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:

SEC. 559. IMPROVEMENTS TO WHISTLEBLOWER PROTECTION PROCEDURES.

(a) MODIFICATION OF ACTIONS TREATABLE AS PROHIBITED PERSONNEL ACTIONS.—Paragraph (2) of subsection (b) of section 1034 of title 10, United States Code, is amended to read as follows:

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

“(A) Any action prohibited by paragraph (1) (including the threat to take any unfavorable action, the withholding or threat to withhold any favorable action, making or threatening to make a significant change in the duties or responsibilities of a member of the armed forces not commensurate with the member’s grade, a retaliatory investigation, and the failure of a superior to respond to retaliatory action
or harassment by one or more subordinates taken
against a member of which the superior knew or
should have known).

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

(b) Option of Member Concerned to Decline
Delegation of Investigation by DoD IG to Mil-
tary Department IG.—Subparagraph (D) of subsection
(c)(4) of such section is amended in the second sentence
by inserting before the period the following: “unless the
member submitting the allegation declines the delegation”.

(c) Temporary Stay of Personnel Actions.—
Subsection (c)(4) of such section is further amended—

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

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

“(E)(i) If the Inspector General makes a preliminary
determination in an investigation under subparagraph (D)
that there are reasonable grounds to believe that a per-
sonnel action prohibited by subsection (b) has occurred
and the personnel action will result in an immediate hard-
ship to the member alleging the personnel action, the Inspector General may impose a stay of the personnel action of not more than 90 days in order to prevent undue hardship to the member.

“(ii) If the Inspector General has not completed the investigation described in clause (i) upon the expiration of the stay of the personnel action with respect to a member imposed by the Inspector General under that clause, the Secretary of the military department concerned or the Secretary of Homeland Security, as applicable, may continue the stay of the personnel action with respect to the member for such additional time as is required for the completion of the investigation by the Inspector General.”.

(d) Periodic Notice to Members on Progress of IG Investigations.—Paragraph (3) of subsection (e) of such section is amended to read as follows:

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

“(i) The member.

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

“(B) Each notice on an investigation under subparagraph (A) shall include the following:

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

“(ii) An estimate of the time remaining until the completion of the investigation and the transmittal of the report required by paragraph (1) to the member concerned.”.

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

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

“(A) A thorough review of the facts and circumstances relevant to the allegation and the complaint or disclosure.

“(B) The documents acquired during the course of the investigation, including summaries of interviews conducted.
“(C) A recommendation as to the disposition of
the complaint.

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

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

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

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

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

(2) by striking paragraph (2) and inserting the
following new paragraphs (2) and (3):
“(2) In resolving an application described in paragraph (1) for which there is a report of the Inspector General under subsection (e)(1), a correction board—

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

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

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

“(D) if requested by the member or former member, in writing, shall hold an evidentiary hearing.

“(3) In resolving an application described in paragraph (1) for which there is no final action of the Inspector General within 365 days after the claimant submits an application to the Inspector General, the correction board—

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

“(B) if requested by the member or former member, in writing, shall hold an evidentiary hearing.”; and

(3) in paragraph (7), as redesignated by paragraph (1) of this subsection, by inserting before the period at the end the following: “, against a superior
who failed to address such action of which the superior knew or should have known, or both”.

(h) **Conforming Amendment.**—Subsection (b)(1)(B)(ii) of such section is amended by striking “subsection (i)” and inserting “subsection (k)”.

(i) **Uniform Standards for IG Investigations of Prohibited Personnel Actions and Other Matters.**—

(1) **In General.**—Not later than one year after the date of the enactment of this Act, the Inspector General of the Department of Defense shall prescribe uniform standards for the following:

(A) The investigation of allegations of prohibited personnel actions under section 1034 of title 10, United States Code (as amended by this section), by the Inspector General, the Inspectors General of the military departments, and the Inspector General of the Department of Homeland Security.

(B) The training of the staffs of the Inspectors General referred to in subparagraph (A) on the conduct of investigations described in that subparagraph.

(2) **Use.**—Commencing 180 days after prescription of the standards required by paragraph
(1), the Inspectors General referred to in that paragraph shall comply with such standards in the conduct of investigations described in that paragraph and in the training of the staffs of such Inspectors General in the conduct of such investigations.

SEC. 559A. IMPROVEMENTS TO AUTHORITIES AND PROCEDURES FOR THE CORRECTION OF MILITARY RECORDS.

(a) AJS AS PRESIDING OFFICERS AT MEETINGS OF BOARDS FOR CORRECTION OF MILITARY RECORDS.—Section 1552(a) of title 10, United States Code, is amended—

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

(2) by inserting after paragraph (2) the following new paragraph (3):

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

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

(1) IN GENERAL.—Section 1552(a) of title 10, United States Code, is further amended by inserting
after paragraph (3), as inserted by subsection (a)(2)
of this section, the following new paragraph (4):

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

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

(2) Application of term of service limitation

to members serving on date of enactment.—For purposes of the application of para-
graph (4)(B) of subsection (a) of section 1552 of
title 10, United States Code (as amended by para-
graph (1) of this subsection), to individuals serving
on boards for the correction of military records as
of the date of the enactment of this Act, the term
of service of such individuals on such boards shall be
deemed to have commenced on the date of the enact-
ment of this Act.

(e) Procedures of boards.—Paragraph (5) of
such subsection, as redesignated by subsection (a)(1) of
this section, is further amended—
(1) by inserting “(A)” after “(5)”; and

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

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

“(C) If a claimant is unable to provide military person-
nel or medical records applicable to a claim under this
section, the board shall make reasonable efforts to obtain
the records. A claimant shall provide the board with docu-
mentary evidence of the efforts of the claimant to obtain
such records. The board shall inform the claimant of the
results of the board’s efforts, and shall provide the claim-
ant copies of any records so obtained upon request of the
claimant.

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

(d) EVIDENTIARY HEARINGS ON CERTAIN CLAIMS.—

Such subsection is further amended by inserting after
paragraph (5), as redesignated by subsection (a)(1) of this section and amended by subsection (e) of this section, the following new paragraph (6):

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

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

“(C) A claimant may, at the election and expense of the claimant, be represented by outside counsel in connection with an evidentiary hearing.”.

(c) Final Decisions of Boards.—Such subsection is further amended by inserting after paragraph (6), as inserted by subsection (d) of this section, the following new paragraph (7):

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

“(i) there shall be redacted all personally identifiable information; but
“(ii) if the decision relates to or arises from an investigation under section 1034 of this title, there shall not be redacted the names and position of such categories of officers investigated, above the grade of lieutenant colonel (or commander in the case of the Navy and the Coast Guard) as the Secretary of Defense or the Secretary of Homeland Security, as applicable, shall prescribe in the procedures under paragraph (5).

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

“(ii) For purposes of this subparagraph—

“(I) a decision having precedential value is any decision determined by a board in accordance with the procedures required by clause (i) to add significantly to the case law of boards under this section;

and

“(II) a decision having non-precedential value is any decision that does not have precedential value.
“(iii) Any decision having precedential value for purposes of this subparagraph may be cited or referred to by any party in a claim under this section.”.

(f) **Judicial Review of Determinations of Boards.**—Paragraph (8) of such subsection, as redesignated by subsection (a)(1) of this section, is further amended—

(1) by inserting “(A)” after “(8)”;

(2) in subparagraph (A), as so designated, by inserting “or subject to review or appeal as described in subparagraph (B)” after “Except when procured by fraud”; and

(3) by adding at the end the following new subparagraph:

“(B) A claimant may seek judicial review of a determination of a board under this section in an appropriate court of the United States. The scope of judicial review under this subparagraph shall be as specified in section 706 of title 5.”.

(g) **Training of Members of Boards.**—

(1) **In General.**—Not later than one year after the date of the enactment of this Act, each Secretary concerned shall develop and implement a comprehensive training curriculum for members of boards for the correction of military records under
the jurisdiction of such Secretary in the duties of such boards under section 1552 of title 10, United States Code. The curriculum shall address all areas of administrative law applicable to the duties of such boards.

(2) **Uniform Curricula.**—The Secretary of Defense and the Secretary of Homeland Security shall jointly ensure that the curricula developed and implemented pursuant to this subsection are, to the extent practicable, uniform.

(3) **Training.**—

(A) **In General.**—Each member of a board for the correction of military records shall undergo retraining (consistent with the curriculum developed and implemented pursuant to this subsection) regarding the duties of boards for the correction of military records under section 1552 of title 10, United States Code, at least once during the member’s tenure on the board.

(B) **Current Members.**—Each member of a board for the correction of military records as of the date of the implementation of the curriculum required by paragraph (1) (in this paragraph referred to as the “curriculum imple-
mentation date”) the shall undergo training de-
scribed in subparagraph (A) not later than 90
days after the curriculum implementation date.

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

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

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

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

(C) A description and assessment of any
impediments to the implementation of training
requirements for members of boards for the
correction of military records under the jurisdiction of such Secretary.

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

SEC. 559B. INCLUSIONS OF INSPECTORS GENERAL OF THE MILITARY DEPARTMENTS AND CERTAIN OTHER INSPECTORS GENERAL IN COUNCIL OF THE INSPECTORS GENERAL ON INTEGRITY AND EFFICIENCY.

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

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