

AMENDMENT TO RULES COMM PRINT 114–51
OFFERED BY MS. SPEIER OF CALIFORNIA

At the end of subtitle D of title V (page 139, after
line 22), add the following new sections:

1 **SEC. 547. IMPROVEMENTS TO WHISTLEBLOWER PROTEC-**
2 **TION PROCEDURES.**

3 (a) ACTIONS TREATABLE AS PROHIBITED PER-
4 SONNEL ACTIONS.—Paragraph (2) of section 1034(b) of
5 title 10, United States Code, is amended to read as fol-
6 lows:

7 “(2)(A) The actions considered for purposes of this
8 section to be a personnel action prohibited by this sub-
9 section shall include any action prohibited by paragraph
10 (1), including the threat to take any unfavorable action,
11 the withholding or threat to withhold any favorable action,
12 making or threatening to make a significant change in the
13 duties or responsibilities of a member of the armed forces
14 not commensurate with the member’s grade, a retaliatory
15 investigation, and the failure of a superior to respond to
16 retaliatory action or harassment by one or more subordi-
17 nates taken against a member of which the superior knew
18 or should have known.

1 “(B) In this paragraph, the term ‘retaliatory inves-
2 tigation’ means an investigation requested, directed, initi-
3 ated, or conducted for the primary purpose of punishing,
4 harassing, or ostracizing a member for making a protected
5 communication.

6 “(C) Nothing in this paragraph shall be construed to
7 limit the ability of a commander to consult with a superior
8 in the chain of command, an inspector general, or a judge
9 advocate general on the disposition of a complaint against
10 a member of the armed forces for an allegation of collat-
11 eral misconduct or for a matter unrelated to a protected
12 communication. Such consultation shall provide an affirm-
13 ative defense against an allegation that a member re-
14 quested, directed, initiated, or conducted a retaliatory in-
15 vestigation under this section.”.

16 (b) TEMPORARY STAY OF PERSONNEL ACTIONS.—
17 Section 1034(c)(4) of title 10, United States Code, as
18 amended by section 546 of this Act, is further amended—

19 (1) by redesignating subparagraphs (E) and
20 (F) as subparagraphs (F) and (G); and

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

23 “(E)(i) If the Inspector General makes a preliminary
24 determination in an investigation under subparagraph (D)
25 that there are reasonable grounds to believe that a per-

1 personnel action prohibited by subsection (b) has occurred
2 and the personnel action will result in an immediate hard-
3 ship to the member alleging the personnel action, the In-
4 spector General may impose a stay of the personnel action
5 of not more than 90 days in order to prevent undue hard-
6 ship to the member. The Secretary of the military depart-
7 ment concerned or the Secretary of Homeland Security,
8 as applicable, may lift the stay in the interest of national
9 security.

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

19 (c) PERIODIC NOTICE TO MEMBERS ON PROGRESS
20 OF INSPECTOR GENERAL INVESTIGATIONS.—Paragraph
21 (3) of section 1034(e) of title 10, United States Code, is
22 amended to read as follows:

23 “(3)(A) Not later than 180 days after the commence-
24 ment of an investigation of an allegation under subsection
25 (c)(4), and every 180 days thereafter until the trans-

1 mission of the report on the investigation under paragraph
2 (1) to the member concerned, the Inspector General con-
3 ducting the investigation shall submit a notice on the in-
4 vestigation described in subparagraph (B) to the following:

5 “(i) The member.

6 “(ii) The Secretary of Defense.

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

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

14 “(i) A description of the current progress of the
15 investigation.

16 “(ii) An estimate of the time remaining until
17 the completion of the investigation and the trans-
18 mittal of the report required by paragraph (1) to the
19 member concerned.”.

20 (d) ACTIONS IN CASE OF VIOLATIONS.—Section
21 1034(f)(2) of title 10, United States Code, is amended—

22 (1) by striking subparagraph (A) and inserting
23 the following new subparagraph (A):

24 “(A) order such action as is necessary to cor-
25 rect the record of a personnel action prohibited by

1 subsection (b), including referring the report to the
2 appropriate board for the correction of military
3 records;”;

4 (2) in subparagraph (B), by striking the period
5 at the end and inserting “; and”; and

6 (3) by adding after subparagraph (B) the fol-
7 lowing new subparagraph:

8 “(C) submit to the Inspector General a report
9 on the actions taken by the Secretary pursuant to
10 this paragraph, and include a summary of the report
11 under this subparagraph (with any personally identi-
12 fiable information redacted) in the semiannual re-
13 port to Congress of the Inspector General of the De-
14 partment of Defense or the Inspector General of the
15 Department of Homeland Security, as applicable,
16 under section 5 of the Inspector General Act of
17 1978 (5 U.S.C. App.).”.

18 (e) CORRECTION OF RECORDS.—Section 1034(g) of
19 title 10, United States Code, such section is amended—

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

22 (2) by striking paragraph (2) and inserting the
23 following:

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) shall consider a request by a member or
11 former member in determining whether to hold an
12 evidentiary hearing.”.

13 (f) UNIFORM STANDARDS FOR INSPECTOR GENERAL
14 INVESTIGATIONS OF PROHIBITED PERSONNEL ACTIONS
15 AND OTHER MATTERS.—

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

20 (A) The investigation of allegations of pro-
21 hibited personnel actions under section 1034 of
22 title 10, United States Code (as amended by
23 this section), by the Inspector General and the
24 Inspectors General of the military departments.

1 (B) The training of the staffs of the In-
2 spectors General referred to in subparagraph
3 (A) on the conduct of investigations described
4 in that subparagraph.

5 (2) USE.—Commencing 180 days after pre-
6 scription of the standards required by paragraph
7 (1), the Inspectors General referred to in that para-
8 graph shall comply with such standards in the con-
9 duct of investigations described in that paragraph
10 and in the training of the staffs of such Inspectors
11 General in the conduct of such investigations.

12 (g) COMPTROLLER GENERAL OF THE UNITED
13 STATES REVIEW OF INTEGRITY OF DEPARTMENT OF DE-
14 FENSE WHISTLEBLOWER PROGRAM.—

15 (1) REPORT REQUIRED.—Not later than one
16 year after the date of the enactment of this Act, the
17 Comptroller General of the United States shall sub-
18 mit to the Committees on Armed Services of the
19 Senate and the House of Representatives a report
20 setting forth a review of the integrity of the Depart-
21 ment of Defense whistleblower program.

22 (2) ELEMENTS.—The review for purposes of
23 the report required by paragraph (1) shall include
24 the following elements:

1 (A) An assessment of the extent to which
2 the Department of Defense whistleblower pro-
3 gram meets Executive branch policies and goals
4 for whistleblower protections.

5 (B) A determination and assessment of the
6 causes and impacts of the situation in which
7 some employees in the Office of the Inspector
8 General of the Department Defense believed
9 they could not disclose a suspected violation of
10 law, rule, or regulation without fear of reprisal,
11 as determined in a recent review of the Comp-
12 troller General.

13 (C) An assessment of the extent to which
14 there have been violations of standards used in
15 regard to the protection of confidentiality pro-
16 vided to whistleblowers by the Inspector Gen-
17 eral of the Department of Defense.

18 (D) An assessment of the extent to which
19 there have been incidents of retaliatory inves-
20 tigations against whistleblowers within the Of-
21 fice of the Inspector General.

22 (E) An assessment of the extent to which
23 the Inspector General of the Department of De-
24 fense has thoroughly investigated and substan-
25 tiated allegations within the past 10 years

1 against civilian officials of the Department of
2 Defense appointed to their positions by and
3 with the advice and consent of the Senate, and
4 whether Congress has been notified of the re-
5 sults of such investigations.

6 **SEC. 548. IMPROVEMENTS TO AUTHORITIES AND PROCE-**
7 **DURES FOR THE CORRECTION OF MILITARY**
8 **RECORDS.**

9 (a) PROCEDURES OF BOARDS.—Section 1552(a)(3)
10 of title 10, United States Code, is amended—

11 (1) by inserting “(A)” after “(3)”; and

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

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

20 “(C) If a claimant is unable to provide military per-
21 sonnel or medical records applicable to a claim under this
22 section, the board shall make reasonable efforts to obtain
23 the records. A claimant shall provide the board with docu-
24 mentary evidence of the efforts of the claimant to obtain
25 such records. The board shall inform the claimant of the

1 results of the board's efforts, and shall provide the claim-
2 ant copies of any records so obtained upon request of the
3 claimant.

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

9 (b) PUBLICATION OF FINAL DECISIONS OF
10 BOARDS.—Section 1552(a) of title 10, United States
11 Code, is further amended by adding at the end the fol-
12 lowing new paragraph:

13 “(5) Each final decision of a board under this sub-
14 section shall be made available to the public in electronic
15 form on a centralized Internet website. In any decision so
16 made available to the public there shall be redacted all
17 personally identifiable information.”.

18 (c) TRAINING OF MEMBERS OF BOARDS.—

19 (1) IN GENERAL.—Not later than one year
20 after the date of the enactment of this Act, each
21 Secretary concerned shall develop and implement a
22 comprehensive training curriculum for members of
23 boards for the correction of military records under
24 the jurisdiction of such Secretary in the duties of
25 such boards under section 1552 of title 10, United

1 States Code. The curriculum shall address all areas
2 of administrative law applicable to the duties of such
3 boards.

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

9 (3) TRAINING.—

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

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

1 scribed in subparagraph (A) not later than 90
2 days after the curriculum implementation date.

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

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

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

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

22 (C) A description and assessment of any
23 impediments to the implementation of training
24 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.

