

Suspend the Rules and Pass the Bill, H.R. 8510, with an Amendment

(The amendment strikes all after the enacting clause and inserts a new text)

117TH CONGRESS
2^D SESSION

H. R. 8510

To amend title 38, United States Code, to make certain improvements to the Office of Accountability and Whistleblower Protection of the Department of Veterans Affairs, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 26, 2022

Mr. PAPPAS (for himself and Mr. MANN) introduced the following bill; which was referred to the Committee on Veterans' Affairs

A BILL

To amend title 38, United States Code, to make certain improvements to the Office of Accountability and Whistleblower Protection 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.**

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

1 **SEC. 2. COUNSEL OF OFFICE OF ACCOUNTABILITY AND**
2 **WHISTLEBLOWER PROTECTION.**

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

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

6 (2) by adding at the end the following new
7 paragraph:

8 “(2) The Assistant Secretary shall appoint a Counsel
9 of the Office, who shall be a career appointee in the Senior
10 Executive Service and shall report to the Assistant Sec-
11 retary. The Counsel shall provide the Assistant Secretary
12 with legal advice on all matters relating to the Office. In
13 accordance with subsection (e), the Assistant Secretary
14 may hire the appropriate staff for the Counsel to provide
15 such legal advice.”.

16 **SEC. 3. MODIFICATIONS TO FUNCTIONS OF OFFICE OF AC-**
17 **COUNTABILITY AND WHISTLEBLOWER PRO-**
18 **TECTION.**

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

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

21 (2) by redesignating subparagraphs (C) through
22 (G) as subparagraphs (A) through (E), respectively;

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

1 (4) by striking subparagraph (B), as so redesign-
2 nated, and inserting the following new subpara-
3 graph:

4 “(B) Referring employees of the Depart-
5 ment to the Office of Special Counsel so the Of-
6 fice of Special Counsel may receive whistle-
7 blower disclosures and allegations of whistle-
8 blower retaliation.”; and

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

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

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

13 (1) in paragraph (1)—

14 (A) in the matter preceding subparagraph
15 (A), by inserting “, or threatening to take or
16 fail to take,” after “failing to take”; and

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

20 (2) in paragraph (3), by inserting “, making a
21 referral to boards of licensure,” after “negative peer
22 review”.

23 (b) **FUNCTION OF OFFICE OF ACCOUNTABILITY AND**
24 **WHISTLEBLOWER PROTECTION.**—Section 323(g) of such

1 title is amended by adding at the end the following new
2 paragraph:

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

6 **SEC. 5. TRACKING AND ENFORCEMENT OF RECOMMENDA-**
7 **TIONS AND SETTLEMENT AGREEMENTS RE-**
8 **GARDING WHISTLEBLOWERS.**

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

11 (1) in paragraph (1), by adding at the end the
12 following new subparagraphs:

13 “(I) Tracking the negotiation, implementation,
14 and enforcement of settlement agreements entered
15 into by the Secretary regarding claims of whistle-
16 blower retaliation, including with respect to the work
17 of the General Counsel of the Department regarding
18 such settlements.

19 “(J) Tracking the determinations made by the
20 Special Counsel regarding claims of whistleblower
21 retaliation, including—

22 “(i) any disciplinary action for the indi-
23 vidual who engaged in whistleblower retaliation;
24 and

1 “(ii) determinations regarding the need for
2 settlement as identified by the Special Counsel,
3 and any settlement resolving claims of whistle-
4 blower retaliation entered into by the Secretary
5 with the whistleblower.”; and

6 (2) by adding at the end the following new
7 paragraph:

8 “(4)(A) In carrying out subparagraph (I) of para-
9 graph (1), the Assistant Secretary shall, in consultation
10 with the General Counsel, establish metrics and standards
11 regarding—

12 “(i) the timely implementation of settlement
13 agreements entered into by the Secretary regarding
14 whistleblower retaliation; and

15 “(ii) reasonable restitution and restoration of
16 employment, and other relief for whistleblowers; and

17 “(B) The Assistant Secretary shall establish a secure
18 electronic system to carry out subparagraphs (I) and (J)
19 of paragraph (1) in a manner that ensures the confiden-
20 tiality of the identity of a whistleblower.”.

21 **SEC. 6. TRAINING AND INFORMATION.**

22 Section 323 of such title is further amended—

23 (1) in subsection (c)(2), by striking “receive
24 anonymous whistleblower disclosures” and inserting
25 “provide information to employees of the Depart-

1 ment regarding the rights of and procedures for
2 whistleblowers”;

3 (2) by redesignating subsection (g) as sub-
4 section (i); and

5 (3) by inserting after subsection (f) the fol-
6 lowing new subsections:

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

8 “(1) develop, in consultation with the Special
9 Counsel, annual training on whistleblower protection
10 and related issues;

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

13 “(3) disseminate training materials and infor-
14 mation to employees on whistleblower rights, whistle-
15 blower disclosures, and allegations of whistleblower
16 retaliation, including any materials created pursuant
17 to section 733 of this title.”.

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

19 Subsection (f) of section 323 of such title is amend-
20 ed—

21 (1) in paragraph (1)(B)(ii), by striking “sub-
22 section (C)(1)(G)” and inserting “subsection
23 (c)(1)(E)”;

24 (2) in paragraph (2)—

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

4 (B) by inserting “not later than 60 days
5 after such date” before “the Secretary shall”;
6 and

7 (3) by adding at the end the following new
8 paragraph:

9 “(3) Not later than June 30, 2023, and semiannually
10 thereafter, the Secretary shall submit to the Committees
11 on Veterans’ Affairs of the House of Representatives and
12 the Senate a report on settlements described in paragraph
13 (1)(I) of subsection (c), including, with respect to the pe-
14 riod covered by the report—

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

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

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

22 “(D) identification of settlement agreements
23 that are not meeting such metrics and standards, or
24 for which the Assistant Secretary is aware of a de-

1 termination that a breach of agreement has been
2 found.”.