual.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 “(3)(A) The decision of the administrative judge  
24 under paragraph (1) may be appealed to the Merit Sys-  
25 tems Protection Board.

1       “(B) Notwithstanding section 7701(c)(1)(B) of title  
2 5, the Merit Systems Protection Board shall uphold the  
3 decision of the Secretary to remove, demote, or suspend  
4 an employee under subsection (a) if the decision is sup-  
5 ported by substantial evidence.

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

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

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

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

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

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

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

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

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

1 under the collective bargaining agreement, the timelines  
2 and procedures set forth in subsection (c) and this sub-  
3 section shall apply.

4 “(e) WHISTLEBLOWER PROTECTION.—(1) In the  
5 case of a covered individual seeking corrective action (or  
6 on behalf of whom corrective action is sought) from the  
7 Office of Special Counsel based on an alleged prohibited  
8 personnel practice described in section 2302(b) of title 5,  
9 the Secretary may not remove, demote, or suspend such  
10 covered individual under subsection (a) without the ap-  
11 proval of the Special Counsel under section 1214(f) of title  
12 5.

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

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

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

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

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

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

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

19 “(h) DEFINITIONS.—In this section:

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

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

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

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

6           “(D) a political appointee.

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

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

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

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

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

22               “(B) a limited term appointee, limited  
23               emergency appointee, or noncareer appointee in  
24               the Senior Executive Service, as defined under

1 paragraphs (5), (6), and (7), respectively, of  
2 section 3132(a) of title 5; or

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

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

11 (b) CLERICAL AND CONFORMING AMENDMENTS.—

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

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

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

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

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

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

23 “(4) any removal or demotion under section  
24 714 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  
14 713, 714, or 7461 of this title or any other provision of  
15 law shall not be taken into account for purposes of calcu-  
16 lating an annuity with respect to such individual under  
17 chapter 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 the Secretary proposes to re-  
22          move for performance or misconduct under section 713,  
23          714, or 7461 of this title or any other provision of law  
24          but who leaves employment at the Department prior to  
25          the issuance of a final decision with respect to such action

1 shall not be taken into account for purposes of calculating  
2 an annuity with respect to such individual under chapter  
3 83 or chapter 84 of title 5, if—

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

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

10 “(i) notice of the proposed order;

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

14 “(C) the Secretary issues the order—

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

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

24 “(2) Upon the issuance of an order by the Secretary  
25 under paragraph (1), the individual shall have an oppor-

1 tunity to appeal the order to the Director of the Office  
2 of Personnel Management before the date that is seven  
3 business days after the date of such issuance.

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

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

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

18 “(e) SPOUSE OR CHILDREN EXCEPTION.—(1) The  
19 Secretary, in consultation with the Director of the Office  
20 of Personnel Management, shall prescribe regulations that  
21 may provide for the payment to the spouse or children  
22 of any individual referred to in subsection (a) or (b) of  
23 any amounts which (but for this subsection) would other-  
24 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       (b) CLERICAL AMENDMENT.—The table of sections  
5 at the beginning of such chapter, as amended by section  
6 203(a)(2), is further amended by inserting after the item  
7 relating to section 719 the following new item:

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

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

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

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

23       (a) IN GENERAL.—Subchapter I of chapter 7 of title  
24 38, United States Code, as amended by section 204, is



1           (2)(B), not later than five business days after  
2           receiving the response of the individual; or

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

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

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

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

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

21          (c) EFFECTIVE DATE.—Section 723 of title 38,  
22          United States Code, as added by subsection (a), shall  
23          apply with respect to an amount paid by the Secretary  
24          of Veterans Affairs to or on behalf of an employee of the

1 Department of Veterans Affairs for relocation expenses on  
2 or after the date of the enactment of this Act.

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

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

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

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

13 **SEC. 207. DIRECT HIRING AUTHORITY FOR MEDICAL CEN-**  
14 **TER DIRECTORS AND VISN DIRECTORS.**

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

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

23 (b) CONFORMING AMENDMENTS.—Section  
24 7404(a)(1) of such title is amended—

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

2 and

3 (2) in subparagraph (A), as designated by para-  
4 graph (1)—

5 (A) by inserting “and 7401(4)” after  
6 “7306”; and

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

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

13 **SEC. 208. TIME PERIODS FOR REVIEW OF ADVERSE AC-**  
14 **TIONS WITH RESPECT TO CERTAIN EMPLOY-**  
15 **EES.**

16 (a) PHYSICIANS, DENTISTS, PODIATRISTS, CHIRO-  
17 PRACTORS, OPTOMETRISTS, REGISTERED NURSES, PHY-  
18 SICIAN ASSISTANTS, AND EXPANDED-FUNCTION DENTAL  
19 AUXILIARIES.—Paragraph (2) of section 7461(b) of title  
20 38, United States Code, is amended to read as follows:

21 “(2) In any case other than a case described in para-  
22 graph (1) that involves or includes a question of profes-  
23 sional conduct or competence in which a major adverse  
24 action was not taken, such an appeal shall be made

1 through Department grievance procedures under section  
2 7463 of this title.”.

3 (b) MAJOR ADVERSE ACTIONS INVOLVING PROFES-  
4 SIONAL CONDUCT OR COMPETENCE.—Section 7462(b) of  
5 such title is amended—

6 (1) in paragraph (1)—

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

11 (B) in subparagraph (A)—

12 (i) by striking “At least 30 days ad-  
13 vance written notice” and inserting “Ad-  
14 vance written notice”;

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

17 (iii) by inserting “and a file con-  
18 taining all the evidence in support of each  
19 charge,” after “with respect to each  
20 charge,”; and

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

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

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

8           (3) in paragraph (4)—

9           (A) by striking subparagraph (A) and in-  
10           serting the following new subparagraph (A):

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

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

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

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

21           “(B) The deciding official shall render a decision  
22 under paragraph (3) on charges under this subsection not  
23 later than 15 business days after the Under Secretary pro-  
24 vides notice on the charges for purposes of paragraph  
25 (1)(A).

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

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

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

14           (2) in paragraph (2)—

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

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

22           (C) in subparagraph (B), by striking “a  
23 reasonable time” and inserting “time to an-  
24 swer”; and

1           (3) by adding at the end the following new  
2 paragraph (3):

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

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

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

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

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

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

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

24           (3) How to effectively manage employees who  
25 are performing at an unacceptable level and access

1 assistance from the human resources office of the  
2 Department and the Office of the General Counsel  
3 of the Department with respect to those employees.

4 (b) DEFINITIONS.—In this section:

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

8 (2) WHISTLEBLOWER.—The term “whistle-  
9 blower” has the meaning given such term in section  
10 323(g) of title 38, United States Code, as added by  
11 section 101.

12 **SEC. 210. ASSESSMENT AND REPORT ON EFFECT ON SEN-**  
13 **IOR EXECUTIVES AT DEPARTMENT OF VET-**  
14 **ERANS AFFAIRS.**

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

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

23 (2) submit to the Committee on Veterans’ Af-  
24 fairs of the Senate and the Committee on Veterans’  
25 Affairs of the House of Representatives a report on

1 the findings of the Secretary with respect to the  
2 measurement and assessment carried out under  
3 paragraph (1).

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

6 (1) With respect to engagement, trends in mo-  
7 rale of individuals in senior executive positions and  
8 individuals aspiring to senior executive positions.

9 (2) With respect to promotions—

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

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

18 (3) With respect to retention—

19 (A) trends in retirement rates of individ-  
20 uals in senior executive positions at the Depart-  
21 ment;

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

24 (C) rates of transfer of—

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

4 (ii) individuals from senior executive  
5 positions at the Department to other Fed-  
6 eral agencies; and

7 (D) trends in total loss rates by job func-  
8 tion.

9 (4) With respect to disciplinary processes—

10 (A) regarding individuals in senior execu-  
11 tive positions at the Department who are the  
12 subject of disciplinary action—

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

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

22 (B) the components or offices of the De-  
23 partment which experience the greatest number  
24 of proposed adverse actions against individuals  
25 in senior executive positions and components

1 and offices which experience the least relative to  
2 the size of the components or offices' total  
3 number of senior executive positions;

4 (C) the tenure of individuals in senior ex-  
5 ecutive positions who are the subject of discipli-  
6 nary action;

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

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

21 (5) With respect to hiring—

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

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

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

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

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

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

1           (G) the satisfaction of newly hired individ-  
2           uals in senior executive positions at the Depart-  
3           ment with the hiring process and the process of  
4           joining and becoming oriented with the Depart-  
5           ment.

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

10 **SEC. 211. MEASUREMENT OF DEPARTMENT OF VETERANS**

11                   **AFFAIRS DISCIPLINARY PROCESS OUTCOMES**

12                   **AND EFFECTIVENESS.**

13           (a) MEASURING AND COLLECTING.—

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

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

23           (A) The average time from the initiation of  
24           an adverse action against an employee at the

1 Department to the final resolution of that ac-  
2 tion.

3 (B) The number of distinct steps and lev-  
4 els of review within the Department involved in  
5 the disciplinary process and the average length  
6 of time required to complete these steps.

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

13 (D) The number of appeals from adverse  
14 actions filed against employees of the Depart-  
15 ment, the number of appeals upheld, and the  
16 reasons for which the appeals were upheld.

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

20 (b) REPORT.—

21 (1) IN GENERAL.—Not later than December 31,  
22 2017, the Secretary shall submit to the appropriate  
23 committees of Congress a report on the disciplinary  
24 procedures and actions of the Department.

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

3           (A) The information collected under sub-  
4 section (a).

5           (B) The findings of the Secretary with re-  
6 spect to the measurement and collection carried  
7 out under subsection (a).

8           (C) An analysis of the disciplinary proce-  
9 dures and actions of the Department.

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

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

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

17           (A) the Committee on Appropriations and  
18 the Committee on Veterans’ Affairs of the Sen-  
19 ate; and

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

Passed the Senate June 6, 2017.

Attest:

*Secretary.*



115<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

**S. 1094**

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**AN ACT**

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