

House Committee on Veterans Affairs
345 Cannon House Office Building
Washington, DC 20003

We, the undersigned, appreciate the opportunity to share our views on the Draft HR G:\CMTE\VA\18\R\OANDI\VA_DISCIPLINE_01.XML that would amend title 38, United States Code, to modify personnel action procedures with respect to employees of the Department of Veterans Affairs (VA), and for other purposes.

During the 117th Congress and beginning in 2019, members of the Make It Safe Coalition (MISC) testified¹ and worked with the House Veterans Affairs Committee (HVAC) to draft legislation that eventually passed the House but not in time for the Senate to take action. We are committed to the principles and plans laid out in the original H.R. 8510. Therefore, we are disappointed that none of those provisions are contained within this draft legislation. We would like to request that legislation include the previous provisions on separation of General Counsel, removal of investigation authority from OAWP, and transparency in settlement agreements, as well as closure of loopholes such as retaliatory referral to medical boards.

In relation to § 712. *Supervisors: removal, demotion, or suspension based on performance or misconduct* provisions, such provisions already exist under the Office of Personnel Management (OPM) rules. We agree that the VA should be able to remove criminal and dangerous employees as quickly as possible. But we have seen too many cases in which the whistleblower who reported those crimes is the person who is terminated after retaliatory investigations or as a result of what psychological literature calls DARVO – Deny, Attack, Reverse Victim Offender.²

We would like to see VA leaders who have been suspended, terminated, or seriously reprimanded barred from future government money if cases were substantiated or if more than two different complaints were investigated but not substantiated. For example, former VA Education Director, Charmain Bogue, who is at the center of Senator Grassley's inquiries, was allowed to resign even though the VA OIG substantiated her ethical violations, but there have been no sanctions and contracts awarded by her office have gone unchecked. Furthermore, retired OIG Special Agent Bruce Sackman found that potentially hundreds of veterans were murdered at VA hospitals while medical center directors covered up those crimes – and none were ever held accountable.³ We would like to further discuss this provision to see who it is intended to hold accountable.

However, your section on timing seems highly unrealistic, since the VA adjudicates nothing in 15 days and a response to any proposed action, especially if there has been no previous notification to the employee can take more than 7 days. An employee responding to a proposed adverse action must find and hire an attorney, request discovery, review documents that the VA

¹ Government Accountability Project (GAP), Project on Government Oversight (POGO), and Whistleblowers of America appeared at hearings on June 25, 2019, <https://www.govinfo.gov/content/pkg/CHRG-116hhrg40823/html/CHRG-116hhrg40823.htm>, May 19, 2021 and

² Citations for DARVO: <https://dynamic.uoregon.edu/jjf/defineDARVO.html>

³ <https://behindthemurdercurtain.com/>

produces – which can take months and may even require a FOIA to get all documents requested – and then prepare a rebuttal. The VA has no “duty to assist” any employee with a case.

We appreciate the provisions that would protect a whistleblower from termination while investigations are ongoing. However, we strongly disagree with the ban on Merit System Protection Board (MSPB) appeals. These are rights that all OPM covered employees and contractors should preserve. It would be a violation of the Merit System Principles to treat common employees differently, unless the provision applies to a VA employee fined or charged with a crime under 18 U.S.C. sections 1901-1924.

We also do not believe a bargaining agreement reached in good faith with members of a union should be superseded. An agreement that represents the trust between employees and management should be honored so as not to erode the rights and protections agreed upon by the parties. Otherwise, it would further hamper the VA’s ability to recruit and retain the staff it needs to fulfill its mission, which is already challenged by market competition.

As members of the MISC, we believe that all federal employees deserve protection and assistance in doing their jobs. VA employees should be treated no differently. The welfare of our nation’s veterans is in their hands. Accountability for wrongdoing is vital, but it shall not come by sacrificing due process and the rule of law – the very ideals veterans fight to defend.

Signed//

Whistleblowers of America