AMENDMENT TO H.R. 5620
OFFERED BY MRS. KIRKPATRICK OF ARIZONA

Strike section 8 and insert the following:

SEC. 8. 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 sub-
stantial and specific danger to public health and 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 Sec-
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 infor-
mation as the Assistant Secretary considers appropriate.

“(ii) Identification of any issues reported to the Secretary under subsection (e)(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 (e)(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 provision of law; 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.”.

6 SEC. 9. PROTECTION OF WHISTLEBLOWERS IN DEPARTMENT OF VETERANS AFFAIRS.

(a) IN GENERAL.—Chapter 7 of title 38, United States Code, is further amended by adding at the end the following new sections:

“§ 725. 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.

“§ 727. 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 reprised against 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, includ-
ing 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 AMENDMENT.—The table of sections
at the beginning of such chapter is further amended by
adding at the end the following new items:

“725. Protection of whistleblowers as criteria in evaluation of supervisors.
727. Training regarding whistleblower disclosures.”.

SEC. 10. TREATMENT OF CONGRESSIONAL TESTIMONY BY
DEPARTMENT OF VETERANS AFFAIRS EMP-
LOYEES AS OFFICIAL DUTY.

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

“§ 729. Congressional testimony by employees: treat-
ment as official duty

“(a) CONGRESSIONAL TESTIMONY.—An employee of
the Department is performing official duty during the pe-
riod with respect to which the employee is testifying in
an official capacity in front of either chamber of Congress,
a committee of either chamber of Congress, or a joint or
select committee of Congress.
“(b) TRAVEL EXPENSES.—The Secretary shall provide travel expenses, including per diem in lieu of subsistence, in accordance with applicable provisions under subchapter I of chapter 57 of title 5, to any employee of the Department of Veterans Affairs performing official duty described under subsection (a).”.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter, as amended by section 102, is further amended by inserting after the item relating to section 721 the following new item:

“Sec. 729. Congressional testimony by employees: treatment as official duty.”.

SEC. 11. 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, 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 8.