

## Committee Print

---

(Reflecting the actions of the Subcommittee on Oversight and  
Investigations on April 21, 2015)

---

114<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 571

To amend title 38, United States Code, to improve the treatment of whistleblower complaints by the Secretary of Veterans Affairs, and for other purposes.

---

IN THE HOUSE OF REPRESENTATIVES

---

## A BILL

To amend title 38, United States Code, to improve the treatment of whistleblower complaints by the Secretary 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 “Veterans Affairs Retal-  
5 iation Prevention Act of 2015”.

1 **SEC. 2. TREATMENT OF WHISTLEBLOWER COMPLAINTS IN**  
2 **DEPARTMENT OF VETERANS AFFAIRS.**

3 (a) IN GENERAL.—Chapter 7 of title 38, United  
4 States Code, is amended by adding at the end the fol-  
5 lowing new subchapter:

6 “SUBCHAPTER II—WHISTLEBLOWER  
7 COMPLAINTS

8 “§ 721. Whistleblower complaint defined

9 “In this subchapter, the term ‘whistleblower com-  
10 plaint’ means a complaint by an employee of the Depart-  
11 ment disclosing, or assisting another employee to disclose,  
12 a potential violation of any law, rule, or regulation, or  
13 gross mismanagement, gross waste of funds, abuse of au-  
14 thority, or substantial and specific danger to public health  
15 and safety.

16 “§ 722. Treatment of whistleblower complaints

17 “(a) FILING.—(1) In addition to any other method  
18 established by law in which an employee may file a whistle-  
19 blower complaint, an employee of the Department may file  
20 a whistleblower complaint with a supervisor of the em-  
21 ployee.

22 “(2) In making a whistleblower complaint under  
23 paragraph (1), an employee shall file the initial complaint  
24 with the immediate supervisor of the employee.

25 “(b) NOTIFICATION.—(1) Not later than two busi-  
26 ness days after the date on which a supervisor receives

1 a whistleblower complaint by an employee under this sec-  
2 tion, the supervisor shall notify, in writing, the employee  
3 of whether the supervisor determines that there is a rea-  
4 sonable likelihood that the complaint discloses a violation  
5 of any law, rule, or regulation, or gross mismanagement,  
6 gross waste of funds, abuse of authority, or substantial  
7 and specific danger to public health and safety. The super-  
8 visor shall retain written documentation regarding the  
9 whistleblower complaint and shall submit to the next-level  
10 supervisor and the central whistleblower office described  
11 in subsection (g) a written report on the complaint.

12 “(2) On a monthly basis, the supervisor shall submit  
13 to the appropriate director or other official who is superior  
14 to the supervisor a written report that includes the num-  
15 ber of whistleblower complaints received by the supervisor  
16 under this section during the month covered by the report,  
17 the disposition of such complaints, and any actions taken  
18 because of such complaints pursuant to subsection (c). In  
19 the case in which such a director or official carries out  
20 this paragraph, the director or official shall submit such  
21 monthly report to the supervisor of the director or official  
22 and to the central whistleblower office described in sub-  
23 section (g).

24 “(c) POSITIVE DETERMINATION.—If a supervisor  
25 makes a positive determination under subsection (b)(1) re-

1 regarding a whistleblower complaint of an employee, the su-  
2 pervisor shall include in the notification to the employee  
3 under such subsection the specific actions that the super-  
4 visor will take to address the complaint.

5 “(d) FILING COMPLAINT WITH NEXT-LEVEL SUPER-  
6 VISORS.—(1) If a supervisor does not make a timely deter-  
7 mination under subsection (b)(1) regarding a whistle-  
8 blower complaint, or if the employee who made the com-  
9 plaint determines that the supervisor did not adequately  
10 address the complaint pursuant to subsection (c), the em-  
11 ployee may file such whistleblower complaint with the  
12 next-level supervisor who shall treat such complaint in ac-  
13 cordance with this section.

14 “(2) An employee may file a whistleblower complaint  
15 with the Secretary if the employee has filed the whistle-  
16 blower complaint to each level of supervisors between the  
17 employee and the Secretary in accordance with paragraph  
18 (1).

19 “(e) TRANSFER OF EMPLOYEE WHO FILES WHIS-  
20 TLEBLOWER COMPLAINT.—If a supervisor makes a posi-  
21 tive determination under subsection (b)(1) regarding a  
22 whistleblower complaint filed by an employee, the Sec-  
23 retary shall—

1           “(1) inform the employee of the ability to vol-  
2           unteer for a transfer in accordance with section  
3           3352 of title 5; and

4           “(2) give preference to the employee for such a  
5           transfer in accordance with such section.

6           “(f) PROHIBITION ON EXEMPTION.—The Secretary  
7           may not exempt any employee of the Department from  
8           being covered by this section.

9           “(g) CENTRAL WHISTLEBLOWER OFFICE.—(1) The  
10          Secretary shall ensure that the central whistleblower of-  
11          fice—

12           “(A) is not an element of the Office of the Gen-  
13          eral Counsel;

14           “(B) is not headed by an official who reports to  
15          the General Counsel;

16           “(C) does not provide, or receive from, the Gen-  
17          eral Counsel any information regarding a whistle-  
18          blower complaint except pursuant to an action re-  
19          garding the complaint before an administrative body  
20          or court; and

21           “(D) does not provide advice to the General  
22          Counsel.

23          “(2) The central whistleblower office shall be respon-  
24          sible for investigating all whistleblower complaints of the  
25          Department, regardless of whether such complaints are

1 made by or against an employee who is not a member of  
2 the Senior Executive Service.

3 “(3) In this subsection, the term ‘central whistle-  
4 blower office’ means the Office of Accountability Review  
5 or a successor office that is established or designated by  
6 the Secretary to investigate whistleblower complaints filed  
7 under this section or any other method established by law.

8 **“§ 723. Adverse actions against supervisory employ-**  
9 **ees who commit prohibited personnel ac-**  
10 **tions relating to whistleblower com-**  
11 **plaints**

12 “(a) IN GENERAL.—(1) In accordance with para-  
13 graph (2), the Secretary shall carry out the following ad-  
14 verse actions against supervisory employees whom the Sec-  
15 retary, an administrative judge, the Merit Systems Protec-  
16 tion Board, the Office of Special Counsel, an adjudicating  
17 body provided under a union contract, a Federal judge,  
18 or the Inspector General of the Department determines  
19 committed a prohibited personnel action described in sub-  
20 section (c):

21 “(A) With respect to the first offense, an ad-  
22 verse action that is not less than a 14-day suspen-  
23 sion and not more than removal.

24 “(B) With respect to the second offense, re-  
25 moval.

1       “(2)(A) Except as provided by subparagraph (B),  
2 and notwithstanding subsections (b) and (c) of section  
3 7513 and section 7543 of title 5, the provisions of sub-  
4 sections (d) and (e) of section 713 of this title shall apply  
5 with respect to an adverse action carried out under para-  
6 graph (1).

7       “(B) An employee who is notified of being the subject  
8 of a proposed adverse action under paragraph (1) may not  
9 be given more than five days following such notification  
10 to provide evidence to dispute such proposed adverse ac-  
11 tion. If the employee does not provide any such evidence,  
12 or if the Secretary determines that such evidence is not  
13 sufficient to reverse the determination to propose the ad-  
14 verse action, the Secretary shall carry out the adverse ac-  
15 tion following such five-day period.

16       “(b) LIMITATION ON OTHER ADVERSE ACTIONS.—  
17 With respect to a prohibited personnel action described in  
18 subsection (c), if the Secretary carries out an adverse ac-  
19 tion against a supervisory employee, the Secretary may  
20 carry out an additional adverse action under this section  
21 based on the same prohibited personnel action if the total  
22 severity of the adverse actions do not exceed the level spec-  
23 ified in subsection (a).

1           “(c) PROHIBITED PERSONNEL ACTION DE-  
2 SCRIBED.—A prohibited personnel action described in this  
3 subsection is any of the following actions:

4           “(1) Taking or failing to take a personnel ac-  
5 tion in violation of section 2302 of title 5 against an  
6 employee relating to the employee—

7           “(A) filing a whistleblower complaint in ac-  
8 cordance with section 722 of this title;

9           “(B) filing a whistleblower complaint with  
10 the Inspector General of the Department, the  
11 Special Counsel, or Congress;

12           “(C) providing information or participating  
13 as a witness in an investigation of a whistle-  
14 blower complaint in accordance with section  
15 722 or with the Inspector General of the De-  
16 partment, the Special Counsel, or Congress;

17           “(D) participating in an audit or investiga-  
18 tion by the Comptroller General of the United  
19 States;

20           “(E) refusing to perform an action that is  
21 unlawful or prohibited by the Department; or

22           “(F) engaging in communications that are  
23 related to the duties of the position or are oth-  
24 erwise protected.





1 the Merit Systems Protection Board, the Office of  
2 Special Counsel, an adjudicating body provided  
3 under a union contract, a Federal judge, or, in the  
4 case of a settlement of a whistleblower complaint  
5 (regardless of whether any fault was assigned under  
6 such settlement), the Secretary.

7 “(b) BONUSES.—(1) The Secretary may not pay to  
8 a supervisor described in subsection (a)(2)(B) an award  
9 or bonus under this title or title 5, including under chapter  
10 45 or 53 of such title, during the one-year period begin-  
11 ning on the date on which the determination was made  
12 under such subsection.

13 “(2) Notwithstanding any other provision of law, the  
14 Secretary shall issue an order directing a supervisor de-  
15 scribed in subsection (a)(2)(B) to repay the amount of any  
16 award or bonus paid under this title or title 5, including  
17 under chapter 45 or 53 of such title, if—

18 “(A) such award or bonus was paid for per-  
19 formance during a period in which the supervisor  
20 committed a prohibited personnel action as deter-  
21 mined pursuant to such subsection (a)(2)(B);

22 “(B) the Secretary determines such repayment  
23 appropriate pursuant to regulations prescribed by  
24 the Secretary to carry out this section; and

1           “(C) the supervisor is afforded notice and an  
2           opportunity for a hearing before making such repay-  
3           ment.

4   **“§ 725. Training regarding whistleblower complaints**

5           “(a) TRAINING.—The Secretary, in coordination with  
6           the Whistleblower Protection Ombudsman designated  
7           under section 3(d)(1)(C) of the Inspector General Act of  
8           1978 (5 U.S.C. App.), shall annually provide to each em-  
9           ployee of the Department training regarding whistleblower  
10          complaints, including—

11           “(1) an explanation of each method established  
12           by law in which an employee may file a whistle-  
13           blower complaint;

14           “(2) an explanation of prohibited personnel ac-  
15           tions described by section 723(c) of this title;

16           “(3) with respect to supervisors, how to treat  
17           whistleblower complaints in accordance with section  
18           722 of this title;

19           “(4) the right of the employee to petition Con-  
20           gress regarding a whistleblower complaint in accord-  
21           ance with section 7211 of title 5;

22           “(5) an explanation that the employee may not  
23           be prosecuted or reprimed against for disclosing in-  
24           formation to Congress in instances where such dis-  
25           closure is permitted by law, including under sections

1 5701, 5705, and 7732 of this title, under section  
2 552a of title 5 (commonly referred to as the Privacy  
3 Act), under chapter 93 of title 18, and pursuant to  
4 regulations promulgated under section 264(c) of the  
5 Health Insurance Portability and Accountability Act  
6 of 1996 (Public Law 104–191);

7 “(6) an explanation of the language that is re-  
8 quired to be included in all nondisclosure policies,  
9 forms, and agreements pursuant to section  
10 115(a)(1) of the Whistleblower Protection Enhance-  
11 ment Act of 2012 (5 U.S.C. 2302 note); and

12 “(7) the right of contractors to be protected  
13 from reprisal for the disclosure of certain informa-  
14 tion under section 4705 or 4712 of title 41.

15 “(b) CERTIFICATION.—The Secretary shall annually  
16 provide training on merit system protection in a manner  
17 that the Special Counsel certifies as being satisfactory.

18 “(c) PUBLICATION.—The Secretary shall publish on  
19 the Internet website of the Department, and display  
20 prominently at each facility of the Department, the rights  
21 of an employee to file a whistleblower complaint and to  
22 petition Congress regarding a whistleblower complaint as  
23 described in paragraphs (3) and (4) of subsection (a).

1 **“§ 726. Reports to Congress**

2 “(a) ANNUAL REPORTS.—The Secretary shall annu-  
3 ally submit to the Committees on Veterans’ Affairs of the  
4 House of Representatives and the Senate, the Committee  
5 on Oversight and Government Reform of the House of  
6 Representatives, and the Committee on Homeland Secu-  
7 rity and Governmental Affairs of the Senate a report that  
8 includes—

9 “(1) with respect to whistleblower complaints  
10 filed under section 722 during the year covered by  
11 the report—

12 “(A) the number of such complaints filed;

13 “(B) the disposition of such complaints;

14 and

15 “(C) the ways in which the Secretary ad-  
16 dressed such complaints in which a positive de-  
17 termination was made by a supervisor under  
18 subsection (b)(1) of such section;

19 “(2) the number of whistleblower complaints  
20 filed during the year covered by the report that are  
21 not included under paragraph (1), including—

22 “(A) the method in which such complaints  
23 were filed;

24 “(B) the disposition of such complaints;

25 and

1           “(C) the ways in which the Secretary ad-  
2           dressed such complaints; and

3           “(3) with respect to disclosures made by a con-  
4           tractor under section 4705 or 4712 of title 41—

5           “(A) the number of complaints relating to  
6           such disclosures that were investigated by the  
7           Inspector General of the Department of Vet-  
8           erans Affairs during the year covered by the re-  
9           port;

10           “(B) the disposition of such complaints;  
11           and

12           “(C) the ways in which the Secretary ad-  
13           dressed such complaints.

14           “(b) NOTICE OF OFFICE OF SPECIAL COUNSEL DE-  
15           TERMINATIONS.—Not later than 30 days after the date  
16           on which the Secretary receives from the Special Counsel  
17           information relating to a whistleblower complaint pursu-  
18           ant to section 1213 of title 5, the Secretary shall notify  
19           the Committees on Veterans’ Affairs of the House of Rep-  
20           resentatives and the Senate, the Committee on Oversight  
21           and Government Reform of the House of Representatives,  
22           and the Committee on Homeland Security and Govern-  
23           mental Affairs of the Senate of such information, includ-  
24           ing the determination made by the Special Counsel.”.

25           (b) CONFORMING AND CLERICAL AMENDMENTS.—

