

117TH CONGRESS
2D SESSION

H. R. 8510

IN THE SENATE OF THE UNITED STATES

OCTOBER 11, 2022

Received; read twice and referred to the Committee on Veterans' Affairs

AN ACT

To amend title 38, United States Code, to make certain improvements to the Office of Accountability and Whistleblower Protection of the Department of Veterans Affairs, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Strengthening Whistle-
3 blower Protections at the Department of Veterans Affairs
4 Act”.

5 **SEC. 2. COUNSEL OF OFFICE OF ACCOUNTABILITY AND**
6 **WHISTLEBLOWER PROTECTION.**

7 Subsection (e) of section 323 of title 38, United
8 States Code, is amended—

9 (1) by inserting “(1)” before “The Office”; and

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

12 “(2) The Assistant Secretary shall appoint a Counsel
13 of the Office, who shall be a career appointee in the Senior
14 Executive Service and shall report to the Assistant Sec-
15 retary. The Counsel shall provide the Assistant Secretary
16 with legal advice on all matters relating to the Office. In
17 accordance with subsection (e), the Assistant Secretary
18 may hire the appropriate staff for the Counsel to provide
19 such legal advice.”.

20 **SEC. 3. MODIFICATIONS TO FUNCTIONS OF OFFICE OF AC-**
21 **COUNTABILITY AND WHISTLEBLOWER PRO-**
22 **TECTION.**

23 Subsection (c)(1) of such section is amended—

24 (1) by striking subparagraphs (A) and (B);

25 (2) by redesignating subparagraphs (C) through
26 (G) as subparagraphs (A) through (E), respectively;

1 (3) in subparagraph (A), as so redesignated, by
2 inserting “and allegations of whistleblower retaliation”
3 after “disclosures”;

4 (4) by striking subparagraph (B), as so redesignated,
5 and inserting the following new subparagraph:
6

7 “(B) Referring employees of the Department
8 to the Office of Special Counsel so the Office of
9 Special Counsel may receive whistleblower disclosures
10 and allegations of whistleblower retaliation.”; and

12 (5) by striking subparagraphs (H) and (I).

13 **SEC. 4. EXPANSION OF WHISTLEBLOWER PROTECTIONS.**

14 (a) CLARIFICATION OF PROHIBITED PERSONNEL ACTION.—Section 731(c) of such title is amended—

16 (1) in paragraph (1)—

17 (A) in the matter preceding subparagraph
18 (A), by inserting “, or threatening to take or
19 fail to take,” after “failing to take”; and

20 (B) in subparagraph (A), by inserting “, or
21 with respect to an allegation of such a disclosure”
22 before the semicolon;

23 (2) in paragraph (3), by inserting “, making a
24 referral to boards of licensure,” after “negative peer
25 review”.

1 (b) FUNCTION OF OFFICE OF ACCOUNTABILITY AND
2 WHISTLEBLOWER PROTECTION.—Section 323(g) of such
3 title is amended by adding at the end the following new
4 paragraph:

5 “(4) The term ‘prohibited personnel action’ has
6 the meaning given such term in section 731(c) of
7 this title.”.

8 **SEC. 5. TRACKING AND ENFORCEMENT OF RECOMMENDA-**
9 **TIONS AND SETTLEMENT AGREEMENTS RE-**
10 **GARDING WHISTLEBLOWERS.**

11 Subsection (c) of section 323 of such title, as amend-
12 ed by section 4, is further amended—

13 (1) in paragraph (1), by adding at the end the
14 following new subparagraphs:

15 “(I) Tracking the negotiation, implementation,
16 and enforcement of settlement agreements entered
17 into by the Secretary regarding claims of whistle-
18 blower retaliation, including with respect to the work
19 of the General Counsel of the Department regarding
20 such settlements.

21 “(J) Tracking the determinations made by the
22 Special Counsel regarding claims of whistleblower
23 retaliation, including—

1 “(i) any disciplinary action for the indi-
2 vidual who engaged in whistleblower retaliation;
3 and

4 “(ii) determinations regarding the need for
5 settlement as identified by the Special Counsel,
6 and any settlement resolving claims of whistle-
7 blower retaliation entered into by the Secretary
8 with the whistleblower.”; and

9 (2) by adding at the end the following new
10 paragraph:

11 “(4)(A) In carrying out subparagraph (I) of para-
12 graph (1), the Assistant Secretary shall, in consultation
13 with the General Counsel, establish metrics and standards
14 regarding—

15 “(i) the timely implementation of settlement
16 agreements entered into by the Secretary regarding
17 whistleblower retaliation; and

18 “(ii) reasonable restitution and restoration of
19 employment, and other relief for whistleblowers; and

20 “(B) The Assistant Secretary shall establish a secure
21 electronic system to carry out subparagraphs (I) and (J)
22 of paragraph (1) in a manner that ensures the confiden-
23 tiality of the identity of a whistleblower.”.

24 **SEC. 6. TRAINING AND INFORMATION.**

25 Section 323 of such title is further amended—

1 (1) in subsection (c)(2), by striking “receive
2 anonymous whistleblower disclosures” and inserting
3 “provide information to employees of the Depart-
4 ment regarding the rights of and procedures for
5 whistleblowers”;

6 (2) by redesignating subsection (g) as sub-
7 section (i); and

8 (3) by inserting after subsection (f) the fol-
9 lowing new subsections:

10 “(g) TRAINING.—The Assistant Secretary shall—

11 “(1) develop, in consultation with the Special
12 Counsel, annual training on whistleblower protection
13 and related issues;

14 “(2) provide and make such training available
15 to employees of the Department; and

16 “(3) disseminate training materials and infor-
17 mation to employees on whistleblower rights, whistle-
18 blower disclosures, and allegations of whistleblower
19 retaliation, including any materials created pursuant
20 to section 733 of this title.”.

21 **SEC. 7. IMPROVEMENTS TO ANNUAL REPORTS.**

22 Subsection (f) of section 323 of such title is amend-
23 ed—

1 (1) in paragraph (1)(B)(ii), by striking “sub-
2 section (C)(1)(G)” and inserting “subsection
3 (c)(1)(E)”;

4 (2) in paragraph (2)—

5 (A) by striking “under subsection
6 (c)(1)(I)” and inserting “by the Special Coun-
7 sel”; and

8 (B) by inserting “not later than 60 days
9 after such date” before “the Secretary shall”;
10 and

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

13 “(3) Not later than June 30, 2023, and semiannually
14 thereafter, the Secretary shall submit to the Committees
15 on Veterans’ Affairs of the House of Representatives and
16 the Senate a report on settlements described in paragraph
17 (1)(I) of subsection (c), including, with respect to the pe-
18 riod covered by the report—

19 “(A) the number of settlements under negotia-
20 tion or executed, and the number of executed settle-
21 ments that have not been fully implemented;

22 “(B) the explanation as to why any such exe-
23 cuted settlement has not been fully implemented;

24 “(C) a description of the metrics described in
25 paragraph (4)(A) of such subsection; and

1 “(D) identification of settlement agreements
2 that are not meeting such metrics and standards, or
3 for which the Assistant Secretary is aware of a de-
4 termination that a breach of agreement has been
5 found.”.

Passed the House of Representatives September 29,
2022.

Attest: **CHERYL L. JOHNSON,**
Clerk.