

117TH CONGRESS
2D SESSION

H. R. 6638

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.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 8, 2022

Mr. MANN (for himself and Mr. BOST) introduced the following bill; which was referred to the Committee on Veterans' Affairs, and in addition to the Committee on Appropriations, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

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,*

3 **SECTION 1. MODIFICATIONS AND IMPROVEMENTS TO OF-**
4 **FICE OF ACCOUNTABILITY AND WHISTLE-**
5 **BLOWER PROTECTION.**

6 Section 323 of title 38, United States Code, is
7 amended—

1 (1) in subsection (c)—

2 (A) in paragraph (1)—

3 (i) by striking subparagraphs (A) and
4 (B);

5 (ii) by redesignating subparagraphs
6 (C) through (G) as subparagraphs (A)
7 through (E), respectively;

8 (iii) in each of subparagraphs (A) and
9 (B), as so redesignated, by inserting “and
10 allegations of whistleblower retaliation”
11 after “disclosures”;

12 (iv) in subparagraph (B), as so rededesignated—
13

14 (I) by striking “subparagraph
15 (C)” and inserting “subparagraph
16 (A)”; and

17 (II) by striking “the Office of the
18 Medical Inspector” and all that fol-
19 lows through the period at the end
20 and inserting “the Office of Special
21 Counsel.”; and

22 (v) by striking subparagraphs (H) and
23 (I); and

24 (B) in paragraph (2)—

1 (i) by striking “a toll-free telephone
2 number and Internet” and inserting “an
3 internet”; and

4 (ii) by inserting “and allegations of
5 whistleblower retaliation” after “disclo-
6 sures”;

7 (2) by striking subsection (f) and inserting the
8 following new subsection (f):

9 “(f) REPORTS.—(1) Not later than 90 days after the
10 last day of each fiscal year, the Assistant Secretary shall
11 submit to the Committee on Veterans’ Affairs of the Sen-
12 ate and the Committee on Veterans’ Affairs of the House
13 of Representatives a report on the activities of the Office
14 during that fiscal year.

15 “(2) Each report submitted under paragraph (1)
16 shall include, for the fiscal year covered by the report, the
17 following:

18 “(A) A full and substantive analysis of the ac-
19 tivities of the Office, including such statistical infor-
20 mation as the Assistant Secretary considers appro-
21 priate.

22 “(B) Identification of any issues reported to the
23 Secretary under subsection (c)(1)(G), including such
24 data as the Assistant Secretary considers relevant to

1 such issues and any trends the Assistant Secretary
2 may have identified with respect to such issues.

3 “(C) Identification of such concerns as the As-
4 sistant Secretary may have regarding the size, staff-
5 ing, and resources of the Office and such rec-
6 ommendations as the Assistant Secretary may have
7 for legislative or administrative action to address
8 such concerns.

9 “(D) Such recommendations as the Assistant
10 Secretary may have for legislative or administrative
11 action to improve—

12 “(i) the process by which concerns are re-
13 ported to the Office; and

14 “(ii) the protection of whistleblowers with-
15 in the Department.

16 “(E) Such other matters as the Assistant Sec-
17 retary considers appropriate regarding the functions
18 of the Office or other matters relating to the Of-
19 fice.”;

20 (3) by redesignating subsection (g) as sub-
21 section (j);

22 (4) by inserting after subsection (f) the fol-
23 lowing new subsections:

24 “(g) TRANSFER AUTHORITY.—(1) As the Secretary
25 determines appropriate, of the amounts made available for

1 the Department for any of fiscal years 2022 through
2 2026, the Secretary may transfer to the Office of Special
3 Counsel not more than \$5,000,000, to be available for the
4 purpose of addressing whistleblower and retaliation
5 claims, if the Comptroller General of the Office of Special
6 Counsel enters into an agreement with the Secretary
7 under which the Comptroller General agrees to ensure
8 that amounts transferred under this paragraph will only
9 be used—

10 “(A) to address whistleblower and retaliation
11 claims involving the Department; and

12 “(B) to supplement and not to supplant
13 amounts otherwise made available to the Office of
14 Special Counsel.

15 “(2) Not later than 90 days after the last day of any
16 fiscal year for which the Secretary transfers funds under
17 this subsection, the Special Counsel shall submit to the
18 Committees on Veterans’ Affairs of the Senate and House
19 of Representatives a report on the use of the funds trans-
20 ferred under this subsection during such fiscal year. Each
21 such report shall include, for the fiscal year covered by
22 the report—

23 “(A) the total amount transferred and an ac-
24 counting of the expenditure of such funds dem-

1 onstrating that such funds were used only to address
2 complaints related to the Department;

3 “(B) the number of whistleblower complaints
4 received by the Office of Special Counsel involving
5 the Department;

6 “(C) the number of retaliation complaints re-
7 ceived by the Office of Special Counsel involving the
8 Department;

9 “(D) the number of whistleblower complaints
10 investigated by the Office of Special Counsel involv-
11 ing the Department;

12 “(E) the number of retaliation complaints
13 closed by the Office of Special Counsel involving the
14 Department and disposition of each such complaint,
15 including—

16 “(i) whether each such complaint was set-
17 tled, closed without a finding of retaliation, or
18 received another disposition; and

19 “(ii) for each such complaint that was set-
20 tled, the amount of the settlement; and

21 “(F) data regarding the amount of time it took
22 the Office of Special Counsel to close whistleblower
23 and retaliation claims involving the Department, in-
24 cluding a distribution of the closed cases by type.

25 “(h) TRAINING.—The Assistant Secretary shall—

1 “(1) provide training on whistleblower protec-
2 tion and related issues and make such training avail-
3 able to employees of the Department; and

4 “(2) disseminate training materials and infor-
5 mation to employees on whistleblower rights, whistle-
6 blower disclosures, and allegations of whistleblower
7 retaliation, including any materials created pursuant
8 to section 733 of this title.

9 “(i) AVAILABILITY OF INFORMATION.—The Assistant
10 Secretary shall make publicly available on an appropriate
11 website of the Department the following information:

12 “(1) Templates that can be used to submit
13 proper and complete whistleblower and retaliation
14 claims.

15 “(2) The standard operating procedures of the
16 Office and any applicable regulations.

17 “(3) Each report submitted under subsection
18 (f).”; and

19 (5) in subsection (j), as so redesignated—

20 (A) by striking paragraph (1);

21 (B) by redesignating paragraphs (2) and
22 (3) as paragraphs (1) and (2), respectively; and

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

1 “(3) The term ‘whistleblower retaliation’ means
2 the taking or failure to take, or the threat to take
3 or not to take, by a supervisory employee (as such
4 term is defined in section 7103(a) of title 5), of a
5 personnel action because of a whistleblower disclo-
6 sure.”.

7 **SEC. 2. PILOT PROGRAM ON COUNSELING FOR WHISTLE-**
8 **BLOWERS.**

9 (a) IN GENERAL.—The Assistant Secretary of Vet-
10 erans Affairs for Accountability and Whistleblower Protec-
11 tion shall carry out two-year pilot program under which
12 the Assistant Secretary shall offer counseling to a Depart-
13 ment of Veterans Affairs whistleblower regarding the rel-
14 evant laws and policies that affect the whistleblower, the
15 whistleblower’s disclosure, and any allegation of whistle-
16 blower retaliation.

17 (b) IMPLEMENTATION.—The Assistant Secretary
18 shall begin implementing the pilot program required under
19 this section by not later than one year after the date of
20 the enactment of this Act.

21 (c) REPORT.—Upon the conclusion of the pilot pro-
22 gram, the Assistant Secretary shall submit to Congress
23 a report on the program, which shall include the number
24 of employees who received counseling under the program,
25 trends identified by the program, an analysis of the pro-

- 1 gram, and such other matters as the Assistant Secretary
- 2 determines relevant.

