

IMPROVING VA ACCOUNTABILITY TO PREVENT SEXUAL
HARASSMENT AND DISCRIMINATION ACT OF 2021

MAY 17, 2021.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed

Mr. TAKANO, from the Committee on Veterans' Affairs,
submitted the following

R E P O R T

[To accompany H.R. 2704]

[Including cost estimate of the Congressional Budget Office]

The Committee on Veterans' Affairs, to whom was referred the bill (H.R. 2704) to amend title 38, United States Code, to improve the equal employment opportunity functions of Department of Veterans Affairs, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

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PURPOSE AND SUMMARY

This bill would require the Department of Veterans Affairs (VA) to improve its ability to track and address sexual harassment and discrimination allegations and cases. It would realign several Equal Employment Opportunity (EEO) related positions by prohibiting the VA EEO Director from also serving in a position with responsibility over personnel functions. The bill would also require that the EEO Director report to the Deputy Secretary. EEO program managers would be realigned so that each EEO program manager, at VA facilities, reports to the head of the Office of Resolution Management.

The bill also requires that any manager of the Department who receives a report of sexual or other harassment, or employment discrimination, report that complaint to the Office of Resolution Management within two business days. Additional training on identifying and addressing sexual, and other harassment, and employment discrimination will be made mandatory. The bill also requires the Secretary to regularly review harassment and discrimination policies, as well as issue a final directive and handbook for the Department's Harassment Prevention Program.

VA is also required to provide to Congress semiannual reports on progress the Secretary has made in carrying out the legislation.

BACKGROUND AND NEED FOR LEGISLATION

This bill addresses issues of harassment and discrimination at VA. The Subcommittee on Oversight and Investigations discussed these issues at a hearing on July 22, 2020, *Safety for All: Ending Sexual Harassment in the Department of Veterans Affairs*.¹ The hearing testimony included findings from a Government Accountability Office (GAO) report released in June of that year.²

Women VA employees experience high levels of sexual and gender harassment. A 2016 Merit System Protection Board survey found that VA had the second-highest rate of sexual harassment of women employees in the executive branch, at 26 percent.³ Only the Department of the Navy had a higher rate (27 percent). Further, unlike the Department of the Navy, which is heavily male-dominated (72 percent), the VA has a workforce that is 60 percent women, and also the third-highest rate of sexual harassment of male employees across all of the federal government. Therefore, VA has one of the highest rates of sexual harassment in the executive branch.

In January 2019, VA released an empirical study that found that at least one in four women veterans experienced sexual or gender-

¹Hearing by the House Veterans' Affairs Committee, *Safety for All: Ending Sexual Harassment in The Department Of Veterans Affairs*, July 22, 2020, <https://veterans.house.gov/events/hearings/safety-for-all-ending-sexual-harassment-in-the-department-of-veterans-affairs> (accessed on May 12, 2021).

²U.S. Government Accountability Office, *Sexual Harassment: Inconsistent and Incomplete Policies and Information Hinder VA's Efforts to Protect Employees*, June 15, 2020, <https://www.gao.gov/products/gao-20-387> (accessed on May 12, 2021).

³U.S. Merit System Protection Board, Office of Policy and Evaluation. *Update on Sexual Harassment in the Federal Workplace*, March 2018, <https://www.mspb.gov/MSPBSEARCH/viewdocs.aspx?docnumber=1500639&version=1506232&application=ACROBAT> (accessed on May 12, 2021).

based harassment at VA facilities.⁴ These experiences negatively impact women's health care experiences and caused women veterans to delay or miss care. The study focused on women veterans within a sampling of 12 VA facilities. An average of 25 percent of women veterans in the study experienced harassment at the selected VA facilities, with facilities ranging from 10 to over 40 percent of subjects reporting harassment.

GAO testified about the need to prevent conflicts of interest in the EEO process at VA. GAO also testified for the need to realign the EEO Director and EEO Program Managers in order for them to report to higher-level officials and avoid facility-level or personnel conflicts. Additionally, GAO stated the need to require VA managers to report all complaints of harassment or discrimination to Office of Resolution Management to facilitate oversight for those complaints.

HEARINGS

On April 21, 2021, the Subcommittee on Oversight and Investigations conducted a legislative hearing on various bills introduced during the 117th Congress, including a discussion draft of H.R. 2704. The following witnesses testified: Mr. Jeffrey R. Mayo, Acting Assistant Secretary, Human Resources and Administration/Operations, Security, and Preparedness (HRA/OSP), U.S. Department of Veterans Affairs; Mr. Hansel Cordeiro, Acting Assistant Secretary, Office of Accountability and Whistleblower Protection (OAWP), U.S. Department of Veterans Affairs; Mr. Ed Murray, Principal Deputy Assistant Secretary and Deputy Chief Financial Officer, Office of Management (OM), U.S. Department of Veterans Affairs; Ms. Jessica Bonjorni, Chief, Human Capital Management (HCM), Veterans Health Administration (VHA), U.S. Department of Veterans Affairs; Mr. Christopher Wilber, Counsel to the Inspector General, Office of the Inspector General, U.S. Department of Veterans Affairs.

SUBCOMMITTEE CONSIDERATION

A discussion draft of H.R. 2704 was considered before the Subcommittee on Oversight and Investigations on April 21, 2021. The bill was subsequently considered by the Full Committee on May 4, 2021.

COMMITTEE CONSIDERATION

On May 4, 2021, the full Committee met in an open session, a quorum being present, to consider H.R. 2704. The Committee ordered that H.R. 2704 be ordered favorably reported to the House of Representatives.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the recorded votes on the motion to report the legislation and amendments thereto. The results of the record vote on an amendment or motion to transmit, to-

⁴Ruth Klap, et al, Prevalence of Stranger Harassment of Women Veterans at Veterans Affairs Medical Centers and Impacts on Delayed and Missed Care, January 25, 2019, <https://pubmed.ncbi.nlm.nih.gov/30686577/> (accessed on May 12, 2021).

gether with the names of those voting for and against, are printed below.

Veterans' Affairs Committee record vote No. 3

A motion to favorably report the en bloc package to the U.S. House of Representatives, agreed to by a roll call vote 22–6. The vote was as follows:

Majority Members	Vote	Minority Members	Vote
Mr. Takano	Aye	Mr. Bost	Aye
Ms. Brownley	Aye	Ms. Radewagen
Mr. Lamb	Aye	Mr. Bergman
Mr. Levin	Aye	Mr. Banks	Nay
Mr. Pappas	Aye	Mr. Roy	Nay
Ms. Luria	Aye	Mr. Murphy	Aye
Mr. Mrvan	Aye	Mr. Mann	Nay
Mr. Sablan	Aye	Mr. Moore	Nay
Ms. Underwood	Aye	Ms. Mace	Aye
Mr. Allred	Aye	Mr. Cawthorn	Aye
Ms. Frankel	Aye	Mr. Nehls	Nay
Mr. Brown	Aye	Mr. Rosendale	Nay
Ms. Slotkin	Aye	Ms. Miller-Meeks	Aye
Mr. Trone	Aye		
Ms. Kaptur	Aye		
Mr. Ruiz	Aye		
Mr. Gallego	Aye		

SECTION-BY-SECTION DESCRIPTION

Section 1.—Short title

This Act may be cited as the “Improving VA Accountability to Prevent Sexual Harassment and Discrimination Act of 2021.”

Section 2.—Improvements to equal employment opportunity functions of Department of Veterans Affairs

Alignment of Equal Employment Opportunity (EEO) Director—The Secretary will ensure that the Department official who serves as the EEO Director of the Department reports directly to the Deputy Secretary and does not serve in another position that has responsibilities for personnel functions or other functions that may conflict with the role of EEO Director, within 90 days of enactment.

Alignment of EEO program managers—The Secretary will ensure that each EEO program manager at the facility level will report to the head of the Office of Resolution Management with respect to the EEO functions of their positions, by December 31, 2021.

Reporting harassment and employment discrimination complaints—The Secretary will ensure that the employment discrimination complaint resolution system requires that any manager who receives a sexual or other harassment, or employment discrimination complaint reports the complaint to the Office of Resolution Management immediately. If immediate reporting is impracticable, the complaint must be reported within two business days following the date on which the manager received the complaint.

Training—The Secretary will provide each Department employee a mandatory annual training on identifying and addressing sexual and other harassment or employment discrimination, including processes under the Harassment Prevention Program, by Sep-

tember 30, 2021. Employees hired on or after such date must receive this training within 60 days of being hired.

Harassment and employment discrimination policies and directives—By no later than September 30, 2021, and on a regular basis thereafter, the Secretary will review Department policies related to sexual and other harassment and employment discrimination to ensure that such policies are complete and in accordance with the sexual and other harassment and employment discrimination policies established by the Office of Resolution Management.

The Secretary will issue a final directive and handbook for the Department's Harassment Prevention Program, within 180 days of enactment.

Reports—Within 180 days of enactment, and semiannually thereafter for one year, the Secretary will issue a report to the House and Senate Committees on Veterans' Affairs on the progress made in carrying out this section and 38 U.S.C. § 516, as amended, including with respect to reporting sexual and other harassment and employment discrimination complaints pursuant to subsection (a)(2).

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate for H.R. 2704 provided by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

H.R. 2704 would change the way the Department of Veterans Affairs (VA) reviews and processes complaints of sexual harassment. According to the Government Accountability Office, VA already is implementing many of the bill's requirements and most should be completed by the end of fiscal year 2021. Because VA already is implementing most of the bill's requirements, any incremental changes required would increase costs by insignificant amounts, CBO estimates. Such spending would be subject to the availability of appropriated funds.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 13, 2021.

Hon. MARK TAKANO,
*Chairman, Committee on Veterans' Affairs,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2704, the Improving VA Accountability to Prevent Sexual Harassment and Discrimination Act of 2021.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Logan Smith.

Sincerely,

PHILLIP L. SWAGEL,
Director.

Enclosure.

H.R. 2704, Improving VA Accountability to Prevent Sexual Harassment and Discrimination Act of 2021			
As ordered reported by the House Committee on Veterans' Affairs on May 4, 2021			
By Fiscal Year, Millions of Dollars	2021	2021-2026	2021-2031
Direct Spending (Outlays)	0	0	0
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	0	0	0
Spending Subject to Appropriation (Outlays)	*	*	not estimated
Statutory pay-as-you-go procedures apply?	No	Mandate Effects	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2032?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No
* = between zero and \$500,000.			

H.R. 2704 would change the way the Department of Veterans Affairs (VA) reviews and processes complaints of sexual harassment. Complaints of all forms of workplace harassment and discrimination are processed and investigated by VA's Equal Employment Opportunity (EEO) office.

The bill would stipulate that VA's EEO Director cannot also oversee other personnel functions, and it would change the official to whom EEO program managers at VA's subagencies report. In addition, VA managers who receive any complaint related to sexual harassment, other harassment, or employment discrimination would be required to report such cases within two business days. The bill also would require VA to provide annual training on identifying and addressing all forms of workplace harassment and employment discrimination. Finally, VA would be directed to review its policies relating to harassment and employment discrimination each year and report to the Congress on progress toward meeting the bill's requirements.

According to the Government Accountability Office, VA already is implementing many of the bill's requirements and most should be completed by the end of fiscal year 2021.

Because VA already is implementing most of the bill's requirements, any incremental changes required would increase costs by insignificant amounts, CBO estimates. Such spending would be subject to the availability of appropriated funds.

The CBO staff contact for this estimate is Logan Smith. The estimate was reviewed by Leo Lex, Deputy Director of Budget Analysis.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII and clause (2)(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the descriptive portions of this report.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to Article I, section 8 of the United States Constitution, H.R. 2704, as amended is authorized by Congress' power to "provide for the common Defense and general Welfare of the United States."

EARMARK STATEMENT

H.R. 2704 does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI of the Rules of the House of Representatives.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates regarding H.R. 2704 prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act would be created by H.R. 2704.

PERFORMANCE GOALS

In accordance with clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee's performance goals and objectives are to improve the Department's ability to track and address sexual harassment and discrimination allegations and cases.

SUPPLEMENTAL, ADDITIONAL, DISSENTING, AND MINORITY VIEWS

There were no supplemental, additional, dissenting and minority views filed with this report.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that H.R. 2704 does not relate to the terms and condition of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

STATEMENT ON DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, the Committee finds that no provision of H.R. 2704 establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

RAMSEYER SUBMISSION

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, and existing law in which no change is proposed is shown in roman):

TITLE 38, UNITED STATES CODE

* * * * *

PART I—GENERAL PROVISIONS

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CHAPTER 5—AUTHORITY AND DUTIES OF THE SECRETARY

SUBCHAPTER I—GENERAL AUTHORITIES

* * * * *

§ 516. Equal employment responsibilities

(a) **[The Secretary]** (1) *The Secretary* shall provide that the employment discrimination complaint resolution system within the Department be established and administered so as to encourage timely and fair resolution of concerns and complaints. The Secretary shall take steps to ensure that the system is administered in an objective, fair, and effective manner and in a manner that is perceived by employees and other interested parties as being objective, fair, and effective.

(2) *The Secretary shall ensure that the employment discrimination complaint resolution system established under paragraph (1) requires that any manager of the Department who receives a sexual or other harassment or employment discrimination complaint reports such complaint to the Office of Resolution Management, or such successor office, immediately, or if such immediate reporting is impracticable, not later than two business days after the date on which the manager receives the complaint.*

(b) The Secretary shall provide—

(1) that employees responsible for counseling functions associated with employment discrimination and for receiving, investigating, and processing complaints of employment discrimination shall be supervised in those functions by, and report to, an Assistant Secretary or a Deputy Assistant Secretary, *in accordance with subsection (h)(2)*, for complaint resolution management; and

(2) that employees performing employment discrimination complaint resolution functions at a facility of the Department shall not be subject to the authority, direction, and control of the Director of the facility with respect to those functions.

(c) The Secretary shall ensure that all employees of the Department receive adequate education and training for the purposes of

this section and section 319 of this title. *Beginning not later than September 30, 2021, the Secretary shall provide to each employee of the Department mandatory annual training on identifying and addressing sexual and other harassment and employment discrimination, including with respect to processes under the Harassment Prevention Program of the Department, or such successor program. An employee of the Department who is hired on or after such date shall receive the first such mandatory annual training not later than 60 days after being hired.*

(d) The Secretary shall, when appropriate, impose disciplinary measures, as authorized by law, in the case of employees of the Department who engage in unlawful employment discrimination, including retaliation against an employee asserting rights under an equal employment opportunity law.

(e)(1)(A) Not later than 45 days after the end of each calendar quarter, [the Assistant Secretary for Human Resources and Administration] *the Secretary* shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report summarizing the employment discrimination complaints filed against the individuals referred to in paragraph (2) during such quarter.

(B) Subparagraph (A) shall apply in the case of complaints filed against individuals on the basis of such individuals' personal conduct and shall not apply in the case of complaints filed solely on the basis of such individuals' positions as officials of the Department.

(2) Paragraph (1) applies to the following officers and employees of the Department:

(A) The Secretary.

(B) The Deputy Secretary of Veterans Affairs.

(C) The Under Secretary for Health and the Under Secretary for Benefits.

(D) Each Assistant Secretary of Veterans Affairs and each Deputy Assistant Secretary of Veterans Affairs.

(E) The Under Secretary of Veterans Affairs for Memorial Affairs.

(F) The General Counsel of the Department.

(G) The Chairman of the Board of Veterans' Appeals.

(H) The Chairman of the Board of Contract Appeals of the Department.

(I) The director and the chief of staff of each medical center of the Department.

(J) The director of each Veterans Integrated Services Network.

(K) The director of each regional office of the Department.

(L) Each program director of the Central Office of the Department.

(3) Each report under this subsection—

(A) may not disclose information which identifies the individuals filing, or the individuals who are the subject of, the complaints concerned or the facilities at which the discrimination identified in such complaints is alleged to have occurred;

(B) shall summarize such complaints by type and by equal employment opportunity field office area in which filed; and

(C) shall include copies of such complaints, with the information described in subparagraph (A) redacted.

(4) Not later than April 1 each year, the Assistant Secretary shall submit to the committees referred to in paragraph (1)(A) a report on the complaints covered by paragraph (1) during the preceding year, including the number of such complaints filed during that year and the status and resolution of the investigation of such complaints.

(f) The Secretary shall ensure that an employee of the Department who seeks counseling relating to employment discrimination may elect to receive such counseling from an employee of the Department who carries out equal employment opportunity counseling functions on a full-time basis rather than from an employee of the Department who carries out such functions on a part-time basis.

(g) The number of employees of the Department whose duties include equal employment opportunity counseling functions as well as other, unrelated functions may not exceed 40 full-time equivalent employees. Any such employee may be assigned equal employment opportunity counseling functions only at Department facilities in remote geographic locations (as determined by the Secretary). The Secretary may waive the limitation in the preceding sentence in specific cases.

(h) **【The provisions】** (1) *The provisions* of this section shall be implemented in a manner consistent with procedures applicable under regulations prescribed by the Equal Employment Opportunity Commission.

(2) *Beginning not later than 90 days after the date of the enactment of this paragraph, in carrying out paragraph (1), the Secretary shall ensure that the official of the Department who serves as the Equal Employment Opportunity Director of the Department—*

(A) reports directly to the Deputy Secretary with respect to the functions under this section; and

(B) does not also serve in a position that has responsibility over personnel functions of the Department or other functions that conflict with the functions under this section.

(i) In accordance with subsection (b), not later than December 31, 2021, the Secretary of Veterans Affairs shall ensure that each Equal Employment Opportunity program manager of the Department at the facility level reports to the head of the Office of Resolution Management, or such successor office established pursuant to subsection (a), with respect to the equal employment functions of the program manager.

* * * * *