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
2D 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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Strengthening Whistleblower Protections at the Department of Veterans Affairs Act”.

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

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

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

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

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

SEC. 3. MODIFICATIONS TO FUNCTIONS OF OFFICE OF ACCOUNTABILITY AND WHISTLEBLOWER PROTECTION.

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

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

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

(3) in subparagraph (A), as so redesignated, by inserting “and allegations of whistleblower retaliation” after “disclosures”;
(4) by striking subparagraph (B), as so redesignated, and inserting the following new subparagraph:

“(B) Referring employees of the Department to the Office of Special Counsel so the Office of Special Counsel may receive whistleblower disclosures and allegations of whistleblower retaliation.”; and

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

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

(a) **Clarification of Prohibited Personnel Action.**—Section 731(c) of such title is amended—

(1) in paragraph (1)—

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

(B) in subparagraph (A), by inserting “, or with respect to an allegation of such a disclosure” before the semicolon;

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

(b) **Function of Office of Accountability and Whistleblower Protection.**—Section 323(g) of such
title is amended by adding at the end the following new paragraph:

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

SEC. 5. TRACKING AND ENFORCEMENT OF RECOMMENDATIONS AND SETTLEMENT AGREEMENTS REGARDING WHISTLEBLOWERS.

Subsection (c) of section 323 of such title, as amended by section 4, is further amended—

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

“(I) Tracking the negotiation, implementation, and enforcement of settlement agreements entered into by the Secretary regarding claims of whistleblower retaliation, including with respect to the work of the General Counsel of the Department regarding such settlements.

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

“(i) any disciplinary action for the individual who engaged in whistleblower retaliation; and
“(ii) determinations regarding the need for settlement as identified by the Special Counsel, and any settlement resolving claims of whistleblower retaliation entered into by the Secretary with the whistleblower.”; and
(2) by adding at the end the following new paragraph:

“(4)(A) In carrying out subparagraph (I) of paragraph (1), the Assistant Secretary shall, in consultation with the General Counsel, establish metrics and standards regarding—

“(i) the timely implementation of settlement agreements entered into by the Secretary regarding whistleblower retaliation; and
“(ii) reasonable restitution and restoration of employment, and other relief for whistleblowers; and
“(B) The Assistant Secretary shall establish a secure electronic system to carry out subparagraphs (I) and (J) of paragraph (1) in a manner that ensures the confidentiality of the identity of a whistleblower.”.

SEC. 6. TRAINING AND INFORMATION.

Section 323 of such title is further amended—
(1) in subsection (c)(2), by striking “receive anonymous whistleblower disclosures” and inserting “provide information to employees of the Depart-
ment regarding the rights of and procedures for whistleblowers’’;

(2) by redesignating subsection (g) as subsection (i); and

(3) by inserting after subsection (f) the following new subsections:

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

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

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

“(3) disseminate training materials and information to employees on whistleblower rights, whistleblower disclosures, and allegations of whistleblower retaliation, including any materials created pursuant to section 733 of this title.”.

SEC. 7. IMPROVEMENTS TO ANNUAL REPORTS.

Subsection (f) of section 323 of such title is amended—

(1) in paragraph (1)(B)(ii), by striking “subsection (C)(1)(G)” and inserting “subsection (e)(1)(E)”;

(2) in paragraph (2)—
(A) by striking “under subsection (c)(1)(I)” and inserting “by the Special Counsel”; and
(B) by inserting “not later than 60 days after such date” before “the Secretary shall”; and
(3) by adding at the end the following new paragraph:
“(3) Not later than June 30, 2023, and semiannually thereafter, the Secretary shall submit to the Committees on Veterans’ Affairs of the House of Representatives and the Senate a report on settlements described in paragraph (1)(I) of subsection (e), including, with respect to the period covered by the report—
“(A) the number of settlements under negotiation or executed, and the number of executed settlements that have not been fully implemented;
“(B) the explanation as to why any such executed settlement has not been fully implemented;
“(C) a description of the metrics described in paragraph (4)(A) of such subsection; and
“(D) identification of settlement agreements that are not meeting such metrics and standards, or for which the Assistant Secretary is aware of a de-
termination that a breach of agreement has been found.”