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.

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

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”.

SEC. 2. DHS POLICY ON DISCIPLINE AND ADVERSE ACTIONS.

(a) In General.—Section 704 of the Homeland Security Act of 2002 (6 U.S.C. 344) is amended—

(1) in subsection (b)—

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

(B) in paragraph (10), by striking the period at the end and inserting “; and”; and

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

“(11) implement a Department-wide policy related to discipline and adverse actions described in subsection (e).”;

(2) by redesignating subsection (e) as subsection (f); and

(3) by inserting after subsection (d) the following new subsection:

“(e) Policy on Discipline and Adverse Actions.—

“(1) In General.—Not later than 90 days after the date of the enactment of this subsection, the Chief Human Capital Officer, in accordance with any established Department-wide policy that deals with discipline and adverse actions, shall provide—
“(A) guidance to the senior human resources official overseeing discipline and adverse actions for headquarters personnel and non-component entities, as identified by the Chief Human Capital Officer, and relevant component heads regarding informing the public about how to report employee misconduct;

“(B) guidance on how Department employees should report employee misconduct; and

“(C) guidance on the type, quantity, and frequency of data regarding discipline and adverse actions to be submitted to the Chief Human Capital Officer by the senior human resources official overseeing discipline and adverse actions for headquarters personnel and non-component entities, as identified by the Chief Human Capital Officer and component heads for the purposes of paragraph (3)(C).

“(2) TABLE OF OFFENSES AND PENALTIES.—

“(A) PRE-EXISTING TABLES.—If a table of offenses and penalties exists for a component of the Department as of the date of the enactment of this subsection, the Chief Human Capital Officer shall review and, if appropriate, approve such table and any changes to such table made
after such date of enactment. In cases in which such tables do not comply with Department policy, the Chief Human Capital Officer shall instruct component heads on corrective measures to be taken in order to achieve such compliance.

“(B) NEW COMPONENT TABLES.—If a table of offenses and penalties does not exist for a component of the Department as of the date of enactment of this subsection, a component head may, in coordination with the Chief Human Capital Officer, develop a table of offenses and penalties to be used by such component. The Chief Human Capital Officer shall review and, if appropriate, approve such table and any changes to such table made after such date of enactment. In cases in which such tables or changes do not comply with Department policy, the Chief Human Capital Officer shall instruct the component head on corrective measures to be taken in order to achieve such compliance.

“(3) COMPONENT RESPONSIBILITIES.—Component heads shall comply with Department-wide policy (including guidance relating to such) regarding
discipline and adverse actions for the Department’s workforce, including—

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

“(B) providing any new table of offenses and penalties or future changes to a component’s table to the Chief Human Capital Officer for review in accordance with paragraph (2)(B); and

“(C) providing to the Chief Human Capital Officer any data regarding discipline and adverse actions in accordance with paragraph (1)(C).

“(4) OVERSIGHT.—

“(A) IN GENERAL.—Not later than 90 days after the date of the enactment of this subsection, the Chief Human Capital Officer shall implement a process to oversee component compliance with any established Department-wide policy regarding discipline and adverse actions referred to in paragraph (1), including—
“(i) the degree to which components are complying with such policy; and

“(ii) at a minimum, each fiscal year, a review of component adjudication of misconduct data to—

“(I) ensure consistent adherence to such policy and any Department-wide table of offenses and penalties or any component-specific table of offenses and penalties approved by the Chief Human Capital Officer pursuant to paragraph (2); and

“(II) determine whether employee training regarding such misconduct policy or adjustment in such misconduct policy is necessary.

“(B) WORKING GROUPS.—

“(i) IN GENERAL.—The Chief Human Capital Officer may establish working groups, as necessary, to improve employee relations within the Department. If the Chief Human Capital Officer establishes such a working group, the Chief Human Capital Officer shall specify a timeframe for the completion of such group’s work.
“(ii) Function.—A working group established pursuant to clause (i) shall identify the causes in persistent misconduct referred to in such subparagraph, review component processes for addressing misconduct, and develop alternate strategies to address such misconduct.

“(iii) Participation.—If a working group is established pursuant to clause (i), the relevant component head shall participate in such working group and implement any recommendations issued by such working group.

“(iv) Follow-up Reviews.—The Chief Human Capital Officer shall conduct annual, or on a more frequent basis as determined by the Chief Human Capital Officer, follow-up reviews of components with respect to which misconduct has been identified under this paragraph. In consultation with the Chief Human Capital Officer, the Secretary may request the Inspector General of the Department to investigate any concerns identified through the over-
sight process under this subsection that components have not addressed.

“(5) INSPECTOR GENERAL FUNCTIONS.—The Inspector General of the Department may, as the Inspector General determines appropriate, issue management alerts regarding misconduct to the Secretary.

“(6) MISCONDUCT DEFINED.—In this subsection, the term ‘misconduct’ means the failure of a Department employee to comply with a performance plan, rule, regulation, or law within the scope of such employee’s duties, responsibilities, or functions.”.

(b) REVIEW.—Not later than 30 days after the development of the oversight process required under subsection (e) of section 704 of the Homeland Security Act of 2002 (6 U.S.C. 344) (as added by subsection (a) of this section), the Chief Human Capital Officer of the Department of Homeland Security shall provide to the Committee on Homeland Security of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate information on such oversight process, including component compliance with any policy regarding discipline and adverse actions, data collection ef-
forts, and information on the development of any working
groups under such subsection (e).

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