

115TH CONGRESS  
1ST SESSION

# H. R. 2131

To amend the Homeland Security Act of 2002 to direct the Chief Human Capital Officer of the Department of Homeland Security to improve consistency regarding discipline and adverse actions in the Department’s workforce, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 25, 2017

Mr. HIGGINS of Louisiana (for himself and Mr. McCAUL) introduced the following bill; which was referred to the Committee on Homeland Security

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## A BILL

To amend the Homeland Security Act of 2002 to direct the Chief Human Capital Officer of the Department of Homeland Security to improve consistency regarding discipline and adverse actions in the Department’s workforce, 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 “Fixing Internal Re-  
5 sponse to Misconduct Act” or the “DHS FIRM Act”.

1 **SEC. 2. DHS POLICY ON DISCIPLINE AND ADVERSE AC-**  
2 **TIONS.**

3 (a) IN GENERAL.—Section 704 of the Homeland Se-  
4 curity Act of 2002 (6 U.S.C. 344) is amended—

5 (1) in subsection (b)—

6 (A) in paragraph (9), by striking “and” at  
7 the end;

8 (B) in paragraph (10), by striking the pe-  
9 riod at the end and inserting “; and”; and

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

12 “(11) implement a Department-wide policy re-  
13 lated to discipline and adverse actions described in  
14 subsection (e).”;

15 (2) by redesignating subsection (e) as sub-  
16 section (f); and

17 (3) by inserting after subsection (d) the fol-  
18 lowing new subsection:

19 “(e) POLICY ON DISCIPLINE AND ADVERSE AC-  
20 TIONS.—

21 “(1) IN GENERAL.—Not later than 90 days  
22 after the date of the enactment of this subsection,  
23 the Chief Human Capital Officer, in accordance with  
24 any established Department-wide policy that deals  
25 with discipline and adverse actions, shall provide—

1           “(A) guidance to the senior human re-  
2 sources official overseeing discipline and adverse  
3 actions for headquarters personnel and non-  
4 component entities, as identified by the Chief  
5 Human Capital Officer, and relevant component  
6 heads regarding informing the public about how  
7 to report employee misconduct;

8           “(B) guidance on how Department employ-  
9 ees should report employee misconduct; and

10           “(C) guidance on the type, quantity, and  
11 frequency of data regarding discipline and ad-  
12 verse actions to be submitted to the Chief  
13 Human Capital Officer by the senior human re-  
14 sources official overseeing discipline and adverse  
15 actions for headquarters personnel and non-  
16 component entities, as identified by the Chief  
17 Human Capital Officer and component heads  
18 for the purposes of paragraph (3)(C).

19           “(2) TABLE OF OFFENSES AND PENALTIES.—

20           “(A) PRE-EXISTING TABLES.—If a table of  
21 offenses and penalties exists for a component of  
22 the Department as of the date of the enactment  
23 of this subsection, the Chief Human Capital Of-  
24 ficer shall review and, if appropriate, approve  
25 such table and any changes to such table made

1 after such date of enactment. In cases in which  
2 such tables do not comply with Department pol-  
3 icy, the Chief Human Capital Officer shall in-  
4 struct component heads on corrective measures  
5 to be taken in order to achieve such compliance.

6 “(B) NEW COMPONENT TABLES.—If a  
7 table of offenses and penalties does not exist for  
8 a component of the Department as of the date  
9 of enactment of this subsection, a component  
10 head may, in coordination with the Chief  
11 Human Capital Officer, develop a table of of-  
12 fenses and penalties to be used by such compo-  
13 nent. The Chief Human Capital Officer shall  
14 review and, if appropriate, approve such table  
15 and any changes to such table made after such  
16 date of enactment. In cases in which such ta-  
17 bles or changes do not comply with Department  
18 policy, the Chief Human Capital Officer shall  
19 instruct the component head on corrective  
20 measures to be taken in order to achieve such  
21 compliance.

22 “(3) COMPONENT RESPONSIBILITIES.—Compo-  
23 nent heads shall comply with Department-wide pol-  
24 icy (including guidance relating to such) regarding

1 discipline and adverse actions for the Department’s  
2 workforce, including—

3 “(A) providing any current table of of-  
4 fenses and penalties or future changes to a  
5 component’s table to the Chief Human Capital  
6 Officer for review in accordance with paragraph  
7 (2)(A);

8 “(B) providing any new table of offenses  
9 and penalties or future changes to a compo-  
10 nent’s table to the Chief Human Capital Officer  
11 for review in accordance with paragraph (2)(B);  
12 and

13 “(C) providing to the Chief Human Capital  
14 Officer any data regarding discipline and ad-  
15 verse actions in accordance with paragraph  
16 (1)(C).

17 “(4) OVERSIGHT.—

18 “(A) IN GENERAL.—Not later than 90  
19 days after the date of the enactment of this  
20 subsection, the Chief Human Capital Officer  
21 shall implement a process to oversee component  
22 compliance with any established Department-  
23 wide policy regarding discipline and adverse ac-  
24 tions referred to in paragraph (1), including—

1           “(i) the degree to which components  
2           are complying with such policy; and

3           “(ii) at a minimum, each fiscal year,  
4           a review of component adjudication of mis-  
5           conduct data to—

6                       “(I) ensure consistent adherence  
7                       to such policy and any Department-  
8                       wide table of offenses and penalties or  
9                       any component-specific table of of-  
10                      fenses and penalties approved by the  
11                      Chief Human Capital Officer pursu-  
12                      ant to paragraph (2); and

13                     “(II) determine whether em-  
14                     ployee training regarding such mis-  
15                     conduct policy or adjustment in such  
16                     misconduct policy is necessary.

17           “(B) WORKING GROUPS.—

18                     “(i) IN GENERAL.—The Chief Human  
19                     Capital Officer may establish working  
20                     groups, as necessary, to improve employee  
21                     relations within the Department. If the  
22                     Chief Human Capital Officer establishes  
23                     such a working group, the Chief Human  
24                     Capital Officer shall specify a timeframe  
25                     for the completion of such group’s work.

1           “(ii) FUNCTION.—A working group  
2 established pursuant to clause (i) shall  
3 identify the causes in persistent mis-  
4 conduct referred to in such subparagraph,  
5 review component processes for addressing  
6 misconduct, and develop alternate strate-  
7 gies to address such misconduct.

8           “(iii) PARTICIPATION.—If a working  
9 group is established pursuant to clause (i),  
10 the relevant component head shall partici-  
11 pate in such working group and implement  
12 any recommendations issued by such work-  
13 ing group.

14           “(iv) FOLLOW-UP REVIEWS.—The  
15 Chief Human Capital Officer shall conduct  
16 annual, or on a more frequent basis as de-  
17 termined by the Chief Human Capital Offi-  
18 cer, follow-up reviews of components with  
19 respect to which misconduct has been iden-  
20 tified under this paragraph. In consulta-  
21 tion with the Chief Human Capital Officer,  
22 the Secretary may request the Inspector  
23 General of the Department to investigate  
24 any concerns identified through the over-

1                   sight process under this subsection that  
2                   components have not addressed.

3                   “(5) INSPECTOR GENERAL FUNCTIONS.—The  
4           Inspector General of the Department may, as the  
5           Inspector General determines appropriate, issue  
6           management alerts regarding misconduct to the Sec-  
7           retary.

8                   “(6) MISCONDUCT DEFINED.—In this sub-  
9           section, the term ‘misconduct’ means the failure of  
10          a Department employee to comply with a perform-  
11          ance plan, rule, regulation, or law within the scope  
12          of such employee’s duties, responsibilities, or func-  
13          tions.”.

14           (b) REVIEW.—Not later than 30 days after the devel-  
15          opment of the oversight process required under subsection  
16          (e) of section 704 of the Homeland Security Act of 2002  
17          (6 U.S.C. 344) (as added by subsection (a) of this sec-  
18          tion), the Chief Human Capital Officer of the Department  
19          of Homeland Security shall provide to the Committee on  
20          Homeland Security of the House of Representatives and  
21          the Committee on Homeland Security and Governmental  
22          Affairs of the Senate information on such oversight proc-  
23          ess, including component compliance with any policy re-  
24          garding discipline and adverse actions, data collection ef-

1 forts, and information on the development of any working  
2 groups under such subsection (e).

3 (c) PROHIBITION ON NEW FUNDING.—No funds are  
4 authorized to carry out this section and the amendments  
5 made by this section. This section and such amendments  
6 shall be carried out using amounts otherwise made avail-  
7 able.

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