

AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 8510
OFFERED BY Mr . Pappas

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “Strengthening Whistle-
3 blower Protections at the Department of Veterans Affairs
4 Act”.

5 SEC. 2. COUNSEL OF OFFICE OF ACCOUNTABILITY AND
6 WHISTLEBLOWER PROTECTION.

7 Subsection (e) of section 323 of title 38, United
8 States Code, is amended—

9 (1) by inserting “(1)” before “The Office”; and

10 (2) by adding at the end the following new
11 paragraph:

12 “(2) The Assistant Secretary shall appoint a Counsel
13 of the Office, who shall be a career appointee in the Senior
14 Executive Service and shall report to the Assistant Sec-
15 retary. The Counsel shall provide the Assistant Secretary
16 with legal advice on all matters relating to the Office. In
17 accordance with subsection (e), the Assistant Secretary

1 may hire the appropriate staff for the Counsel to provide
2 such legal advice.”.

3 **SEC. 3. MODIFICATIONS TO FUNCTIONS OF OFFICE OF AC-**
4 **COUNTABILITY AND WHISTLEBLOWER PRO-**
5 **TECTION.**

6 Subsection (c)(1) of such section is amended—

7 (1) by striking subparagraphs (A) and (B);

8 (2) by redesignating subparagraphs (C) through
9 (G) as subparagraphs (A) through (E), respectively;

10 (3) in subparagraph (A), as so redesignated, by
11 inserting “and allegations of whistleblower retalia-
12 tion” after “disclosures”;

13 (4) by striking subparagraph (B), as so redesign-
14 ated, and inserting the following new subpara-
15 graph:

16 “(B) Referring employees of the Depart-
17 ment to the Office of Special Counsel so the Of-
18 fice of Special Counsel may receive whistle-
19 blower disclosures and allegations of whistle-
20 blower retaliation.”; and

21 (5) by striking subparagraphs (H) and (I).

22 **SEC. 4. EXPANSION OF WHISTLEBLOWER PROTECTIONS.**

23 (a) **CLARIFICATION OF PROHIBITED PERSONNEL AC-**
24 **TION.**—Section 731(c) of such title is amended—

25 (1) in paragraph (1)—

1 (A) in the matter preceding subparagraph
2 (A), by inserting “, or threatening to take or
3 fail to take,” after “failing to take”; and

4 (B) in subparagraph (A), by inserting “, or
5 with respect to an allegation of such a disclo-
6 sure” before the semicolon;

7 (2) in paragraph (3), by inserting “, making a
8 referral to boards of licensure,” after “negative peer
9 review”.

10 (b) **FUNCTION OF OFFICE OF ACCOUNTABILITY AND**
11 **WHISTLEBLOWER PROTECTION.**—Section 323(g) of such
12 title is amended by adding at the end the following new
13 paragraph:

14 “(4) The term ‘prohibited personnel action’ has
15 the meaning given such term in section 731(c) of
16 this title.”.

17 **SEC. 5. TRACKING AND ENFORCEMENT OF RECOMMENDA-**
18 **TIONS AND SETTLEMENT AGREEMENTS RE-**
19 **GARDING WHISTLEBLOWERS.**

20 Subsection (c) of section 323 of such title, as amend-
21 ed by section 4, is further amended—

22 (1) in paragraph (1), by adding at the end the
23 following new subparagraphs:

24 “(I) Tracking the negotiation, implementation,
25 and enforcement of settlement agreements entered

1 into by the Secretary regarding claims of whistle-
2 blower retaliation, including with respect to the work
3 of the General Counsel of the Department regarding
4 such settlements.

5 “(J) Tracking the determinations made by the
6 Special Counsel regarding claims of whistleblower
7 retaliation, including—

8 “(i) any disciplinary action for the indi-
9 vidual who engaged in whistleblower retaliation;
10 and

11 “(ii) determinations regarding the need for
12 settlement as identified by the Special Counsel,
13 and any settlement resolving claims of whistle-
14 blower retaliation entered into by the Secretary
15 with the whistleblower.”; and

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

18 “(4)(A) In carrying out subparagraph (I) of para-
19 graph (1), the Assistant Secretary shall, in consultation
20 with the General Counsel, establish metrics and standards
21 regarding—

22 “(i) the timely implementation of settlement
23 agreements entered into by the Secretary regarding
24 whistleblower retaliation; and

1 “(ii) reasonable restitution and restoration of
2 employment, and other relief for whistleblowers; and
3 “(B) The Assistant Secretary shall establish a secure
4 electronic system to carry out subparagraphs (I) and (J)
5 of paragraph (1) in a manner that ensures the confiden-
6 tiality of the identity of a whistleblower.”.

7 **SEC. 6. TRAINING AND INFORMATION.**

8 Section 323 of such title is further amended—

9 (1) in subsection (c)(2), by striking “receive
10 anonymous whistleblower disclosures” and inserting
11 “provide information to employees of the Depart-
12 ment regarding the rights of and procedures for
13 whistleblowers”;

14 (2) by redesignating subsection (g) as sub-
15 section (i); and

16 (3) by inserting after subsection (f) the fol-
17 lowing new subsections:

18 “(g) TRAINING.—The Assistant Secretary shall—

19 “(1) develop, in consultation with the Special
20 Counsel, annual training on whistleblower protection
21 and related issues;

22 “(2) provide and make such training available
23 to employees of the Department; and

24 “(3) disseminate training materials and infor-
25 mation to employees on whistleblower rights, whistle-

1 blower disclosures, and allegations of whistleblower
2 retaliation, including any materials created pursuant
3 to section 733 of this title.”.

4 **SEC. 7. IMPROVEMENTS TO ANNUAL REPORTS.**

5 Subsection (f) of section 323 of such title is amend-
6 ed—

7 (1) in paragraph (1)(B)(ii), by striking “sub-
8 section (C)(1)(G)” and inserting “subsection
9 (c)(1)(E)”;

10 (2) in paragraph (2)—

11 (A) by striking “under subsection
12 (c)(1)(I)” and inserting “by the Special Coun-
13 sel”; and

14 (B) by inserting “not later than 60 days
15 after such date” before “the Secretary shall”;

16 and

17 (3) by adding at the end the following new
18 paragraph:

19 “(3) Not later than June 30, 2023, and semiannually
20 thereafter, the Secretary shall submit to the Committees
21 on Veterans’ Affairs of the House of Representatives and
22 the Senate a report on settlements described in paragraph
23 (1)(I) of subsection (c), including, with respect to the pe-
24 riod covered by the report—

1 “(A) the number of settlements under negotia-
2 tion or executed, and the number of executed settle-
3 ments that have not been fully implemented;

4 “(B) the explanation as to why any such exe-
5 cuted settlement has not been fully implemented;

6 “(C) a description of the metrics described in
7 paragraph (4)(A) of such subsection; and

8 “(D) identification of settlement agreements
9 that are not meeting such metrics and standards, or
10 for which the Assistant Secretary is aware of a de-
11 termination that a breach of agreement has been
12 found.”.

