

117TH CONGRESS
1ST SESSION

S. _____

To promote diversity at the Department of State, to direct the Secretary of State to review the termination characterization of former members of the Department who were fired by reason of their sexual orientation, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. MENENDEZ (for himself, Mr. BOOKER, Mr. VAN HOLLEN, Mrs. SHAHEEN, Mr. KAINE, Mr. CARDIN, Mr. MERKLEY, Mr. MARKEY, Mr. SCHATZ, Mr. COONS, and Mr. MURPHY) introduced the following bill; which was read twice and referred to the Committee on

A BILL

To promote diversity at the Department of State, to direct the Secretary of State to review the termination characterization of former members of the Department who were fired by reason of their sexual orientation, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Department of State Inclusivity Act of 2021”.

1 (b) TABLE OF CONTENTS.—The table of contents for
2 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—A DIVERSE WORKFORCE: RECRUITMENT, RETENTION,
AND PROMOTION

- Sec. 101. Definitions.
Sec. 102. Office of the Chief Diversity and Inclusion Officer.
Sec. 103. Collection, analysis, and dissemination of workforce data.
Sec. 104. Workforce interviews.
Sec. 105. Recruitment and retention.
Sec. 106. Sense of Congress on support for equal employment opportunity and merit principles criteria.
Sec. 107. Leadership engagement and accountability.
Sec. 108. Professional development opportunities and tools.
Sec. 109. Examination and oral assessment for the Foreign Service.
Sec. 110. Sense of Congress on veterans' recruitment for the Foreign Service.
Sec. 111. Department of State and USAID fellowships and programs.
Sec. 112. Expansion of Diplomats in Residence program.
Sec. 113. Use of gender neutral terms in employee evaluation forms.
Sec. 114. Voluntary participation.
Sec. 115. Sense of Congress on diversity, equity, and inclusion in the foreign affairs workforce.
Sec. 116. Employee assignment restrictions and preclusions.
Sec. 117. Mentorship program.
Sec. 118. Senior executive service candidate development program.

TITLE II—LOVE ACT OF 2021

- Sec. 201. Short title.
Sec. 202. Findings.
Sec. 203. Director General review.
Sec. 204. Reports on reviews.
Sec. 205. Establishment of Reconciliation Board.
Sec. 206. Issuance of apology.
Sec. 207. Establishment of permanent exhibit on the Lavender Scare.
Sec. 208. Guidance on issuing visas.
Sec. 209. Establishment of advancement board.

TITLE III—SHAPE ACT OF 2021

- Sec. 301. Short title; rule of construction.
Sec. 302. Department of State policy and procedures on prevention and response to harassment, discrimination, sexual assault, and related retaliation.
Sec. 303. Reporting, documentation, and investigation procedures.
Sec. 304. Sexual assault protocol and victim care.
Sec. 305. Rights of employees harassed, discriminated against, retaliated against, or sexually assaulted.
Sec. 306. Provision of climate surveys.
Sec. 307. Reports to Congress, the Department, and the public.
Sec. 308. Required training for Department personnel.
Sec. 309. Hiring, vetting, and promotion.

Sec. 310. Nondisclosure and nondisparagement agreements.

Sec. 311. Sense of Congress on sexual harassment and assault prevention and eradication in the foreign affairs workforce.

1 **TITLE I—A DIVERSE WORK-**
2 **FORCE: RECRUITMENT, RE-**
3 **TENTION, AND PROMOTION**

4 **SEC. 101. DEFINITIONS.**

5 In this title:

6 (1) **APPLICANT FLOW DATA.**—The term “appli-
7 cant flow data” means data that tracks the rate of
8 applications for job positions among demographic
9 categories.

10 (2) **APPROPRIATE CONGRESSIONAL COMMIT-**
11 **TEES.**—The term “*appropriate congressional com-*
12 *mittees*” means the Committee on Foreign Relations
13 of the Senate and the Committee on Foreign Affairs
14 of the House of Representatives.

15 (3) **DEMOGRAPHIC DATA.**—The term “demo-
16 graphic data” means facts or statistics relating to
17 the demographic categories specified in the Office of
18 Management and Budget statistical policy directive
19 entitled “Standards for Maintaining, Collecting, and
20 Presenting Federal Data on Race and Ethnicity”
21 (81 Fed. Reg. 67398).

22 (4) **DEPARTMENT.**—The term “Department”
23 means the Department of State.

1 (5) DIVERSITY.—The term “diversity” means
2 those classes of persons protected under the Civil
3 Rights Act of 1964 (42 U.S.C. 2000a et seq.) and
4 the Americans with Disabilities Act of 1990 (42
5 U.S.C. 12101 et seq.).

6 (6) SECRETARY.—The term “Secretary” means
7 the Secretary of State.

8 (7) WORKFORCE.—The term “workforce”
9 means—

10 (A) individuals serving in a position in the
11 civil service (as defined in section 2101 of title
12 5, United States Code);

13 (B) individuals who are members of the
14 Foreign Service (as defined in section 103 of
15 the Foreign Service Act of 1980 (22 U.S.C.
16 3902));

17 (C) all individuals serving under a personal
18 services agreement or personal services con-
19 tract;

20 (D) all individuals serving under a Foreign
21 Service Limited appointment under section 309
22 of the Foreign Service Act of 1980 (22 U.S.C.
23 3949); or

24 (E) individuals working in the Department
25 of State under any other authority.

1 **SEC. 102. OFFICE OF THE CHIEF DIVERSITY AND INCLU-**
2 **SION OFFICER.**

3 Section 1 of the State Department Basic Authorities
4 Act of 1956 (22 U.S.C. 2651a) is amended—

5 (1) by redesignating subsection (g) as sub-
6 section (h); and

7 (2) by inserting after subsection (f) the fol-
8 lowing new subsection:

9 “(g) CHIEF DIVERSITY AND INCLUSION OFFICER.—

10 “(1) IN GENERAL.—There shall be established
11 within the Department of State in the immediate of-
12 fice of the Secretary an Office of the Chief Diversity
13 and Inclusion Officer, which shall have at least two
14 additional members of staff. The head of the Office
15 of the Chief Diversity and Inclusion Officer shall re-
16 port directly to the Secretary.

17 “(2) DUTIES.—The Office of the Chief Diver-
18 sity and Inclusion Officer shall—

19 “(A) lead the development and implemen-
20 tation of proactive diversity, equity, and inclu-
21 sion initiatives in support of the Department’s
22 strategic plan to create a culture for diversity,
23 equity, and inclusion;

24 “(B) work with the Office of Management
25 and Budget to assess areas of improvement for
26 recruitment and retention;

1 “(C) ensure the recruitment and retention
2 of a diverse workforce, including through col-
3 laboration with other Department offices and
4 bureaus to support them in assessing potential
5 barriers and developing recruitment and reten-
6 tion strategies;

7 “(D) recommend training initiatives on
8 cultural competency, gender differences, dis-
9 ability, sexual harassment, explicit and implicit
10 bias, and other topics designed to increase
11 awareness and support of equity and inclusion
12 values;

13 “(E) ensure the Department maintains
14 compliance with all relevant and applicable laws
15 and regulations; and

16 “(F) coordinate and engage with the Office
17 of Civil Rights and the Bureau of Global Talent
18 Management as necessary.”.

19 **SEC. 103. COLLECTION, ANALYSIS, AND DISSEMINATION OF**
20 **WORKFORCE DATA.**

21 (a) INITIAL REPORT.—Not later than 180 days after
22 the date of the enactment of this Act, the Secretary shall,
23 in consultation with the Director of the Office of Per-
24 sonnel Management and the Director of the Office of Man-
25 agement and Budget, submit to the appropriate congress-

1 sional committees a report, which shall also be posted on
2 a publicly available website of the Department in a search-
3 able database format, that includes disaggregated demo-
4 graphic data and other information regarding the diversity
5 of the workforce of the Department.

6 (b) DATA.—The report under subsection (a) shall in-
7 clude the following data:

8 (1) Demographic data on each element of the
9 workforce of the Department, disaggregated by rank
10 and grade or grade-equivalent, with respect to the
11 following groups:

12 (A) Applicants for positions in the Depart-
13 ment.

14 (B) Individuals hired to join the workforce.

15 (C) Individuals promoted during the 2-year
16 period ending on the date of the enactment of
17 this Act, including promotions to and within the
18 Senior Executive Service or the Senior Foreign
19 Service.

20 (D) Individuals serving on applicable selec-
21 tion boards.

22 (E) Members of any external advisory com-
23 mittee or board who are subject to appointment
24 by individuals at senior positions in the Depart-
25 ment.

1 (F) Individuals participating in profes-
2 sional development programs of the Depart-
3 ment, and the extent to which such participants
4 have been placed into senior positions within
5 the Department after such participation.

6 (G) Individuals participating in mentorship
7 or retention programs.

8 (H) Individuals who separated from the
9 agency during the 2-year period ending on the
10 date of the enactment of this Act, including in-
11 dividuals in the Senior Executive Service or the
12 Senior Foreign Service.

13 (2) An assessment of agency compliance with
14 the essential elements identified in Equal Employ-
15 ment Opportunity Commission Management Direc-
16 tive 715, effective October 1, 2003.

17 (3) Data on the overall number of individuals
18 who are part of the workforces of the Department
19 of State overall and within each bureau of the De-
20 partment, the percentages of such workforce cor-
21 responding to each element listed in section 101(6),
22 and the percentages corresponding to each rank,
23 grade, or grade-equivalent.

1 (4) Data on the promotion outcomes of women
2 and racial or ethnic minorities in mid-career ranks
3 of the workforce.

4 (5) Demographic data, disaggregated by rank
5 and grade or grade-equivalent, of contractors and
6 subcontractors, as well as the nongovernmental orga-
7 nizations and civil society organizations that win
8 bids or obtain contracts and grants and serve as
9 subcontractors.

10 (c) RECOMMENDATION.—The Secretary may include
11 in the report under subsection (a) a recommendation to
12 the Director of Office of Management and Budget and to
13 the appropriate congressional committees regarding
14 whether the Department should collect more detailed data
15 on demographic categories in addition to the race and eth-
16 nicity categories specified in the Office of Management
17 and Budget statistical policy directive entitled “Standards
18 for Maintaining, Collecting, and Presenting Federal Data
19 on Race and Ethnicity” (81 Fed. Reg. 67398).

20 (d) OTHER CONTENTS.—The report under sub-
21 section (a) shall also describe the efforts of the Depart-
22 ment—

23 (1) to propagate fairness, impartiality, and in-
24 clusion in the work environment, both domestically
25 and abroad;

1 (2) to enforce anti-harassment and anti-dis-
2 crimination policies;

3 (3) to refrain from engaging in unlawful dis-
4 crimination in any phase of the employment process,
5 including recruitment, hiring, evaluation, assign-
6 ments, promotion, retention, and training;

7 (4) to prevent retaliation against employees for
8 participating in a protected equal employment op-
9 portunity activity;

10 (5) to provide reasonable accommodation for
11 qualified employees and applicants with disabilities;
12 and

13 (6) to recruit a representative workforce by—

14 (A) recruiting women and minorities;

15 (B) recruiting at women’s colleges, histori-
16 cally Black colleges and universities, minority-
17 serving institutions, and other institutions serv-
18 ing a significant percentage of minority stu-
19 dents;

20 (C) placing job advertisements in news-
21 papers, magazines, and job sites oriented to-
22 ward women and minorities;

23 (D) sponsoring and recruiting at job fairs
24 in urban and rural communities and land-grant
25 colleges or universities;

1 (E) providing opportunities through the
2 Foreign Service Internship Program under
3 chapter 12 of the Foreign Service Act of 1980
4 (22 U.S.C. 4141 et seq.) and other hiring ini-
5 tiatives, including a description of efforts to
6 provide opportunities for paid internships;

7 (F) recruiting mid-level and senior-level
8 professionals through programs designed to in-
9 crease minority representation in international
10 affairs;

11 (G) offering the Foreign Service written
12 and oral assessment examinations in multiple
13 locations throughout the United States to re-
14 duce the burden of applicants having to travel
15 at their own expense to take either or both such
16 examinations; and

17 (H) supporting recruiting and hiring op-
18 portunities including through—

19 (i) the Charles B. Rangel Inter-
20 national Affairs Fellowship Program;

21 (ii) the Thomas R. Pickering Foreign
22 Affairs Fellowship Program;

23 (iii) the International Career Advance-
24 ment Program; and

1 (iv) other initiatives, including agency-
2 wide policy initiatives.

3 (e) ANNUAL UPDATES.—Not later than one year
4 after the publication of the report required under sub-
5 section (a), and annually thereafter for five years, the Sec-
6 retary shall, in consultation with the Director of the Office
7 of Personnel Management and the Director of the Office
8 of Management and Budget, provide a report to the appro-
9 priate congressional committees, which shall be posted on
10 the Department’s website and may be included in another
11 annual report required under another provision of law,
12 that includes—

13 (1) disaggregated demographic data relating to
14 the workforce and information on the status of di-
15 versity and inclusion efforts of the Department;

16 (2) an analysis of applicant flow data; and

17 (3) disaggregated demographic data relating to
18 participants in professional development programs of
19 the Department and the rate of placement into sen-
20 ior positions for participants in such programs.

21 **SEC. 104. WORKFORCE INTERVIEWS.**

22 (a) RETAINED MEMBERS.—The Director General of
23 the Foreign Service and the Director of the Bureau of
24 Global Talent Management of the Department should con-

1 duct periodic interviews with a representative and diverse
2 cross-section of the workforce of the Department—

3 (1) to understand the reasons of individuals in
4 such workforce for remaining in a position in the
5 Department; and

6 (2) to receive feedback on workplace policies,
7 professional development opportunities, and other
8 issues affecting the decision of individuals in the
9 workforce to remain in the Department.

10 (b) DEPARTING MEMBERS.—The Director General of
11 the Foreign Service and the Director of the Bureau of
12 Global Talent Management shall provide an opportunity
13 for an exit interview to each individual in the workforce
14 of the Department who separates from service with the
15 Department to better understand the reasons of such indi-
16 vidual for leaving such service.

17 (c) USE OF ANALYSIS FROM INTERVIEWS.—The Di-
18 rector General of the Foreign Service and the Director of
19 the Bureau of Global Talent Management shall analyze
20 demographic data and other information obtained through
21 interviews under subsections (a) and (b) to determine—

22 (1) to what extent, if any, the diversity of those
23 conducting the interviews impacts the results; and

24 (2) whether to implement any policy changes or
25 include any recommendations in a report required

1 under subsection (a) or (e) of section 102 relating
2 to the determination reached pursuant to paragraph
3 (1).

4 (d) TRACKING DATA.—The Chief Diversity Officer
5 shall—

6 (1) track demographic data relating to partici-
7 pants in professional development programs and the
8 rate of placement into senior positions for partici-
9 pants in such programs;

10 (2) annually evaluate such data—

11 (A) to identify ways to improve outreach
12 and recruitment for such programs, consistent
13 with merit system principles; and

14 (B) to understand the extent to which par-
15 ticipation in any professional development pro-
16 gram offered or sponsored by the Department
17 differs among the demographic categories of the
18 workforce; and

19 (3) actively encourage participation from a
20 range of demographic categories, especially from cat-
21 egories with consistently low participation, in such
22 professional development programs.

23 **SEC. 105. RECRUITMENT AND RETENTION.**

24 (a) IN GENERAL.—The Secretary should—

1 (1) continue to seek a diverse and talented pool
2 of applicants; and

3 (2) instruct the Director General of the Foreign
4 Service and the Director of the Bureau of Global
5 Talent Management of the Department to have a
6 plan of action for the recruitment of people belong-
7 ing to traditionally under-represented groups, which
8 should include outreach at appropriate colleges, uni-
9 versities, affinity groups, and professional associa-
10 tions.

11 (b) SCOPE.—The diversity recruitment initiatives de-
12 scribed in subsection (a) should include—

13 (1) recruiting at women’s colleges, historically
14 Black colleges and universities, minority-serving in-
15 stitutions, and other institutions serving a signifi-
16 cant percentage of minority students;

17 (2) placing job advertisements in newspapers,
18 magazines, and job sites oriented toward diverse
19 groups;

20 (3) sponsoring and recruiting at job fairs in
21 urban and rural communities and land-grant colleges
22 or universities;

23 (4) providing opportunities through highly re-
24 spected, international leadership programs, that
25 focus on diversity recruitment and retention; and

1 (5) cultivating partnerships with organizations
2 dedicated to the advancement of the profession of
3 international affairs and national security to advance
4 shared diversity goals.

5 (c) EXPAND TRAINING ON ANTI-HARASSMENT AND
6 ANTI-DISCRIMINATION.—

7 (1) IN GENERAL.—The Secretary shall, through
8 the Foreign Service Institute and other educational
9 and training opportunities—

10 (A) expand the provision of training on
11 workplace rights and responsibilities to focus on
12 anti-harassment and anti-discrimination infor-
13 mation and policies;

14 (B) expand the provision of training on
15 workplace rights and responsibilities to focus on
16 explicit and implicit bias, including training on
17 the effects of bias; and

18 (C) make such expanded training manda-
19 tory for—

20 (i) individuals in senior and super-
21 visory positions; and

22 (ii) individuals having responsibilities
23 related to recruitment, retention, or pro-
24 motion of employees.

1 (2) BEST PRACTICES.—Each agency shall give
2 special attention to ensuring the continuous incorpora-
3 tion of evidence-based best practices in training
4 provided under this subsection.

5 **SEC. 106. SENSE OF CONGRESS ON SUPPORT FOR EQUAL**
6 **EMPLOYMENT OPPORTUNITY AND MERIT**
7 **PRINCIPLES CRITERIA.**

8 It is the sense of Congress that—

9 (1) the “support for equal employment oppor-
10 tunity and merit principles” criteria for tenure and
11 promotion in the Foreign Service is critical to pro-
12 moting a more diverse Foreign Service;

13 (2) equal employment opportunity and merit
14 principles criteria for tenure and promotion in the
15 Civil Service is critical to promoting a more diverse
16 Civil Service; and

17 (3) the Department should—

18 (A) develop mechanisms to ensure that the
19 Foreign Service promotion list appropriately
20 promotes a diverse workforce;

21 (B) develop mechanisms to ensure that the
22 Civil Service appropriately promotes a diverse
23 workforce;

24 (C) establish criteria within the Foreign
25 Service Employee Evaluation Report that in-

1 clude evaluating the support of Foreign Service
2 officers for equal employment opportunities;
3 and

4 (D) establish criteria to evaluate the sup-
5 port of Civil Service officers for equal employ-
6 ment opportunities.

7 **SEC. 107. LEADERSHIP ENGAGEMENT AND ACCOUNT-**
8 **ABILITY.**

9 (a) **REWARD AND RECOGNIZE EFFORTS TO PRO-**
10 **MOTE DIVERSITY AND INCLUSION.—**

11 (1) **IN GENERAL.—**The Secretary shall imple-
12 ment performance and advancement requirements
13 that reward and recognize the efforts of individuals
14 in senior positions and supervisors in the Depart-
15 ment in fostering an inclusive environment and culti-
16 vating talent consistent with merit system principles,
17 such as through participation in mentoring pro-
18 grams or sponsorship initiatives, recruitment events,
19 and other similar opportunities.

20 (2) **OUTREACH EVENTS.—**The Secretary shall
21 create opportunities for individuals in senior posi-
22 tions and supervisors in the Department to partici-
23 pate in outreach events and to discuss issues relat-
24 ing to diversity and inclusion within the workforce

1 on a regular basis, including with employee resource
2 groups.

3 (b) SENSE OF CONGRESS ON EXTERNAL ADVISORY
4 COMMITTEES AND BOARDS.—It is the sense of Congress
5 that the Secretary should ensure that qualified teams that
6 represent the diversity of the Department review in ad-
7 vance appointments to external advisory committees or
8 boards by senior officials in the Department.

9 **SEC. 108. PROFESSIONAL DEVELOPMENT OPPORTUNITIES**
10 **AND TOOLS.**

11 (a) EXPAND PROVISION OF PROFESSIONAL DEVEL-
12 OPMENT AND CAREER ADVANCEMENT OPPORTUNITIES.—
13 The Secretary is authorized to expand professional devel-
14 opment opportunities that support the mission needs of
15 the Department, such as—

16 (1) academic programs;

17 (2) private-public exchanges; and

18 (3) detail assignments to relevant positions in—

19 (A) private or international organizations;

20 (B) State, local, and Tribal governments;

21 (C) other branches of the Federal Govern-

22 ment; or

23 (D) schools of international affairs or

24 those with related programs.

25 (b) TRAINING FOR SENIOR POSITIONS.—

1 (1) IN GENERAL.—The Secretary shall offer, or
2 sponsor members of the workforce to participate in,
3 a Senior Executive Service candidate development
4 program or other program that trains members on
5 the skills required for appointment to senior posi-
6 tions in the Department.

7 (2) REQUIREMENTS.—In determining which
8 members of the workforce are granted professional
9 development or career advancement opportunities
10 under paragraph (1), the Secretary shall—

11 (A) ensure any program offered or spon-
12 sored by the Department under such subpara-
13 graph comports with the requirements of sub-
14 part C of part 412 of title 5, Code of Federal
15 Regulations, or any successor thereto, including
16 merit staffing and assessment requirements;

17 (B) consider the number of expected va-
18 cancies in senior positions as a factor in deter-
19 mining the number of candidates to select for
20 such programs;

21 (C) understand how participation in any
22 program offered or sponsored by the Depart-
23 ment under such subparagraph differs by gen-
24 der, race, national origin, disability status, or
25 other demographic categories; and

1 (D) actively encourage participation from a
2 range of demographic categories, especially
3 from categories with consistently low participa-
4 tion.

5 **SEC. 109. EXAMINATION AND ORAL ASSESSMENT FOR THE**
6 **FOREIGN SERVICE.**

7 (a) SENSE OF CONGRESS.—It is the sense of Con-
8 gress that the Department should offer both the Foreign
9 Service written examination and oral assessment in more
10 locations throughout the United States. Doing so would
11 ease the financial burden on potential candidates who do
12 not currently reside in and must travel at their own ex-
13 pense to one of the few locations where these assessments
14 are offered.

15 (b) FOREIGN SERVICE EXAMINATIONS.—Section
16 301(b) of the Foreign Service Act of 1980 (22 U.S.C.
17 3941) is amended—

18 (1) by striking “The Secretary” and inserting:
19 “(1) The Secretary”; and

20 (2) by adding at the end the following new
21 paragraphs:

22 “(2) The Secretary shall ensure that the Board of
23 Examiners for the Foreign Service annually offers the oral
24 assessment examinations described in paragraph (1) in
25 cities, chosen on a rotating basis, located in at least three

1 different time zones across the United States, and that
2 those examinations give sufficient weight to a candidate's
3 commitment to inclusion and diversity.

4 “(3) The Secretary shall consider whether partici-
5 pants in Department fellowship programs should be re-
6 quired to take oral examinations, and whether there is any
7 justification for requiring certain, but not all, fellowship
8 participants to take such examinations.”.

9 **SEC. 110. SENSE OF CONGRESS ON VETERANS' RECRUIT-**
10 **MENT FOR THE FOREIGN SERVICE.**

11 It is the sense of Congress that the Foreign Service
12 exam should be offered in multiple diverse locations, at
13 least in three different time zones in a calendar year, to
14 encourage more accessibility to the test, especially for vet-
15 erans and members of the United States Armed Forces
16 transitioning to civilian life.

17 **SEC. 111. DEPARTMENT OF STATE AND USAID FELLOW-**
18 **SHIPS AND PROGRAMS.**

19 (a) EDUCATION GRANTS.—The Secretary of State
20 may make grants to postsecondary educational institu-
21 tions, including minority serving institutions, or students
22 for the purpose of increasing knowledge and awareness of
23 and interest in employment with the Civil Service. To the
24 extent possible, the Secretary shall give special emphasis
25 to promoting such knowledge and awareness of, and inter-

1 est in employment with, the Civil Service among minority
2 students. Any grants awarded shall be made pursuant to
3 regulations to be established by the Secretary of State,
4 which shall provide for a limit on the size of any specific
5 grant and, regarding any grants to individuals, shall en-
6 sure that no grant recipient receives an amount of grants
7 from one or more Federal programs which in the aggre-
8 gate would exceed the cost of his, her, or their education
9 and shall require satisfactory educational progress by
10 grantees as a condition of eligibility for continued receipt
11 of grant funds.

12 (b) DONALD M. PAYNE INTERNATIONAL DEVELOP-
13 MENT FELLOWSHIP PROGRAM.—Undergraduate and
14 graduate components of the Donald M. Payne Inter-
15 national Development Fellowship Program are authorized
16 and encouraged to conduct outreach to attract out-
17 standing students with an interest in pursuing a Foreign
18 Service career who represent diverse ethnic and socio-
19 economic backgrounds.

20 (c) REVIEW OF PAST PROGRAMS.—The Secretary of
21 State and the Administrator of the United States Agency
22 for International Development shall review past and
23 present programs, including the Donald M. Payne Inter-
24 national Development Fellowship Program, the Thomas
25 R. Pickering Fellowship in International Affairs, and the

1 Charles B. Rangel International Affairs Program, de-
2 signed to increase minority representation in international
3 affairs positions.

4 **SEC. 112. EXPANSION OF DIPLOMATS IN RESIDENCE PRO-**
5 **GRAM.**

6 Not later than one year after the date of the enact-
7 ment of this Act, the Secretary of State shall double the
8 number of diplomats in the Diplomats in Residence Pro-
9 gram as of the date of the enactment of this Act.

10 **SEC. 113. USE OF GENDER NEUTRAL TERMS IN EMPLOYEE**
11 **EVALUATION FORMS.**

12 The Secretary shall develop a pilot program to use
13 gender neutral terms in employee evaluation forms.

14 **SEC. 114. VOLUNTARY PARTICIPATION.**

15 (a) **IN GENERAL.**—Nothing in this title shall be con-
16 strued so as to compel any Department personnel to par-
17 ticipate in the collection of the data or divulge any per-
18 sonal information. Department employees shall be in-
19 formed that their participation in the data collection con-
20 templated by this title is voluntary.

21 (b) **PRIVACY PROTECTION.**—Any data collected
22 under this title shall be subject to the relevant privacy pro-
23 tection statutes and regulations applicable to Federal em-
24 ployees.

1 **SEC. 115. SENSE OF CONGRESS ON DIVERSITY, EQUITY,**
2 **AND INCLUSION IN THE FOREIGN AFFAIRS**
3 **WORKFORCE.**

4 It is the sense of Congress that the foreign affairs
5 workforce, including the United States Agency for Inter-
6 national Development, the Broadcasting Board of Gov-
7 ernors, the Peace Corps, the Development Finance Cor-
8 poration, and the Millennium Challenge Corporation,
9 should take significant steps to improve diversity, equity,
10 and inclusion in their workforce, especially as it relates
11 to recruitment, retention, and promotion.

12 **SEC. 116. EMPLOYEE ASSIGNMENT RESTRICTIONS AND**
13 **PRECLUSIONS.**

14 (a) SENSE OF CONGRESS.—It is the sense of Con-
15 gress that the Department of State should expand the ap-
16 peal process it makes available to employees related to as-
17 signment preclusions and restrictions.

18 (b) APPEALS OF ASSIGNMENT RESTRICTION OR PRE-
19 CLUSION.—Section 414(a) of the Department of State Au-
20 thorities Act, Fiscal Year 2017 (22 U.S.C. 2734c(a)) is
21 amended by adding at the end the following: “The right
22 and process shall ensure that any employee subjected to
23 an assignment restriction or preclusion shall have the
24 same appeal rights as provided by the Department regard-
25 ing denial or revocation of a security clearance, including
26 the participation of the Chief Diversity and Inclusion Offi-

1 cer serving on the Security Appeals Panel as part of any
2 appeals process. Any such appeal shall be resolved not
3 later than 60 days after the appeal is filed.”.

4 **SEC. 117. MENTORSHIP PROGRAM.**

5 (a) IN GENERAL.—The Foreign Service Act of 1980
6 is amended by inserting after section 708 (22 U.S.C.
7 4028) the following new section:

8 **“SEC. 709. MENTORSHIP PROGRAM.**

9 “(a) IN GENERAL.—The Secretary of State shall es-
10 tablish in the Department of State a mentorship program
11 to match interested participants who are—

12 “(1) entry-level members of the Foreign Serv-
13 ice; and

14 “(2) mid-level members of the Foreign Service.

15 “(b) DURATION.—Individuals participating in the
16 mentorship program under this section should participate
17 for a minimum of two years.

18 “(c) EMPLOYEE AFFINITY GROUPS.—Members of
19 Employee Affinity Groups shall be encouraged to partici-
20 pate in the mentorship program established under this sec-
21 tion.

22 “(d) Service as a mentor in the mentorship program
23 may be considered as satisfying the criteria described in
24 section 603(b)(1).”.

1 (b) CLERICAL AMENDMENT.—The table of contents
2 in section 2 of the Foreign Service Act of 1980 is amended
3 by inserting after the item relating to section 708 the fol-
4 lowing new item:

“Sec. 709. Mentorship program.”.

5 (c) MENTORSHIP PROGRAM FOR CIVIL SERVICE.—

6 (1) IN GENERAL.—The Secretary of State shall
7 establish a mentorship program to match mentors
8 with interested participants who are—

9 (A) members of the civil service at the GS–
10 12 level and below; and

11 (B) members of the civil service from at
12 the GS–13 level to the GS–15 level.

13 (2) DURATION.—Individuals participating in
14 the civil service mentorship program under para-
15 graph (1) should participate for a minimum of two
16 years.

17 (3) INCLUSION OF EMPLOYEE AFFINITY
18 GROUPS.—Members of employee affinity groups shall
19 be encouraged to participate in the civil service
20 mentorship program established under paragraph
21 (1).

22 **SEC. 118. SENIOR EXECUTIVE SERVICE CANDIDATE DEVEL-**
23 **OPMENT PROGRAM.**

24 (a) IN GENERAL.—The Secretary of State shall offer
25 the Senior Executive Service Candidate Development Pro-

1 gram every three years to members of the civil service at
2 the Department of State at the GS–14 and GS–15 levels.

3 (b) REPORT.—The Secretary of State shall submit to
4 the Committee on Foreign Relations of the Senate and
5 the Committee on Foreign Affairs of the House of Rep-
6 resentatives a report detailing disaggregated demographic
7 information of candidates referred by each bureau of the
8 Department of State to interview for the Senior Executive
9 Service, including [de-identified] demographic informa-
10 tion, disaggregated by bureau, relating to the diversity of
11 such candidates.

12 **TITLE II—LOVE ACT OF 2021**

13 **SEC. 201. SHORT TITLE.**

14 This title may be cited as the “Lavender Offense Vic-
15 tim Exoneration Act of 2021” or the “LOVE Act of
16 2021”.

17 **SEC. 202. FINDINGS.**

18 Congress makes the following findings:

19 (1) During the so-called “Lavender Scare”, at
20 least 1,000 people were wrongfully dismissed from
21 the Department of State for alleged homosexuality
22 during the 1950s and well into the 1960s.

23 (2) According to the Department of State’s Bu-
24 reau of Diplomatic Security, Department of State
25 employees were forced out of the Department on the

1 grounds that their sexual orientation ostensibly
2 made them vulnerable to blackmail and rendered
3 them security risks.

4 (3) In addition to those wrongfully terminated,
5 many other patriotic Americans were prevented from
6 joining the Department due to a screening process
7 that was put in place to prevent the hiring of those
8 who, according to the findings of the Bureau of Dip-
9 lomatic Security, “seemed like they might be gay or
10 lesbian”.

11 (4) Congress bears some responsibility for these
12 discriminatory actions as the Department’s actions
13 were in part a response to congressional investiga-
14 tions into “sex perversion of Federal employees”, re-
15 ports on the employment of “moral perverts by Gov-
16 ernment Agencies”, hearings and pressure placed on
17 the Department through the appropriations process
18 and congressional complaints that Foggy Bottom
19 was “rampant with homosexuals who were sympa-
20 thetic to Communism and vulnerable to blackmail”.

21 (5) Between 1950 and 1969, the Department of
22 State was required to report on the number of ho-
23 mosexuals fired each year as part of their annual ap-
24 peals before the Committees on Appropriations.

1 (6) Although the worst effects of the “Lavender
2 Scare” are behind us, as recently as the early 1990s,
3 the Department of State’s diplomatic security office
4 was investigating State personnel thought to be gay
5 and driving them out of government service as “se-
6 curity risks”.

7 (7) In 1994, Secretary of State Warren Chris-
8 topher issued a prohibition against discrimination at
9 the Department of State, including that based on
10 sexual orientation.

11 (8) In 1998, President William Jefferson Clin-
12 ton signed Executive Order 13087 barring discrimi-
13 nation on the basis of sexual orientation.

14 (9) On January 9, 2017, Secretary of State
15 John Kerry issued a statement regarding the “Lav-
16 ender Scare”, saying, “On behalf of the Department,
17 I apologize to those who were impacted by the prac-
18 tices of the past and reaffirm the Department’s
19 steadfast commitment to diversity and inclusion for
20 all our employees, including members of the LGBTI
21 community”.

22 **SEC. 203. DIRECTOR GENERAL REVIEW.**

23 (a) REVIEW.—The Director General of the Foreign
24 Service and Director of the Bureau of Global Talent Man-
25 agement of the Department of State, in consultation with

1 the Historian of the Department of State, shall review all
2 employee terminations that occurred after January 1,
3 1950, to determine who was wrongfully terminated owing
4 to their sexual orientation or gender identity, whether real
5 or perceived.

6 (b) REPORT.—Not later than 270 days after the date
7 of the enactment of this Act, the Director General shall,
8 consistent with applicable privacy regulations, compile the
9 information required under subsection (a) in a publicly
10 available report. The report shall include historical state-
11 ments made by officials of the Department of State and
12 Congress encouraging and implementing policies and tac-
13 tics that led to the termination of employees due to their
14 sexual orientation or gender identity.

15 **SEC. 204. REPORTS ON REVIEWS.**

16 (a) REVIEWS.—The Secretary of State shall conduct
17 reviews of the consistency and uniformity of the reviews
18 conducted by the Director General under section 203.

19 (b) REPORTS.—Not later than 270 days after the
20 date of the enactment of this Act, and annually thereafter
21 for 2 years, the Secretary shall submit to Congress a re-
22 port on the reviews conducted under section 203. Each
23 report shall include any comments or recommendations for
24 continued actions.

1 **SEC. 205. ESTABLISHMENT OF RECONCILIATION BOARD.**

2 (a) ESTABLISHMENT.—The Secretary of State shall
3 establish, within the Office of Civil Rights of the Depart-
4 ment of State, an independent Reconciliation Board to re-
5 view the reports released by the Director General of the
6 Foreign Service and the Director of the Bureau of Global
7 Talent Management under section 203(b).

8 (b) DUTIES.—The Reconciliation Board shall—

9 (1) consistent with applicable privacy regula-
10 tions, contact all employees found to be fired due to
11 the “Lavender Scare” or, in the case of deceased
12 former employees, the family members of the em-
13 ployees, to inform them that their termination from
14 the Department of State has been deemed inappro-
15 priate and that, if they wish, their employment
16 record can be changed to reflect these findings;

17 (2) designate a point of contact at a senior level
18 position within the Office of the Director General of
19 the Foreign Service and the Director of the Bureau
20 of Global Talent Management to receive oral testi-
21 mony of any employees or family members of de-
22 ceased employees mentioned in the report who per-
23 sonally experienced discrimination and termination
24 because of the actual or perceived sexual orientation
25 or gender identity in order that such testimony may
26 serve as an official record of these discriminatory

1 policies and their impact on the lives of United
2 States citizens serving their Nation; and

3 (3) provide an opportunity for any former em-
4 ployee not mentioned in the report to bring forth a
5 grievance to the Board if they believe they were ter-
6 minated due to their sexual orientation or gender
7 identity.

8 (c) REVIEW OF CLAIMS.—

9 (1) IN GENERAL.—The Board shall review each
10 claim described in subsection (b) within 150 days of
11 receiving the claim. Lack of paperwork may not be
12 used as a basis for dismissing any claims.

13 (2) COOPERATION.—The Department of State
14 shall be responsible for producing pertinent informa-
15 tion regarding each claim to prove the employee was
16 not wrongfully terminated.

17 (d) TERMINATION.—The Board shall terminate 5
18 years after the date of the enactment of this Act.

19 **SEC. 206. ISSUANCE OF APOLOGY.**

20 (a) FINDING.—Secretary of State Kerry delivered the
21 following apology on January 9, 2017: “Throughout my
22 career, including as Secretary of State, I have stood
23 strongly in support of the LGBTI community, recognizing
24 that respect for human rights must include respect for all
25 individuals. LGBTI employees serve as proud members of

1 the State Department and valued colleagues dedicated to
2 the service of our country. For the last several years, the
3 Department has pressed for the families of LGBTI offi-
4 cers to have the same protections overseas as families of
5 other officers. In 2015, to further promote LGBTI rights
6 throughout the world, I appointed the first ever Special
7 Envoy for the Human Rights of LGBTI Persons. In the
8 past—as far back as the 1940s, but continuing for dec-
9 ades—the Department of State was among many public
10 and private employers that discriminated against employ-
11 ees and job applicants on the basis of perceived sexual ori-
12 entation, forcing some employees to resign or refusing to
13 hire certain applicants in the first place. These actions
14 were wrong then, just as they would be wrong today. On
15 behalf of the Department, I apologize to those who were
16 impacted by the practices of the past and reaffirm the De-
17 partment’s steadfast commitment to diversity and inclu-
18 sion for all our employees, including members of the
19 LGBTI community.”.

20 (b) CONGRESSIONAL APOLOGY.—Congress hereby of-
21 fers a formal apology for its responsibility in encouraging
22 the “Lavender Scare” and similar policies at the Depart-
23 ment of State, as these policies were in part a response
24 to congressional investigations into “sex perversion of
25 Federal employees”, reports on the employment of “moral

1 perverts by Government Agencies”, and hearings or pres-
2 sure otherwise placed on the Department of State through
3 the appropriations process.

4 **SEC. 207. ESTABLISHMENT OF PERMANENT EXHIBIT ON**
5 **THE LAVENDER SCARE.**

6 (a) IN GENERAL.—The Secretary of State, working
7 with the current public-private partnership associated with
8 the Department of State’s United States Diplomacy Cen-
9 ter, shall establish a permanent exhibit on the “Lavender
10 Scare” in the museum to assure that the history of this
11 discriminatory episode is not brushed aside.

12 (b) SPECIFICATIONS.—The exhibit—

13 (1) shall be installed at the museum not later
14 than one year after the date of enactment of this
15 Act;

16 (2) shall provide access to the reports compiled
17 by the Director General of the Foreign Service and
18 the Director of the Bureau of Global Talent Man-
19 agement under section 203(b); and

20 (3) shall readily display material gathered from
21 oral testimony received pursuant to section
22 205(b)(2) from employees or family members of de-
23 ceased employees who were subject to these discrimi-
24 natory policies during the “Lavender Scare”.

1 **SEC. 208. GUIDANCE ON ISSUING VISAS.**

2 To demonstrate the Department of State's commit-
3 ment to ensuring fairness for current employees, not later
4 than 100 days after the date of the enactment of this Act,
5 the Secretary of State shall submit to Congress a report
6 on countries not issuing spousal visas to the spouses of
7 all Foreign Service personnel posted overseas due to their
8 sexual orientation or gender identity. This report shall in-
9 clude any comments or recommendations for actions, in-
10 cluding eliminating visa reciprocity with countries found
11 to be instituting these practices against the spouses of
12 Foreign Service personnel, that will lead to ensuring that
13 all spouses of Foreign Service personnel receive spousal
14 visas for the country their spouse is assigned, regardless
15 of sexual orientation or gender identity.

16 **SEC. 209. ESTABLISHMENT OF ADVANCEMENT BOARD.**

17 (a) ESTABLISHMENT.—The Secretary of State shall
18 establish, within the Office of the Director General of the
19 Department of State, a board comprised of senior-level of-
20 ficials to address the issues faced by LGBTQI+ Foreign
21 Service employees and their families.

22 (b) HEARING OF TESTIMONY.—The Advancement
23 Board shall hear testimony from any willing LGBTQI+
24 Foreign Service employees and their families regarding
25 any discrimination they have faced due to their sexual ori-
26 entation.

1 (c) REPORT.—

2 (1) IN GENERAL.—Not later than 100 days
3 after completing collection of testimony described
4 under subsection (b), and annually thereafter for 5
5 years, the Advancement Board shall submit to Con-
6 gress a report based on the testimony.

7 (2) CONTENT.—The report required under
8 paragraph (1) shall include any comments or rec-
9 ommendations for continued actions to improve the
10 Department of State to ensure that no employee or
11 their family members experience discrimination due
12 to their sexual orientation or gender identity.

13 (3) PRIVACY.—The report required under para-
14 graph (1) shall remain private and will only be ac-
15 cessible to Members of Congress, their appropriate
16 staff, and members of the Advancement Board.

17 **TITLE III—SHAPE ACT OF 2021**

18 **SEC. 301. SHORT TITLE; RULE OF CONSTRUCTION.**

19 (a) SHORT TITLE.—This title may be cited as the
20 “State Harassment and Assault Prevention and Eradi-
21 cation Act of 2021” or the “SHAPE Act of 2021”.

22 (b) RULE OF CONSTRUCTION.—Nothing in this title
23 shall be construed to supersede or otherwise affect the dis-
24 crimination protections or related processes provided
25 under section 717 of the Civil Rights Act of 1964 (42

1 U.S.C. 2000e–16) to officers and employees of the Depart-
2 ment of State or applicants for employment at the Depart-
3 ment.

4 **SEC. 302. DEPARTMENT OF STATE POLICY AND PROCE-**
5 **DURES ON PREVENTION AND RESPONSE TO**
6 **HARASSMENT, DISCRIMINATION, SEXUAL AS-**
7 **SAULT, AND RELATED RETALIATION.**

8 (a) **COMPREHENSIVE POLICY ON PREVENTION AND**
9 **RESPONSE.**—Not later than one year after the date of the
10 enactment of this Act, the Secretary of State shall develop
11 a comprehensive policy for the Department of State on
12 the prevention of and response to harassment, discrimina-
13 tion, sexual assault, and related retaliation involving em-
14 ployees, contractors, and officials of the Department.

15 (b) **ELEMENTS OF COMPREHENSIVE POLICY.**—The
16 policy developed under subsection (a) may include ele-
17 ments as the Secretary deems necessary, but shall include,
18 at a minimum, the following:

- 19 (1) Prevention measures.
- 20 (2) Education and training on prevention and
21 response, as provided in this title.
- 22 (3) Investigation of complaints.
- 23 (4) Medical treatment of victims.

1 (5) Mechanisms for confidential reporting of in-
2 cidents by staff and service contractors, to include
3 online and telephonic methods.

4 (6) Victim advocacy, intervention, and coun-
5 seling for covered employees of the Department who
6 are victims of harassment, discrimination, sexual as-
7 sault, and related retaliation that shall be made
8 available, irrespective of where such covered employ-
9 ees are located, to assist and guide such victims.

10 (7) Supportive services, including counseling
11 and victim advocacy, that shall be made available ir-
12 respective of whether the victim identifies the ac-
13 cused individual.

14 (8) Oversight and review of administrative and
15 disciplinary actions, to include termination, for em-
16 ployees and officials of the Department of State.

17 (9) Review by appropriate authority of adminis-
18 trative separation actions involving victims of har-
19 assment, discrimination, sexual assault, and related
20 retaliation.

21 (10) Uniform collection of data on the incidence
22 of violations and on disciplinary actions taken in
23 cases of harassment, discrimination, sexual assault,
24 and related retaliation.

1 (11) Procedures for disciplinary action in cases
2 of harassment, discrimination, sexual assault, and
3 related retaliation by employees or officials of the
4 Department.

5 (12) Workforce communications relating to har-
6 assment, discrimination, sexual assault, and related
7 retaliation prevention, discipline, and reporting, to
8 include printed and electronic materials made avail-
9 able in both English and the working languages at
10 overseas posts, made available for all staff.

11 (13) Acknowledgment of the challenges facing
12 vulnerable groups including women, people of color,
13 members of the LGBTQI+ community, entry-level
14 officers, and locally employed staff.

15 (14) Policies regarding the retention of docu-
16 ments relating to complaints, investigations, and dis-
17 ciplinary action.

18 (c) CLARIFICATION OF VICTIM REPORTING AND
19 CASE RESOLUTION.—The Secretary of State shall review
20 Department of State processes for victim reporting and
21 resolution of complaints, as in effect on the date of enact-
22 ment of this Act, to ensure that the Department’s proce-
23 dures are clear and easily accessible to all covered employ-
24 ees. Such review shall be included in the report to be sub-
25 mitted in section 307.

1 (d) APPLICATION OF COMPREHENSIVE POLICY TO
2 OFFICES IN THE DEPARTMENT OF STATE.—The Sec-
3 retary of State shall ensure that the policy developed
4 under subsection (a) is implemented uniformly by the bu-
5 reaus and offices of the Department of State.

6 (e) COORDINATION WITH OTHER AGENCIES.—The
7 Department of State is directed to coordinate with other
8 United States government agencies which provide per-
9 sonnel to serve in overseas posts under Chief of Mission
10 authority to develop interagency policies for addressing,
11 reporting, and disciplining incidents of harassment, dis-
12 crimination, sexual assault, or related retaliation occurring
13 between covered employees and non-covered employees.

14 **SEC. 303. REPORTING, DOCUMENTATION, AND INVESTIGA-**
15 **TION PROCEDURES.**

16 (a) DEFINITIONS.—In this title:

17 (1) The term “covered employee” means—

18 (A) any officer or employee (including any
19 temporary, part-time, contract, intermittent em-
20 ployee, intern, fellow, or other unpaid staff;
21 both American citizens and foreign nationals)
22 performing work for or on behalf of the Depart-
23 ment of State;

24 (B) members of the Foreign Service (as
25 that term is defined under section 103 of the

1 Foreign Service Act of 1980 (22 U.S.C. 3903)),
2 to include Foreign Service Officers, Foreign
3 Service Specialists, Locally Employed Staff, and
4 Consular Agents; and

5 (C) any individual who is engaged by an
6 employer or entity as a contractor.

7 (2) The term “Office of Employee Advocacy”
8 means the Office of Employee Advocacy, as estab-
9 lished under subsection (b).

10 (3) The term “Office of Civil Rights” means
11 the Office of Civil Rights within the Department of
12 State.

13 (4) The term “Global Talent Management”
14 means the Bureau of Global Talent Management,
15 Office of Employee Relations, Conduct, Suitability,
16 and Discipline Division within the Department of
17 State.

18 (5) The term “Diplomatic Security” means the
19 Bureau of Diplomatic Security within the Depart-
20 ment of State.

21 (6) The term “harassment” means as follow:

22 (A) Harassment is conduct based on race,
23 color, religion, sex (including sexual orientation,
24 gender identity, pregnancy, childbirth, a med-
25 ical condition related to pregnancy or childbirth,

1 and a sex stereotype), or national origin, re-
2 gardless of whether it is direct or indirect, or
3 verbal or nonverbal, that unreasonably alters an
4 individual's terms, conditions, or privileges of
5 employment, including by creating an intimi-
6 dating, hostile, or offensive work environment.

7 (B) Sexual harassment is conduct that
8 takes place in a circumstance described in sub-
9 paragraph (C) and that takes the form of—

- 10 (i) a sexual advance;
11 (ii) a request for sexual favors; or
12 (iii) any other conduct of a sexual na-
13 ture.

14 (C) A circumstance described in this sub-
15 paragraph is a situation in which—

- 16 (i) submission to the conduct involved
17 is made either explicitly or implicitly a
18 term or condition of employment;
19 (ii) submission to or rejection of such
20 conduct is used as the basis for an employ-
21 ment decision affecting an individual's em-
22 ployment; or
23 (iii) such conduct unreasonably alters
24 an individual's terms, conditions, or privi-
25 leges of employment, including by creating

1 an intimidating, hostile, or offensive work
2 environment.

3 (D) In determining whether conduct con-
4 stitutes harassment because the conduct unrea-
5 sonably alters an individual's terms, conditions,
6 or privileges of employment, including by cre-
7 ating an intimidating, hostile, or offensive work
8 environment, the following rules shall apply:

9 (i) The determination shall be made
10 on the basis of the record as a whole, ac-
11 cording to the totality of the cir-
12 cumstances. A single incident may con-
13 stitute workplace harassment.

14 (ii) Incidents that may be workplace
15 harassment shall be considered in the ag-
16 gregate, with—

17 (I) conduct of varying types
18 (such as expressions of sex-based hos-
19 tility, requests for sexual favors, and
20 denial of employment opportunities
21 due to sexual orientation) viewed in
22 totality, rather than in isolation; and

23 (II) conduct based on multiple
24 protected characteristics (such as sex

1 and race) viewed in totality, rather
2 than in isolation.

3 (iii) The factors specified in this
4 clause are among the factors to be consid-
5 ered in determining whether conduct con-
6 stitutes harassment and are not meant to
7 be exhaustive. None of these factors shall
8 be considered to be determinative in estab-
9 lishing whether conduct constitutes harass-
10 ment. Factors to be used in determining
11 whether conduct constitutes harassment in-
12 clude—

13 (I) the frequency of the conduct;

14 (II) the duration of the conduct;

15 (III) the location where the con-
16 duct occurred;

17 (IV) the number of individuals
18 engaged in the conduct;

19 (V) the nature of the conduct,
20 which may include physical, verbal,
21 pictorial, or visual conduct, and con-
22 duct that occurs in person or is trans-
23 mitted, such as electronically;

24 (VI) whether the conduct is
25 threatening;

1 (VII) any power differential be-
2 tween the alleged harasser and the
3 person allegedly harassed;

4 (VIII) any use of epithets, slurs,
5 or other conduct that is humiliating
6 or degrading; or

7 (IX) whether the conduct reflects
8 stereotypes about individuals in the
9 protected class involved.

10 (iv) In determining whether conduct
11 constitutes harassment, conduct may be
12 harassment regardless of whether, for ex-
13 ample—

14 (I) the complaining party is not
15 the individual being harassed;

16 (II) the complaining party acqui-
17 esced or otherwise submitted to, or
18 participated in, the conduct;

19 (III) the conduct is also experi-
20 enced by others outside the protected
21 class involved;

22 (IV) the complaining party was
23 able to continue carrying out duties
24 and responsibilities of the party's job
25 despite the conduct;

1 (V) the conduct did not cause a
2 tangible injury or psychological injury;

3 or

4 (VI) the conduct occurred outside
5 of the workplace.

6 (b) ESTABLISHMENT OF OFFICE OF EMPLOYEE AD-
7 VOCACY.—

8 (1) IN GENERAL.—Not later than one year
9 after the date of the enactment of this Act, the Sec-
10 retary shall establish a new office to be the Office
11 of Employee Advocacy, to be headed by a full-time
12 Chief Advocate. Personnel of the Office shall be ap-
13 pointed without regard to political affiliation and
14 solely on the basis of fitness to perform the duties
15 of the position. The Chief Advocate—

16 (A) shall report directly to the Under Sec-
17 retary for Management; and

18 (B) may not have any other duties in the
19 Department of State that are not reasonably
20 connected to employee advocacy.

21 (2) DUTIES OF OFFICE OF EMPLOYEE ADVO-
22 CACY.—The duties of the Office of Employee Advo-
23 cacy are as follows:

24 (A) Receive complaints from any Depart-
25 ment of State covered employee or eligible fam-

1 ily member (EFM), as defined in the Foreign
2 Affairs Manual, of harassment, discrimination,
3 sexual assault, and related retaliation.

4 (B) Counsel victims of their rights, proce-
5 dures for seeking relief, and available resources,
6 both locally and at headquarters, under this
7 title, and other employment laws enforced by
8 the Equal Employment Opportunity Commis-
9 sion including the Civil Rights Act of 1964, the
10 Pregnancy Discrimination Act of 1978, the
11 Equal Pay Act of 1963, the Age Discrimination
12 in Employment Act of 1967, the Americans
13 with Disabilities Act of 1990, the Civil Rights
14 Act of 1991, the Rehabilitation Act of 1973,
15 and the Genetic Information Nondiscrimination
16 Act of 2008.

17 (C) Provide confidential support and infor-
18 mation, including referrals to medical and men-
19 tal health care.

20 (D) Refer complaints to the appropriate
21 offices in the Department of State promptly in-
22 cluding—

23 (i) the Office of Civil Rights in in-
24 stances of harassment, discrimination, or
25 related retaliation; and

1 (ii) Bureau of Diplomatic Security in
2 instances of sexual assault or other com-
3 plaints with security clearance implica-
4 tions.

5 (E) For the purposes of receiving com-
6 plaints, operate secure, confidential means of
7 reporting 24 hours a day, including an elec-
8 tronic reporting system and an internationally
9 accessible hotline.

10 (F) Employ Employee Advocates to carry
11 out the duties of the Office and assist those fil-
12 ing or considering filing a complaint.

13 (G) If a victim chooses to file a complaint,
14 such Advocates shall assist the victim in pro-
15 viding information and support until an inves-
16 tigation is completed, and a final agency deci-
17 sion has been made.

18 (H) Provide assistance to complainants
19 without undue pressure from Department of
20 State leadership.

21 (I) Provide routine training to attorneys
22 and advocates on harassment, discrimination,
23 sexual assault, and related retaliation policies
24 and best practices for victim care.

1 (J) Track the stage of reporting, investiga-
2 tion, or disciplinary process a complaint is in.

3 (K) Conduct climate surveys, as specified
4 in section 306.

5 (3) ELECTRONIC REPORTING SYSTEM.—The
6 system established under this subsection shall—

7 (A) include an electronic reporting system
8 under which a complaint may be filed, in addi-
9 tion to a non-electronic system;

10 (B) maintain an electronic record of the
11 date and time at which any complaint is so
12 filed;

13 (C) ensure the security and confidentiality
14 of records; and

15 (D) allow the submission of confidential re-
16 ports that will not prompt individualized inves-
17 tigations, but shall be monitored by the Office
18 to identify trends and determine whether inves-
19 tigations should be undertaken by the Office of
20 Civil Rights.

21 (4) INTERNATIONAL HOTLINE.—The system es-
22 tablished under this subsection shall—

23 (A) include an international toll-free num-
24 ber accessible by all covered employees and
25 EFM both domestic and overseas;

1 (B) be staffed 24 hours day, 7 days a week
2 by Office of Employee Advocacy staff during
3 normal working hours, and by a rotating OEA
4 duty officer or contractor during non-working
5 hours;

6 (C) be entered by OEA staff into the elec-
7 tronic reporting system so that all reported
8 cases are captured in the system; and

9 (D) to the extent practicable, ensure access
10 to the hotline for non-English speakers.

11 (5) OVERSEAS POST REPORTING.—

12 (A) Each overseas post shall notify employ-
13 ees that they may use the electronic reporting
14 system or international hotline as established in
15 paragraphs (3) and (4), or report in person to
16 the Deputy Chief of Mission or other employees
17 designated as Office of Employee Advocacy Li-
18 aisons.

19 (B) The OEA Liaisons may include (but
20 are not limited to) the Equal Employment Op-
21 portunity Counselor, the Community Liaison
22 Officer, the Locally Employed Staff (LES)
23 Equal Employment Opportunity Officer Liai-
24 son, or other staff to be selected by the Deputy
25 Chief of Mission.

1 (C) OEA Liaisons should be provided with
2 educational materials to distribute as well as
3 training on the resources and services provided
4 by the Office of Employee Advocacy, and on the
5 various means of communications that employ-
6 ees can use to reach out to OEA Employee Ad-
7 vocates.

8 (D) The Chief of Mission shall not be noti-
9 fied of the identity of the complainant without
10 the express permission of the complainant.

11 (6) APPLICATION.—This section shall not be
12 construed to preclude, limit, or otherwise effect the
13 rights of a covered employee to file a complaint,
14 based on the alleged harassment, discrimination,
15 sexual assault, and related retaliation that gave rise
16 to the complaint under this subsection, under any
17 other provision of law. This section shall not be con-
18 strued to preclude, limit, or otherwise affect the
19 rights of a covered employee to file a complaint with
20 another office.

21 (7) CONSULTATION; TECHNICAL ASSISTANCE.—
22 In developing the Office of Employee Advocacy, the
23 Department of State shall receive technical assist-
24 ance and consultation from organizations and other
25 professionals with expertise in victim-centered, trau-

1 ma-informed care, individuals who have experienced
2 harassment, discrimination, or retaliation at the De-
3 partment of State, the Equal Employment Oppor-
4 tunity Commission, and other relevant executive
5 agencies.

6 (c) DUTIES OF OFFICE OF CIVIL RIGHTS.—

7 (1) IN GENERAL.—Upon the referral of a com-
8 plaint from the Office of Employee Advocacy to the
9 Office of Civil Rights, the Office of Civil Rights
10 shall—

11 (A) take steps for the initial intake and re-
12 cording of the complaint, including providing
13 the covered employee who filed the complaint
14 with all relevant information with respect to the
15 rights of the covered employee under this title
16 and other relevant law; and

17 (B) notify the accused covered employee—

18 (i) of the complaint and the right of
19 that covered employee to participate in any
20 mediation, hearing, or civil action under
21 this section and other applicable law with
22 respect to the complaint;

23 (ii) that retention of documents and
24 evidence is crucial, and any unauthorized
25 destruction of documents and evidence may

1 result in additional investigations and po-
2 tential punishment; and

3 (iii) that there is a prohibition on re-
4 tiation against the covered employee who
5 filed the complaint and may be investiga-
6 tion and discipline for retaliation.

7 (2) INVESTIGATION OF COMPLAINTS.—

8 (A) INVESTIGATION.—The Office of Civil
9 Rights shall investigate all complaints in a
10 prompt, thorough, and impartial manner. The
11 Department shall update the Foreign Affairs
12 Manual to enable Office of Civil Rights inves-
13 tigators to travel to the foreign and domestic
14 sites of received complaints in which widespread
15 or pervasive sexual harassment is reported. The
16 Under Secretary for Management shall author-
17 ize sufficient funding for Office of Civil Rights
18 attorney advisors to conduct this travel as nec-
19 essary.

20 (B) INVESTIGATION OF CHIEF OF MIS-
21 SION.—If the Chief of Mission at an overseas
22 post is named as the alleged perpetrator in a
23 complaint, the Office of Civil Rights must no-
24 tify the Secretary of State. The Office of Civil

1 Rights must prioritize the investigation of such
2 cases.

3 (C) REPORT.—Not later than 120 days
4 after a complaint is filed under this section and
5 transmitted to the Office of Civil Rights, the
6 Office of Civil Rights shall conclude the inves-
7 tigation regarding that complaint. On the date
8 the investigation is so concluded, the Office of
9 Civil Rights shall transmit a written report on
10 the results of the investigation to—

11 (i) the covered employee who filed the
12 complaint;

13 (ii) the accused employee and his or
14 her employing office; and

15 (iii) Global Talent Management.

16 (D) EXTENSION.—The Office of Civil
17 Rights may extend the 120 day deadline in sub-
18 paragraph (A) if the Office of Civil Rights de-
19 termines that additional time is necessary to
20 conclude the investigation. The Office of Civil
21 Rights shall notify the Committee on Foreign
22 Relations of the Senate and the Committee on
23 Foreign Affairs of the House of Representatives
24 of the extension and provide justification for
25 each extension of 30 days.

1 (E) TRANSMISSION TO GLOBAL TALENT
2 MANAGEMENT.—After the Office of Civil Rights
3 concludes the investigation, it shall transmit a
4 report providing a summary of the facts with
5 all investigatory material including transcripts
6 of interviews and evidence to Global Talent
7 Management for consideration of disciplinary
8 action.

9 (F) TRANSMISSION TO SECRETARY OF
10 STATE.—Global Talent Management shall
11 transmit the investigatory report and any re-
12 sulting disciplinary actions to the Secretary of
13 State. Reports shall be transmitted to the Sec-
14 retary no less than quarterly.

15 (G) STAFFING.—If the number of com-
16 plaints received by the Office of Civil Rights ex-
17 ceeds its capacity to respond within 120 days to
18 the majority of cases, the Director of the Office
19 of Civil Rights and Under Secretary for Man-
20 agement shall authorize the hiring of additional
21 attorney advisors or other appropriate staff on
22 a temporary or permanent basis.

23 (H) RECORD RETENTION.—

24 (i) RECORD RETENTION.—Global Tal-
25 ent Management shall keep a record of in-

1 vestigations, hearings, and other pro-
2 ceedings conducted related to complaints of
3 harassment, discrimination, sexual assault,
4 or related retaliation.

5 (ii) PERSONNEL FILES.—Subsequent
6 disciplinary action taken by Global Talent
7 Management in response to the investiga-
8 tion and any EEO settlements or judge-
9 ments of harassment, discrimination, sex-
10 ual assault, or related retaliation shall be
11 documented and kept on file and accessible
12 to the Office of Civil Rights, Diplomatic
13 Security, security clearance investigators,
14 and Federal law enforcement officials.
15 Global Talent Management shall also en-
16 sure that a standalone document con-
17 taining a description of the offense and
18 disciplinary action taken, redacted of any
19 personally identifiable information, shall be
20 provided to and reviewed by all subsequent
21 Department Foreign Service and Civil
22 Service Selection and promotion Boards, to
23 include a permanent notation in the em-
24 ployee's file, including annual performance
25 assessments or employee evaluations.

1 (d) DISCIPLINARY ACTION.—

2 (1) SUSPENSION.—Section 610(c)(1) of the
3 Foreign Service Act of 1980 (22 U.S.C. 4010(c)(1))
4 is amended to read as follows:

5 “(1) In order to promote the efficiency of the
6 Service, the Secretary may suspend a member of the
7 Foreign Service without pay when the member’s se-
8 curity clearance is suspended or when there is rea-
9 sonable cause to believe that the member has com-
10 mitted a crime for which a sentence of imprisonment
11 may be imposed or if the member has a history of
12 harassment or Equal Employment Opportunity vio-
13 lations documented and substantiated by Global Tal-
14 ent Management.”.

15 (2) SEPARATION FOR CAUSE.—Section
16 610(a)(1) of the Foreign Service Act of 1980 (22
17 U.S.C. 4010(a)(1)) is amended to read as follows:

18 “(1) The Secretary may decide to separate any
19 member from the Service for such cause as will pro-
20 mote the efficiency of the service, to include findings
21 by Diplomatic Security that the member has en-
22 gaged in criminal misconduct, to include murder,
23 rape, or other sexual assault.”.

24 (3) UPDATE TO MANUAL.—Global Talent Man-
25 agement shall update the Foreign Affairs Manual’s

1 “Grounds for Disciplinary Action” and “List of Dis-
2 ciplinary Offenses and Penalties” to reflect the
3 amendments made by this subsection and commu-
4 nicate such amendments to staff via Department
5 Notices.

6 (e) PENALTIES.—Consistent with other civil service
7 and Foreign Service laws and regulations, the Secretary
8 of State shall develop a policy of applying penalties to any
9 covered employee who is determined to have sexual as-
10 sault, harassment, discrimination, or related retaliation
11 complaints against him or her substantiated. Such pen-
12 alties shall include additional mandatory training, suspen-
13 sion with or without pay, demotion in rank, or removal
14 for a period of the Secretary’s choosing.

15 (f) ADDITIONAL DOCUMENTATION.—Global Talent
16 Management shall ensure, to the extent practicable and
17 appropriate, that any third country national or any na-
18 tional of a host country that was assigned to work at a
19 diplomatic facility or employee residence who harasses,
20 discriminates against, sexually assaults, or retaliates
21 against a covered employee is—

22 (1) documented in an appropriate site history
23 file and in a global tracking and recording system,
24 to be coordinated by Global Talent Management;

1 (2) taken into account with respect to deter-
2 minations regarding placements of third country na-
3 tionals or any national of a host country at such
4 post and the provision of any funds or other benefit
5 by the Department; and

6 (3) any covered employee who filed the com-
7 plaint may opt out of having personally identifiable
8 information included in such a report.

9 (g) CASE REVIEW.—

10 (1) IN GENERAL.—The Office of Civil Rights
11 and Diplomatic Security shall conduct case reviews
12 of a statistically significant number of cases on a
13 quarterly basis to determine if proper procedures
14 were followed in accordance with the harassment,
15 discrimination, sexual assault, and related retaliation
16 protocols and guidelines provided under this title
17 and other applicable laws.

18 (2) REPORTS TO CONGRESS.—An analysis of
19 such case reviews shall be annually reported to the
20 Committee on Homeland Security and Governmental
21 Affairs and the Committee on Foreign Relations of
22 the Senate and the Committee on Oversight and Re-
23 form and the Committee on Foreign Affairs of the
24 House of Representatives in the report required
25 under section 307(a).

1 **SEC. 304. SEXUAL ASSAULT PROTOCOL AND VICTIM CARE.**

2 (a) ESTABLISHMENT.—

3 (1) IN GENERAL.—In addition to the other re-
4 quirements of this title, not later than one year after
5 the date of the enactment of this Act, the Secretary
6 of State shall develop and implement comprehensive
7 sexual assault protocol and guidelines that conform
8 to best practices in the sexual assault field and are
9 applicable to all posts at which covered employees
10 serve.

11 (2) CONSULTATION.—In developing the proto-
12 cols and guidelines under paragraph (1), the Sec-
13 retary shall consult with and incorporate, as appro-
14 priate, the recommendations and views of experts in
15 the sexual assault prevention and response field, vic-
16 tims, victim advocates, and current or former cov-
17 ered employees who have reported sexual assault or
18 related retaliation.

19 (b) ELEMENTS.—The protocols and guidelines under
20 subsection (a)(1) shall include the following services with
21 respect to a covered employee who has made an allegation
22 of sexual assault:

23 (1) Protection of such employee's confiden-
24 tiality.

25 (2) Provision of a victim's advocate, as de-
26 scribed in subsection (e), who is able to refer the vic-

1 tim to supportive services and resources and explain
2 the victim's rights at no cost to the victim.

3 (3) Provision, within 72 hours of a report, of a
4 sexual assault forensic evidence kit to such em-
5 ployee, upon request.

6 (4) Provision of emergency health care to such
7 employee, including, to the greatest extent prac-
8 ticable, a choice of medical providers and a mecha-
9 nism for such employee to evaluate such provider.

10 (5) Provision of comprehensive health services,
11 to the greatest extent practicable, to include physical
12 and mental health services.

13 (6) Nothing in this subsection may be con-
14 strued to authorize the furnishing of any medical
15 benefit that the Secretary of State is not otherwise
16 authorized to reimburse for covered employees who
17 receive treatment for injury or disease proximately
18 caused by their service in the Department of State.

19 (c) NOTIFICATION.—Diplomatic Security Office of
20 Special Investigations shall be notified immediately of any
21 reported sexual assault against any covered employee. For
22 the purposes of maintaining comprehensive records of all
23 incidents of sexual misconduct at the Department of
24 State, if Diplomatic Security receives the initial report of

1 a sexual assault involving a covered employee, Diplomatic
2 Security shall notify the Office of Employee Advocacy.

3 (d) SEXUAL ASSAULT PREVENTION AND RESPONSE
4 VICTIM ADVOCATES.—

5 (1) IN GENERAL.—The Secretary of State shall
6 ensure the Victims' Resource Advocacy Program, as
7 defined in the Foreign Assistance Manual, includes,
8 in the competitive service in Diplomatic Security
9 within the Department of State, staff formally
10 trained to provide victim-centered, trauma-informed
11 care and advocacy for victims of sexual assault. (In
12 this subsection referred to as the "Advocates").

13 (2) DUTIES.—The Advocates shall—

14 (A) receive continuous training in victim
15 advocacy;

16 (B) assist the victim in navigating those
17 processes required to obtain care and services
18 needed; and

19 (C) offer trauma-informed care to victims,
20 referrals, and ongoing nonclinical support.

21 (3) LIMITATIONS.—The Advocates shall not
22 be—

23 (A) responsible for providing mental health
24 services or to act as an investigator; or

1 (B) placed under the Department's med-
2 ical offices or be responsible for providing phys-
3 ical health services.

4 (4) PLACEMENT.—The Secretary shall ensure
5 that Advocates are physically present at Department
6 headquarters, major domestic and international fa-
7 cilities and embassies, as determined by the Depart-
8 ment and with logistical consideration to allow for
9 expedient travel to Department facilities without Ad-
10 vocates.

11 (e) OVERSEAS POST.—

12 (1) IN GENERAL.—The Department shall serve
13 as the lead agency for reporting and responding to
14 harassment, discrimination, sexual assault, and re-
15 lated retaliation within an Embassy, Consulate, or
16 other overseas location (in this subsection referred to
17 as an “overseas post”), and shall make Advocates
18 and other resources available to victims of other
19 agencies who fall under Chief of Mission authority at
20 the overseas post.

21 (2) REFERRAL.—The Department shall refer
22 incident reporting to the appropriate agency for any
23 employees working under Chief of Mission authority
24 if the accused is not a covered employee of the De-
25 partment of State.

1 (3) CHIEF OF MISSION AUTHORITY.—If a cred-
2 ible allegation of harassment, discrimination, sexual
3 assault, or related retaliation is made by a covered
4 employee at an overseas post against a non-covered
5 employee serving under Chief of Mission authority,
6 including against an employee of another executive
7 agency or non-executive branch agencies operating
8 under memoranda of understanding, the Chief of
9 Mission may use all authorities at their disposal to
10 include revoking the non-covered employee’s permis-
11 sion to be in the country on official business.

12 (4) DIPLOMATIC SECURITY TRAINING.—Diplo-
13 matic Security shall ensure that individuals serving
14 as regional security officers in overseas posts are
15 trained in victim-centered, trauma-informed care
16 and sexual assault investigation techniques.

17 (f) SANE PROGRAM TRAINING.—The Bureau of Med-
18 ical Services within the Department of State shall ensure
19 that to the greatest extent practicable, Sexual Assault
20 Nurse Examiner trained staff shall be placed at Depart-
21 ment headquarters and major domestic and international
22 facilities and embassies.

1 **SEC. 305. RIGHTS OF EMPLOYEES HARASSED, DISCRIMI-**
2 **NATED AGAINST, RETALIATED AGAINST, OR**
3 **SEXUALLY ASSAULTED.**

4 (a) **RIGHT TO LEGAL COUNSEL.**—Any covered em-
5 ployee filing a complaint of harassment, discrimination,
6 sexual assault, or related retaliation may have access to
7 legal counsel as specified in section 303(b).

8 (b) **AVAILABILITY OF MEDIATION DURING HARASS-**
9 **MENT INVESTIGATIONS.**—

10 (1) **AVAILABILITY OF MEDIATION DURING IN-**
11 **VESTIGATION.**—During the complaint intake of a
12 covered employee's complaint under section 303—

13 (A) the Office of Civil Rights may inform
14 the covered employee of the availability of medi-
15 ation;

16 (B) the covered employee who filed the
17 complaint and the accused covered employee
18 may jointly file a request for mediation with the
19 Office of Civil Rights; and

20 (C) the covered employee who filed the
21 complaint and the accused employee may re-
22 quest the presence of an attorney or a victim
23 advocate in the mediation.

24 (2) **REQUIRING PARTIES TO BE SEPARATED**
25 **DURING MEDIATION AT REQUEST OF EMPLOYEE.**—
26 At the request of either party, the parties shall be

1 separated during any mediation proceeding under
2 this subsection.

3 (c) AVAILABILITY OF ALTERNATE WORK ASSIGN-
4 MENT OR PAID LEAVE OF ABSENCE DURING PENDENCY
5 OF PROCEDURES.—

6 (1) OPTIONS FOR EMPLOYEES.—

7 (A) EMERGENCY CURTAILMENT OF OVER-
8 SEAS ASSIGNMENT.—At the request of a cov-
9 ered employee who files a complaint of harass-
10 ment, discrimination, sexual assault, or related
11 retaliation, an employee may request emergency
12 curtailment of his or her tour of duty at no
13 penalty to their career progress and shall be re-
14 assigned. Such requests for emergency curtail-
15 ment shall be approved by the Secretary or
16 their designee, not post management, within 10
17 days. The Department shall develop a process
18 by which covered employees may request this
19 option in a manner which does not inadvert-
20 ently result in retaliation against the employee.

21 (B) ALTERNATE WORK ASSIGNMENT.—At
22 the request of a covered employee who files a
23 complaint, during the pendency of any of the
24 procedures available under this title for consid-
25 eration of the violation, the employing office

1 shall permit the covered employee to carry out
2 the employee's responsibilities from an alternate
3 location where such relocation would have the
4 effect of materially reducing interactions be-
5 tween the covered employee and any person al-
6 leged to have committed the violation, instead
7 of from a location of the employing office.

8 (C) EXCEPTION FOR WORK ASSIGNMENTS
9 REQUIRED TO BE CARRIED OUT ONSITE.—If, in
10 the determination of the covered employee's em-
11 ploying office, a covered employee who makes a
12 request under this subsection cannot carry out
13 the employee's responsibilities from an alternate
14 location or such relocation would not have the
15 effect described in subparagraph (B), the em-
16 ploying office may during the pendency of the
17 procedures described in subparagraph (B)—

- 18 (i) reassign the covered employee;
19 (ii) make another workplace adjust-
20 ment that would have the effect of reduc-
21 ing interactions between the covered em-
22 ployee and any person alleged to have com-
23 mitted the violation described in subpara-
24 graph (B); or
25 (iii) grant a paid leave of absence.

1 (D) ENSURING NO RETALIATION.—An em-
2 ploying office may not grant a covered employ-
3 ee’s request under this subsection in a manner
4 which would constitute retaliation in violation of
5 any provision of law, including any provision of
6 title 5, United States Code.

7 (E) NO IMPACT ON ANNUAL OR PERSONAL
8 LEAVE.—In granting leave for a paid leave of
9 absence under this section, an employing office
10 shall not require the covered employee to sub-
11 stitute, for that leave, any of the accrued paid
12 annual leave of the covered employee.

13 (F) USE OF DUTY HOURS.—An employee
14 may use up to 16 hours of duty hours to pre-
15 pare for the investigation and resolution of the
16 applicable complaint.

17 (2) EXCEPTION FOR ARRANGEMENTS SUBJECT
18 TO COLLECTIVE BARGAINING AGREEMENTS.—Para-
19 graph (1) does not apply to the extent that it is in-
20 consistent with the terms and conditions of any col-
21 lective bargaining agreement which is in effect with
22 respect to an employing office.

23 (3) PROTECTIONS.—A request under paragraph
24 (1) may not be granted or carried out in a retalia-
25 tory manner, including retaliation for whistleblowing

1 in violation of the provisions of title 5, United States
2 Code, or any other provision of law.

3 (d) EXIT INTERVIEWS.—Departing employees may
4 request the opportunity to be interviewed in person with
5 Global Talent Management or its designee to discuss the
6 circumstances of their departure and should be asked spe-
7 cifically about the prevalence of and incidents of harass-
8 ment, discrimination, sexual assault, and related retalia-
9 tion.

10 **SEC. 306. PROVISION OF CLIMATE SURVEYS.**

11 (a) DEFINITIONS.—In this section—

12 (1) the term “bureaus and offices of the De-
13 partment of State” includes the Foreign Service (as
14 that term is defined in section 102 of the Foreign
15 Service Act of 1980 (22 U.S.C. 3902));

16 (2) the terms “Department of State” and “De-
17 partment” include the Foreign Service; and

18 (3) the terms “employees and officials of the
19 Department of State” includes members of the Serv-
20 ice (as that term is defined in section 103 of the
21 Foreign Service Act of 1980 (22 U.S.C. 3903)).

22 (b) CLIMATE SURVEYS OF EMPLOYEES OF THE DE-
23 PARTMENT OF STATE.—

24 (1) REQUIREMENT TO CONDUCT SURVEYS.—

25 Not later than 180 days after the date of the enact-

1 ment of this Act and every 2 years thereafter, the
2 Office of Employee Advocacy within the Department
3 of State shall conduct a survey of covered employees
4 of the Department of State regarding harassment,
5 discrimination, sexual assault, and related retaliation
6 in Department of State employment, including a
7 survey of the following:

8 (A) The prevalence of perceived violations
9 by employees and officials of the Department of
10 State.

11 (B) The extent to which such violations
12 arise from harassment or discrimination, in-
13 cluding on the basis of sex, race, religion, na-
14 tional origin, disability, genetic information,
15 and other demographic characteristics.

16 (C) The presence of a hostile work environ-
17 ment in the agency.

18 (D) Whether employees are aware of their
19 rights and Department processes and proce-
20 dures, and able to effectively exercise the rights
21 and protections provided under this title and
22 other applicable laws, including the effectiveness
23 of the procedures applicable under this title and
24 other applicable laws for investigating and hold-
25 ing accountable violations.

1 (E) The extent to which employees feel
2 comfortable making use of the available report-
3 ing and resolution mechanisms.

4 (F) For employees who have used the re-
5 porting and resolution mechanisms, the extent
6 to which the process was accessible and fair.

7 (2) SPECIAL REQUIREMENTS.—

8 (A) IN GENERAL.—In each survey con-
9 ducted under this section, the Office of Em-
10 ployee Advocacy shall survey respondents re-
11 garding the prevalence of and attitudes regard-
12 ing harassment, discrimination, sexual assault,
13 and related retaliation in Department of State
14 employment.

15 (B) COMPILATION OF INFORMATION BY
16 VARIOUS CATEGORIES.—The Office of Em-
17 ployee Advocacy shall endeavor to compile infor-
18 mation from the survey on the basis of various
19 categories of demographic characteristics, in-
20 cluding gender, race and ethnicity, and age, so
21 that the survey will report on the rates of inci-
22 dents of harassment, discrimination, sexual as-
23 sault, and related retaliation affecting each
24 such demographic category. The provision of

1 such demographic information shall be vol-
2 untary.

3 (C) CONSULTATION; TECHNICAL ASSIST-
4 ANCE.—The Office of Employee Advocacy shall
5 develop the survey in consultation with offices
6 of the executive branch which currently conduct
7 similar surveys of their employees, including the
8 Sexual Assault Prevention and Response Office
9 of the Department of Defense, the Office of Vi-
10 olence Against Women of the Department of
11 Justice, and the Merit Systems Protection
12 Board. Additionally, in developing the survey,
13 the Office of Employee Advocacy shall enter
14 into agreement to receive technical assistance
15 from Workplaces Respond to Domestic and
16 Sexual Violence: A National Resource Center
17 (also known as “Workplaces Respond”), the
18 nonprofit nongovernmental entity described in
19 section of the Violence Against Women Act of
20 1994 (34 U.S.C. 12501).

21 (D) CONFIDENTIALITY.—The underlying
22 data of the climate surveys shall only be avail-
23 able to the Office of Employee Advocacy.

1 (3) METHODOLOGY.—The Office of Employee
2 Advocacy shall conduct each survey under this sec-
3 tion in accordance with the following:

4 (A) All responses to all portions of the sur-
5 vey shall be anonymous and confidential, and
6 each respondent shall be told throughout the
7 survey that all responses shall be anonymous
8 and confidential.

9 (B) The Office of Employee Advocacy shall
10 design the survey so that it will take no more
11 than 15 minutes to complete, and so that it
12 may be taken online through the use of both
13 stationary communication devices (such as
14 desktop computers) and portable communica-
15 tion devices (such as cell phones and tablets).

16 (C) The Office of Employee Advocacy shall
17 include in the survey a list of resources avail-
18 able to respondents who wish to get more infor-
19 mation about harassment, discrimination, sex-
20 ual assault, or related retaliation in Department
21 of State employment, including the services the
22 Department of State provides to individuals
23 who allege violations.

1 **SEC. 307. REPORTS TO CONGRESS, THE DEPARTMENT, AND**
2 **THE PUBLIC.**

3 (a) ANNUAL REPORT.—

4 (1) IN GENERAL.—Not later than one year
5 after the date of enactment, and annually thereafter,
6 the Secretary of State shall submit to the Committee
7 on Foreign Relations and Committee on Homeland
8 Security and Governmental Affairs of the Senate
9 and the Committee on Foreign Affairs and Com-
10 mittee on Oversight and Reform of the House of
11 Representatives a report on allegations of harass-
12 ment, discrimination, sexual assault, and related re-
13 tiation involving employees and officials of the De-
14 partment of State during the preceding year.

15 (2) AVAILABILITY.—Any report submitted
16 under paragraph (1) shall be made available to—

17 (A) Department personnel on internal
18 websites and town hall meetings; and

19 (B) to the general public on the Depart-
20 ment's public website.

21 (b) CONTENTS.—Each report under subsection (a)(1)
22 shall contain the following:

23 (1) The number of instances of harassment,
24 discrimination, sexual assault, and related retaliation
25 against employees and officials of the Department of
26 State, and the number of instances of harassment,

1 discrimination, sexual assault, and related retaliation
2 by employees and officials of the Department, that
3 were reported to the Department during the year
4 covered by such report, and the number of the cases
5 so reported that were substantiated. The types of
6 harassment and discrimination shall be
7 disaggregated by category.

8 (2) A summary of types of charges of, and the
9 disciplinary action taken, in each such resolved case,
10 with identifying information of both the accused and
11 complainant removed.

12 (3) The policies, procedures, and processes im-
13 plemented by the Secretary of State during the year
14 covered by each such report in response to incidents
15 of harassment, discrimination, sexual assault, and
16 related retaliation involving employees and officials
17 of the Department of State.

18 (4) A plan for the actions that are to be taken
19 in the year following the year covered by each such
20 report on the prevention of and response to harass-
21 ment, discrimination, sexual assault, and related re-
22 taliation involving employees and officials of the De-
23 partment of State.

24 (5) Details on the average caseload of Depart-
25 ment investigators handling harassment, discrimina-

1 tion, sexual assault, and related retaliation, to in-
2 clude the number of staff working, the average and
3 median time to investigate cases, and the number of
4 extensions requested by the Office of Civil Rights to
5 conduct investigations past the 120-day timeframe.

6 (6) Details on the average caseload of Office of
7 Employee Advocacy Employee Advocates and staff
8 attorneys.

9 (7) Details on cases of bystander intervention
10 where a bystander assisted to counter or report inci-
11 dents of harassment, discrimination, sexual assault,
12 and related retaliation.

13 (8) Detailed findings and underlying data of
14 the climate surveys required in section 306, includ-
15 ing an independent assessment by the Chief Advo-
16 cate, not subject to the Secretary of State, of the
17 current climate at the Department of State with re-
18 gard to harassment, discrimination, sexual assault,
19 and related retaliation.

20 (9) Frequency with which those alleging harass-
21 ment, discrimination, sexual assault, or related retal-
22 iation took advantage of supportive services, such as
23 medical care or counseling.

24 (c) ASSESSMENT.—Each report under paragraph (1)
25 for each year beginning with 2022 shall also include an

1 assessment by the Secretary of State of the implementa-
2 tion during the preceding fiscal year of the policies and
3 procedures under section 2(a) of the Department of State
4 on the prevention of and response to harassment, discrimi-
5 nation, sexual assault, and related retaliation involving
6 employees and officials of the Department in order to de-
7 termine the effectiveness of such policies and procedures
8 during such fiscal year in providing an appropriate re-
9 sponse to such harassment, discrimination, sexual assault,
10 and related retaliation.

11 (d) ASSESSMENT OF ADDITIONAL AUTHORITIES
12 NEEDED.—Not later than one year after the date of en-
13 actment of this Act, the Secretary of State shall submit
14 to Congress a proposal for such changes and legislation
15 as the Secretary considers necessary to enhance the capa-
16 bility of the Department of State to address matters relat-
17 ing to harassment, discrimination, sexual assault, and re-
18 lated retaliation involving covered employees. The report
19 shall include recommendations for additional appropria-
20 tions, as appropriate, to implement these changes.

21 **SEC. 308. REQUIRED TRAINING FOR DEPARTMENT PER-**
22 **SONNEL.**

23 (a) WHISTLEBLOWER PROTECTION TRAINING.—Not
24 later than one year after the enactment of this Act, and
25 annually thereafter, the Office of Civil Rights shall provide

1 to each covered employee of the Department of State
2 training regarding whistleblower disclosures and protec-
3 tions. Such training shall include instruction and an expla-
4 nation of the rights of such covered employee regarding
5 whistleblowing, including—

6 (1) each method established by law in which a
7 covered employee may file a whistleblower disclosure;

8 (2) the right of the covered employee to petition
9 Congress regarding a whistleblower disclosure; and

10 (3) the fact that the covered employee may not
11 be prosecuted or retaliated against for disclosing in-
12 formation to Congress, the Inspector General, or any
13 other investigatory agency in instances where such
14 disclosure is permitted by law, rule, or regulation.

15 (b) BYSTANDER INTERVENTION TRAINING.—Not
16 later than one year after the enactment of this Act, and
17 annually thereafter, the Office of Civil Rights shall provide
18 to each covered employee of the Department of State
19 training regarding harassment, discrimination, sexual as-
20 sult, and related retaliation, including—

21 (1) describing what such conduct entails;

22 (2) identifying the types of conduct that serve
23 as grounds to report or intervene;

1 (3) training on relevant laws that may require
2 an officer or employee to report or intervene in in-
3 stances of such conduct;

4 (4) reporting and intervening protocols and
5 strategies for such conduct;

6 (5) specific training for covered employees who
7 process allegations of such conduct against other
8 covered employees; and

9 (6) such training must be developed based on
10 consultation with organizations with expertise in
11 trauma-informed care, effective strategies in preven-
12 tion and response, and healthy workplace culture.

13 (c) SUPERVISOR TRAINING.—Not later than one year
14 after the enactment of this Act, and annually thereafter,
15 the Office of Civil Rights shall provide and institute man-
16 datory training on responding to complaints of harass-
17 ment, discrimination, sexual assault, and related retalia-
18 tion to each covered employee of the Department of State
19 who is a supervisor. Such training must be developed
20 based on consultation with organizations with expertise in
21 trauma-informed care, effective strategies in prevention
22 and response, and healthy workplace culture.

23 (d) EXECUTIVE LEADERSHIP TRAINING.—Not later
24 than one year after the enactment of this Act, and annu-
25 ally thereafter, the Office of Civil Rights shall provide and

1 institute mandatory training for each covered employee
2 serving in an executive leadership role, including Chiefs
3 of Mission. The training shall emphasize the statutory re-
4 quirements for reporting and responding to complaints of
5 harassment, discrimination, sexual assault, and related re-
6 taliation, including—

7 (1) understanding the damage and harm har-
8 assment, discrimination, sexual assault, and related
9 retaliation do to the employee and the organization;

10 (2) senior leadership’s responsibility and role to
11 create and foster a work environment free from har-
12 assment, discrimination, sexual assault, and related
13 retaliation; and

14 (3) such training must be developed based on
15 consultation with organizations with expertise in
16 trauma-informed care, effective strategies in preven-
17 tion and response, and healthy workplace culture.

18 (e) POLICIES AND PROCEDURES.—Not later than one
19 year after the enactment of this Act, and annually there-
20 after, the Office of Civil Rights shall provide to each cov-
21 ered employee of the Department of State training on the
22 policies and procedures on harassment, discrimination,
23 sexual assault, and related retaliation applicable by oper-
24 ation of section 302. Employees should receive this train-
25 ing within 30 days of entering on duty. Such training

1 must be developed based on consultation with organiza-
2 tions with expertise in trauma-informed care, effective
3 strategies in prevention and response, and healthy work-
4 place culture.

5 (f) **MANAGER’S TOOLKIT.**—The Secretary of State
6 shall establish resources, to be referred to as a “Manager’s
7 Toolkit”, to aid supervisors in understanding rights, re-
8 sponsibilities, and penalties associated with conduct of
9 harassment, discrimination, sexual assault, and related re-
10 taliation.

11 (g) **EQUAL EMPLOYMENT OPPORTUNITY COUNSELOR**
12 **TRAINING.**—The Office of Civil Rights shall revise the 32
13 hours of training provided to Equal Employment Oppor-
14 tunity Counselors to include the resources and responsibil-
15 ities of the Office of Employee Advocacy, as well as the
16 various means of communication available to employees to
17 relay their complaints to OEA.

18 **SEC. 309. HIRING, VETTING, AND PROMOTION.**

19 (a) **IN GENERAL.**—The Secretary of State, in con-
20 sultation with relevant agencies, shall ensure that ques-
21 tions relating to harassment, discrimination, sexual as-
22 sault, and related retaliation complaints are included in
23 any background investigation with respect to a security
24 clearance or access determination and vetting of any cov-
25 ered employee.

1 (b) REQUIREMENTS FOR APPOINTMENT.—Consistent
2 with the civil service and Foreign Service laws and regula-
3 tions, the Secretary of State shall ensure that a back-
4 ground investigation on any potential sexual assault is
5 conducted before an individual is appointed to a position
6 within the Department.

7 (c) REQUIREMENTS FOR PROMOTION INTO THE SEN-
8 IOR FOREIGN SERVICE OR SENIOR EXECUTIVE SERV-
9 ICE.—The Secretary of State shall ensure that potential
10 candidates are vetted for their history of promoting a work
11 environment free from harassment and discrimination.
12 Promotion boards shall take into account whether can-
13 didates have a history of offenses that occurred under
14 their leadership, regardless of whether the candidate was
15 named an offender or not.

16 (d) PROMOTION POLICY OBJECTIVES.—Consistent
17 with the civil service and Foreign Service laws and regula-
18 tions, the Secretary of State shall ensure that promotion
19 precepts and selection panels reward officers who have vol-
20 unteered to serve as Equal Employment Opportunity
21 Counselors, and that documentation of the precepts em-
22 phasize that counseling experience is to be viewed as valu-
23 able experience preparing officers to perform in senior-
24 level positions with respect to the leadership, management,
25 and interpersonal skills precepts.

1 **SEC. 310. NONDISCLOSURE AND NONDISPARAGEMENT**
2 **AGREEMENTS.**

3 (a) DEFINITIONS.—In this section—

4 (1) EMPLOYEE.—The term “employee” means
5 any individual subject to section 717 of the Civil
6 Rights Act of 1964 (42 U.S.C. 2000e–16), section
7 411(c) of title 3, United States Code, or section
8 101(a)(3) of the Congressional Accountability Act of
9 1995.

10 (2) EMPLOYER.—The term “employer” means
11 any employing office referred to in section
12 1301(a)(9) of title 2, United States Code, or section
13 411(c)(2) of title 3, United States Code, or depart-
14 ment, agency, or unit referred to in subsection (a)
15 of section 717 of the Civil Rights Act of 1964 (42
16 U.S.C. 2000e–16).

17 (3) NONDISCLOSURE CLAUSE.—The term “non-
18 disclosure clause” means a provision in a contract or
19 agreement establishing that one or more parties to
20 the contract or agreement agrees not to disclose in-
21 formation covered by the terms and conditions of the
22 contract or agreement.

23 (4) NONDISPARAGEMENT CLAUSE.—The term
24 “nondisparagement clause” means a provision in a
25 contract or agreement requiring one or more parties

1 to the contract or agreement not to make negative
2 statements about another such party.

3 (b) UNLAWFUL PRACTICES.—

4 (1) IN GENERAL.—It shall be an unlawful prac-
5 tice for an employer to enter into a contract or
6 agreement with an employee, as a condition of em-
7 ployment, promotion, compensation, benefits, or
8 change in employment status, or as a term, condi-
9 tion, or privilege of employment, if that contract or
10 agreement contains a nondisparagement clause or
11 nondisclosure clause that covers prohibited discrimi-
12 nation or harassment in employment or contracting,
13 or retaliation for reporting, resisting, opposing, or
14 assisting in the investigation of such discrimination
15 or harassment.

16 (2) ENFORCEMENT.—Notwithstanding any
17 other provision of law, it shall be an unlawful prac-
18 tice for an employer to enforce or attempt to enforce
19 a nondisclosure or nondisparagement clause that
20 covers prohibited discrimination or harassment in
21 employment, or retaliation for reporting, resisting,
22 opposing, or assisting in the investigation of such
23 discrimination or harassment. An employer's en-
24 forcement or attempts to enforce such a nondisclo-

1 sure agreement against an employee shall be deter-
2 mined to be prohibited retaliation.

3 (3) SETTLEMENT OR SEPARATION AGREE-
4 MENTS.—

5 (A) IN GENERAL.—The provisions of para-
6 graphs (1) and (2) do not apply to a nondispar-
7 agement clause or nondisclosure clause con-
8 tained in a settlement agreement or separation
9 agreement that resolves legal claims or disputes
10 if—

11 (i) such legal claims accrued or such
12 disputes arose before the settlement agree-
13 ment or separation agreement was exe-
14 cuted;

15 (ii) the clause involved is mutually
16 agreed upon by and mutually benefits
17 both—

18 (I) the employer, as the case may
19 be; and

20 (II) the employee;

21 (iii) the employee's agreement to such
22 clause is knowing and voluntary, as de-
23 scribed in subparagraph (C); and

24 (iv) the settlement agreement or sepa-
25 ration agreement expressly states that the

1 agreement involved does not prohibit, pre-
2 vent, or otherwise restrict a worker from—

3 (I) reporting the allegations un-
4 derlying those settled claims to the
5 Equal Employment Opportunity Com-
6 mission, any other Federal, State, or
7 local agency with the authority to en-
8 force laws (including regulations) that
9 prohibit discrimination or harassment
10 in employment, as the case may be, or
11 law enforcement;

12 (II) testifying at, assisting, or
13 participating in an investigation or
14 proceeding conducted by the Equal
15 Employment Opportunity Commis-
16 sion, any other Federal, State, or local
17 agency with the authority to enforce
18 laws (including regulations) that pro-
19 hibit discrimination or harassment in
20 employment, as the case may be, or
21 law enforcement; or

22 (III) testifying in a hearing or
23 trial or complying with a request for
24 discovery in relation to civil litigation.

1 (B) PROHIBITION ON SOLE BENEFIT.—For
2 purposes of this paragraph, it shall be an un-
3 lawful practice for an employer to unilaterally
4 include a nondisparagement clause or nondisclo-
5 sure clause that solely benefits the employer in
6 a separation or settlement agreement.

7 (C) KNOWING AND VOLUNTARY AGREE-
8 MENT.—For purposes of this paragraph, agree-
9 ment to a nondisparagement clause or non-
10 disclosure clause may not be considered know-
11 ing and voluntary unless at a minimum—

12 (i) the nondisparagement clause or
13 nondisclosure clause is written in a manner
14 designed to ensure that the employee un-
15 derstands the content of the clause in-
16 volved;

17 (ii) the nondisparagement clause or
18 nondisclosure clause is included only in ex-
19 change for consideration of value provided
20 to the employee, in addition to anything of
21 value to which the employee is already en-
22 titled;

23 (iii) the nondisparagement clause or
24 nondisclosure clause does not apply to any
25 rights or claims that arise after the date

1 the settlement or separation agreement is
2 executed;

3 (iv) the employee is advised in writing
4 to consult with an attorney prior to agree-
5 ing to such an agreement that includes a
6 nondisparagement clause or nondisclosure
7 clause;

8 (v) the employee is given a period of
9 at least 21 days to consider any proposal
10 for a settlement or separation agreement
11 that includes a nondisparagement clause or
12 nondisclosure clause; and

13 (vi) the settlement or separation
14 agreement provides that for a period of at
15 least 7 days following the execution of such
16 agreement the employee may revoke the
17 agreement, and the agreement shall not be-
18 come effective or enforceable until the rev-
19 ocation period has expired.

20 (D) BURDEN OF PROOF.—In any dispute
21 that may arise over whether any of the require-
22 ments of subparagraph (A) have been met, the
23 party asserting the validity of an agreement
24 shall have the burden of proving that the re-
25 quirements of subparagraph (A) have been met.

1 (E) PARTICIPATION IN INVESTIGATIONS OR
2 PROCEEDINGS.—No nondisparagement clause
3 or nondisclosure clause may affect the ability of
4 an employee to testify at, assist, or participate
5 in an investigation or proceeding conducted by
6 the Equal Employment Opportunity Commis-
7 sion, any Federal, State, or local agency with
8 the authority to enforce laws (including regula-
9 tions) that prohibit discrimination in employ-
10 ment, as the case may be, or a law enforcement
11 agency.

12 (F) PROHIBITION ON DAMAGES.—Under
13 no circumstances shall an employee be required
14 to pay damages for breach of a nondisparage-
15 ment clause or nondisclosure clause permitted
16 by this paragraph in excess of an amount equal
17 to the consideration of value provided to the
18 worker in exchange for the workers' agreement
19 to the nondisparagement clause or nondisclo-
20 sure clause.

21 (c) ENFORCEMENT.—

22 (1) ENFORCEMENT POWERS.—With respect to
23 the administration and enforcement of this section
24 in the case of a claim alleged by an employee against
25 an employer for a violation of this section—

1 (A) the Commission shall have the same
2 powers as the Commission has to administer
3 and enforce title VII of the Civil Rights Act of
4 1964 (42 U.S.C. 2000e et seq.);

5 (B) the Librarian of Congress shall have
6 the same powers as the Librarian of Congress
7 has to administer and enforce title VII of the
8 Civil Rights Act of 1964 (42 U.S.C. 2000e et
9 seq.) in the case of a claim alleged by an em-
10 ployee of the employer for a violation of such
11 title;

12 (C) the Board (as defined in section
13 101(a) of the Congressional Accountability Act
14 of 1995 (2 U.S.C. 1301(a))) shall have the
15 same powers as the Board has to administer
16 and enforce the Congressional Accountability
17 Act of 1995 (2 U.S.C. 1301 et seq.) in the case
18 of a claim alleged by an employee of the em-
19 ployer for a violation of section 201(a)(1) of
20 such Act (2 U.S.C. 1311(a)(1));

21 (D) the President, the Commission, and
22 the Merit Systems Protection Board shall have
23 the same powers as the President, the Commis-
24 sion, and the Board, respectively, to administer
25 and enforce chapter 5 of title 3, United States

1 Code, in the case of a claim alleged by an em-
2 ployee of the employer for a violation of section
3 411 of such title; and

4 (E) a court of the United States shall have
5 the same jurisdiction and powers as the court
6 has to enforce—

7 (i) title VII of the Civil Rights Act of
8 1964 (42 U.S.C. 2000e et seq.) in the case
9 of a claim alleged by an employee of the
10 employer for a violation of such title;

11 (ii) the Congressional Accountability
12 Act of 1995 (2 U.S.C. 1301 et seq.) in the
13 case of a claim alleged by an employee of
14 the employer for a violation of section
15 201(a)(1) of such Act (2 U.S.C.
16 1311(a)(1)); and

17 (iii) chapter 5 of title 3, United States
18 Code, in the case of a claim alleged by an
19 employee of the employer for a violation of
20 section 411 of such title.

21 (2) PROCEDURES AND REMEDIES.—The proce-
22 dures and remedies applicable to a claim alleged by
23 an employee against the employer for a violation of
24 this section are—

1 (A) the procedures and remedies applicable
2 for a violation of title VII of the Civil Rights
3 Act of 1964 (42 U.S.C. 2000e et seq.) in the
4 case of a claim alleged by an employee of the
5 employer for a violation of such title;

6 (B) the procedures and remedies applicable
7 for a violation of section 201(a)(1) of the Con-
8 gressional Accountability Act of 1995 (2 U.S.C.
9 1311(a)(1)) in the case of a claim alleged by an
10 employee of the employer for a violation of such
11 section; and

12 (C) the procedures and remedies applicable
13 for a violation of section 411 of title 3, United
14 States Code, in the case of a claim alleged by
15 an employee of the employer for a violation of
16 such section.

17 (d) RIGHT TO REPORT RESERVED.—Notwith-
18 standing signing (before, on, or after the effective date of
19 this Act) any nondisparagement clause or nondisclosure
20 clause, an employee retains—

21 (1) any right that person would otherwise have
22 had to report a concern about harassment, including
23 sexual harassment, in employment or another viola-
24 tion of the law to the Commission, another Federal
25 agency (including an office of the legislative or judi-

1 cial branch), a State or local fair employment prac-
2 tices agency or any other State or local agency, or
3 a law enforcement agency; and

4 (2) any right that person would otherwise have
5 had to bring an action in a court of the United
6 States.

7 (e) REGULATIONS.—

8 (1) IN GENERAL.—Except as provided in para-
9 graphs (2), (3), and (4), the Commission shall have
10 authority to issue regulations to carry out this sec-
11 tion.

12 (2) LIBRARIAN OF CONGRESS.—The Librarian
13 of Congress shall have authority to issue regulations
14 to carry out this section with respect to workers of
15 the Library of Congress.

16 (3) BOARD.—The Board referred to in sub-
17 section (c)(1)(C) shall have authority to issue regu-
18 lations to carry out this section, in accordance with
19 section 304 of the Congressional Accountability Act
20 of 1995 (2 U.S.C. 1384), with respect to employees
21 described in subsection (c)(1)(C).

22 (4) PRESIDENT.—The President shall have au-
23 thority to issue regulations to carry out this section
24 with respect to employees described in subsection
25 (c)(1)(E).

1 (f) REMEDIES.—Notwithstanding any other provision
2 of this title, in an action or administrative proceeding
3 against the United States for a violation of this section,
4 remedies (including remedies at law and in equity, and
5 interest) are available for the violation to the same extent
6 as the remedies are available for a violation of title VII
7 of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.)
8 by an employer, except that—

- 9 (1) punitive damages are not available; and
10 (2) compensatory damages are available to the
11 extent specified in section 1977A(b) of the Revised
12 Statutes (42 U.S.C. 1981a(b)).

13 **SEC. 311. SENSE OF CONGRESS ON SEXUAL HARASSMENT**
14 **AND ASSAULT PREVENTION AND ERADI-**
15 **CATION IN THE FOREIGN AFFAIRS WORK-**
16 **FORCE.**

17 It is the sense of Congress that the foreign affairs
18 workforce, including the United States Agency for Inter-
19 national Development, the Broadcasting Board of Gov-
20 ernors, the Peace Corps, the Development Finance Cor-
21 poration, and the Millennium Challenge Corporation,
22 should take significant steps to prevent and eradicate sex-
23 ual harassment and assault.