

**AMENDMENT TO THE RULES COMMITTEE PRINT  
FOR H.R. 1735  
OFFERED BY MS. SPEIER OF CALIFORNIA**

**National Defense Authorization Bill**

At the end of subtitle E of title V, add the following  
new sections:

1 **SEC. 559. IMPROVEMENTS TO WHISTLEBLOWER PROTEC-**  
2 **TION PROCEDURES.**

3 (a) MODIFICATION OF ACTIONS TREATABLE AS PRO-  
4 HIBITED PERSONNEL ACTIONS.—Paragraph (2) of sub-  
5 section (b) of section 1034 of title 10, United States Code,  
6 is amended to read as follows:

7 “(2) The following actions shall be considered for the  
8 purposes of this section to be a personnel action prohibited  
9 by this subsection:

10 “(A) Any action prohibited by paragraph (1)  
11 (including the threat to take any unfavorable action,  
12 the withholding or threat to withhold any favorable  
13 action, making or threatening to make a significant  
14 change in the duties or responsibilities of a member  
15 of the armed forces not commensurate with the  
16 member’s grade, a retaliatory investigation, and the  
17 failure of a superior to respond to retaliatory action

1 or harassment by one or more subordinates taken  
2 against a member of which the superior knew or  
3 should have known).

4 “(B) Any other action that could be reasonably  
5 understood as an attempt to dissuade a member of  
6 the armed forces from making or preparing a com-  
7 munication, or participating in any other activity,  
8 described in paragraph (1).”.

9 (b) OPTION OF MEMBER CONCERNED TO DECLINE  
10 DELEGATION OF INVESTIGATION BY DoD IG TO MILI-  
11 TARY DEPARTMENT IG.—Subparagraph (D) of subsection  
12 (c)(4) of such section is amended in the second sentence  
13 by inserting before the period the following: “unless the  
14 member submitting the allegation declines the delegation”.

15 (c) TEMPORARY STAY OF PERSONNEL ACTIONS.—  
16 Subsection (c)(4) of such section is further amended—

17 (1) by redesignating subparagraph (E) as sub-  
18 paragraph (F); and

19 (2) by inserting after subparagraph (D) the fol-  
20 lowing new subparagraph (E):

21 “(E)(i) If the Inspector General makes a preliminary  
22 determination in an investigation under subparagraph (D)  
23 that there are reasonable grounds to believe that a per-  
24 sonnel action prohibited by subsection (b) has occurred  
25 and the personnel action will result in an immediate hard-

1 ship to the member alleging the personnel action, the In-  
2 spector General may impose a stay of the personnel action  
3 of not more than 90 days in order to prevent undue hard-  
4 ship to the member.

5 “(ii) If the Inspector General has not completed the  
6 investigation described in clause (i) upon the expiration  
7 of the stay of the personnel action with respect to a mem-  
8 ber imposed by the Inspector General under that clause,  
9 the Secretary of the military department concerned or the  
10 Secretary of Homeland Security, as applicable, may con-  
11 tinue the stay of the personnel action with respect to the  
12 member for such additional time as is required for the  
13 completion of the investigation by the Inspector General.”.

14 (d) PERIODIC NOTICE TO MEMBERS ON PROGRESS  
15 OF IG INVESTIGATIONS.—Paragraph (3) of subsection (e)  
16 of such section is amended to read as follows:

17 “(3)(A) Not later than 180 days after the commence-  
18 ment of an investigation of an allegation under subsection  
19 (c)(4), and every 90 days thereafter until the transmission  
20 of the report on the investigation under paragraph (1) to  
21 the member concerned, the Inspector General conducting  
22 the investigation shall submit a notice on the investigation  
23 described in subparagraph (B) to the following:

24 “(i) The member.

25 “(ii) The Secretary of Defense.

1           “(iii) The Secretary of the military department  
2           concerned, or the Secretary of Homeland Security in  
3           the case of a member of the Coast Guard when the  
4           Coast Guard is not operating as a service in the  
5           Navy.

6           “(B) Each notice on an investigation under subpara-  
7 graph (A) shall include the following:

8           “(i) A description of the current progress of the  
9           investigation, including the number of witnesses  
10          interviewed and the number of documents reviewed.

11          “(ii) An estimate of the time remaining until  
12          the completion of the investigation and the trans-  
13          mittal of the report required by paragraph (1) to the  
14          member concerned.”.

15          (e) IG RECOMMENDATIONS REGARDING DISPOSITION  
16 OF COMPLAINTS.—Paragraph (4) of subsection (e) of such  
17 section is amended to read as follows:

18          “(4) The report on the results of the investigation  
19 shall contain the following:

20               “(A) A thorough review of the facts and cir-  
21               cumstances relevant to the allegation and the com-  
22               plaint or disclosure.

23               “(B) The documents acquired during the course  
24               of the investigation, including summaries of inter-  
25               views conducted.

1           “(C) A recommendation as to the disposition of  
2           the complaint.

3           “(D) Recommendations, made in consultation  
4           with the appropriate Judge Advocate General, for  
5           disciplinary actions against the person who com-  
6           mitted the prohibited personnel action, against a su-  
7           perior who failed to address such action of which the  
8           superior knew or should have known, or both.”.

9           (f) ACTIONS IN CASE OF VIOLATIONS.—Subpara-  
10          graph (B) of subsection (f)(3) of such section is amended  
11          to read as follows:

12           “(B) refer the report to the appropriate board  
13           for the correction of military records for further re-  
14           view under subsection (g) unless the member or  
15           former member requests, in writing, during the 30-  
16           day period beginning on the date of the making of  
17           the determination, that the report not be so re-  
18           ferred.”.

19           (g) CORRECTION OF RECORDS.—Subsection (g) of  
20          such section is amended—

21           (1) by redesignating paragraphs (3) through  
22           (6) as paragraphs (4) through (7), respectively;

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

1           “(2) In resolving an application described in para-  
2 graph (1) for which there is a report of the Inspector Gen-  
3 eral under subsection (e)(1), a correction board—

4           “(A) shall review the report of the Inspector  
5 General;

6           “(B) may request the Inspector General to  
7 gather further evidence;

8           “(C) may receive oral argument, examine and  
9 cross-examine witnesses, and take depositions; and

10           “(D) if requested by the member or former  
11 member, in writing, shall hold an evidentiary hear-  
12 ing.

13           “(3) In resolving an application described in para-  
14 graph (1) for which there is no final action of the Inspec-  
15 tor General within 365 days after the claimant submits  
16 an application to the Inspector General, the correction  
17 board—

18           “(A) may receive oral argument, examine and  
19 cross-examine witnesses, and take depositions; and

20           “(B) if requested by the member or former  
21 member, in writing, shall hold an evidentiary hear-  
22 ing.”; and

23           (3) in paragraph (7), as redesignated by para-  
24 graph (1) of this subsection, by inserting before the  
25 period at the end the following: “, against a superior

1 who failed to address such action of which the supe-  
2 rior knew or should have known, or both”.

3 (h) CONFORMING AMENDMENT.—Subsection  
4 (b)(1)(B)(ii) of such section is amended by striking “sub-  
5 section (i)” and inserting “subsection (k)”.

6 (i) UNIFORM STANDARDS FOR IG INVESTIGATIONS  
7 OF PROHIBITED PERSONNEL ACTIONS AND OTHER MAT-  
8 TERS.—

9 (1) IN GENERAL.—Not later than one year  
10 after the date of the enactment of this Act, the In-  
11 spector General of the Department of Defense shall  
12 prescribe uniform standards for the following:

13 (A) The investigation of allegations of pro-  
14 hibited personnel actions under section 1034 of  
15 title 10, United States Code (as amended by  
16 this section), by the Inspector General, the In-  
17 spectors General of the military departments,  
18 and the Inspector General of the Department of  
19 Homeland Security.

20 (B) The training of the staffs of the In-  
21 spectors General referred to in subparagraph  
22 (A) on the conduct of investigations described  
23 in that subparagraph.

24 (2) USE.—Commencing 180 days after pre-  
25 scription of the standards required by paragraph

1 (1), the Inspectors General referred to in that para-  
2 graph shall comply with such standards in the con-  
3 duct of investigations described in that paragraph  
4 and in the training of the staffs of such Inspectors  
5 General in the conduct of such investigations.

6 **SEC. 559A. IMPROVEMENTS TO AUTHORITIES AND PROCE-**  
7 **DURES FOR THE CORRECTION OF MILITARY**  
8 **RECORDS.**

9 (a) **AJS AS PRESIDING OFFICERS AT MEETINGS OF**  
10 **BOARDS FOR CORRECTION OF MILITARY RECORDS.**—Sec-  
11 tion 1552(a) of title 10, United States Code, is amended—

12 (1) by redesignating paragraphs (3) and (4) as  
13 paragraphs (5) and (8), respectively; and

14 (2) by inserting after paragraph (2) the fol-  
15 lowing new paragraph (3):

16 “(3) Each meeting of a board under this subsection,  
17 including any evidentiary hearing under paragraph (6),  
18 shall, to the extent practicable, have as its presiding officer  
19 an administrative judge serving on a part-time basis for  
20 that purpose under a contract with the Secretary con-  
21 cerned for that purpose.”.

22 (b) **QUALIFICATIONS AND TERMS OF SERVICE ON**  
23 **BOARDS.**—

24 (1) **IN GENERAL.**—Section 1552(a) of title 10,  
25 United States Code, is further amended by inserting

1 after paragraph (3), as inserted by subsection (a)(2)  
2 of this section, the following new paragraph (4):

3 “(4)(A) The members of each board under this sub-  
4 section shall be individuals who, by demonstrated ability,  
5 background, training, or experience are especially qualified  
6 to carry out the functions of a board under this section.  
7 No member of a board may hold another office or position  
8 in the Federal Government except as otherwise provided  
9 by law.

10 “(B) The term of service of an individual on a board  
11 may not exceed five years.”.

12 (2) APPLICATION OF TERM OF SERVICE LIMITA-  
13 TION TO MEMBERS SERVING ON DATE OF ENACT-  
14 MENT.—For purposes of the application of para-  
15 graph (4)(B) of subsection (a) of section 1552 of  
16 title 10, United States Code (as amended by para-  
17 graph (1) of this subsection), to individuals serving  
18 on boards for the correction of military records as  
19 of the date of the enactment of this Act, the term  
20 of service of such individuals on such boards shall be  
21 deemed to have commenced on the date of the enact-  
22 ment of this Act.

23 (c) PROCEDURES OF BOARDS.—Paragraph (5) of  
24 such subsection, as redesignated by subsection (a)(1) of  
25 this section, is further amended—

1 (1) by inserting “(A)” after “(5)”; and

2 (2) by adding at the end the following new sub-  
3 paragraphs:

4 “(B) If a board makes a preliminary determination  
5 that a claim under this section lacks sufficient information  
6 or documents to support the claim, the board shall notify  
7 the claimant, in writing, indicating the specific informa-  
8 tion or documents necessary to make the claim complete  
9 and reviewable by the board.

10 “(C) If a claimant is unable to provide military per-  
11 sonnel or medical records applicable to a claim under this  
12 section, the board shall make reasonable efforts to obtain  
13 the records. A claimant shall provide the board with docu-  
14 mentary evidence of the efforts of the claimant to obtain  
15 such records. The board shall inform the claimant of the  
16 results of the board’s efforts, and shall provide the claim-  
17 ant copies of any records so obtained upon request of the  
18 claimant.

19 “(D) Any request for reconsideration of a determina-  
20 tion of a board under this section, no matter when filed,  
21 shall be reconsidered by a board under this section if sup-  
22 ported by materials not previously presented to or consid-  
23 ered by the board in making such determination.”.

24 (d) EVIDENTIARY HEARINGS ON CERTAIN CLAIMS.—  
25 Such subsection is further amended by inserting after

1 paragraph (5), as redesignated by subsection (a)(1) of this  
2 section and amended by subsection (c) of this section, the  
3 following new paragraph (6):

4 “(6)(A) A board shall hold an evidentiary hearing on  
5 a claim that presents a genuine issue of material fact, if  
6 requested by the claimant.

7 “(B) A board holding an evidentiary hearing shall  
8 have broad discretion (as specified in the procedures re-  
9 quired by paragraph (5)) to allow and limit discovery on  
10 matters covered by the hearing in order to expedite the  
11 hearing and action on the claim concerned.

12 “(C) A claimant may, at the election and expense of  
13 the claimant, be represented by outside counsel in connec-  
14 tion with an evidentiary hearing.”.

15 (e) FINAL DECISIONS OF BOARDS.—Such subsection  
16 is further amended by inserting after paragraph (6), as  
17 inserted by subsection (d) of this section, the following  
18 new paragraph (7):

19 “(7)(A) Each final decision of a board under this sub-  
20 section shall be made available to the public in electronic  
21 form on a centralized Internet website. In any decision so  
22 made available to the public—

23 “(i) there shall be redacted all personally identi-  
24 fiable information; but

1           “(ii) if the decision relates to or arises from an  
2           investigation under section 1034 of this title, there  
3           shall not be redacted the names and position of such  
4           categories of officers investigated, above the grade of  
5           lieutenant colonel (or commander in the case of the  
6           Navy and the Coast Guard) as the Secretary of De-  
7           fense or the Secretary of Homeland Security, as ap-  
8           plicable, shall prescribe in the procedures under  
9           paragraph (5).

10          “(B)(i) Under procedures jointly developed by the  
11         Secretaries of the military departments and the Secretary  
12         of Homeland Security, each final decision of a board shall  
13         be characterized by the board as having precedential value  
14         or non-precedential value for purposes of subsequent deci-  
15         sions of boards under this section.

16          “(ii) For purposes of this subparagraph—

17                 “(I) a decision having precedential value is any  
18                 decision determined by a board in accordance with  
19                 the procedures required by clause (i) to add signifi-  
20                 cantly to the case law of boards under this section;  
21                 and

22                 “(II) a decision having non-precedential value is  
23                 any decision that does not have precedential value.

1       “(iii) Any decision having precedential value for pur-  
2 poses of this subparagraph may be cited or referred to  
3 by any party in a claim under this section.”.

4       (f) JUDICIAL REVIEW OF DETERMINATIONS OF  
5 BOARDS.—Paragraph (8) of such subsection, as redesign-  
6 nated by subsection (a)(1) of this section, is further  
7 amended—

8           (1) by inserting “(A)” after “(8)”;

9           (2) in subparagraph (A), as so designated, by  
10 inserting “or subject to review or appeal as de-  
11 scribed in subparagraph (B)” after “Except when  
12 procured by fraud”; and

13           (3) by adding at the end the following new sub-  
14 paragraph:

15       “(B) A claimant may seek judicial review of a deter-  
16 mination of a board under this section in an appropriate  
17 court of the United States. The scope of judicial review  
18 under this subparagraph shall be as specified in section  
19 706 of title 5.”.

20       (g) TRAINING OF MEMBERS OF BOARDS.—

21           (1) IN GENERAL.—Not later than one year  
22 after the date of the enactment of this Act, each  
23 Secretary concerned shall develop and implement a  
24 comprehensive training curriculum for members of  
25 boards for the correction of military records under

1 the jurisdiction of such Secretary in the duties of  
2 such boards under section 1552 of title 10, United  
3 States Code. The curriculum shall address all areas  
4 of administrative law applicable to the duties of such  
5 boards.

6 (2) UNIFORM CURRICULA.—The Secretary of  
7 Defense and the Secretary of Homeland Security  
8 shall jointly ensure that the curricula developed and  
9 implemented pursuant to this subsection are, to the  
10 extent practicable, uniform.

11 (3) TRAINING.—

12 (A) IN GENERAL.—Each member of a  
13 board for the correction of military records  
14 shall undergo retraining (consistent with the  
15 curriculum developed and implemented pursu-  
16 ant to this subsection) regarding the duties of  
17 boards for the correction of military records  
18 under section 1552 of title 10, United States  
19 Code, at least once during the member’s tenure  
20 on the board.

21 (B) CURRENT MEMBERS.—Each member  
22 of a board for the correction of military records  
23 as of the date of the implementation of the cur-  
24 riculum required by paragraph (1) (in this  
25 paragraph referred to as the “curriculum imple-

1           mentation date”) the shall undergo training de-  
2           scribed in subparagraph (A) not later than 90  
3           days after the curriculum implementation date.

4                   (C) NEW MEMBERS.—Each individual who  
5           becomes a member of a board for the correction  
6           of military records after the curriculum imple-  
7           mentation date shall undergo training described  
8           in subparagraph (A) by not later than 90 days  
9           after the date on which such individual becomes  
10          a member of the board.

11           (4) REPORTS.—Not later than 18 months after  
12          the date of the enactment of this Act, each Secretary  
13          concerned shall submit to Congress a report setting  
14          forth the following:

15                   (A) A description and assessment of the  
16           progress made by such Secretary in imple-  
17           menting training requirements for members of  
18           boards for the correction of military records  
19           under the jurisdiction of such Secretary.

20                   (B) A detailed description of the training  
21           curriculum required of such Secretary by para-  
22           graph (1).

23                   (C) A description and assessment of any  
24           impediments to the implementation of training  
25           requirements for members of boards for the

1 correction of military records under the juris-  
2 diction of such Secretary.

3 (5) SECRETARY CONCERNED DEFINED.—In this  
4 subsection, the term “Secretary concerned” means a  
5 “Secretary concerned” as that term is used in sec-  
6 tion 1552 of title 10, United States Code.

7 **SEC. 559B. INCLUSIONS OF INSPECTORS GENERAL OF THE**  
8 **MILITARY DEPARTMENTS AND CERTAIN**  
9 **OTHER INSPECTORS GENERAL IN COUNCIL**  
10 **OF THE INSPECTORS GENERAL ON INTEG-**  
11 **RITY AND EFFICIENCY.**

12 Section 11(b)(1) of the Inspector General Act of  
13 1978 (5 U.S.C. App.) is amended by adding at the end  
14 the following new subparagraph:

15 “(J) The Inspectors General of the Army,  
16 the Navy, the Air Force, the Marine Corps, the  
17 National Guard Bureau, and the Coast  
18 Guard.”.

