AMENDMENT TO RULES COMMITTEE PRINT

118–10

OFFERED BY MS. GARCIA OF TEXAS

At the beginning of subtitle E of title V, insert the following (and redesignate the following sections accordingly):

SEC. 541. CLARIFICATIONS OF PROCEDURE IN INVESTIGATIONS OF PERSONNEL ACTIONS TAKEN AGAINST MEMBERS OF THE ARMED FORCES IN RETALIATION FOR PROTECTED COMMUNICATIONS.

(a) In general.—Subparagraphs (D) and (E) of paragraph (4) of section 1034(c) of title 10, United States Code, is amended to read as follows:

“(D)(i) Upon determining that an investigation of an allegation under paragraph (1) is warranted, the Inspector General making the determination shall expeditiously investigate the allegation to determine whether the protected communication or activity under subsection (b) was a contributing factor in the personnel action prohibited under subsection (b) that was taken or withheld (or threatened to be taken or withheld) against a member of the armed forces.
“(ii) In the case of a determination made by the Inspector General of the Department of Defense, that Inspector General may delegate responsibility for the investigation to an appropriate Inspector General of a military department.

“(iii) The member alleging the prohibited personnel action may use circumstantial evidence to demonstrate that the protected communication or activity under subsection (b) was a contributing factor in the personnel action prohibited under subsection (b). Such circumstantial evidence may include that the person taking such prohibited personnel action knew of the protected communication or activity, and that the prohibited personnel action occurred within a period of time such that a reasonable person could conclude that the communication or protected activity was a contributing factor in the personnel action.

“(iv) If the Inspector General determines it likelier than not that the member made a communication or participated in an activity protected under subsection (b) that was a contributing factor in a personnel action described in such subsection, the Inspector General shall presume such personnel action to be prohibited under such subsection unless the Inspector General determines there is clear and convincing evidence that the same personnel ac-
tion would have occurred in the absence of such protected
communication or activity.

“(E) If the Inspector General preliminarily deter-
mines in an investigation under subparagraph (D) that a
personnel action prohibited under subsection (b) has oc-
curred and that such personnel action shall result in an
immediate hardship to the member alleging the personnel
action, the Inspector General shall promptly notify the
Secretary of the military department concerned or the Sec-
retary of Homeland Security, as applicable, of the hard-
ship, and such Secretary shall take such action as such
Secretary determines appropriate.”.

(b) Technical Amendments.—Such paragraph is
further amended in subparagraphs (A) and (B) by striking
“subsection (h)” both places it appears and inserting
“subsection (i)”.

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