

DEPARTMENT OF VETERANS AFFAIRS ACCOUNTABILITY AND WHISTLEBLOWER PROTECTION ACT OF 2017

GENERAL LEAVE

Mr. ROE of Tennessee. Mr. Speaker, I ask unanimous consent that all Members have 5 legislative days to revise and extend their remarks and include extraneous material on S. 1094.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Tennessee?

There was no objection.

Mr. ROE of Tennessee. Mr. Speaker, pursuant to House Resolution 378, I call up the bill (S. 1094) to amend title 38, United States Code, to improve the accountability of employees of the Department of Veterans Affairs, and for other purposes, and ask for its immediate consideration.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Pursuant to House Resolution 378, the bill is considered read.

The text of the bill is as follows:

S. 1094

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

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) **SHORT TITLE.**—This Act may be cited as the “Department of Veterans Affairs Accountability and Whistleblower Protection Act of 2017”.

(b) **TABLE OF CONTENTS.**—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

**TITLE I—OFFICE OF ACCOUNTABILITY AND WHISTLEBLOWER PROTECTION**

Sec. 101. Establishment of Office of Accountability and Whistleblower Protection.

Sec. 102. Protection of whistleblowers in Department of Veterans Affairs.

Sec. 103. Report on methods used to investigate employees of Department of Veterans Affairs.

**TITLE II—ACCOUNTABILITY OF SENIOR EXECUTIVES, SUPERVISORS, AND OTHER EMPLOYEES**

Sec. 201. Improved authorities of Secretary of Veterans Affairs to improve accountability of senior executives.

Sec. 202. Improved authorities of Secretary of Veterans Affairs to improve accountability of employees.

Sec. 203. Reduction of benefits for Department of Veterans Affairs employees convicted of certain crimes.

Sec. 204. Authority to recoup bonuses or awards paid to employees of Department of Veterans Affairs.

Sec. 205. Authority to recoup relocation expenses paid to or on behalf of employees of Department of Veterans Affairs.

Sec. 206. Time period for response to notice of adverse actions against supervisory employees who commit prohibited personnel actions.

Sec. 207. Direct hiring authority for medical center directors and VISN directors.

Sec. 208. Time periods for review of adverse actions with respect to certain employees.

Sec. 209. Improvement of training for supervisors.

Sec. 210. Assessment and report on effect on senior executives at Department of Veterans Affairs.

Sec. 211. Measurement of Department of Veterans Affairs disciplinary process outcomes and effectiveness.

**TITLE I—OFFICE OF ACCOUNTABILITY AND WHISTLEBLOWER PROTECTION**

**SEC. 101. ESTABLISHMENT OF OFFICE OF ACCOUNTABILITY AND WHISTLEBLOWER PROTECTION.**

(a) **IN GENERAL.**—Chapter 3 of title 38, United States Code, is amended by adding at the end the following new section:

**“§ 323. Office of Accountability and Whistleblower Protection**

“(a) **ESTABLISHMENT.**—There is established in the Department an office to be known as the ‘Office of Accountability and Whistleblower Protection’ (in this section referred to as the ‘Office’).

“(b) **HEAD OF OFFICE.**—(1) The head of the Office shall be responsible for the functions of the Office and shall be appointed by the President pursuant to section 308(a) of this title.

“(2) The head of the Office shall be known as the ‘Assistant Secretary for Accountability and Whistleblower Protection’.

“(3) The Assistant Secretary shall report directly to the Secretary on all matters relating to the Office.

“(4) Notwithstanding section 308(b) of this title, the Secretary may only assign to the Assistant Secretary responsibilities relating to the functions of the Office set forth in subsection (c).

“(c) **FUNCTIONS.**—(1) The functions of the Office are as follows:

“(A) Advising the Secretary on all matters of the Department relating to accountability, including accountability of employees of the Department, retaliation against whistleblowers, and such matters as the Secretary considers similar and affect public trust in the Department.

“(B) Issuing reports and providing recommendations related to the duties described in subparagraph (A).

“(C) Receiving whistleblower disclosures.

“(D) Referring whistleblower disclosures received under subparagraph (C) for investigation to the Office of the Medical Inspector, the Office of Inspector General, or other investigative entity, as appropriate, if the Assistant Secretary has reason to believe the whistleblower disclosure is evidence of a violation of a provision of law, mismanagement, gross waste of funds, abuse of authority, or a substantial and specific danger to public health or safety.

“(E) Receiving and referring disclosures from the Special Counsel for investigation to the Medical Inspector of the Department, the Inspector General of the Department, or such other person with investigatory authority, as the Assistant Secretary considers appropriate.

“(F) Recording, tracking, reviewing, and confirming implementation of recommendations from audits and investigations carried out by the Inspector General of the Department, the Medical Inspector of the Department, the Special Counsel, and the Comptroller General of the United States, including the imposition of disciplinary actions and other corrective actions contained in such recommendations.

“(G) Analyzing data from the Office and the Office of Inspector General telephone hotlines, other whistleblower disclosures, disaggregated by facility and area of health care if appropriate, and relevant audits and investigations to identify trends and issue reports to the Secretary based on analysis conducted under this subparagraph.

“(H) Receiving, reviewing, and investigating allegations of misconduct, retaliation, or poor performance involving—

“(i) an individual in a senior executive position (as defined in section 713(d) of this title) in the Department;

“(ii) an individual employed in a confidential, policy-making, policy-determining, or policy-advocating position in the Department; or

“(iii) a supervisory employee, if the allegation involves retaliation against an employee for making a whistleblower disclosure.

“(I) Making such recommendations to the Secretary for disciplinary action as the Assistant Secretary considers appropriate after substantiating any allegation of misconduct or poor performance pursuant to an investigation carried out as described in subparagraph (F) or (H).

“(2) In carrying out the functions of the Office, the Assistant Secretary shall ensure that the Office maintains a toll-free telephone number and Internet website to receive anonymous whistleblower disclosures.

“(3) In any case in which the Assistant Secretary receives a whistleblower disclosure from an employee of the Department under paragraph (1)(C), the Assistant Secretary may not disclose the identity of the employee without the consent of the employee, except in accordance with the provisions of section 552a of title 5, or as required by any other applicable provision of Federal law.

“(d) **STAFF AND RESOURCES.**—The Secretary shall ensure that the Assistant Secretary has such staff, resources, and access to information as may be necessary to carry out the functions of the Office.

“(e) **RELATION TO OFFICE OF GENERAL COUNSEL.**—The Office shall not be established as an element of the Office of the General Counsel and the Assistant Secretary may not report to the General Counsel.

“(f) **REPORTS.**—(1)(A) Not later than June 30 of each calendar year, beginning with June 30, 2017, the Assistant Secretary shall submit to the Committee on Veterans’ Affairs of the Senate and the Committee on Veterans’ Affairs of the House of Representatives a report on the activities of the Office during the calendar year in which the report is submitted.

“(B) Each report submitted under subparagraph (A) shall include, for the period covered by the report, the following:

“(i) A full and substantive analysis of the activities of the Office, including such statistical information as the Assistant Secretary considers appropriate.

“(ii) Identification of any issues reported to the Secretary under subsection (c)(1)(G), including such data as the Assistant Secretary considers relevant to such issues and any trends the Assistant Secretary may have identified with respect to such issues.

“(iii) Identification of such concerns as the Assistant Secretary may have regarding the size, staffing, and resources of the Office and such recommendations as the Assistant Secretary may have for legislative or administrative action to address such concerns.

“(iv) Such recommendations as the Assistant Secretary may have for legislative or administrative action to improve—

“(I) the process by which concerns are reported to the Office; and

“(II) the protection of whistleblowers within the Department.

“(v) Such other matters as the Assistant Secretary considers appropriate regarding the functions of the Office or other matters relating to the Office.

“(2) If the Secretary receives a recommendation for disciplinary action under subsection (c)(1)(I) and does not take or initiate the recommended disciplinary action

before the date that is 60 days after the date on which the Secretary received the recommendation, the Secretary shall submit to the Committee on Veterans' Affairs of the Senate and the Committee on Veterans' Affairs of the House of Representatives a detailed justification for not taking or initiating such disciplinary action.

“(g) DEFINITIONS.—In this section:

“(1) The term ‘supervisory employee’ means an employee of the Department who is a supervisor as defined in section 7103(a) of title 5.

“(2) The term ‘whistleblower’ means one who makes a whistleblower disclosure.

“(3) The term ‘whistleblower disclosure’ means any disclosure of information by an employee of the Department or individual applying to become an employee of the Department which the employee or individual reasonably believes evidences—

“(A) a violation of a law, rule, or regulation; or

“(B) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.”.

(b) CONFORMING AMENDMENT.—Section 308(b) of such title is amended by adding at the end the following new paragraph:

“(12) The functions set forth in section 323(c) of this title.”.

(c) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 3 of such title is amended by adding at the end the following new item:

“323. Office of Accountability and Whistleblower Protection.”.

#### SEC. 102. PROTECTION OF WHISTLEBLOWERS IN DEPARTMENT OF VETERANS AFFAIRS.

(a) IN GENERAL.—Subchapter II of chapter 7 of title 38, United States Code, is amended by—

(1) striking sections 731, 732, 734, 735, and 736;

(2) by redesignating section 733 as section 731; and

(3) by adding at the end the following new sections:

##### “§ 732. Protection of whistleblowers as criteria in evaluation of supervisors

“(a) DEVELOPMENT AND USE OF CRITERIA REQUIRED.—The Secretary, in consultation with the Assistant Secretary of Accountability and Whistleblower Protection, shall develop criteria that—

“(1) the Secretary shall use as a critical element in any evaluation of the performance of a supervisory employee; and

“(2) promotes the protection of whistleblowers.

“(b) PRINCIPLES FOR PROTECTION OF WHISTLEBLOWERS.—The criteria required by subsection (a) shall include principles for the protection of whistleblowers, such as the degree to which supervisory employees respond constructively when employees of the Department report concerns, take responsible action to resolve such concerns, and foster an environment in which employees of the Department feel comfortable reporting concerns to supervisory employees or to the appropriate authorities.

“(c) SUPERVISORY EMPLOYEE AND WHISTLEBLOWER DEFINED.—In this section, the terms ‘supervisory employee’ and ‘whistleblower’ have the meanings given such terms in section 323 of this title.

##### “§ 733. Training regarding whistleblower disclosures

“(a) TRAINING.—Not less frequently than once every two years, the Secretary, in coordination with the Whistleblower Protection Ombudsman designated under section 3(d)(1)(C) of the Inspector General Act of 1978

(5 U.S.C. App.), shall provide to each employee of the Department training regarding whistleblower disclosures, including—

“(1) an explanation of each method established by law in which an employee may file a whistleblower disclosure;

“(2) the right of the employee to petition Congress regarding a whistleblower disclosure in accordance with section 7211 of title 5;

“(3) an explanation that the employee may not be prosecuted or reprimanded for disclosing information to Congress, the Inspector General, or another investigatory agency in instances where such disclosure is permitted by law, including under sections 5701, 5705, and 7732 of this title, under section 552a of title 5 (commonly referred to as the Privacy Act), under chapter 93 of title 18, and pursuant to regulations promulgated under section 264(c) of the Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191);

“(4) an explanation of the language that is required to be included in all nondisclosure policies, forms, and agreements pursuant to section 115(a)(1) of the Whistleblower Protection Enhancement Act of 2012 (5 U.S.C. 2302 note); and

“(5) the right of contractors to be protected from reprisal for the disclosure of certain information under section 4705 or 4712 of title 41.

“(b) MANNER TRAINING IS PROVIDED.—The Secretary shall ensure, to the maximum extent practicable, that training provided under subsection (a) is provided in person.

“(c) CERTIFICATION.—Not less frequently than once every two years, the Secretary shall provide training on merit system protection in a manner that the Special Counsel certifies as being satisfactory.

“(d) PUBLICATION.—The Secretary shall publish on the Internet website of the Department, and display prominently at each facility of the Department, the rights of an employee to make a whistleblower disclosure, including the information described in paragraphs (1) through (5) of subsection (a).

“(e) WHISTLEBLOWER DISCLOSURE DEFINED.—In this section, the term ‘whistleblower disclosure’ has the meaning given such term in section 323 of this title.”.

(b) CLERICAL AMENDMENTS.—The table of sections at the beginning of such chapter is amended—

(1) by striking the items relating to sections 731 through 736; and

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

“731. Adverse actions against supervisory employees who commit prohibited personnel actions relating to whistleblower complaints.

“732. Protection of whistleblowers as criteria in evaluation of supervisors.

“733. Training regarding whistleblower disclosures.”.

(c) CONFORMING AMENDMENTS.—Section 731 of such title, as redesignated by subsection (a)(2), is amended—

(1) in subsection (c)—

(A) in paragraph (1)—

(i) by striking subparagraphs (A) and (B) and inserting the following:

“(A) making a whistleblower disclosure to the Assistant Secretary for Accountability and Whistleblower Protection, the Inspector General of the Department, the Special Counsel, or Congress;”; and

(ii) by redesignating subparagraphs (C) through (F) as subparagraphs (B) through (E), respectively; and

(iii) in subparagraph (B), as redesignated by clause (ii), by striking “complaint in accordance with section 732 or with” and inserting “disclosure made to the Assistant

Secretary for Accountability and Whistleblower Protection,”; and

(B) in paragraph (2), by striking “through (F)” and inserting “through (E)”; and

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

“(d) WHISTLEBLOWER DISCLOSURE DEFINED.—In this section, the term ‘whistleblower disclosure’ has the meaning given such term in section 323(g) of this title.”.

#### SEC. 103. REPORT ON METHODS USED TO INVESTIGATE EMPLOYEES OF DEPARTMENT OF VETERANS AFFAIRS.

(a) REPORT REQUIRED.—Not later than 540 days after the date of the enactment of this Act, the Assistant Secretary for Accountability and Whistleblower Protection shall submit to the Secretary of Veterans Affairs, the Committee on Veterans' Affairs of the Senate, and the Committee on Veterans' Affairs of the House of Representatives a report on methods used to investigate employees of the Department of Veterans Affairs and whether such methods are used to retaliate against whistleblowers.

(b) CONTENTS.—The report required by subsection (a) shall include the following:

(1) An assessment of the use of administrative investigation boards, peer review, searches of medical records, and other methods for investigating employees of the Department.

(2) A determination of whether and to what degree the methods described in paragraph (1) are being used to retaliate against whistleblowers.

(3) Recommendations for legislative or administrative action to implement safeguards to prevent the retaliation described in paragraph (2).

(c) WHISTLEBLOWER DEFINED.—In this section, the term “whistleblower” has the meaning given such term in section 323 of title 38, United States Code, as added by section 101.

#### TITLE II—ACCOUNTABILITY OF SENIOR EXECUTIVES, SUPERVISORS, AND OTHER EMPLOYEES

##### SEC. 201. IMPROVED AUTHORITIES OF SECRETARY OF VETERANS AFFAIRS TO IMPROVE ACCOUNTABILITY OF SENIOR EXECUTIVES.

(a) IN GENERAL.—Section 713 of title 38, United States Code, is amended to read as follows:

##### “§ 713. Senior executives: removal, demotion, or suspension based on performance or misconduct

“(a) AUTHORITY.—(1) The Secretary may, as provided in this section, reprimand or suspend, involuntarily reassign, demote, or remove a covered individual from a senior executive position at the Department if the Secretary determines that the misconduct or performance of the covered individual warrants such action.

“(2) If the Secretary so removes such an individual, the Secretary may remove the individual from the civil service (as defined in section 2101 of title 5).

“(b) RIGHTS AND PROCEDURES.—(1) A covered individual who is the subject of an action under subsection (a) is entitled to—

“(A) advance notice of the action and a file containing all evidence in support of the proposed action;

“(B) be represented by an attorney or other representative of the covered individual's choice; and

“(C) grieve the action in accordance with an internal grievance process that the Secretary, in consultation with the Assistant Secretary for Accountability and Whistleblower Protection, shall establish for purposes of this subsection.

“(2)(A) The aggregate period for notice, response, and decision on an action under subsection (a) may not exceed 15 business days.

“(B) The period for the response of a covered individual to a notice under paragraph (1)(A) of an action under subsection (a) shall be 7 business days.

“(C) A decision under this paragraph on an action under subsection (a) shall be issued not later than 15 business days after notice of the action is provided to the covered individual under paragraph (1)(A). The decision shall be in writing, and shall include the specific reasons therefor.

“(3) The Secretary shall ensure that the grievance process established under paragraph (1)(C) takes fewer than 21 days.

“(4) A decision under paragraph (2) that is not grieved, and a grievance decision under paragraph (3), shall be final and conclusive.

“(5) A covered individual adversely affected by a decision under paragraph (2) that is not grieved, or by a grievance decision under paragraph (3), may obtain judicial review of such decision.

“(6) In any case in which judicial review is sought under paragraph (5), the court shall review the record and may set aside any Department action found to be—

“(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with a provision of law;

“(B) obtained without procedures required by a provision of law having been followed; or

“(C) unsupported by substantial evidence.

“(C) RELATION TO OTHER PROVISIONS OF LAW.—Section 3592(b)(1) of title 5 and the procedures under section 7543(b) of such title do not apply to an action under subsection (a).

“(d) DEFINITIONS.—In this section:

“(1) The term ‘covered individual’ means—  
“(A) a career appointee (as that term is defined in section 3132(a)(4) of title 5); or

“(B) any individual who occupies an administrative or executive position and who was appointed under section 7306(a), section 7401(1), or section 7401(4) of this title.

“(2) The term ‘misconduct’ includes neglect of duty, malfeasance, or failure to accept a directed reassignment or to accompany a position in a transfer of function.

“(3) The term ‘senior executive position’ means—

“(A) with respect to a career appointee (as that term is defined in section 3132(a) of title 5), a Senior Executive Service position (as such term is defined in such section); and

“(B) with respect to a covered individual appointed under section 7306(a) or section 7401(1) of this title, an administrative or executive position.”.

(b) CONFORMING AMENDMENT.—Section 7461(c)(1) of such title is amended by inserting “employees in senior executive positions (as defined in section 713(d) of this title) and” before “interns”.

(c) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 7 of such title is amended by striking the item relating to section 713 and inserting the following new item:

“713. Senior executives: removal, demotion, or suspension based on performance or misconduct.”.

## SEC. 202. IMPROVED AUTHORITIES OF SECRETARY OF VETERANS AFFAIRS TO IMPROVE ACCOUNTABILITY OF EMPLOYEES.

(a) IN GENERAL.—Subchapter I of chapter 7 of title 38, United States Code, is amended by inserting after section 713 the following new section:

### “§ 714. Employees: removal, demotion, or suspension based on performance or misconduct

“(a) IN GENERAL.—(1) The Secretary may remove, demote, or suspend a covered individual who is an employee of the Department

if the Secretary determines the performance or misconduct of the covered individual warrants such removal, demotion, or suspension.

“(2) If the Secretary so removes, demotes, or suspends such a covered individual, the Secretary may—

“(A) remove the covered individual from the civil service (as defined in section 2101 of title 5);

“(B) demote the covered individual by means of a reduction in grade for which the covered individual is qualified, that the Secretary determines is appropriate, and that reduces the annual rate of pay of the covered individual; or

“(C) suspend the covered individual.

“(b) PAY OF CERTAIN DEMOTED INDIVIDUALS.—(1) Notwithstanding any other provision of law, any covered individual subject to a demotion under subsection (a)(2) shall, beginning on the date of such demotion, receive the annual rate of pay applicable to such grade.

“(2)(A) A covered individual so demoted may not be placed on administrative leave during the period during which an appeal (if any) under this section is ongoing, and may only receive pay if the covered individual reports for duty or is approved to use accrued unused annual, sick, family medical, military, or court leave.

“(B) If a covered individual so demoted does not report for duty or receive approval to use accrued unused leave, such covered individual shall not receive pay or other benefits pursuant to subsection (d)(5).

“(c) PROCEDURE.—(1)(A) The aggregate period for notice, response, and final decision in a removal, demotion, or suspension under this section may not exceed 15 business days.

“(B) The period for the response of a covered individual to a notice of a proposed removal, demotion, or suspension under this section shall be 7 business days.

“(C) Paragraph (3) of subsection (b) of section 7513 of title 5 shall apply with respect to a removal, demotion, or suspension under this section.

“(D) The procedures in this subsection shall supersede any collective bargaining agreement to the extent that such agreement is inconsistent with such procedures.

“(2) The Secretary shall issue a final decision with respect to a removal, demotion, or suspension under this section not later than 15 business days after the Secretary provides notice, including a file containing all the evidence in support of the proposed action, to the covered individual of the removal, demotion, or suspension. The decision shall be in writing and shall include the specific reasons therefor.

“(3) The procedures under chapter 43 of title 5 shall not apply to a removal, demotion, or suspension under this section.

“(4)(A) Subject to subparagraph (B) and subsection (d), any removal or demotion under this section, and any suspension of more than 14 days under this section, may be appealed to the Merit Systems Protection Board, which shall refer such appeal to an administrative judge pursuant to section 7701(b)(1) of title 5.

“(B) An appeal under subparagraph (A) of a removal, demotion, or suspension may only be made if such appeal is made not later than 10 business days after the date of such removal, demotion, or suspension.

“(d) EXPEDITED REVIEW.—(1) Upon receipt of an appeal under subsection (c)(4)(A), the administrative judge shall expedite any such appeal under section 7701(b)(1) of title 5 and, in any such case, shall issue a final and complete decision not later than 180 days after the date of the appeal.

“(2)(A) Notwithstanding section 7701(c)(1)(B) of title 5, the administrative judge shall uphold the decision of the Sec-

retary to remove, demote, or suspend an employee under subsection (a) if the decision is supported by substantial evidence.

“(B) Notwithstanding title 5 or any other provision of law, if the decision of the Secretary is supported by substantial evidence, the administrative judge shall not mitigate the penalty prescribed by the Secretary.

“(3)(A) The decision of the administrative judge under paragraph (1) may be appealed to the Merit Systems Protection Board.

“(B) Notwithstanding section 7701(c)(1)(B) of title 5, the Merit Systems Protection Board shall uphold the decision of the Secretary to remove, demote, or suspend an employee under subsection (a) if the decision is supported by substantial evidence.

“(C) Notwithstanding title 5 or any other provision of law, if the decision of the Secretary is supported by substantial evidence, the Merit Systems Protection Board shall not mitigate the penalty prescribed by the Secretary.

“(4) In any case in which the administrative judge cannot issue a decision in accordance with the 180-day requirement under paragraph (1), the Merit Systems Protection Board shall, not later than 14 business days after the expiration of the 180-day period, submit to the Committee on Veterans' Affairs of the Senate and the Committee on Veterans' Affairs of the House of Representatives a report that explains the reasons why a decision was not issued in accordance with such requirement.

“(5)(A) A decision of the Merit Systems Protection Board under paragraph (3) may be appealed to the United States Court of Appeals for the Federal Circuit pursuant to section 7703 of title 5 or to any court of appeals of competent jurisdiction pursuant to subsection (b)(1)(B) of such section.

“(B) Any decision by such Court shall be in compliance with section 7462(f)(2) of this title.

“(6) The Merit Systems Protection Board may not stay any removal or demotion under this section, except as provided in section 1214(b) of title 5.

“(7) During the period beginning on the date on which a covered individual appeals a removal from the civil service under subsection (c) and ending on the date that the United States Court of Appeals for the Federal Circuit issues a final decision on such appeal, such covered individual may not receive any pay, awards, bonuses, incentives, allowances, differentials, student loan repayments, special payments, or benefits related to the employment of the individual by the Department.

“(8) To the maximum extent practicable, the Secretary shall provide to the Merit Systems Protection Board such information and assistance as may be necessary to ensure an appeal under this subsection is expedited.

“(9) If an employee prevails on appeal under this section, the employee shall be entitled to backpay (as provided in section 5596 of title 5).

“(10) If an employee who is subject to a collective bargaining agreement chooses to grieve an action taken under this section through a grievance procedure provided under the collective bargaining agreement, the timelines and procedures set forth in subsection (c) and this subsection shall apply.

“(e) WHISTLEBLOWER PROTECTION.—(1) In the case of a covered individual seeking corrective action (or on behalf of whom corrective action is sought) from the Office of Special Counsel based on an alleged prohibited personnel practice described in section 2302(b) of title 5, the Secretary may not remove, demote, or suspend such covered individual under subsection (a) without the approval of the Special Counsel under section 1214(f) of title 5.

“(2) In the case of a covered individual who has made a whistleblower disclosure to the Assistant Secretary for Accountability and Whistleblower Protection, the Secretary may not remove, demote, or suspend such covered individual under subsection (a) until—

“(A) in the case in which the Assistant Secretary determines to refer the whistleblower disclosure under section 323(c)(1)(D) of this title to an office or other investigative entity, a final decision with respect to the whistleblower disclosure has been made by such office or other investigative entity; or

“(B) in the case in which the Assistant Secretary determines not to refer the whistleblower disclosure under such section, the Assistant Secretary makes such determination.

“(f) **TERMINATION OF INVESTIGATIONS BY OFFICE OF SPECIAL COUNSEL.**—(1) Notwithstanding any other provision of law, the Special Counsel (established by section 1211 of title 5) may terminate an investigation of a prohibited personnel practice alleged by an employee or former employee of the Department after the Special Counsel provides to the employee or former employee a written statement of the reasons for the termination of the investigation.

“(2) Such statement may not be admissible as evidence in any judicial or administrative proceeding without the consent of such employee or former employee.

“(g) **VACANCIES.**—In the case of a covered individual who is removed or demoted under subsection (a), to the maximum extent feasible, the Secretary shall fill the vacancy arising as a result of such removal or demotion.

“(h) **DEFINITIONS.**—In this section:

“(1) The term ‘covered individual’ means an individual occupying a position at the Department, but does not include—

“(A) an individual occupying a senior executive position (as defined in section 713(d) of this title);

“(B) an individual appointed pursuant to sections 7306, 7401(1), 7401(4), or 7405 of this title;

“(C) an individual who has not completed a probationary or trial period; or

“(D) a political appointee.

“(2) The term ‘suspend’ means the placing of an employee, for disciplinary reasons, in a temporary status without duties and pay for a period in excess of 14 days.

“(3) The term ‘grade’ has the meaning given such term in section 7511(a) of title 5.

“(4) The term ‘misconduct’ includes neglect of duty, malfeasance, or failure to accept a directed reassignment or to accompany a position in a transfer of function.

“(5) The term ‘political appointee’ means an individual who is—

“(A) employed in a position described under sections 5312 through 5316 of title 5 (relating to the Executive Schedule);

“(B) a limited term appointee, limited emergency appointee, or noncareer appointee in the Senior Executive Service, as defined under paragraphs (5), (6), and (7), respectively, of section 3132(a) of title 5; or

“(C) employed in a position of a confidential or policy-determining character under schedule C of subpart C of part 213 of title 5, Code of Federal Regulations, or successor regulation.

“(6) The term ‘whistleblower disclosure’ has the meaning given such term in section 323(g) of this title.”.

(b) **CLERICAL AND CONFORMING AMENDMENTS.**—

(1) **CLERICAL.**—The table of sections at the beginning of chapter 7 of such title is amended by inserting after the item relating to section 713 the following new item:

“714. Employees: removal, demotion, or suspension based on performance or misconduct.”.

(2) **CONFORMING.**—Section 4303(f) of title 5, United States Code, is amended—

(A) in paragraph (2), by striking “or” at the end;

(B) in paragraph (3), by striking the period at the end and inserting “, or”; and

(C) by adding at the end the following:

“(4) any removal or demotion under section 714 of title 38.”.

**SEC. 203. REDUCTION OF BENEFITS FOR DEPARTMENT OF VETERANS AFFAIRS EMPLOYEES CONVICTED OF CERTAIN CRIMES.**

(a) **REDUCTION OF BENEFITS.**—

(1) **IN GENERAL.**—Subchapter I of chapter 7 of title 38, United States Code, is amended by adding at the end the following new section:

**“§719. Reduction of benefits of employees convicted of certain crimes**

“(a) **REDUCTION OF ANNUITY FOR REMOVED EMPLOYEE.**—(1) The Secretary shall order that the covered service of an employee of the Department removed from a position for performance or misconduct under section 713, 714, or 7461 of this title or any other provision of law shall not be taken into account for purposes of calculating an annuity with respect to such individual under chapter 83 or chapter 84 of title 5, if—

“(A) the Secretary determines that the individual is convicted of a felony (and the conviction is final) that influenced the individual’s performance while employed in the position; and

“(B) before such order is made, the individual is afforded—

“(i) notice of the proposed order; and

“(ii) an opportunity to respond to the proposed order by not later than ten business days following receipt of such notice; and

“(C) the Secretary issues the order—

“(i) in the case of a proposed order to which an individual responds under subparagraph (B)(ii), not later than five business days after receiving the response of the individual; or

“(ii) in the case of a proposed order to which an individual does not respond, not later than 15 business days after the Secretary provides notice to the individual under subparagraph (B)(i).

“(2) Any individual with respect to whom an annuity is reduced under this subsection may appeal the reduction to the Director of the Office of Personnel Management pursuant to such regulations as the Director may prescribe for purposes of this subsection.

“(b) **REDUCTION OF ANNUITY FOR RETIRED EMPLOYEE.**—(1) The Secretary may order that the covered service of an individual who the Secretary proposes to remove for performance or misconduct under section 713, 714, or 7461 of this title or any other provision of law but who leaves employment at the Department prior to the issuance of a final decision with respect to such action shall not be taken into account for purposes of calculating an annuity with respect to such individual under chapter 83 or chapter 84 of title 5, if—

“(A) the Secretary determines that individual is convicted of a felony (and the conviction is final) that influenced the individual’s performance while employed in the position; and

“(B) before such order is made, the individual is afforded—

“(i) notice of the proposed order;

“(ii) opportunity to respond to the proposed order by not later than ten business days following receipt of such notice; and

“(C) the Secretary issues the order—

“(i) in the case of a proposed order to which an individual responds under subpara-

graph (B)(ii), not later than five business days after receiving the response of the individual; or

“(ii) in the case of a proposed order to which an individual does not respond, not later than 15 business days after the Secretary provides notice to the individual under subparagraph (B)(i).

“(2) Upon the issuance of an order by the Secretary under paragraph (1), the individual shall have an opportunity to appeal the order to the Director of the Office of Personnel Management before the date that is seven business days after the date of such issuance.

“(3) The Director of the Office of Personnel Management shall make a final decision with respect to an appeal under paragraph (2) within 30 business days of receiving the appeal.

“(c) **ADMINISTRATIVE REQUIREMENTS.**—Not later than 37 business days after the Secretary issues a final order under subsection (a) or (b) with respect to an individual, the Director of the Office of Personnel Management shall recalculate the annuity of the individual.

“(d) **LUMP-SUM ANNUITY CREDIT.**—Any individual with respect to whom an annuity is reduced under subsection (a) or (b) shall be entitled to be paid so much of such individual’s lump-sum credit as is attributable to the period of covered service.

“(e) **SPOUSE OR CHILDREN EXCEPTION.**—(1) The Secretary, in consultation with the Director of the Office of Personnel Management, shall prescribe regulations that may provide for the payment to the spouse or children of any individual referred to in subsection (a) or (b) of any amounts which (but for this subsection) would otherwise have been nonpayable by reason of such subsections.

“(2) Regulations prescribed under paragraph (1) shall be consistent with the requirements of section 8332(o)(5) and 8411(l)(5) of title 5, as the case may be.

“(f) **DEFINITIONS.**—In this section:

“(1) The term ‘covered service’ means, with respect to an individual subject to a removal for performance or misconduct under section 719 or 7461 of this title or any other provision of law, the period of service beginning on the date that the Secretary determines under such applicable provision that the individual engaged in activity that gave rise to such action and ending on the date that the individual is removed from or leaves a position of employment at the Department prior to the issuance of a final decision with respect to such action.

“(2) The term ‘lump-sum credit’ has the meaning given such term in section 8331(8) or section 8401(19) of title 5, as the case may be.

“(3) The term ‘service’ has the meaning given such term in section 8331(12) or section 8401(26) of title 5, as the case may be.”.

(2) **CLERICAL AMENDMENT.**—The table of sections at the beginning of chapter 7 of such title is amended by inserting after the item relating to section 717 the following new item:

“719. Reduction of benefits of employees convicted of certain crimes.”.

(b) **APPLICATION.**—Section 719 of title 38, United States Code, as added by subsection (a)(1), shall apply to any action of removal of an employee of the Department of Veterans Affairs under section 719 or 7461 of such title or any other provision of law, commencing on or after the date of the enactment of this Act.

**SEC. 204. AUTHORITY TO RECOUP BONUSES OR AWARDS PAID TO EMPLOYEES OF DEPARTMENT OF VETERANS AFFAIRS.**

(a) **IN GENERAL.**—Subchapter I of chapter 7 of title 38, United States Code, as amended

by section 203, is further amended by adding at the end the following new section:

**“§ 721. Recoupment of bonuses or awards paid to employees of Department**

“(a) IN GENERAL.—Notwithstanding any other provision of law, the Secretary may issue an order directing an employee of the Department to repay the amount, or a portion of the amount, of any award or bonus paid to the employee under title 5, including under chapters 45 or 53 of such title, or this title if—

“(1) the Secretary determines that the individual engaged in misconduct or poor performance prior to payment of the award or bonus, and that such award or bonus would not have been paid, in whole or in part, had the misconduct or poor performance been known prior to payment; and

“(2) before such repayment, the employee is afforded—

“(A) notice of the proposed order; and

“(B) an opportunity to respond to the proposed order by not later than 10 business days after the receipt of such notice; and

“(3) the Secretary issues the order—

“(A) in the case of a proposed order to which an individual responds under paragraph (2)(B), not later than five business days after receiving the response of the individual; or

“(B) in the case of a proposed order to which an individual does not respond, not later than 15 business days after the Secretary provides notice to the individual under paragraph (2)(A).

“(b) APPEAL OF ORDER OF SECRETARY.—(1) Upon the issuance of an order by the Secretary under subsection (a) with respect to an individual, the individual shall have an opportunity to appeal the order to the Director of the Office of Personnel Management before the date that is seven business days after the date of such issuance.

“(2) The Director shall make a final decision with respect to an appeal under paragraph (1) within 30 business days after receiving such appeal.”.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter, as amended by section 203(a)(2), is further amended by inserting after the item relating to section 719 the following new item:

“721. Recoupment of bonuses or awards paid to employees of Department.”.

(c) EFFECTIVE DATE.—Section 721 of title 38, United States Code, as added by subsection (a), shall apply with respect to an award or bonus paid by the Secretary of Veterans Affairs to an employee of the Department of Veterans Affairs on or after the date of the enactment of this Act.

(d) CONSTRUCTION.—Nothing in this Act or the amendments made by this Act may be construed to modify the certification issued by the Office of Personnel Management and the Office of Management and Budget regarding the performance appraisal system of the Senior Executive Service of the Department of Veterans Affairs.

**SEC. 205. AUTHORITY TO RECOUP RELOCATION EXPENSES PAID TO OR ON BEHALF OF EMPLOYEES OF DEPARTMENT OF VETERANS AFFAIRS.**

(a) IN GENERAL.—Subchapter I of chapter 7 of title 38, United States Code, as amended by section 204, is further amended by adding at the end the following new section:

**“§ 723. Recoupment of relocation expenses paid on behalf of employees of Department**

“(a) IN GENERAL.—Notwithstanding any other provision of law, the Secretary may issue an order directing an employee of the Department to repay the amount, or a portion of the amount, paid to or on behalf of the employee under title 5 for relocation expenses, including any expenses under section 5724 or 5724a of such title, or this title if—

“(1) the Secretary determines that relocation expenses were paid following an act of fraud or malfeasance that influenced the authorization of the relocation expenses;

“(2) before such repayment, the employee is afforded—

“(A) notice of the proposed order; and

“(B) an opportunity to respond to the proposed order not later than ten business days following the receipt of such notice; and

“(3) the Secretary issues the order—

“(A) in the case of a proposed order to which an individual responds under paragraph (2)(B), not later than five business days after receiving the response of the individual; or

“(B) in the case of a proposed order to which an individual does not respond, not later than 15 business days after the Secretary provides notice to the individual under paragraph (2)(A).

“(b) APPEAL OF ORDER OF SECRETARY.—(1) Upon the issuance of an order by the Secretary under subsection (a) with respect to an individual, the individual shall have an opportunity to appeal the order to the Director of the Office of Personnel Management before the date that is seven business days after the date of such issuance.

“(2) The Director shall make a final decision with respect to an appeal under paragraph (1) within 30 days after receiving such appeal.”.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is further amended by inserting after the item relating to section 721, as added by section 204(b), the following new item:

“723. Recoupment of relocation expenses paid on behalf of employees of Department.”.

(c) EFFECTIVE DATE.—Section 723 of title 38, United States Code, as added by subsection (a), shall apply with respect to an amount paid by the Secretary of Veterans Affairs to or on behalf of an employee of the Department of Veterans Affairs for relocation expenses on or after the date of the enactment of this Act.

**SEC. 206. TIME PERIOD FOR RESPONSE TO NOTICE OF ADVERSE ACTIONS AGAINST SUPERVISORY EMPLOYEES WHO COMMIT PROHIBITED PERSONNEL ACTIONS.**

Section 731(a)(2)(B) of title 38, United States Code, as redesignated by section 102(a)(2), is amended—

(1) in clause (i), by striking “14 days” and inserting “10 days”; and

(2) in clause (ii), by striking “14-day period” and inserting “10-day period”.

**SEC. 207. DIRECT HIRING AUTHORITY FOR MEDICAL CENTER DIRECTORS AND VISN DIRECTORS.**

(a) IN GENERAL.—Section 7401 of title 38, United States Code, is amended by adding at the end the following new paragraph:

“(4) Directors of medical centers and directors of Veterans Integrated Service Networks with demonstrated ability in the medical profession, in health care administration, or in health care fiscal management.”.

(b) CONFORMING AMENDMENTS.—Section 7404(a)(1) of such title is amended—

(1) by inserting “(A)” before “The annual”; and

(2) in subparagraph (A), as designated by paragraph (1)—

(A) by inserting “and 7401(4)” after “7306”; and

(B) by adding at the end the following new subparagraph:

“(B) Section 5377 of title 5 shall apply to a position under section 7401(4) of this title as if such position were included in the definition of ‘position’ in section 5377(a) of title 5.”.

**SEC. 208. TIME PERIODS FOR REVIEW OF ADVERSE ACTIONS WITH RESPECT TO CERTAIN EMPLOYEES.**

(a) PHYSICIANS, DENTISTS, PODIATRISTS, CHIROPRACTORS, OPTOMETRISTS, REGISTERED NURSES, PHYSICIAN ASSISTANTS, AND EXPANDED-FUNCTION DENTAL AUXILIARIES.—Paragraph (2) of section 7461(b) of title 38, United States Code, is amended to read as follows:

“(2) In any case other than a case described in paragraph (1) that involves or includes a question of professional conduct or competence in which a major adverse action was not taken, such an appeal shall be made through Department grievance procedures under section 7463 of this title.”.

(b) MAJOR ADVERSE ACTIONS INVOLVING PROFESSIONAL CONDUCT OR COMPETENCE.—Section 7462(b) of such title is amended—

(1) in paragraph (1)—

(A) in the matter preceding subparagraph (A), by inserting “, within the aggregate time period specified in paragraph (5)(A),” after “is entitled”; and

(B) in subparagraph (A)—

(i) by striking “At least 30 days advance written notice” and inserting “Advance written notice”; and

(ii) by striking “and a statement” and inserting “a statement”; and

(iii) by inserting “and a file containing all the evidence in support of each charge,” after “with respect to each charge,”; and

(C) in subparagraph (B), by striking “A reasonable time, but not less than seven days” and inserting “The opportunity, within the time period provided for in paragraph (4)(A)”; and

(2) by striking paragraph (3) and inserting the following new paragraph (3):

“(3) After considering the employee’s answer, if any, and within the time period provided for in paragraph (5)(B), the deciding official shall render a decision on the charges. The decision shall be in writing and shall include the specific reasons therefor.”;

(3) in paragraph (4)—

(A) by striking subparagraph (A) and inserting the following new subparagraph (A):

“(A) The period for the response of an employee under paragraph (1)(B) to advance written under paragraph (1)(A) shall be seven business days.”; and

(B) in subparagraph (B), by striking “30 days” and inserting “seven business days”; and

(4) by adding at the end the following new paragraphs:

“(5)(A) The aggregate period for the resolution of charges against an employee under this subsection may not exceed 15 business days.

“(B) The deciding official shall render a decision under paragraph (3) on charges under this subsection not later than 15 business days after the Under Secretary provides notice on the charges for purposes of paragraph (1)(A).

“(6) The procedures in this subsection shall supersede any collective bargaining agreement to the extent that such agreement is inconsistent with such procedures.”.

(c) OTHER ADVERSE ACTIONS.—Section 7463(c) of such title is amended—

(1) in paragraph (1), by striking “the same notice and opportunity to answer with respect to those charges as provided in subparagraphs (A) and (B) of section 7462(b)(1) of this title” and inserting “notice and an opportunity to answer with respect to those charges in accordance with subparagraphs (A) and (B) of section 7462(b)(1) of this title, but within the time periods specified in paragraph (3)”; and

(2) in paragraph (2)—

(A) in the matter preceding subparagraph (A), by inserting “, within the aggregate

time period specified in paragraph (3)(A),” after “is entitled”;

(B) in subparagraph (A), by striking “an advance written notice” and inserting “written notice”; and

(C) in subparagraph (B), by striking “a reasonable time” and inserting “time to answer”; and

(3) by adding at the end the following new paragraph (3):

“(3)(A) The aggregate period for the resolution of charges against an employee under paragraph (1) or (2) may not exceed 15 business days.

“(B) The period for the response of an employee under paragraph (1) or (2)(B) to written notice of charges under paragraph (1) or (2)(A), as applicable, shall be seven business days.

“(C) The deciding official shall render a decision on charges under paragraph (1) or (2) not later than 15 business days after notice is provided on the charges for purposes of paragraph (1) or (2)(A), as applicable.”.

#### **SEC. 209. IMPROVEMENT OF TRAINING FOR SUPERVISORS.**

(a) IN GENERAL.—The Secretary of Veterans Affairs shall provide to each employee of the Department of Veterans Affairs who is employed as a supervisor periodic training on the following:

(1) The rights of whistleblowers and how to address a report by an employee of a hostile work environment, reprisal, or harassment.

(2) How to effectively motivate, manage, and reward the employees who report to the supervisor.

(3) How to effectively manage employees who are performing at an unacceptable level and access assistance from the human resources office of the Department and the Office of the General Counsel of the Department with respect to those employees.

(b) DEFINITIONS.—In this section:

(1) SUPERVISOR.—The term “supervisor” has the meaning given such term in section 7103(a) of title 5, United States Code.

(2) WHISTLEBLOWER.—The term “whistleblower” has the meaning given such term in section 323(g) of title 38, United States Code, as added by section 101.

#### **SEC. 210. ASSESSMENT AND REPORT ON EFFECT ON SENIOR EXECUTIVES AT DEPARTMENT OF VETERANS AFFAIRS.**

(a) IN GENERAL.—Not later than two years after the date of the enactment of this Act, the Secretary of Veterans Affairs shall—

(1) measure and assess the effect of the enactment of this title on the morale, engagement, hiring, promotion, retention, discipline, and productivity of individuals in senior executive positions at the Department of Veterans Affairs; and

(2) submit to the Committee on Veterans' Affairs of the Senate and the Committee on Veterans' Affairs of the House of Representatives a report on the findings of the Secretary with respect to the measurement and assessment carried out under paragraph (1).

(b) ELEMENTS.—The assessment required by subsection (a)(1) shall include the following:

(1) With respect to engagement, trends in morale of individuals in senior executive positions and individuals aspiring to senior executive positions.

(2) With respect to promotions—

(A) whether the Department is experiencing an increase or decrease in the number of employees participating in leadership development and candidate development programs with the intention of becoming candidates for senior executive positions; and

(B) trends in applications to senior executive positions within the Department.

(3) With respect to retention—

(A) trends in retirement rates of individuals in senior executive positions at the Department;

(B) trends in quit rates of individuals in senior executive positions at the Department;

(C) rates of transfer of—

(i) individuals from other Federal agencies into senior executive positions at the Department; and

(ii) individuals from senior executive positions at the Department to other Federal agencies; and

(D) trends in total loss rates by job function.

(4) With respect to disciplinary processes—

(A) regarding individuals in senior executive positions at the Department who are the subject of disciplinary action—

(i) the length of the disciplinary process in days for such individuals both before the date of the enactment of this Act and under the provisions of this Act described in subsection (a)(1); and

(ii) the extent to which appeals by such individuals are upheld under such provisions as compared to before the date of the enactment of this Act;

(B) the components or offices of the Department which experience the greatest number of proposed adverse actions against individuals in senior executive positions and components and offices which experience the least relative to the size of the components or offices' total number of senior executive positions;

(C) the tenure of individuals in senior executive positions who are the subject of disciplinary action;

(D) whether the individuals in senior executive positions who are the subject of disciplinary action have previously been disciplined; and

(E) the number of instances of disciplinary action taken by the Secretary against individuals in senior executive positions at the Department as compared to governmentwide discipline against individuals in Senior Executive Service positions (as defined in section 3132(a) of title 5, United States Code) as a percentage of the total number of individuals in senior executive positions at the Department and Senior Executive Service positions (as so defined).

(5) With respect to hiring—

(A) the degree to which the skills of newly hired individuals in senior executive positions at the Department are appropriate with respect to the needs of the Department;

(B) the types of senior executive positions at the Department most commonly filled under the authorities in the provisions described in subsection (a)(1);

(C) the number of senior executive positions at the Department filled by hires outside of the Department compared to hires from within the Department;

(D) the length of time to fill a senior executive position at the Department and for a new hire to begin working in a new senior executive position;

(E) the mission-critical deficiencies filled by newly hired individuals in senior executive positions and the connection between mission-critical deficiencies filled under the provisions described in subsection (a) and annual performance of the Department;

(F) the satisfaction of applicants for senior executive positions at the Department with the hiring process, including the clarity of job announcements, reasons for withdrawal of applications, communication regarding status of applications, and timeliness of hiring decision; and

(G) the satisfaction of newly hired individuals in senior executive positions at the Department with the hiring process and the process of joining and becoming oriented with the Department.

(c) SENIOR EXECUTIVE POSITION DEFINED.—In this section, the term “senior executive

position” has the meaning given such term in section 713 of title 38, United States Code.

#### **SEC. 211. MEASUREMENT OF DEPARTMENT OF VETERANS AFFAIRS DISCIPLINARY PROCESS OUTCOMES AND EFFECTIVENESS.**

(a) MEASURING AND COLLECTING.—

(1) IN GENERAL.—The Secretary of Veterans Affairs shall measure and collect information on the outcomes of disciplinary actions carried out by the Department of Veterans Affairs during the three-year period ending on the date of the enactment of this Act and the effectiveness of such actions.

(2) ELEMENTS.—In measuring and collecting pursuant to paragraph (1), the Secretary shall measure and collect information regarding the following:

(A) The average time from the initiation of an adverse action against an employee at the Department to the final resolution of that action.

(B) The number of distinct steps and levels of review within the Department involved in the disciplinary process and the average length of time required to complete these steps.

(C) The rate of use of alternate disciplinary procedures compared to traditional disciplinary procedures and the frequency with which employees who are subject to alternative disciplinary procedures commit additional offenses.

(D) The number of appeals from adverse actions filed against employees of the Department, the number of appeals upheld, and the reasons for which the appeals were upheld.

(E) The use of paid administrative leave during the disciplinary process and the length of such leave.

(b) REPORT.—

(1) IN GENERAL.—Not later than December 31, 2017, the Secretary shall submit to the appropriate committees of Congress a report on the disciplinary procedures and actions of the Department.

(2) CONTENTS.—The report submitted under paragraph (1) shall include the following:

(A) The information collected under subsection (a).

(B) The findings of the Secretary with respect to the measurement and collection carried out under subsection (a).

(C) An analysis of the disciplinary procedures and actions of the Department.

(D) Suggestions for improving the disciplinary procedures and actions of the Department.

(E) Such other matters as the Secretary considers appropriate.

(3) APPROPRIATE COMMITTEES OF CONGRESS.—In this subsection, the term “appropriate committees of Congress” means—

(A) the Committee on Appropriations and the Committee on Veterans' Affairs of the Senate; and

(B) the Committee on Appropriations and the Committee on Veterans' Affairs of the House of Representatives.

The SPEAKER pro tempore. The bill shall be debatable for 1 hour, equally divided and controlled by the chair and ranking minority member of the Committee on Veterans' Affairs.

The gentleman from Tennessee (Mr. ROE) and the gentleman from Minnesota (Mr. WALZ) each will control 30 minutes.

The Chair recognizes the gentleman from Tennessee.

Mr. ROE of Tennessee. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this is a historic day. You and many Members of this body



are well aware that bringing real accountability to the Department of Veterans Affairs has been a goal of mine and many of my colleagues for many years. That is why I am proud to rise today to support S. 1094, which passed the United States Senate last week via voice vote.

This bill is heavily modeled off of my bill, H.R. 1259, which passed out of the House with bipartisan support earlier this Congress, and I am proud to have worked with Senators ISAKSON, TESTER, and RUBIO to craft this vital piece of legislation.

The Department of Veterans Affairs Accountability and Whistleblower Protection Act of 2017 would provide the Secretary of the Department of Veterans Affairs with yet another tool to instill accountability at VA by giving him the authority to expeditiously remove, demote, or suspend any VA employee for poor performance or misconduct while still preserving an employee's rights to due process.

This bill would create an expedited procedure for all VA employees to respond and appeal to proposed removals, demotions, and suspensions for performance or misconduct, or in the case of title 38 employees, which are our healthcare providers, for a question involving direct patient care or clinical competence.

The prenotification and response process would have to be completed within 15 business days, and the employee would be entitled to an expedited appeal to the Merit Systems Protection Board where the first step at the administrative judge level would be limited to 180 days.

Additionally, either party would be able to appeal the administrative judge's decision to the full MSPB and would be provided the opportunity for limited judicial review.

This bill would also provide improved protections for whistleblowers by creating a new office and an Assistant Secretary position specifically for accountability and whistleblowers. It would allow the Secretary to reduce an employee's Federal pension if they are convicted of a felony that influenced their job at VA. It would provide the Secretary with the authority to recoup a bonus provided to an employee who engaged in misconduct or malfeasance prior to receiving the bonus, and would allow the Secretary to recoup any relocation expenses that were authorized for a VA employee only through the employee's ill-gotten means, such as fraud, waste, or malfeasance.

Lastly, it would also provide the Secretary with the direct hiring authority he has been asking for so that he can hire medical center directors and VISN directors in a more expedited manner and fill the leadership vacancies across VA.

Mr. Speaker, as I have always said, I agree with all of my colleagues that the vast majority of VA employees—many of whom I know personally and call friends—are hardworking public

servants who are dedicated to providing quality healthcare and benefits for veterans.

But for far too long, the failures of bad actors have tarnished the good name of all VA employees. Unfortunately, despite the tireless efforts of our courageous whistleblowers, the extensive reporting on a lack of accountability by the media and the outrage of the American public, we still see far too many instances of VA employees not living up to the standards America expects. Most importantly, they are not living up to the standards that the men and women who have served this great Nation deserve.

This isn't a political issue. This is a veterans' issue. I can't imagine how any Member of this body can defend not standing for veterans to vote for this bipartisan legislation. The lack of accountability isn't specific to any one area of the Department. It is systemic. In the last few years, the committee discovered an instance of a VA nurse scrubbing in drunk for a veteran's surgery—I found that unbelievable—and a care support specialist in the agency's drug and addiction program taking a recovering addict to a crack house to buy him drugs and a prostitute, a VA medical center clerk participating in an armed robbery, and a practitioner watching pornography at work while they were supposedly treating a patient.

What is more, it has been proven that some senior managers have retaliated against whistleblowers, costing VA and, in turn, taxpayers hundreds of thousands of dollars in restitution.

All of these acts in and of themselves are egregious, but they are just the tip of the iceberg. They have one thing in common: none of these employees were held accountable in a reasonable timeframe, if at all.

There are many factors that contribute to this failure, but an antiquated civil service system and a complicated grievance process have left VA unwilling—and sometimes just unable—to jump through the many hoops to do what is right. This is not an issue unique to VA. Too often it is nearly impossible to remove a poorly performing government employee.

Officials on both sides of the aisle have expressed their concern about the current process to remove or discipline subpar employees. Just last year, Mr. Speaker, VA's then-Deputy Secretary Sloan Gibson sat before our committee and admitted that it was too difficult to fire a substandard VA employee.

Further, the Government Accountability Office studied the government's ability to hold low-performing employees accountable and found that it took 6 months to a year on average, and sometimes significantly longer, to fire a poorly performing government employee—6 months to a year.

I have heard concerns that the bill will hurt the Department's ability to recruit and retain good employees. I don't buy this argument as every em-

ployee I speak to tells me the exact opposite.

Good employees want to work in an environment where they know everyone can be held accountable for their actions. I believe the current status quo hurts the morale of the employees who are doing the right thing each and every day.

This is the same for employees of the Department who are veterans. I know that some have said that this would hurt veterans who are employed at the VA since they make up a large percentage of our VA employees. But as a veteran myself and as my fellow veterans here today would agree, we don't serve, whether in uniform or civilian clothes, because we prioritize our individual protection. The mission always comes first, and at VA, the mission is our veterans.

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Veterans want to work alongside colleagues they know are working hard for the men and women who they served alongside.

Mr. Speaker, before I close, I want to acknowledge some individuals who have made this bill become a reality.

First and foremost, I want to thank the 18 veterans groups representing millions of veterans and their families who are supporting this bill and real accountability at the VA. Many of them are in the gallery today, and I can't thank them enough for all they have done and all they continue to do for our Nation's heroes.

Many of these groups took a courageous stand in support of VA accountability, even when it wasn't a politically popular idea. And I especially want to thank Concerned Veterans for America, The American Legion, and Paralyzed Veterans of America for being some of our earliest and staunchest supporters.

I also want to thank someone who, this Congress, has been with us from day one, and that is the Secretary of the Department of Veterans Affairs, Dr. David Shulkin. We have worked with Secretary Shulkin and his team to draft the bill that is before us today, and I am thankful for his and President Trump's support.

President Trump and Secretary Shulkin have endorsed this legislation, not because they want to punish or make it harder to recruit employees, but because they see this change is needed if the Secretary is going to meet the President's goal of truly reforming the VA.

I also want to thank the bipartisan group of Senators who we worked with in crafting this bill, including Senator ISAKSON; Senator TESTER; and the primary sponsor, Senator RUBIO. Senator RUBIO and his staff have been with me every step of the way, and I am thankful for his and his staff's efforts over the years.

I also want to thank a good friend of mine, Ranking Member WALZ, and his staff for their support and leadership.

They have been fantastic. I also want to thank Speaker RYAN and Majority Leader MCCARTHY and their staffs for helping us bring this bill to the floor.

Lastly, I would like to single out former Veterans' Affairs Committee Chairman Jeff Miller, a good friend, great leader of this committee, and my chairman for 6 years. His leadership got the ball rolling on this issue, which led to House-passed legislation twice last Congress and kept the spotlight on accountability issues at VA through his dogged oversight.

Finally, I would like to thank my staff, and especially the professional and communications staff of the House Committee on Veterans' Affairs, for their years of hard work on this issue.

Mr. Speaker, today, we have a bipartisan, bicameral bill that makes meaningful change to VA's civil service system, while maintaining due process rights.

Today, we have the opportunity to make real and lasting changes to a broken system.

Today, we can stand together with veterans against the status quo that has failed them for far too long. They deserve better.

I hope all of you will join me, and the 18 veterans organizations that support this legislation, to do what is right and send this bill to the President's desk.

Mr. Speaker, I reserve the balance of my time.

Mr. WALZ. Mr. Speaker, I yield myself such time as I may consume.

I would like to associate myself with the chairman's remarks, especially the thanks of all the people involved in this. I think, Mr. Speaker, this is the third time we have come to this body this Congress, as the chairman and the ranking member of the VA Committee, as fellow veterans, as friends and American citizens, on issues of utmost importance to our veterans. We do have a constituency. We do have a special interest group that we look out for: America's veterans.

Those 18 groups, plus millions of Americans across this country, their collective voices through their organizations, through the Disabled American Veterans, through The American Legion, articulate every Congress in front of us what their top priorities are. This year, they came in front of us and said the three things that Congress needs to get done, needs to get right, and needs to get moving as soon as possible in this 2-year period that we have is: appeals reform, choice extension of care in the community, and an accountability bill.

Well, I am proud to say this is the third of those three. The other two have moved here in a bipartisan manner.

In the climate that we are in, and the uncertainty that the American public is feeling—quite honestly, probably the frustration they feel with this body—I think it is important to note that none of those things were easy lifts, none of them were locked in, and many of them

contained things that were pretty ideologically polarizing.

Chairman ROE, through his leadership and with the professional staff, was able to navigate to get to that point that the top priority and focus was care for veterans—making sure that care is delivered in a timely manner; making sure those delivering the care are the best possible; and, as the chairman said, if they are doing their job, they are afforded their constitutional rights and appeals. If they are not, I agree with the chairman, they should be removed as quickly as possible. They should certainly not be rewarded for that. That strengthens the VA. That strengthens those good employees.

Again, keep this in mind: This is the second largest agency in the Federal Government. It has a \$190 billion budget. It has 350,000-plus employees. It is an issue that unites us and that Americans are passionate about.

So we stand before you today with an issue that is unified, as Americans, as accountability. Certainly, the examples that Chairman ROE mentioned, no one is going to defend those. I am pleased because I think the chairman clearly understands that every time one of those issues goes unaddressed in a timely manner, it hurts the morale of the entire agency and erodes trust in the system by Americans.

Those veterans who use the VA system know they are getting quality care. On any given day, tens of thousands of appointments and procedures are being carried out in the most professional manner. All of that is undermined if a bad employee is allowed to not live up to those standards.

So I am pleased to say that I am in full support of this piece of legislation. The way this was done is the way we are taught in school how it is supposed to work. We debate, we send something there, we don't agree, then we let the Senate do that. We all work together to get something. We bring back that little, I am just a bill sitting on Capitol Hill. Now it is back over here. It is not perfect in everyone's mind, but it is certainly perfect in terms of how legislation is done and reaching those goals. Everyone compromised.

I think the chairman needs to be singled out on this. I thank him for commenting about Chairman Miller. We had Mike Michaud on our side work on that, too. Others have been here and done it, but we needed someone to get it over the line.

The three pieces I mentioned—appeals, choice, and accountability—are certainly things that were on everybody's mind. All three are going to pass through this House.

Just a couple of notes on this. This does maintain due process protections for employees, and I support that. I hope we can come together and pass the compromise piece.

The bill promotes accountability by giving the VA the tools it needs to hold bad employees accountable, while

maintaining those constitutional-mandated workplace rights.

At this point, I would say that Secretary Shulkin has earned the trust of, certainly, this committee, certainly of the veterans service organizations, and I would say, if you don't know, the American people. He has asked for some of these things. I take that very seriously. If he says this will add to accountability, if he says this will make his job better in delivering care for veterans, that weighs heavily.

He asked us for these things. He asked and was part of making that. We should be grateful that he is willing to work with Congress.

It also requires VA to evaluate supervisors based on their protection of whistleblowers. This commonsense provision aligns the incentives for supervisors to protect whistleblowers when they shed light on dangerous situations and problematic employees at the agency.

I want to be clear: we don't support collective bargaining rights just because it is a union issue that we think should be there, those of us who ideologically believe workplace protections allow for a larger voice and protect good employees who are pointing out bad behavior from being arbitrarily fired without a collective will to fight back.

One person in a manager's office with no support or no legal right is a very dangerous situation. One employee being backed by workplace guarantees and their union collectively bargained rights helps make us stronger.

The bill requires the VA to improve its training regarding whistleblower disclosures. This is a really key piece. We want to ensure there are no excuses for employees at the VA to not know how to handle protected disclosures. Proper training will be a key to ensure all employees and not just supervisors understand the importance.

No matter what this bill does, it would be hard to support if it didn't do the things the chairman said. It does protect those constitutional rights. It maintains all existing due process protections in current law by ensuring there is notice and an opportunity to respond before an employee is fired.

The bill even improves the appeals process by requiring the VA to provide an employee with the complete evidence file when they are fired, thereby empowering them to appeal sooner. If someone is wrongfully accused of wrongdoing, now they are going to see and have the entire file. We are just asking that they do it sooner.

If someone commits one of the acts that the chairman talked about, it is indefensible for it to take 6 months or a year to have it adjudicated. We certainly want them to have a fair due process, but, again, if we are waiting to get that done, that is holding a position for someone else that could be serving veterans. It also keeps an employee under the cloud of not getting it done and moving on. If they are innocent, we want to move it on as quickly



as possible. We do not jeopardize or change any of their appeal process to come back.

Now is the time to bring real, long-lasting constitutional accountability measures to the Department of Veterans Affairs. I would hope we could come together to pass this. Again, the entire goal of all of the people involved with this was to improve the care for this Nation's veterans, ensuring people's rights to be heard, and a fair due process if they are accused of something, but with the intention that if you are not serving our veterans in the manner that you should, then there are other places you should work. This ensures that those tools are there.

Mr. Speaker, I reserve the balance of my time.

Mr. ROE of Tennessee. Mr. Speaker, I yield 1 minute to the gentleman from California (Mr. MCCARTHY), the majority leader.

Mr. MCCARTHY. I thank the gentleman for yielding.

Mr. Speaker, first and foremost, I want to thank Chairman ROE and the House Committee on Veterans' Affairs for their work on this legislation and their focus on reforming the VA. I know they and the Secretary are all committed to making sure our veterans get the best—and only the best—no excuses.

The Department of Veterans Affairs has an honorable task to care for and heal our veterans. We made a promise in this country that, if you serve, your fellow citizens will take care of you. That is through the employees of the VA that we as a nation fulfill the promise. It is for this reason that we cannot accept the failures and backlogs in our veterans' programs.

We all know that there are thousands of great employees at the VA who consider their duty to care for the veterans as much bigger than just a job. But the few bad apples are spoiling the whole barrel.

We know how this works. You can have an office or a team committed to doing the best job possible. But when one isn't pulling their weight; when somebody is breaking the rules and getting away with it; when bad people get transferred or promoted, instead of fired; that totally destroys the whole organization. It undermines morale, makes the team ineffective, and allows for failures to continue or get worse. Failures at the VA have life-or-death consequences.

This has happened for years—years, where a person who was jailed got leave to serve time and then returned to the VA; years, where an employee showed up drunk to work and participated in a surgery; years, where a psychiatrist watched deeply inappropriate videos with a veteran in the room; and after years of all this and none of them getting fired, the good employees become dispirited, the culture of the VA will decline, and too many of our veterans receive low-quality care, if they can get care at all.

Mr. Speaker, the VA is steeped in a culture of ambivalence, coupled with a lack of accountability, and our veterans suffer as a result. Fixing the culture at the VA requires us to acknowledge the great work of the many, without leaving them tainted with the incompetence and scandal of the few. It requires removing the bad apples.

So I am glad that we are finally sending this bill to the President's desk. The House passed a similar bill in 2015, but the Senate did not act. We passed another in the new Congress earlier this year.

Now that our Senate counterparts have voted, we will take our final step today to send this legislation to the President's desk. Once President Trump signs this into law, I predict we will begin to see the culture change at the VA and our veterans will get the care we promised them and they deserve.

Mr. WALZ. Mr. Speaker, I yield 4 minutes to the gentleman from California (Mr. TAKANO), my good friend and the vice ranking member of the full Committee on Veterans' Affairs.

Mr. TAKANO. Mr. Speaker, I thank the ranking member for yielding time. And I want to thank Ranking Member WALZ and Chairman ROE for their work on the issue of accountability and their tireless commitment to our Nation's veterans.

Mr. Speaker, I rise today in support of the Department of Veterans Affairs Accountability and Whistleblower Protection Act of 2017.

Throughout the debate over accountability at the Department of Veterans Affairs, I have advocated for legislation that holds VA employees accountable, without violating their constitutional right to due process.

□ 1500

This legislation strikes that balance far better than previous accountability proposals. This compromise respects current grievance procedures, maintains existing due process protections, and improves the appeals process by requiring managers to present employees with all of the evidence before they move on a disciplinary action.

Today we are voting to strengthen whistleblower protections. This bill codifies the Office of Accountability and Whistleblower Protection, and it mandates that its Director is a Senate-confirmed position instead of a political appointee. It also offers training on how to handle whistleblowers correctly, which will encourage employees to come forward if they witness misconduct.

Do I have concerns about this bill? Absolutely, I do. This is not the accountability legislation that I would have written. We must always remember that a third of VA employees are veterans themselves, and they deserve the workplace protections afforded to them in the Constitution as well as the respect of this Congress. But my concerns pale in comparison to the serious

and numerous institutional issues raised by accountability bills previously advanced in the House.

Passing this bill today will accomplish several important objectives:

We will fulfill the repeated requests from veteran service organizations and the VA itself for a stronger accountability system.

We will support the VA's continuing effort to create a culture of excellence.

We will provide veterans greater confidence that the VA is prepared to meet their needs.

Finally, by passing this bill, we can shift our focus from who is fired from the VA to who is hired at the VA.

As I stand here today, there are nearly 50,000 vacant jobs at the VA. This is a significant and urgent challenge. Ultimately, the success of the Department of Veterans Affairs will depend on recruiting, training, and retaining the highest quality talent available.

I look forward to working with my colleagues on the Veterans' Affairs Committee to streamlining the hiring process and ensuring that the VA has the staff and expertise it needs to provide veterans the care and support they have earned.

I applaud the Senate for forging this compromise, and I again want to recognize Chairman ROE and Ranking Member WALZ for their important work.

Mr. Speaker, I encourage my colleagues to support this legislation.

Mr. ROE of Tennessee. Mr. Speaker, I thank my friend from California (Mr. TAKANO) for his support.

I yield 2 minutes to the gentleman from Florida (Mr. BILIRAKIS), my good friend and vice chair of the Veterans' Affairs Committee.

Mr. BILIRAKIS. Mr. Speaker, I rise today in support of the Department of Veterans Affairs Accountability and Whistleblower Protection Act.

As a grateful nation, we must implement meaningful VA reform. Every day veterans contact my office seeking assistance in dealing with the agency. Like many of my colleagues here, I have full-time staff specifically dedicated to helping veterans with VA casework. I hear from veterans every day who are waiting for care, waiting for an answer, or simply waiting to finally be heard and recognized.

These are true American heroes, Mr. Speaker. We must do all we can to help them. The VA should be rolling out the red carpet for our veterans and treating them like the heroes they are.

The VA Accountability and Whistleblower Protection Act is good, commonsense legislation. If a VA employee is involved in misconduct, they should be demoted, suspended, or fired—certainly not promoted or given a bonus. If a VA employee sees misconduct and wants to report it, they should not fear repercussions.

Of course, the vast majority of VA employees are hardworking and dedicated professionals. At the end of the day, this bill is about holding the bad actors accountable and protecting the

whistleblowers and refocusing the VA on its mission to serve our Nation's heroes. With the passage of the VA Accountability and Whistleblower Protection Act, we are turning the page to a fresh start for the VA.

Mr. Speaker, I would like to thank Chairman ROE for doing such an outstanding job and also the ranking member for working in a bipartisan fashion. I appreciate it so very much. This is the way Congress should operate.

God bless our veterans.

Mr. WALZ. Mr. Speaker, I yield 3 minutes to the gentlewoman from California (Ms. BROWNLEY), the ranking member of the Subcommittee on Health.

Ms. BROWNLEY of California. Mr. Speaker, I rise in support of this bill to hold bad actors accountable and make the VA a stronger system for our Nation's veterans.

Since the unacceptable wait time scandal came to light in 2014, the House Veterans' Affairs Committee has worked diligently to fix the long-term problems at the VA and to ensure we are serving our veterans as well as they have served us.

From top to bottom, the number one priority for almost every VA employee is serving our veterans. But when an employee does not live up to this mission, engages in misconduct, or puts veterans at risk, we must ensure that the VA is able to hold them accountable.

It is critically important that we acknowledge that the vast majority of the 350,000 VA employees, a third of whom are veterans themselves, are hardworking individuals who have dedicated themselves to serving our country and our Nation's veterans. By being able to hold accountable the few bad actors in the VA, we not only serve our veterans, but we make the job of the rest of the workforce easier to perform.

Because we need a world-class, 21st century VA, this bill also provides the Secretary with direct hiring authority for senior management so that we can bring on the talent we need to properly serve our veterans.

This is an important example of what we can get done when we work in a bipartisan manner. I want to thank Chairman ROE and Ranking Member WALZ, both the chairman and ranking member of the Senate for working with our VSOs and the VA to find a compromise on this issue.

Mr. Speaker, I support this compromise. I ask my colleagues to vote "yes." This is a very good bill.

Mr. ROE of Tennessee. Mr. Speaker, I yield 1½ minutes to the gentleman from Colorado (Mr. COFFMAN), an Army and Marine veteran deployed to Iraq.

Mr. COFFMAN. Mr. Speaker, my colleagues and I rise today in support of the Department of Veterans Affairs and Whistleblower Protection Act, which the House of Representatives will consider today.

Time and time again, I have called to reform the VA, an organization that has been mired in a culture of corruption and bureaucratic incompetence. The VA has consistently failed to meet our Nation's obligations to veterans, the men and women who have sacrificed so much in the protection of our freedoms.

This act also provides the necessary protections for those who do the right thing and come forward to report wrongdoing. This legislation makes it possible to fire the bad VA employees who have failed our Nation's veterans.

Mr. Speaker, I thank my colleagues, along with those in the Senate, for their hard work and support of this legislation. I look forward to getting it to the President's desk for his signature and to finally bringing accountability to the VA.

Mr. WALZ. Mr. Speaker, I yield 3 minutes to the gentleman from California (Mr. PETERS), a friend of all of our veterans and a member of the Veterans' Affairs Committee.

Mr. PETERS. Mr. Speaker, for everything our veterans have given in service to the country, they have earned their benefits and access to timely, quality healthcare at the VA. That is the promise that was made to them when they volunteered to serve. That is the promise that we in Congress are obligated to keep.

Honoring this promise is not just a matter of resources; it also depends on changing the actual culture at the VA. From the Secretary of Veterans Affairs to the doctors and nurses, to the administrators who deal with the flood of appointments that come in, it has to be about serving the veteran, not about serving the bureaucracy.

For as long as I have been in Congress, improving VA accountability has been a bipartisan goal. I am glad to see us working across the aisle once again on this legislation that builds on the progress we made in 2014.

This bill strengthens whistleblower protections, which encourages employees to call out careless or criminal behavior that we have unfortunately seen too often at VAs around the country. It gives the Secretary greater authority to remove or discipline poorly performing and negligent employees, and it provides a reasonable and efficient appeals process for VA employees that is the subject of compromise.

The bill won't solve all the problems at the VA, but by holding bad actors accountable and protecting the hardworking employees who care for our veterans, this bipartisan legislation will improve on the service that our veterans receive.

Mr. Speaker, I appreciate the work done by my colleagues on both sides of the aisle, the administration, and the veterans service organizations to craft this important piece of legislation, and I urge my colleagues to vote "yes." Let's send this bill to the President's desk and help veterans in my district in San Diego and across the country get the care that they have earned.

Mr. ROE of Tennessee. Mr. Speaker, I yield 2 minutes to the gentleman from Maine (Mr. POLIQUIN), my good friend and a member of the Veterans' Affairs Committee.

Mr. POLIQUIN. Mr. Speaker, I appreciate the opportunity to address the Floor on this important issue.

Gentlemen, it was our first Commander in Chief, George Washington, who said something to the effect that we can never expect our young men and women to step forward and fight for our country unless those who have already returned from the battlefield are taken care of.

This is a solemn oath that we all have to honor. It is critically important. I will tell you, Mr. Speaker, in the State of Maine, we have about 125,000 veterans, and we love our veterans. We understand what it is like to fight for our freedom and to stand up for our way of life.

In the State of Maine, we have Togus Medical Center, which is the first veterans hospital in the country, about 150 years old. We understand this. They have great employees, and many of them are veterans themselves.

However, a couple of years ago our country was shocked to learn that there were and are some bad actors in this whole process. A few years ago, we learned that some of the folks at the veterans facility in Phoenix, Arizona, were cooking the scheduling books in order to get paid more money through a bonus program when, in fact, they did not and had not scheduled mental health appointments for some of our veterans who were at risk, and, as a result, a number of those veterans died. This is absolutely unacceptable.

There is nobody who has fought for this country on the front lines who comes home, who needs help, that should be denied help; and it certainly shouldn't be those who are supposed to take care of them who are cooking the books for their own benefit.

Mr. Speaker, that is why I am asking every Republican and Democrat here in this Chamber to support the Senate's bill, 1094. This is a good bill that holds the VA employees accountable for improper behavior. And, yes, sir, it does give, Mr. Speaker, management at the VA the opportunity to replace, fire, or otherwise, those who are supposed to care for our veterans who have chosen not to do so. Please support S. 1094.

Mr. WALZ. Mr. Speaker, may I inquire how much time I have remaining.

The SPEAKER pro tempore (Mr. RODNEY DAVIS of Illinois). The gentleman from Minnesota has 15½ minutes remaining, and the gentleman from Tennessee has 14 minutes remaining.

Mr. WALZ. Mr. Speaker, I have no further speakers, and I am certainly willing to yield some of my time to the gentleman from Tennessee if there are other speakers who would like to speak on this if the gentleman's time runs short. If I could save myself 3 minutes for my closing, I would certainly be

willing to do that. I am not certain what the parliamentary procedure is to do so.

Mr. Speaker, I reserve the balance of my time.

□ 1515

Mr. ROE of Tennessee. Mr. Speaker, I yield 1 minute to the gentleman from Florida (Mr. DUNN), a veteran and a member of the committee, to speak on this issue.

Mr. DUNN. Mr. Speaker, I rise today in support of the Department of Veterans Affairs Accountability and Whistleblower Protection Act of 2017. This important legislation will streamline the arduous process to remove, demote, or suspend any VA employee for poor performance, negligence, or misconduct.

We all know the list of scandals: veterans dying on wait lists, intoxicated surgical staff, armed robbery, grossly mismanaged construction projects. Yet the civil service rules allow bad VA employees to stay on the public payroll.

Our veterans deserve better.

Today we take a bold step toward reversing that failure. This legislation will allow Secretary Shulkin to immediately remove bad employees as he works to restructure and improve veterans' care. It also ensures that whistleblowers are protected from retaliation. The bottom line is that it implements real accountability at the VA, accountability to the men and women who have bravely served this country.

The Veterans Affairs Accountability Act is an important first step in addressing poor performance and misconduct at the VA, and I urge all of my colleagues to support this much-needed legislation.

I thank the chair and the ranking member very much for their work on this.

Mr. WALZ. Mr. Speaker, I continue to reserve the balance of my time.

Mr. ROE of Tennessee. Mr. Speaker, I yield 2 minutes to the gentleman from Texas (Mr. ARRINGTON), chairman of the Economic Opportunity Subcommittee.

Mr. ARRINGTON. Mr. Speaker, it is my highest privilege to serve with Chairman ROE and Ranking Member WALZ on the VA Committee, and I am grateful for the honor to serve as chairman of the Subcommittee on Economic Opportunity.

I want to thank Chairman ROE for his leadership on an issue that I believe gets at the root cause of many of the problems, maybe most of the problems that plague the Department of Veterans Affairs: the lack of accountability. Where you don't have a culture of accountability in an organization, you have mediocrity; and mediocrity and excellence in service do not and cannot coexist.

We are talking about serving our veterans, the men and women who are willing to sacrifice everything for our freedom and security. These folks gave

their best to our country, and they deserve the very best from our country.

Having almost half a million delinquent disability claims is not our very best; having veterans wait in line for months to see a physician, not our best; having hundreds of billions of dollars in improper payments is not our best; waiting 6 months to a year to terminate somebody for misconduct and poor performance is definitely not our best.

People all over this country, hard-working Americans, get up every day; they work hard; they perform; they deliver results; and if they don't, they lose their job. If they are small-business owners, they go out of business. We ought to have no less expectation for our Federal Government and its employees, especially those who serve our veterans.

The VA Accountability and Whistleblower Protection Act gives the Secretary the tools he needs to hold his employees accountable for serving our veterans and to change the culture from one that accepts mediocrity to one that expects excellence.

I applaud Chairman ROE and Ranking Member WALZ for helping our country take a big step towards delivering on our promises to our veterans.

Mr. WALZ. Mr. Speaker, I continue to reserve the balance of my time.

Mr. ROE of Tennessee. Mr. Speaker, I yield 1½ minutes to the gentleman from Florida (Mr. RUTHERFORD), a member of our committee and, for many years, who was in the process of protecting us in law enforcement.

Mr. RUTHERFORD. Mr. Speaker, I rise today in strong support of S. 1094, the Department of Veterans Affairs Accountability and Whistleblower Protection Act of 2017.

As we have all seen from various reports and news stories, increased accountability at the VA is long, long overdue. For far too long, the leadership in the Department of Veterans Affairs has been unable to make firing decisions that would be common sense in any other setting.

The VA Accountability and Whistleblower Protection Act gives the Secretary the authority to fire the bad actors and creates a removal process that is more in line with the private sector. It also gives the Secretary the ability to punish poor performers by recouping bonuses and relocation expenses. We must ensure that employees who fail to do their jobs are not rewarded but are, instead, held accountable.

Another part of this legislation is the enhanced protection for whistleblowers. These are employees who are doing the right thing and advocating for our veterans. They should not be faced with retribution by their leadership.

One of the most important jobs of this Congress is working to improve the lives of our Nation's veterans. When our fellow Americans bravely put on the uniform and serve, we must ensure that that sacrifice does not go unnoticed.

In my time serving on the Veterans' Affairs Committee, I have seen how Congress and the leadership of the VA, in partnership with veterans service organizations, are working to create the culture of service and accountability that our veterans truly deserve.

As Secretary Shulkin has often said, the VA needs changing, and I believe this bill is a huge step in that direction.

I would like to thank Chairman ROE for his leadership, and Senator RUBIO. This issue is crucial to the 150,000 veteran men and women of northeast Florida, and I thank them for their leadership, and I urge my colleagues to support the bill.

Mr. WALZ. Mr. Speaker, I continue to reserve the balance of my time.

Mr. ROE of Tennessee. Mr. Speaker, I yield 2 minutes to the gentleman from Michigan (Mr. BERGMAN), the Oversight and Investigations Subcommittee chair and a lieutenant general in the Marine Corps.

Mr. BERGMAN. Mr. Speaker, I rise today in support of S. 1094, the Department of Veterans Affairs Accountability and Whistleblower Protection Act.

Anyone who has been responsible for the success of a business or organization knows that the most important part of the equation is the people. It is no different with the Department of Veterans Affairs.

Our veterans have given their all, and they deserve our all; but, unfortunately, vulnerabilities in the VA's administrative processes have led to incompetence, neglect, and even unchecked illegal activity on the part of a small number of VA employees.

Unfortunately, lack of oversight and accountability in the hiring and retention process mean that the VA is still failing our veterans. Even in the few instances where the VA has tried to discipline employees for wrongdoing or neglect, it has been foiled by a complex and lengthy administrative process that rarely yields results.

S. 1094 addresses the VA's administrative shortcomings by providing the Secretary with the authority to remove, demote, or suspend any employee for poor performance or misconduct while, at the same time, enhancing protections for whistleblowers.

As a leader of marines and a Vietnam veteran, I know what our servicemen and -women across generations and conflicts have sacrificed for our freedoms and our country. They don't just deserve quality care; they have earned it.

We made a commitment to defend our veterans just as they have defended our way of life, and that starts with reforms that restore efficiency and accountability at Veterans Affairs.

I would like to thank Chairman ROE and the committee for all their hard work. I strongly urge my colleagues to support.

Mr. ROE of Tennessee. Mr. Speaker, I yield 1½ minutes to the gentlewoman

from Puerto Rico (Miss GONZÁLEZ-COLÓN), a new member of our committee, who is doing a great job.

Miss GONZÁLEZ-COLÓN of Puerto Rico. Mr. Speaker, since the day I was elected to Congress, I pledged to do everything in my power to help veterans receive the care and attention they deserve. S. 1094 will ensure that persons hired to care for the health and the well-being of our veterans do so according to VA regulations, and those who fail in their duties are held accountable. Moreover, this bill protects whistleblowers from retaliation when they alarm us of VA misconduct.

Currently, Puerto Rico has one VA regional benefit office, one VA hospital, and a few outpatient clinics. These facilities provide all the VA services to the island's veterans. This bill will help ensure places with limited VA facilities, like Puerto Rico, will be efficiently administered and make certain that the VA's employees adhere to the standards of excellence that our men and women in uniform expect.

I thank Senator RUBIO for sponsoring this bill, but I need to thank Chairman ROE for guiding this important legislation on the House floor the same way he did with H.R. 1529.

Mr. ROE of Tennessee. Mr. Speaker, how much time do I have remaining?

The SPEAKER pro tempore. The gentleman has 6½ minutes remaining.

Mr. ROE of Tennessee. Mr. Speaker, I yield 1 minute to the gentleman from Indiana (Mr. MESSER), my good friend who I have served with for 6 years on the Education and the Workforce Committee.

Mr. MESSER. Mr. Speaker, I appreciate the gentleman's leadership on this important issue.

Mr. Speaker, our veterans deserve high-quality healthcare. They have earned it. That is why I rise today to urge support of S. 1094, the Veterans Affairs Accountability and Whistleblower Protection Act. This is landmark, bipartisan legislation to reform the VA and improve care for our veterans after years of poor performance and scandal.

My grandfather is a World War II veteran who regularly attends the VA in Indianapolis, so I know firsthand that the vast majority of employees at the VA are honest and hardworking public servants. Lack of accountability at the agency, though, has allowed a few bad actors to damage the VA and harm our vets, from manipulating wait lists to letting calls to the suicide hotline go unanswered, to theft and wrongful prescribing of opioids.

Our veterans deserve better.

The Veterans Accountability Act will hold bureaucrats accountable for wrongdoing, make it easier to dismiss bad employees, and strengthen protections for whistleblowers. These are commonsense reforms and long overdue.

Because our military men and women, our Hoosier heroes, fought to

protect us, the least we can do is fight for them and ensure that they get high-quality care.

Mr. Speaker, I urge support of the bill.

Mr. ROE of Tennessee. Mr. Speaker, I yield 2 minutes to the gentleman from Florida (Mr. MAST), a combat-wounded veteran, Bronze Star winner, Purple Heart winner, Defense Meritorious Service and Army Commendation Medal winner.

Mr. MAST. Mr. Speaker, I want to thank the chairman for yielding me time, and the ranking member, both of the gentlemen, for their leadership, and also our Senator from Florida, Senator RUBIO, for his leadership on this bill.

This is a great bill, and that is why I couldn't be more happy than to rise and speak about this bill. For a long time, our veterans have deserved better, and this bill is exactly that: It is better.

Veterans across the board—Army, Navy, Marines, Air Force, Coast Guard—they have common experiences and common healthcare challenges as a result of certainly combat, but also as a result of just simply the austere life of being in the military. Whether it is a daily life of jumping out of planes or roping out of helicopters or kicking in doors or jumping off the back end of trucks, you live an austere life.

Oftentimes, I hear people say a year in the military can be like a dog-year. It is tough on you, and that is why the VA is so critical. It is so critical that the VA maintain an expertise in providing for our unique healthcare needs.

I get my healthcare from the VA. I know many VA employees who are hardworking and certainly unyielding in their dedication, but I have also encountered many who are not, plain and simple, many who lack the hunger or who lack the appropriate mentality or the decorum to care for our men and women who are willing to give their last breath in defense of our country. This is the reality.

Every single veteran needs to be treated like the most important patient ever to be seen every single time they walk into the VA. Anything less is a failure.

In the past several years, this bureaucracy of rules, it has obstructed the VA's ability to go out there and fire employees who have been charged with armed robbery, who have been accused of being drunk while performing surgeries, and this simply cannot stand.

There should never be somebody allowed to service our veterans who would receive a dishonorable discharge in the military for what their actions are. They shouldn't be allowed the honor of serving people who served this country in World War II or Korea or Vietnam or Panama, Kosovo, Bosnia, Somalia, the Gulf war, Iraq, Afghanistan. Folks shouldn't be given that honor lightly.

It is exactly why this bill, the Department of Veterans Affairs Account-

ability and Whistleblower Protection Act is so important. The bill establishes whistleblower protections so that we can ensure veterans get the best possible care and make sure that no veteran is ever dishonored twice by the same person.

I want to thank you again for yielding me time. I want to thank you on behalf of every single veteran across this country for this great bill.

Mr. WALZ. Mr. Speaker, I continue to reserve the balance of my time.

Mr. ROE of Tennessee. Mr. Speaker, I thank Congressman MAST for those kind words and words spoken for every American veteran.

Mr. Speaker, I yield 1 minute to the gentleman from Pennsylvania (Mr. FITZPATRICK).

□ 1530

Mr. FITZPATRICK. Mr. Speaker, I thank the chairman, the ranking member, and Senator RUBIO for their leadership.

Mr. Speaker, scandal after scandal has caused heightened distrust between veterans and the VA. For far too long, veterans nationwide have been disrespected by those who are supposed to be advocates for them, sometimes with deadly consequences.

Be it in regional offices—like the one in Philadelphia, which my office has worked closely with—or medical centers, from Phoenix to Florida, we have seen the devastating impact of the current culture of mismanagement and distrust, and its impact on backlogged claims and lack of care for those who devoted their lives to serve our country.

The legislation before the House today institutes the needed reforms throughout the Department of Veterans Affairs by granting the authority, and the expectation, that the Secretary remove, demote, or suspend any VA employee for poor performance or misconduct.

Rebuilding this trust between Veterans Affairs and those who had served us must be a priority. The Department of Veterans Affairs Accountability and Whistleblower Protection Act is crucial to reforming this trust, and I am proud to support it. I urge my colleagues on both sides of the aisle to do the same. We must serve our veterans as well as they have served us.

Mr. WALZ. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, you heard it from a wide range of folks here on the floor. This is the way Congress is supposed to work and this is what is expected of us. This is what my constituents in southern Minnesota expect, and this is what the gentleman from Tennessee's or the gentleman from Florida's constituents expect: look at a problem, assess it, come up with some different solutions, and debate those out.

I want to be clear, as I said earlier, these are tough issues. There was debate—heated debate. We may even have raised our voices a few times doing

this, but that is the way the world's greatest democracy is supposed to function.

Again, three of the most pressing issues, three of the top priorities of this Nation's veterans, all addressed in the first 6 six months of this Congress, all addressed to the satisfaction of a wide, bipartisan VSO community that is grateful for it.

I think, in trying to find these challenges and understanding them, people are trying to get at the heart of this. I do think there are great frustrations, and I have said, totally indefensible of the examples given.

But when we had this debate before, there were some examples of bad managers inadvertently firing people who were pointing out things that the manager was doing; and the due process considerations got that person their job back, and we got rid of the manager.

I think that when we first started debating this, I made the case that this could be a right-to-work bill in disguise. This bill is not that. This bill, as the chairman said, was not the intention. The intention was accountability. The intention of the bill was to streamline the process while protecting those due process rights.

I am grateful that the chairman, as always, kept his word. He followed through and he negotiated that.

The thing that I would say before closing here, Mr. Speaker, is that I agree with the majority leader. I think the combination of many things that we are doing possesses the potential to see real reforms moving in the right direction. Something that I think hasn't been mentioned here—that the Secretary did with consultation with the chairman, myself, and others—was that he took the action of streamlining the medical record procedure between the DOD, and the VA added to that.

There is transformational, generational-type change happening at the VA, but none of this will matter. And the majority leader said he expects to see that. We must ensure that it happens. We must ensure the accountability, we must monitor, we must ask that it is happening, and we must come back at this again. If there is a glitch that was unintended, let's come back at it again in this same manner of reaching an outcome.

This is a positive day, Mr. Speaker. I would hope that those folks paying attention to this and watching—certainly the veterans, but everyone—know that Congress can work together; Congress can take on pressing issues; Congress can come up with bipartisan solutions; and Congress can agree that the thing that defines us most is not Republican or Democrat—it is U.S. citizen, it is veteran, and it is care for them.

Today I am proud to get this through here. Let's send it on to the President, and let's all celebrate the Administration signing this into law and moving forward.

Mr. Speaker, I yield back the balance of my time.

Mr. ROE of Tennessee. Mr. Speaker, I yield myself such time as I may consume.

Today is a proud day, I think, for this Nation. The United States of America does more for its veterans than all other nations in the world combined; and I don't think that, on some days, that is even enough for these heroes that have served us and many of whom have spoken this afternoon.

I want to express my appreciation to the minority and the majority staff, and to Sergeant Major WALZ for walking hand in hand. As he said, this was not an easy process. There were a lot of difficult issues that we both dealt with.

I also want to thank our friends on the Senate side who also went through the same process and brought a bill to the floor that we can all, I think, enthusiastically support.

The Secretary said when he was first chosen—and I might add, 100-0, Secretary Shulkin was a bipartisan agreement in the Senate. I think he is a leader to transform the VA. He asked for accountability. He said: I cannot do my job as Secretary if I don't have this piece of legislation.

So he was very supportive, along with President Trump, so we gave him that.

We also protected due process rights for the employees who work for the VA—a very important issue.

Whistleblower protections. We could not do our job, Mr. Speaker, if we did not have these whistleblowers. There are 350,000 employees, 154 medical centers, and over 800 outpatient clinics. There is no way that we could monitor that without their help. So their protections are there.

Mr. Speaker, I want to encourage both sides of the aisle to support S. 1094, and I yield back the balance of my time.

Mr. CONNOLLY. Mr. Speaker, I strongly support increased accountability and whistleblower protection at the Department of Veterans Affairs. And I recognize that S. 1094 represents a compromise approach that was crafted specifically to address severe, longstanding problems at VA hospitals.

But a number of S. 1094's provisions concern me. As Vice Ranking Member of the Committee on Oversight and Government Reform, these concerns would be amplified if these provisions were applied to other contexts or across the federal government in future legislation.

A partial list of problematic provisions includes:

The bill requires a lower standard of evidence that would allow removal, demotion, and other disciplinary actions even if the majority of evidence is exculpatory.

The bill supersedes existing collective bargaining agreements.

The bill provides for the clawback and forfeiture of bonuses and pensions under a standard that is broad and susceptible to abuse.

The bill denies senior executives of the right to appeal to the Merit Systems Protection Board, which they have under current law.

The bill imposes unreasonable timelines on the ability of employees to respond to allegations that may lead to discipline and eliminates the ability of the Merit System Protection Board to mitigate penalties that may have been overly harsh and raise due process concerns.

The bill prohibits the use of administrative leave for employees challenging demotions. This provision could also force employees to use their accrued sick or annual leave while on appeal, which Courts have considered a taking in violation of the Constitution.

While S. 1094 is a bipartisan compromise aimed at dealing with a specific and troubled department, a number of its provisions are problematic and would not serve as an example for future civil service-related legislation.

The SPEAKER pro tempore. All time for debate has expired.

Pursuant to House Resolution 378, the previous question is ordered.

The question is on the third reading of the bill.

The bill was ordered to be read a third time, and was read the third time.

The SPEAKER pro tempore. The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. ROE of Tennessee. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, further proceedings on this question will be postponed.

#### ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, proceedings will resume on questions previously postponed.

Votes will be taken in the following order:

The motion to recommit on H.R. 2581;

Passage of H.R. 2581, if ordered; and

Passage of S. 1094.

The first electronic vote will be conducted as a 15-minute vote. Remaining electronic votes will be conducted as 5-minute votes.

#### VERIFY FIRST ACT

The SPEAKER pro tempore. The unfinished business is the vote on the motion to recommit on the bill (H.R. 2581) to amend the Internal Revenue Code of 1986 to require the provision of social security numbers as a condition of receiving the health insurance premium tax credit, offered by the gentlewoman from California (Ms. SANCHEZ), on which the yeas and nays were ordered.

The Clerk will redesignate the motion.

The Clerk redesignated the motion.

The SPEAKER pro tempore. The question is on the motion to recommit.

The vote was taken by electronic device, and there were—yeas 193, nays 231, not voting 6, as follows: