

AMENDMENT NO. \_\_\_\_\_ Calendar No. \_\_\_\_\_

Purpose: In the nature of a substitute.

IN THE SENATE OF THE UNITED STATES—111th Cong., 2d Sess.

**S. 372**

To amend chapter 23 of title 5, United States Code, to clarify the disclosures of information protected from prohibited personnel practices, require a statement in non-disclosure policies, forms, and agreements that such policies, forms, and agreements conform with certain disclosure protections, provide certain authority for the Special Counsel, and for other purposes.

Referred to the Committee on \_\_\_\_\_ and  
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT In the Nature of a Substitute intended to be  
proposed by \_\_\_\_\_

Viz:

- 1 Strike all after the enacting clause and insert the fol-
- 2 lowing:
- 3 **SECTION 1. SHORT TITLE.**
- 4 This Act may be cited as the “Whistleblower Protec-
- 5 tion Enhancement Act of 2010”.

1 **TITLE I—PROTECTION OF CER-**  
2 **TAIN DISCLOSURES OF IN-**  
3 **FORMATION BY FEDERAL EM-**  
4 **PLOYEES**

5 **SEC. 101. CLARIFICATION OF DISCLOSURES COVERED.**

6 (a) IN GENERAL.—Section 2302(b)(8) of title 5,  
7 United States Code, is amended—

8 (1) in subparagraph (A)(i)—

9 (A) by striking “a violation” and inserting  
10 “any violation”; and

11 (B) by adding “except for an alleged viola-  
12 tion that is a minor, inadvertent violation, and  
13 occurs during the conscientious carrying out of  
14 official duties,” after “regulation,”; and

15 (2) in subparagraph (B)(i)—

16 (A) by striking “a violation” and inserting  
17 “any violation (other than a violation of this  
18 section)”; and

19 (B) by adding “except for an alleged viola-  
20 tion that is a minor, inadvertent violation, and  
21 occurs during the conscientious carrying out of  
22 official duties,” after regulation,”.

23 (b) PROHIBITED PERSONNEL PRACTICES UNDER  
24 SECTION 2302(b)(9).—

1           (1) TECHNICAL AND CONFORMING AMEND-  
2           MENTS.—Title 5, United States Code, is amended in  
3           subsections (a)(3), (b)(4)(A), and (b)(4)(B)(i) of  
4           section 1214, in subsections (a), (e)(1), and (i) of  
5           section 1221, and in subsection (a)(2)(C)(i) of sec-  
6           tion 2302, by inserting “or section 2302(b)(9)  
7           (A)(i), (B), (C), or (D)” after “section 2302(b)(8)”  
8           or “(b)(8)” each place it appears.

9           (2) OTHER REFERENCES.—(A) Title 5, United  
10          States Code, is amended in subsection (b)(4)(B)(i)  
11          of section 1214 and in subsection (e)(1) of section  
12          1221, by inserting “or protected activity” after “dis-  
13          closure” each place it appears.

14          (B) Section 2302(b)(9) of title 5, United States  
15          Code, is amended—

16                 (i) by striking subparagraph (A) and insert-  
17                 ing the following:

18                         “(A) the exercise of any appeal, complaint,  
19                         or grievance right granted by any law, rule, or  
20                         regulation—

21                                 “(i) with regard to remedying a viola-  
22                                 tion of paragraph (8); or

23                                 “(ii) with regard to remedying a viola-  
24                                 tion of any other law, rule, or regulation;”;

25                                 and

1 (ii) in subparagraph (B), by inserting “(i)  
2 or (ii)” after “subparagraph (A)”.

3 (C) Section 2302 of title 5, United States Code,  
4 is amended by adding at the end the following:

5 “(f)(1) A disclosure shall not be excluded from sub-  
6 section (b)(8) because—

7 “(A) the disclosure was made to a person, in-  
8 cluding a supervisor, who participated in an activity  
9 that the employee or applicant reasonably believed to  
10 be covered by subsection (b)(8)(A)(ii);

11 “(B) the disclosure revealed information that  
12 had been previously disclosed;

13 “(C) of the employee’s or applicant’s motive for  
14 making the disclosure;

15 “(D) the disclosure was not made in writing;

16 “(E) the disclosure was made while the em-  
17 ployee was off duty; or

18 “(F) of the amount of time which has passed  
19 since the occurrence of the events described in the  
20 disclosure.

21 “(2) If a disclosure is made during the normal course  
22 of duties of an employee, the disclosure shall not be ex-  
23 cluded from subsection (b)(8) if any employee who has au-  
24 thority to take, direct others to take, recommend, or ap-  
25 prove any personnel action with respect to the employee

1 making the disclosure, took, failed to take, or threatened  
2 to take or fail to take a personnel action with respect to  
3 that employee in reprisal for the disclosure.”.

4 **SEC. 102. DEFINITIONAL AMENDMENTS.**

5 Section 2302(a)(2) of title 5, United States Code, is  
6 amended—

7 (1) in subparagraph (B)(ii), by striking “and”  
8 at the end;

9 (2) in subparagraph (C)(iii), by striking the pe-  
10 riod at the end and inserting “; and”; and

11 (3) by adding at the end the following:

12 “(D) ‘disclosure’ means a formal or informal  
13 communication or transmission, but does not include  
14 a communication concerning policy decisions that  
15 lawfully exercise discretionary authority unless the  
16 employee or applicant providing the disclosure rea-  
17 sonably believes that the disclosure evidences—

18 “(i) any violation of any law, rule, or regu-  
19 lation, except for an alleged violation that is a  
20 minor, inadvertent violation, and occurs during  
21 the conscientious carrying out of official duties;  
22 or

23 “(ii) gross mismanagement, a gross waste  
24 of funds, an abuse of authority, or a substantial  
25 and specific danger to public health or safety.”.

1 **SEC. 103. REBUTTABLE PRESUMPTION.**

2 Section 2302(b) of title 5, United States Code, is  
3 amended by amending the matter following paragraph  
4 (12) to read as follows:

5 “This subsection shall not be construed to authorize the  
6 withholding of information from Congress or the taking  
7 of any personnel action against an employee who discloses  
8 information to Congress. For purposes of paragraph (8),  
9 any presumption relating to the performance of a duty by  
10 an employee whose conduct is the subject of a disclosure  
11 as defined under subsection (a)(2)(D) may be rebutted by  
12 substantial evidence. For purposes of paragraph (8), a de-  
13 termination as to whether an employee or applicant rea-  
14 sonably believes that such employee or applicant has dis-  
15 closed information that evidences any violation of law,  
16 rule, regulation, gross mismanagement, a gross waste of  
17 funds, an abuse of authority, or a substantial and specific  
18 danger to public health or safety shall be made by deter-  
19 mining whether a disinterested observer with knowledge  
20 of the essential facts known to and readily ascertainable  
21 by the employee could reasonably conclude that the actions  
22 of the Government evidence such violations, mismanage-  
23 ment, waste, abuse, or danger.”

1 **SEC. 104. PERSONNEL ACTIONS AND PROHIBITED PER-**  
2 **SONNEL PRACTICES.**

3 (a) **PERSONNEL ACTION.**—Section 2302(a)(2)(A) of  
4 title 5, United States Code, is amended—

5 (1) in clause (x), by striking “and” after the  
6 semicolon; and

7 (2) by redesignating clause (xi) as clause (xii)  
8 and inserting after clause (x) the following:

9 “(xi) the implementation or enforce-  
10 ment of any nondisclosure policy, form, or  
11 agreement; and”.

12 (b) **PROHIBITED PERSONNEL PRACTICE.**—

13 (1) **IN GENERAL.**—Section 2302(b) of title 5,  
14 United States Code, is amended—

15 (A) in paragraph (11), by striking “or” at  
16 the end;

17 (B) in paragraph (12), by striking the pe-  
18 riod and inserting “; or”; and

19 (C) by inserting after paragraph (12) the  
20 following:

21 “(13) implement or enforce any nondisclosure  
22 policy, form, or agreement, if such policy, form, or  
23 agreement does not contain the following statement:  
24 ‘These provisions are consistent with and do not su-  
25 persede, conflict with, or otherwise alter the em-  
26 ployee obligations, rights, or liabilities created by

1       Executive Order 13526 (75 Fed. Reg. 707; relating  
2       to classified national security information), or any  
3       successor thereto; section 7211 of title 5, United  
4       States Code (governing disclosures to Congress);  
5       section 1034 of title 10, United States Code (gov-  
6       erning disclosure to Congress by members of the  
7       military); section 2302(b)(8) of title 5, United  
8       States Code (governing disclosures of illegality,  
9       waste, fraud, abuse, or public health or safety  
10      threats); the Intelligence Identities Protection Act of  
11      1982 (50 U.S.C. 421 et seq.) (governing disclosures  
12      that could expose confidential Government agents);  
13      and the statutes which protect against disclosures  
14      that could compromise national security, including  
15      sections 641, 793, 794, 798, and 952 of title 18,  
16      United States Code, and section 4(b) of the Subver-  
17      sive Activities Control Act of 1950 (50 U.S.C.  
18      783(b)). The definitions, requirements, obligations,  
19      rights, sanctions, and liabilities created by such Ex-  
20      ecutive order and such statutory provisions are in-  
21      corporated into this agreement and are control-  
22      ling.'”.

23               (2) NONDISCLOSURE POLICY, FORM, OR AGREE-  
24      MENT IN EFFECT BEFORE THE DATE OF ENACT-  
25      MENT.—A nondisclosure policy, form, or agreement



1 that was in effect before the date of enactment of  
2 this Act, but that does not contain the statement re-  
3 quired under section 2302(b)(13) of title 5, United  
4 States Code, (as added by this Act) for implementa-  
5 tion or enforcement—

6 (A) may be enforced with regard to a cur-  
7 rent employee if the agency gives such employee  
8 notice of the statement; and

9 (B) may continue to be enforced after the  
10 effective date of this Act with regard to a  
11 former employee if the agency posts notice of  
12 the statement on the agency website for the 1-  
13 year period following that effective date.

14 (c) RETALIATORY INVESTIGATIONS.—

15 (1) AGENCY INVESTIGATION.—Section 1214 of  
16 title 5, United States Code, is amended by adding  
17 at the end the following:

18 “(h) Any corrective action ordered under this section  
19 to correct a prohibited personnel practice may include fees,  
20 costs, or damages reasonably incurred due to an agency  
21 investigation of the employee, if such investigation was  
22 commenced, expanded, or extended in retaliation for the  
23 disclosure or protected activity that formed the basis of  
24 the corrective action.”

1           (2) DAMAGES.—Section 1221(g) of title 5,  
2           United States Code, is amended by adding at the  
3           end the following:

4           “(4) Any corrective action ordered under this  
5           section to correct a prohibited personnel practice  
6           may include fees, costs, or damages reasonably in-  
7           curred due to an agency investigation of the em-  
8           ployee, if such investigation was commenced, ex-  
9           panded, or extended in retaliation for the disclosure  
10          or protected activity that formed the basis of the  
11          corrective action.”.

12 **SEC. 105. EXCLUSION OF AGENCIES BY THE PRESIDENT.**

13          Section 2302(a)(2)(C) of title 5, United States Code,  
14          is amended by striking clause (ii) and inserting the fol-  
15          lowing:

16                 “(ii)(I) the Federal Bureau of Inves-  
17                 tigation, the Central Intelligence Agency,  
18                 the Defense Intelligence Agency, the Na-  
19                 tional Geospatial-Intelligence Agency, the  
20                 National Security Agency, the Office of the  
21                 Director of National Intelligence, and the  
22                 National Reconnaissance Office; and

23                 “(II) as determined by the President,  
24                 any executive agency or unit thereof the  
25                 principal function of which is the conduct

1 of foreign intelligence or counterintel-  
2 ligence activities, provided that the deter-  
3 mination be made prior to a personnel ac-  
4 tion; or”.

5 **SEC. 106. DISCIPLINARY ACTION.**

6 Section 1215(a)(3) of title 5, United States Code, is  
7 amended to read as follows:

8 “(3)(A) A final order of the Board may im-  
9 pose—

10 “(i) disciplinary action consisting of re-  
11 moval, reduction in grade, debarment from  
12 Federal employment for a period not to exceed  
13 5 years, suspension, or reprimand;

14 “(ii) an assessment of a civil penalty not to  
15 exceed \$1,000; or

16 “(iii) any combination of disciplinary ac-  
17 tions described under clause (i) and an assess-  
18 ment described under clause (ii).

19 “(B) In any case brought under paragraph (1)  
20 in which the Board finds that an employee has com-  
21 mitted a prohibited personnel practice under section  
22 2302(b)(8), or 2302(b)(9) (A)(i), (B), (C) , or (D),  
23 the Board may impose disciplinary action if the  
24 Board finds that the activity protected under section  
25 2302(b)(8), or 2302(b)(9) (A)(i), (B), (C), or (D)

1 was a significant motivating factor, even if other fac-  
2 tors also motivated the decision, for the employee's  
3 decision to take, fail to take, or threaten to take or  
4 fail to take a personnel action, unless that employee  
5 demonstrates, by preponderance of evidence, that  
6 the employee would have taken, failed to take, or  
7 threatened to take or fail to take the same personnel  
8 action, in the absence of such protected activity.”

9 **SEC. 107. REMEDIES.**

10 (a) **ATTORNEY FEES.**—Section 1204(m)(1) of title 5,  
11 United States Code, is amended by striking “agency in-  
12 volved” and inserting “agency where the prevailing party  
13 was employed or had applied for employment at the time  
14 of the events giving rise to the case”.

15 (b) **DAMAGES.**—Sections 1214(g)(2) and  
16 1221(g)(1)(A)(ii) of title 5, United States Code, are  
17 amended by striking all after “travel expenses,” and in-  
18 serting “any other reasonable and foreseeable consequen-  
19 tial damages, and compensatory damages (including inter-  
20 est, reasonable expert witness fees, and costs).” each place  
21 it appears.

22 **SEC. 108. JUDICIAL REVIEW.**

23 (a) **IN GENERAL.**—Section 7703(b) of title 5, United  
24 States Code, is amended by striking the matter preceding  
25 paragraph (2) and inserting the following:

1           “(b)(1)(A) Except as provided in subparagraph (B)  
2 and paragraph (2) of this subsection, a petition to review  
3 a final order or final decision of the Board shall be filed  
4 in the United States Court of Appeals for the Federal Cir-  
5 cuit. Notwithstanding any other provision of law, any peti-  
6 tion for review shall be filed within 60 days after the  
7 Board issues notice of the final order or decision of the  
8 Board.

9           “(B) During the 5-year period beginning on the effec-  
10 tive date of the Whistleblower Protection Enhancement  
11 Act of 2010, a petition to review a final order or final  
12 decision of the Board that raises no challenge to the  
13 Board’s disposition of allegations of a prohibited personnel  
14 practice described in section 2302(b) other than practices  
15 described in section 2302(b)(8), or 2302(b)(9) (A)(i), (B),  
16 (C), or (D) shall be filed in the United States Court of  
17 Appeals for the Federal Circuit or any court of appeals  
18 of competent jurisdiction as provided under paragraph  
19 (2).”.

20           (b) REVIEW OBTAINED BY OFFICE OF PERSONNEL  
21 MANAGEMENT.—Section 7703(d) of title 5, United States  
22 Code, is amended to read as follows:

23           “(d)(1) Except as provided under paragraph (2), this  
24 paragraph shall apply to any review obtained by the Direc-  
25 tor of the Office of Personnel Management. The Director

1 of the Office of Personnel Management may obtain review  
2 of any final order or decision of the Board by filing, within  
3 60 days after the Board issues notice of the final order  
4 or decision of the Board, a petition for judicial review in  
5 the United States Court of Appeals for the Federal Circuit  
6 if the Director determines, in the discretion of the Direc-  
7 tor, that the Board erred in interpreting a civil service  
8 law, rule, or regulation affecting personnel management  
9 and that the Board's decision will have a substantial im-  
10 pact on a civil service law, rule, regulation, or policy direc-  
11 tive. If the Director did not intervene in a matter before  
12 the Board, the Director may not petition for review of a  
13 Board decision under this section unless the Director first  
14 petitions the Board for a reconsideration of its decision,  
15 and such petition is denied. In addition to the named re-  
16 spondent, the Board and all other parties to the pro-  
17 ceedings before the Board shall have the right to appear  
18 in the proceeding before the Court of Appeals. The grant-  
19 ing of the petition for judicial review shall be at the discre-  
20 tion of the Court of Appeals.

21       “(2) During the 5-year period beginning on the effec-  
22 tive date of the Whistleblower Protection Enhancement  
23 Act of 2010, this paragraph shall apply to any review ob-  
24 tained by the Director of the Office of Personnel Manage-  
25 ment that raises no challenge to the Board's disposition

1 of allegations of a prohibited personnel practice described  
2 in section 2302(b) other than practices described in sec-  
3 tion 2302(b)(8), or 2302(b)(9) (A)(i), (B), (C), or (D).  
4 The Director of the Office of Personnel Management may  
5 obtain review of any final order or decision of the Board  
6 by filing, within 60 days after the Board issues notice of  
7 the final order or decision of the Board, a petition for judi-  
8 cial review in the United States Court of Appeals for the  
9 Federal Circuit or any court of appeals of competent juris-  
10 diction as provided under subsection (b)(2) if the Director  
11 determines, in the discretion of the Director, that the  
12 Board erred in interpreting a civil service law, rule, or reg-  
13 ulation affecting personnel management and that the  
14 Board's decision will have a substantial impact on a civil  
15 service law, rule, regulation, or policy directive. If the Di-  
16 rector did not intervene in a matter before the Board, the  
17 Director may not petition for review of a Board decision  
18 under this section unless the Director first petitions the  
19 Board for a reconsideration of its decision, and such peti-  
20 tion is denied. In addition to the named respondent, the  
21 Board and all other parties to the proceedings before the  
22 Board shall have the right to appear in the proceeding  
23 before the court of appeals. The granting of the petition  
24 for judicial review shall be at the discretion of the court  
25 of appeals.”.

1 **SEC. 109. PROHIBITED PERSONNEL PRACTICES AFFECTING**  
2 **THE TRANSPORTATION SECURITY ADMINIS-**  
3 **TRATION.**

4 (a) IN GENERAL.—Chapter 23 of title 5, United  
5 States Code, is amended—

6 (1) by redesignating sections 2304 and 2305 as  
7 sections 2305 and 2306, respectively; and

8 (2) by inserting after section 2303 the fol-  
9 lowing:

10 **“§ 2304. Prohibited personnel practices affecting the**  
11 **Transportation Security Administration**

12 “(a) IN GENERAL.—Notwithstanding any other pro-  
13 vision of law, any individual holding or applying for a posi-  
14 tion within the Transportation Security Administration  
15 shall be covered by—

16 “(1) the provisions of section 2302(b) (1), (8),  
17 and (9);

18 “(2) any provision of law implementing section  
19 2302(b) (1), (8), or (9) by providing any right or  
20 remedy available to an employee or applicant for em-  
21 ployment in the civil service; and

22 “(3) any rule or regulation prescribed under  
23 any provision of law referred to in paragraph (1) or  
24 (2).

25 “(b) RULE OF CONSTRUCTION.—Nothing in this sec-  
26 tion shall be construed to affect any rights, apart from



1 those described in subsection (a), to which an individual  
2 described in subsection (a) might otherwise be entitled  
3 under law.”.

4 (b) TECHNICAL AND CONFORMING AMENDMENT.—

5 The table of sections for chapter 23 of title 5, United  
6 States Code, is amended by striking the items relating to  
7 sections 2304 and 2305, respectively, and by inserting the  
8 following:

“2304. Prohibited personnel practices affecting the Transportation Security Ad-  
ministration.

“2305. Responsibility of the Government Accountability Office.

“2306. Coordination with certain other provisions of law.”.

9 (c) EFFECTIVE DATE.—The amendments made by  
10 this section shall take effect on the date of enactment of  
11 this section.

12 **SEC. 110. DISCLOSURE OF CENSORSHIP RELATED TO RE-**  
13 **SEARCH, ANALYSIS, OR TECHNICAL INFOR-**  
14 **MATION.**

15 (a) DEFINITIONS.—In this subsection—

16 (1) the term “agency” has the meaning given  
17 under section 2302(a)(2)(C) of title 5, United States  
18 Code;

19 (2) the term “applicant” means an applicant  
20 for a covered position;

21 (3) the term “censorship related to research,  
22 analysis, or technical information” means any effort

1 to distort, misrepresent, or suppress research, anal-  
2 ysis, or technical information;

3 (4) the term “covered position” has the mean-  
4 ing given under section 2302(a)(2)(B) of title 5,  
5 United States Code;

6 (5) the term “employee” means an employee in  
7 a covered position in an agency; and

8 (6) the term “disclosure” has the meaning  
9 given under section 2302(a)(2)(D) of title 5, United  
10 States Code.

11 (b) PROTECTED DISCLOSURE.—

12 (1) IN GENERAL.—Any disclosure of informa-  
13 tion by an employee or applicant for employment  
14 that the employee or applicant reasonably believes is  
15 evidence of censorship related to research, analysis,  
16 or technical information—

17 (A) shall come within the protections of  
18 section 2302(b)(8)(A) of title 5, United States  
19 Code, if—

20 (i) the employee or applicant reason-  
21 ably believes that the censorship related to  
22 research, analysis, or technical information  
23 is or will cause—

24 (I) any violation of law, rule, or  
25 regulation, except for an alleged viola-

1                   tion that is a minor, inadvertent viola-  
2                   tion, and occurs during the conscien-  
3                   tious carrying out of official duties; or

4                   (II) gross mismanagement, a  
5                   gross waste of funds, an abuse of au-  
6                   thority, or a substantial and specific  
7                   danger to public health or safety; and

8                   (ii) such disclosure is not specifically  
9                   prohibited by law or such information is  
10                  not specifically required by Executive order  
11                  to be kept classified in the interest of na-  
12                  tional defense or the conduct of foreign af-  
13                  fairs; and

14                  (B) shall come within the protections of  
15                  section 2302(b)(8)(B) of title 5, United States  
16                  Code, if—

17                  (i) the employee or applicant reason-  
18                  ably believes that the censorship related to  
19                  research, analysis, or technical information  
20                  is or will cause—

21                  (I) any violation of law, rule, or  
22                  regulation, except for an alleged viola-  
23                  tion that is a minor, inadvertent viola-  
24                  tion, and occurs during the conscien-  
25                  tious carrying out of official duties; or

1                   (II) gross mismanagement, a  
2                   gross waste of funds, an abuse of au-  
3                   thority, or a substantial and specific  
4                   danger to public health or safety; and  
5                   (ii) the disclosure is made to the Spe-  
6                   cial Counsel, or to the Inspector General of  
7                   an agency or another person designated by  
8                   the head of the agency to receive such dis-  
9                   closures, consistent with the protection of  
10                  sources and methods.

11               (2) DISCLOSURES NOT EXCLUDED.—A disclo-  
12               sure shall not be excluded from paragraph (1) for  
13               any reason described under section 2302(f)(1) or (2)  
14               of title 5, United States Code.

15               (3) RULE OF CONSTRUCTION.—Nothing in this  
16               section shall be construed to imply any limitation on  
17               the protections of employees and applicants afforded  
18               by any other provision of law, including protections  
19               with respect to any disclosure of information be-  
20               lieved to be evidence of censorship related to re-  
21               search, analysis, or technical information.

1 **SEC. 111. CLARIFICATION OF WHISTLEBLOWER RIGHTS**  
2 **FOR CRITICAL INFRASTRUCTURE INFORMA-**  
3 **TION.**

4 Section 214(c) of the Homeland Security Act of 2002  
5 (6 U.S.C. 133(c)) is amended by adding at the end the  
6 following: "For purposes of this section a permissible use  
7 of independently obtained information includes the disclo-  
8 sure of such information under section 2302(b)(8) of title  
9 5, United States Code."

10 **SEC. 112. ADVISING EMPLOYEES OF RIGHTS.**

11 Section 2302(c) of title 5, United States Code, is  
12 amended by inserting ", including how to make a lawful  
13 disclosure of information that is specifically required by  
14 law or Executive order to be kept classified in the interest  
15 of national defense or the conduct of foreign affairs to the  
16 Special Counsel, the Inspector General of an agency, Con-  
17 gress, or other agency employee designated to receive such  
18 disclosures" after "chapter 12 of this title".

19 **SEC. 113. SPECIAL COUNSEL AMICUS CURIAE APPEAR-**  
20 **ANCE.**

21 Section 1212 of title 5, United States Code, is  
22 amended by adding at the end the following:

23 "(h)(1) The Special Counsel is authorized to appear  
24 as amicus curiae in any action brought in a court of the  
25 United States related to any civil action brought in con-  
26 nection with section 2302(b) (8) or (9), or as otherwise

1 authorized by law. In any such action, the Special Counsel  
2 is authorized to present the views of the Special Counsel  
3 with respect to compliance with section 2302(b) (8) or (9)  
4 and the impact court decisions would have on the enforce-  
5 ment of such provisions of law.

6 “(2) A court of the United States shall grant the ap-  
7 plication of the Special Counsel to appear in any such ac-  
8 tion for the purposes described under subsection (a).”

9 **SEC. 114. SCOPE OF DUE PROCESS.**

10 (a) SPECIAL COUNSEL.—Section 1214(b)(4)(B)(ii) of  
11 title 5, United States Code, is amended by inserting “,  
12 after a finding that a protected disclosure was a contrib-  
13 uting factor,” after “ordered if”.

14 (b) INDIVIDUAL ACTION.—Section 1221(e)(2) of title  
15 5, United States Code, is amended by inserting “, after  
16 a finding that a protected disclosure was a contributing  
17 factor,” after “ordered if”.

18 **SEC. 115. NONDISCLOSURE POLICIES, FORMS, AND AGREE-**  
19 **MENTS.**

20 (a) IN GENERAL.—

21 (1) REQUIREMENT.—Each agreement in Stand-  
22 ard Forms 312 and 4414 of the Government and  
23 any other nondisclosure policy, form, or agreement  
24 of the Government shall contain the following state-  
25 ment: “These restrictions are consistent with and do

1 not supersede, conflict with, or otherwise alter the  
2 employee obligations, rights, or liabilities created by  
3 Executive Order 13526 (75 Fed. Reg. 707; relating  
4 to classified national security information) or any  
5 successor thereto; section 7211 of title 5, United  
6 States Code (governing disclosures to Congress);  
7 section 1034 of title 10, United States Code (gov-  
8 erning disclosure to Congress by members of the  
9 military); section 2302(b)(8) of title 5, United  
10 States Code (governing disclosures of illegality,  
11 waste, fraud, abuse, or public health or safety  
12 threats); the Intelligence Identities Protection Act of  
13 1982 (50 U.S.C. 421 et seq.) (governing disclosures  
14 that could expose confidential Government agents);  
15 and the statutes which protect against disclosure  
16 that may compromise the national security, includ-  
17 ing sections 641, 793, 794, 798, and 952 of title 18,  
18 United States Code, and section 4(b) of the Subver-  
19 sive Activities Act of 1950 (50 U.S.C. 783(b)). The  
20 definitions, requirements, obligations, rights, sanc-  
21 tions, and liabilities created by such Executive order  
22 and such statutory provisions are incorporated into  
23 this agreement and are controlling.”

24 (2) ENFORCEABILITY.—

1 (A) IN GENERAL.—Any nondisclosure pol-  
2 icy, form, or agreement described under para-  
3 graph (1) that does not contain the statement  
4 required under paragraph (1) may not be im-  
5 plemented or enforced to the extent such policy,  
6 form, or agreement is inconsistent with that  
7 statement.

8 (B) NONDISCLOSURE POLICY, FORM, OR  
9 AGREEMENT IN EFFECT BEFORE THE DATE OF  
10 ENACTMENT.—A nondisclosure policy, form, or  
11 agreement that was in effect before the date of  
12 enactment of this Act, but that does not con-  
13 tain the statement required under paragraph  
14 (1)—

15 (i) may be enforced with regard to a  
16 current employee if the agency gives such  
17 employee notice of the statement; and

18 (ii) may continue to be enforced after  
19 the effective date of this Act with regard  
20 to a former employee if the agency posts  
21 notice of the statement on the agency  
22 website for the 1-year period following that  
23 effective date.

24 (b) PERSONS OTHER THAN GOVERNMENT EMPLOY-  
25 EES.—Notwithstanding subsection (a), a nondisclosure



1 policy, form, or agreement that is to be executed by a per-  
2 son connected with the conduct of an intelligence or intel-  
3 ligence-related activity, other than an employee or officer  
4 of the United States Government, may contain provisions  
5 appropriate to the particular activity for which such docu-  
6 ment is to be used. Such policy, form, or agreement shall,  
7 at a minimum, require that the person will not disclose  
8 any classified information received in the course of such  
9 activity unless specifically authorized to do so by the  
10 United States Government. Such nondisclosure policy,  
11 form, or agreement shall also make it clear that such  
12 forms do not bar disclosures to Congress or to an author-  
13 ized official of an executive agency or the Department of  
14 Justice that are essential to reporting a substantial viola-  
15 tion of law, consistent with the protection of sources and  
16 methods.

17 **SEC. 116. REPORTING REQUIREMENTS.**

18 (a) GOVERNMENT ACCOUNTABILITY OFFICE.—

19 (1) REPORT.—Not later than 40 months after  
20 the date of enactment of this Act, the Comptroller  
21 General shall submit a report to the Committee on  
22 Homeland Security and Governmental Affairs of the  
23 Senate and the Committee on Oversight and Govern-  
24 ment Reform of the House of Representatives on the  
25 implementation of this title.

1           (2) CONTENTS.—The report under this para-  
2 graph shall include—

3                   (A) an analysis of any changes in the num-  
4 ber of cases filed with the United States Merit  
5 Systems Protection Board alleging violations of  
6 section 2302(b) (8) or (9) of title 5, United  
7 States Code, since the effective date of this Act;

8                   (B) the outcome of the cases described  
9 under subparagraph (A), including whether or  
10 not the United States Merit Systems Protection  
11 Board, the Federal Circuit Court of Appeals, or  
12 any other court determined the allegations to be  
13 frivolous or malicious;

14                   (C) an analysis of the outcome of cases de-  
15 scribed under subparagraph (A) that were de-  
16 cided by a United States District Court and the  
17 impact the process has on the Merit Systems  
18 Protection Board and the Federal court system;  
19 and

20                   (D) any other matter as determined by the  
21 Comptroller General.

22 (b) MERIT SYSTEMS PROTECTION BOARD.—

23           (1) IN GENERAL.—Each report submitted an-  
24 nually by the Merit Systems Protection Board under  
25 section 1116 of title 31, United States Code, shall,

1 with respect to the period covered by such report, in-  
2 clude as an addendum the following:

3 (A) Information relating to the outcome of  
4 cases decided during the applicable year of the  
5 report in which violations of section 2302(b) (8)  
6 or (9) (A)(i), (B)(i), (C), or (D) of title 5,  
7 United States Code, were alleged.

8 (B) The number of such cases filed in the  
9 regional and field offices, the number of peti-  
10 tions for review filed in such cases, and the out-  
11 comes of such cases.

12 (2) FIRST REPORT.—The first report described  
13 under paragraph (1) submitted after the date of en-  
14 actment of this Act shall include an addendum re-  
15 quired under that subparagraph that covers the pe-  
16 riod beginning on January 1, 2009 through the end  
17 of the fiscal year 2009.

18 **SEC. 117. ALTERNATIVE REVIEW.**

19 (a) IN GENERAL.—Section 1221 of title 5, United  
20 States Code, is amended by adding at the end the fol-  
21 lowing:

22 “(k)(1) In this subsection, the term ‘appropriate  
23 United States district court’, as used with respect to an  
24 alleged prohibited personnel practice, means the United  
25 States district court for the judicial district in which—

1           “(A) the prohibited personnel practice is alleged  
2           to have been committed; or

3           “(B) the employee, former employee, or appli-  
4           cant for employment allegedly affected by such prac-  
5           tice resides.

6           “(2)(A) An employee, former employee, or applicant  
7           for employment in any case to which paragraph (3) or (4)  
8           applies may file an action at law or equity for de novo  
9           review in the appropriate United States district court in  
10          accordance with this subsection.

11          “(B) Upon initiation of any action under subpara-  
12          graph (A), the Board shall stay any other claims of such  
13          employee, former employee, or applicant pending before  
14          the Board at that time which arise out of the same set  
15          of operative facts. Such claims shall be stayed pending  
16          completion of the action filed under subparagraph (A) be-  
17          fore the appropriate United States district court and any  
18          associated appellate review.

19          “(3) This paragraph applies in any case in which—

20                 “(A) an employee, former employee, or appli-  
21                 cant for employment—

22                         “(i) seeks corrective action from the Merit  
23                         Systems Protection Board under section  
24                         1221(a) based on an alleged prohibited per-  
25                         sonnel practice described in section 2302(b) (8)

1 or (9) (A)(i), (B), (C), or (D) for which the as-  
2 sociated personnel action is an action covered  
3 under section 7512 or 7542; or

4 “(ii) files an appeal under section 7701(a)  
5 alleging as an affirmative defense the commis-  
6 sion of a prohibited personnel practice described  
7 in section 2302(b) (8) or (9) (A)(i), (B), (C),  
8 or (D) for which the associated personnel action  
9 is an action covered under section 7512 or  
10 7542;

11 “(B) no final order or decision is issued by the  
12 Board within 270 days after the date on which a re-  
13 quest for that corrective action or appeal has been  
14 duly submitted; and

15 “(C) such employee, former employee, or appli-  
16 cant provides written notice to the Board of filing an  
17 action under this subsection before the filing of that  
18 action.

19 “(4) This paragraph applies in any case in which—

20 “(A) an employee, former employee, or applicant for  
21 employment —

22 “(i) seeks corrective action from the Merit Sys-  
23 tems Protection Board under section 1221(a) based  
24 on an alleged prohibited personnel practice described  
25 in section 2302(b) (8) or (9) (A)(i), (B), (C), or (D)

1 for which the associated personnel action is an ac-  
2 tion covered under section 7512 or 7542; or

3 “(ii) files an appeal under section 7701(a)(1)  
4 alleging as an affirmative defense the commission of  
5 a prohibited personnel practice described in section  
6 2302(b) (8) or (9) (A)(i), (B), (C), or (D) for which  
7 the associated personnel action is an action covered  
8 under section 7512 or 7542;

9 “(B)(i) within 30 days after the date on which the  
10 request for corrective action or appeal was duly submitted,  
11 such employee, former employee, or applicant for employ-  
12 ment files a motion requesting a certification consistent  
13 with subparagraph (C) to the Board, any administrative  
14 law judge appointed by the Board under section 3105 of  
15 this title and assigned to the case, or any employee of the  
16 Board designated by the Board and assigned to the case;  
17 and

18 “(ii) such employee has not previously filed a motion  
19 under clause (i) related to that request for corrective ac-  
20 tion; and

21 “(C) the Board, any administrative law judge ap-  
22 pointed by the Board under section 3105 of this title and  
23 assigned to the case, or any employee of the Board des-  
24 ignated by the Board and assigned to the case certifies  
25 that—

1           “(i) the Board is not likely to dispose of the  
2 case within 270 days after the date on which a re-  
3 quest for that corrective action has been duly sub-  
4 mitted;

5           “(ii) the case—

6                 “(I) consists of multiple claims;

7                 “(II) requires complex or extensive dis-  
8 covery;

9                 “(III) arises out of the same set of opera-  
10 tive facts as any civil action against the Govern-  
11 ment filed by the employee, former employee, or  
12 applicant pending in a Federal court; or

13                 “(IV) involves a novel question of law; or

14                 “(iii) under standards applicable to the review  
15 of motions to dismiss under rule 12(b)(6) of the  
16 Federal Rules of Civil Procedure, including rule  
17 12(d), the request for corrective action (including  
18 any allegations made with the motion under sub-  
19 paragraph (B)) would not be subject to dismissal.

20           “(5) The Board shall grant or deny any motion re-  
21 questing a certification described under paragraph (4)(ii)  
22 within 90 days after the submission of such motion and  
23 the Board may not issue a decision on the merits of a  
24 request for corrective action within 15 days after granting  
25 or denying a motion requesting certification.

1       “(6)(A) Any decision of the Board, any administra-  
2       tive law judge appointed by the Board under section 3105  
3       of this title and assigned to the case, or any employee of  
4       the Board designated by the Board and assigned to the  
5       case to grant or deny a certification described under para-  
6       graph (4)(ii) shall be reviewed on appeal of a final order  
7       or decision of the Board under section 7703 only if—

8               “(i) a motion requesting a certification was de-  
9       nied; and

10              “(ii) the reviewing court vacates the decision of  
11       the Board on the merits of the claim under the  
12       standards set forth in section 7703(c).

13       “(B) The decision to deny the certification shall be  
14       overturned by the reviewing court, and an order granting  
15       certification shall be issued by the reviewing court, if such  
16       decision is found to be arbitrary, capricious, or an abuse  
17       of discretion.

18       “(C) The reviewing court’s decision shall not be con-  
19       sidered evidence of any determination by the Board, any  
20       administrative law judge appointed by the Board under  
21       section 3105 of this title, or any employee of the Board  
22       designated by the Board on the merits of the underlying  
23       allegations during the course of any action at law or equity  
24       for de novo review in the appropriate United States dis-  
25       trict court in accordance with this subsection.



1 “(7) In any action filed under this subsection—

2 “(A) the district court shall have jurisdiction  
3 without regard to the amount in controversy;

4 “(B) at the request of either party, such action  
5 shall be tried by the court with a jury;

6 “(C) the court—

7 “(i) subject to clause (iii), shall apply the  
8 standards set forth in subsection (e); and

9 “(ii) may award any relief which the court  
10 considers appropriate under subsection (g), ex-  
11 cept—

12 “(I) relief for compensatory damages  
13 may not exceed \$300,000; and

14 “(II) relief may not include punitive  
15 damages; and

16 “(iii) notwithstanding subsection (e)(2),  
17 may not order relief if the agency demonstrates  
18 by a preponderance of the evidence that the  
19 agency would have taken the same personnel  
20 action in the absence of such disclosure; and

21 “(D) the Special Counsel may not represent the  
22 employee, former employee, or applicant for employ-  
23 ment.

24 “(8) An appeal from a final decision of a district  
25 court in an action under this subsection shall be taken

1 to the Court of Appeals for the Federal Circuit or any  
2 court of appeals of competent jurisdiction.

3 “(9) This subsection applies with respect to any ap-  
4 peal, petition, or other request for corrective action duly  
5 submitted to the Board, whether under section  
6 1214(b)(2), the preceding provisions of this section, sec-  
7 tion 7513(d), section 7701, or any otherwise applicable  
8 provisions of law, rule, or regulation.”.

9 (b) SUNSET.—

10 (1) IN GENERAL.—Except as provided under  
11 paragraph (2), the amendments made by this section  
12 shall cease to have effect 5 years after the effective  
13 date of this Act.

14 (2) PENDING CLAIMS.—The amendments made  
15 by this section shall continue to apply with respect  
16 to any claim pending before the Board on the last  
17 day of the 5-year period described under paragraph  
18 (1).

19 **SEC. 118. MERIT SYSTEMS PROTECTION BOARD SUMMARY**

20 **JUDGMENT.**

21 (a) IN GENERAL.—Section 1204(b) of title 5, United  
22 States Code, is amended—

23 (1) by redesignating paragraph (3) as para-  
24 graph (4);

1           (2) by inserting after paragraph (2) the fol-  
2           lowing:

3           “(3) With respect to a request for corrective ac-  
4           tion based on an alleged prohibited personnel prac-  
5           tice described in section 2302(b) (8) or (9) (A)(i),  
6           (B), (C), or (D) for which the associated personnel  
7           action is an action covered under section 7512 or  
8           7542, the Board, any administrative law judge ap-  
9           pointed by the Board under section 3105 of this  
10          title, or any employee of the Board designated by  
11          the Board may, with respect to any party, grant a  
12          motion for summary judgment when the Board or  
13          the administrative law judge determines that there is  
14          no genuine issue as to any material fact and that  
15          the moving party is entitled to a judgment as a mat-  
16          ter of law.”.

17          (b) SUNSET.—

18           (1) IN GENERAL.—Except as provided under  
19           paragraph (2), the amendments made by this section  
20           shall cease to have effect 5 years after the effective  
21           date of this Act.

22           (2) PENDING CLAIMS.—The amendments made  
23           by this section shall continue to apply with respect  
24           to any claim pending before the Board on the last

1 day of the 5-year period described under paragraph  
2 (1).

3 **SEC. 119. DISCLOSURES OF CLASSIFIED INFORMATION.**

4 (a) **PROHIBITED PERSONNEL PRACTICES.**—Section  
5 2302(b)(8) of title 5, United States Code, is amended—

6 (1) in subparagraph (A), by striking “or” after  
7 the semicolon;

8 (2) in subparagraph (B), by adding “or” after  
9 the semicolon; and

10 (3) by adding at the end the following:

11 “(C) any communication that complies  
12 with subsection (a)(1), (d), or (h) of section 8H  
13 of the Inspector General Act of 1978 (5 U.S.C.  
14 App);”.

15 (b) **INSPECTOR GENERAL ACT OF 1978.**—Section 8H  
16 of the Inspector General Act of 1978 (5 U.S.C. App) is  
17 amended—

18 (1) in subsection (a)(1), by adding at the end  
19 the following:

20 “(D) An employee of any agency, as that  
21 term is defined under section 2302(a)(2)(C) of  
22 title 5, United States Code, who intends to re-  
23 port to Congress a complaint or information  
24 with respect to an urgent concern may report  
25 the complaint or information to the Inspector

1           General (or designee) of the agency of which  
2           that employee is employed.”;

3           (2) in subsection (c), by striking “intelligence  
4           committees” and inserting “appropriate commit-  
5           tees”;

6           (3) in subsection (d)—

7                 (A) in paragraph (1), by striking “either  
8                 or both of the intelligence committees” and in-  
9                 serting “any of the appropriate committees”;  
10                and

11               (B) in paragraphs (2) and (3), by striking  
12                “intelligence committees” each place that term  
13                appears and inserting “appropriate commit-  
14                tees”;

15           (4) in subsection (h)—

16                (A) in paragraph (1)—

17                   (i) in subparagraph (A), by striking  
18                   “intelligence”; and

19                   (ii) in subparagraph (B), by inserting  
20                   “or an activity involving classified informa-  
21                   tion” after “an intelligence activity”; and

22                (B) by striking paragraph (2), and insert-  
23                ing the following:

24                “(2) The term ‘appropriate committees’ means  
25                the Permanent Select Committee on Intelligence of

1 the House of Representatives and the Select Com-  
2 mittee on Intelligence of the Senate, except that with  
3 respect to disclosures made by employees described  
4 in subsection (a)(1)(D), the term 'appropriate com-  
5 mittees' means the committees of appropriate juris-  
6 diction."

7 **SEC. 120. WHISTLEBLOWER PROTECTION OMBUDSMAN.**

8 (a) IN GENERAL.—Section 3 of the Inspector General  
9 Act of 1978 (5 U.S.C. App.) is amended by striking sub-  
10 section (d) and inserting the following:

11 "(d)(1) Each Inspector General shall, in accordance  
12 with applicable laws and regulations governing the civil  
13 service—

14 "(A) appoint an Assistant Inspector General for  
15 Auditing who shall have the responsibility for super-  
16 vising the performance of auditing activities relating  
17 to programs and operations of the establishment;

18 "(B) appoint an Assistant Inspector General for  
19 Investigations who shall have the responsibility for  
20 supervising the performance of investigative activi-  
21 ties relating to such programs and operations; and

22 "(C) designate a Whistleblower Protection Om-  
23 budsman who shall educate agency employees—

24 "(i) about prohibitions on retaliation for  
25 protected disclosures; and

1           “(ii) who have made or are contemplating  
2           making a protected disclosure about the rights  
3           and remedies against retaliation for protected  
4           disclosures.

5           “(2) The Whistleblower Protection Ombudsman shall  
6           not act as a legal representative, agent, or advocate of the  
7           employee or former employee.

8           “(3) For the purposes of this section, the requirement  
9           of the designation of a Whistleblower Protection Ombuds-  
10          man under paragraph (1)(C) shall not apply to—

11           “(A) any agency that is an element of the intel-  
12          ligence community (as defined in section 3(4) of the  
13          National Security Act of 1947 (50 U.S.C. 401a(4)));  
14          or

15           “(B) as determined by the President, any exec-  
16          utive agency or unit thereof the principal function of  
17          which is the conduct of foreign intelligence or  
18          counter intelligence activities.”.

19          (b) TECHNICAL AND CONFORMING AMENDMENT.—  
20          Section 8D(j) of the Inspector General Act of 1978 (5  
21          U.S.C. App.) is amended—

22           (1) by striking “section 3(d)(1)” and inserting  
23          “section 3(d)(1)(A)”; and

24           (2) by striking “section 3(d)(2)” and inserting  
25          “section 3(d)(1)(B)”.

1 (c) SUNSET.—

2 (1) IN GENERAL.—The amendments made by  
3 this section shall cease to have effect on the date  
4 that is 5 years after the date of enactment of this  
5 Act.

6 (2) RETURN TO PRIOR AUTHORITY.—Upon the  
7 date described in paragraph (1), section 3(d) and  
8 section 8D(j) of the Inspector General Act of 1978  
9 (5 U.S.C. App.) shall read as such sections read on  
10 the day before the date of enactment of this Act.

11 **TITLE II—INTELLIGENCE COM-**  
12 **MUNITY WHISTLEBLOWER**  
13 **PROTECTIONS**

14 **SEC. 201. PROTECTION OF INTELLIGENCE COMMUNITY**  
15 **WHISTLEBLOWERS.**

16 (a) IN GENERAL.—Chapter 23 of title 5, United  
17 States Code, is amended by inserting after section 2303  
18 the following:

19 **“§ 2303A. Prohibited personnel practices in the intel-**  
20 **ligence community**

21 “(a) DEFINITIONS.—In this section—

22 “(1) the term ‘agency’ means an executive de-  
23 partment or independent establishment, as defined  
24 under sections 101 and 104, that contains an intel-



1       ligence community element, except the Federal Bu-  
2       reau of Investigation;

3               “(2) the term ‘intelligence community ele-  
4       ment’—

5               “(A) means—

6                       “(i) the Central Intelligence Agency,  
7                       the Defense Intelligence Agency, the Na-  
8                       tional Geospatial-Intelligence Agency, the  
9                       National Security Agency, the Office of the  
10                      Director of National Intelligence, and the  
11                      National Reconnaissance Office; and

12                     “(ii) any executive agency or unit  
13                     thereof determined by the President under  
14                     section 2302(a)(2)(C)(ii) of title 5, United  
15                     States Code, to have as its principal func-  
16                     tion the conduct of foreign intelligence or  
17                     counterintelligence activities; and

18                     “(B) does not include the Federal Bureau  
19                     of Investigation; and

20                     “(3) the term ‘personnel action’ means any ac-  
21                     tion described in clauses (i) through (x) of section  
22                     2302(a)(2)(A) with respect to an employee in a posi-  
23                     tion in an intelligence community element (other  
24                     than a position of a confidential, policy-determining,  
25                     policymaking, or policy-advocating character).

1       “(b) IN GENERAL.—Any employee of an agency who  
2 has authority to take, direct others to take, recommend,  
3 or approve any personnel action, shall not, with respect  
4 to such authority, take or fail to take a personnel action  
5 with respect to any employee of an intelligence community  
6 element as a reprisal for a disclosure of information by  
7 the employee to the Director of National Intelligence (or  
8 an employee designated by the Director of National Intel-  
9 ligence for such purpose), or to the head of the employing  
10 agency (or an employee designated by the head of that  
11 agency for such purpose), which the employee reasonably  
12 believes evidences—

13               “(1) a violation of any law, rule, or regulation,  
14       except for an alleged violation that—

15                       “(A) is a minor, inadvertent violation; and

16                       “(B) occurs during the conscientious car-  
17       rying out of official duties; or

18               “(2) mismanagement, a gross waste of funds,  
19       an abuse of authority, or a substantial and specific  
20       danger to public health or safety.

21       “(c) ENFORCEMENT.—The President shall provide  
22 for the enforcement of this section in a manner consistent  
23 with applicable provisions of sections 1214 and 1221.

24       “(d) EXISTING RIGHTS PRESERVED.—Nothing in  
25 this section shall be construed to—

1 “(1) preempt or preclude any employee, or ap-  
 2 plicant for employment, at the Federal Bureau of  
 3 Investigation from exercising rights currently pro-  
 4 vided under any other law, rule, or regulation, in-  
 5 cluding section 2303;

6 “(2) repeal section 2303; or

7 “(3) provide the President or Director of Na-  
 8 tional Intelligence the authority to revise regulations  
 9 related to section 2303, codified in part 27 of the  
 10 Code of Federal Regulations.”.

11 (b) TECHNICAL AND CONFORMING AMENDMENT.—  
 12 The table of sections for chapter 23 of title 5, United  
 13 States Code, is amended by inserting after the item relat-  
 14 ing to section 2303 the following:

“2303A. Prohibited personnel practices in the intelligence community.”.

15 **SEC. 202. REVIEW OF SECURITY CLEARANCE OR ACCESS**  
 16 **DETERMINATIONS.**

17 (a) IN GENERAL.—Section 3001(b) of the Intel-  
 18 ligence Reform and Terrorism Prevention Act of 2004 (50  
 19 U.S.C. 435b(b)) is amended—

20 (1) in the matter preceding paragraph (1), by  
 21 striking “Not” and inserting “Except as otherwise  
 22 provided, not”;

23 (2) in paragraph (5), by striking “and” after  
 24 the semicolon;

1           (3) in paragraph (6), by striking the period at  
2 the end and inserting “; and”; and

3           (4) by inserting after paragraph (6) the fol-  
4 lowing:

5           “(7) not later than 180 days after the date of  
6 enactment of the Whistleblower Protection Enhance-  
7 ment Act of 2010—

8           “(A) developing policies and procedures  
9 that permit, to the extent practicable, individ-  
10 uals who challenge in good faith a determina-  
11 tion to suspend or revoke a security clearance  
12 or access to classified information to retain  
13 their government employment status while such  
14 challenge is pending; and

15           “(B) developing and implementing uniform  
16 and consistent policies and procedures to ensure  
17 proper protections during the process for deny-  
18 ing, suspending, or revoking a security clear-  
19 ance or access to classified information, includ-  
20 ing the provision of a right to appeal such a de-  
21 nial, suspension, or revocation, except that  
22 there shall be no appeal of an agency’s suspen-  
23 sion of a security clearance or access determina-  
24 tion for purposes of conducting an investiga-  
25 tion, if that suspension lasts no longer than 1

1           year or the head of the agency certifies that a  
2           longer suspension is needed before a final deci-  
3           sion on denial or revocation to prevent immi-  
4           nent harm to the national security.

5           “Any limitation period applicable to an agency  
6           appeal under paragraph (7) shall be tolled until the  
7           head of the agency (or in the case of any component  
8           of the Department of Defense, the Secretary of De-  
9           fense) determines, with the concurrence of the Di-  
10          rector of National Intelligence, that the policies and  
11          procedures described in paragraph (7) have been es-  
12          tablished for the agency or the Director of National  
13          Intelligence promulgates the policies and procedures  
14          under paragraph (7). The policies and procedures  
15          for appeals developed under paragraph (7) shall be  
16          comparable to the policies and procedures pertaining  
17          to prohibited personnel practices defined under sec-  
18          tion 2302(b)(8) of title 5, United States Code, and  
19          provide—

20                   “(A) for an independent and impartial  
21                   fact-finder;

22                   “(B) for notice and the opportunity to be  
23                   heard, including the opportunity to present rel-  
24                   evant evidence, including witness testimony;

1           “(C) that the employee or former employee  
2           may be represented by counsel;

3           “(D) that the employee or former employee  
4           has a right to a decision based on the record  
5           developed during the appeal;

6           “(E) that not more than 180 days shall  
7           pass from the filing of the appeal to the report  
8           of the impartial fact-finder to the agency head  
9           or the designee of the agency head, unless—

10           “(i) the employee and the agency con-  
11           cerned agree to an extension; or

12           “(ii) the impartial fact-finder deter-  
13           mines in writing that a greater period of  
14           time is required in the interest of fairness  
15           or national security;

16           “(F) for the use of information specifically  
17           required by Executive order to be kept classified  
18           in the interest of national defense or the con-  
19           duct of foreign affairs in a manner consistent  
20           with the interests of national security, including  
21           ex parte submissions if the agency determines  
22           that the interests of national security so war-  
23           rant; and

24           “(G) that the employee or former employee  
25           shall have no right to compel the production of

1 information specifically required by Executive  
2 order to be kept classified in the interest of na-  
3 tional defense or the conduct of foreign affairs,  
4 except evidence necessary to establish that the  
5 employee made the disclosure or communication  
6 such employee alleges was protected by sub-  
7 paragraphs (A), (B), and (C) of subsection  
8 (j)(1).”.

9 (b) RETALIATORY REVOCATION OF SECURITY  
10 CLEARANCES AND ACCESS DETERMINATIONS.—Section  
11 3001 of the Intelligence Reform and Terrorism Prevention  
12 Act of 2004 (50 U.S.C. 435b) is amended by adding at  
13 the end the following:

14 “(j) RETALIATORY REVOCATION OF SECURITY  
15 CLEARANCES AND ACCESS DETERMINATIONS.—

16 “(1) IN GENERAL.—Agency personnel with au-  
17 thority over personnel security clearance or access  
18 determinations shall not take or fail to take, or  
19 threaten to take or fail to take, any action with re-  
20 spect to any employee’s security clearance or access  
21 determination because of—

22 “(A) any disclosure of information to the  
23 Director of National Intelligence (or an em-  
24 ployee designated by the Director of National  
25 Intelligence for such purpose) or the head of

1 the employing agency (or employee designated  
2 by the head of that agency for such purpose) by  
3 an employee that the employee reasonably be-  
4 lieves evidences—

5 “(i) a violation of any law, rule, or  
6 regulation, except for an alleged violation  
7 that is a minor, inadvertent violation, and  
8 occurs during the conscientious carrying  
9 out of official duties; or

10 “(ii) gross mismanagement, a gross  
11 waste of funds, an abuse of authority, or  
12 a substantial and specific danger to public  
13 health or safety;

14 “(B) any disclosure to the Inspector Gen-  
15 eral of an agency or another employee des-  
16 ignated by the head of the agency to receive  
17 such disclosures, of information which the em-  
18 ployee reasonably believes evidences—

19 “(i) a violation of any law, rule, or  
20 regulation, except for an alleged violation  
21 that is a minor, inadvertent violation, and  
22 occurs during the conscientious carrying  
23 out of official duties; or

24 “(ii) gross mismanagement, a gross  
25 waste of funds, an abuse of authority, or



1 a substantial and specific danger to public  
2 health or safety;

3 “(C) any communication that complies  
4 with subsection (a)(1), (d), or (h) of section 8H  
5 of the Inspector General Act of 1978 (5 U.S.C.  
6 App.) or that complies with subsection (d)(5)  
7 (A), (D), or (H) of section 17 of the Central In-  
8 telligence Agency Act of 1949 (50 U.S.C.  
9 403q);

10 “(D) the exercise of any appeal, complaint,  
11 or grievance right granted by any law, rule, or  
12 regulation;

13 “(E) testifying for or otherwise lawfully as-  
14 sisting any individual in the exercise of any  
15 right referred to in subparagraph (D); or

16 “(F) cooperating with or disclosing infor-  
17 mation to the Inspector General of an agency,  
18 in accordance with applicable provisions of law  
19 in connection with an audit, inspection, or in-  
20 vestigation conducted by the Inspector General,  
21 if the actions described under subparagraphs (D)  
22 through (F) do not result in the employee or appli-  
23 cant unlawfully disclosing information specifically re-  
24 quired by Executive order to be kept classified in the

1 interest of national defense or the conduct of foreign  
2 affairs.

3 “(2) RULE OF CONSTRUCTION.—Consistent  
4 with the protection of sources and methods, nothing  
5 in paragraph (1) shall be construed to authorize the  
6 withholding of information from the Congress or the  
7 taking of any personnel action against an employee  
8 who discloses information to the Congress

9 “(3) DISCLOSURES.—

10 “(A) IN GENERAL.—A disclosure shall not  
11 be excluded from paragraph (1) because—

12 “(i) the disclosure was made to a per-  
13 son, including a supervisor, who partici-  
14 pated in an activity that the employee rea-  
15 sonably believed to be covered by para-  
16 graph (1)(A)(ii);

17 “(ii) the disclosure revealed informa-  
18 tion that had been previously disclosed;

19 “(iii) of the employee’s motive for  
20 making the disclosure;

21 “(iv) the disclosure was not made in  
22 writing;

23 “(v) the disclosure was made while  
24 the employee was off duty; or

1                   “(vi) of the amount of time which has  
2                   passed since the occurrence of the events  
3                   described in the disclosure.

4                   “(B) REPRISALS.—If a disclosure is made  
5                   during the normal course of duties of an em-  
6                   ployee, the disclosure shall not be excluded from  
7                   paragraph (1) if any employee who has author-  
8                   ity to take, direct others to take, recommend, or  
9                   approve any personnel action with respect to  
10                  the employee making the disclosure, took, failed  
11                  to take, or threatened to take or fail to take a  
12                  personnel action with respect to that employee  
13                  in reprisal for the disclosure.

14                  “(4) AGENCY ADJUDICATION.—

15                  “(A) REMEDIAL PROCEDURE.—An em-  
16                  ployee or former employee who believes that he  
17                  or she has been subjected to a reprisal prohib-  
18                  ited by paragraph (1) of this subsection may,  
19                  within 90 days after the issuance of notice of  
20                  such decision, appeal that decision within the  
21                  agency of that employee or former employee  
22                  through proceedings authorized by paragraph  
23                  (7) of subsection (a), except that there shall be  
24                  no appeal of an agency’s suspension of a secu-  
25                  rity clearance or access determination for pur-

1 poses of conducting an investigation, if that  
2 suspension lasts not longer than 1 year (or a  
3 longer period in accordance with a certification  
4 made under subsection (b)(7)).

5 “(B) CORRECTIVE ACTION.—If, in the  
6 course of proceedings authorized under sub-  
7 paragraph (A), it is determined that the ad-  
8 verse security clearance or access determination  
9 violated paragraph (1) of this subsection, the  
10 agency shall take specific corrective action to  
11 return the employee or former employee, as  
12 nearly as practicable and reasonable, to the po-  
13 sition such employee or former employee would  
14 have held had the violation not occurred. Such  
15 corrective action shall include reasonable attor-  
16 ney’s fees and any other reasonable costs in-  
17 curred, and may include back pay and related  
18 benefits, travel expenses, and compensatory  
19 damages not to exceed \$300,000.

20 “(C) CONTRIBUTING FACTOR.—In deter-  
21 mining whether the adverse security clearance  
22 or access determination violated paragraph (1)  
23 of this subsection, the agency shall find that  
24 paragraph (1) of this subsection was violated if  
25 a disclosure described in paragraph (1) was a

1 contributing factor in the adverse security clear-  
2 ance or access determination taken against the  
3 individual, unless the agency demonstrates by a  
4 preponderance of the evidence that it would  
5 have taken the same action in the absence of  
6 such disclosure, giving the utmost deference to  
7 the agency's assessment of the particular threat  
8 to the national security interests of the United  
9 States in the instant matter.

10 “(5) APPELLATE REVIEW OF SECURITY CLEAR-  
11 ANCE ACCESS DETERMINATIONS BY DIRECTOR OF  
12 NATIONAL INTELLIGENCE.—

13 “(A) DEFINITION.—In this paragraph, the  
14 term ‘Board’ means the appellate review board  
15 established under section 204 of the Whistle-  
16 blower Protection Enhancement Act of 2010.

17 “(B) APPEAL.—Within 60 days after re-  
18 ceiving notice of an adverse final agency deter-  
19 mination under a proceeding under paragraph  
20 (4), an employee or former employee may ap-  
21 peal that determination to the Board.

22 “(C) POLICIES AND PROCEDURES.—The  
23 Board, in consultation with the Attorney Gen-  
24 eral, Director of National Intelligence, and the  
25 Secretary of Defense, shall develop and imple-

1           ment policies and procedures for adjudicating  
2           the appeals authorized by subparagraph (B).  
3           The Director of National Intelligence and Sec-  
4           retary of Defense shall jointly approve any  
5           rules, regulations, or guidance issued by the  
6           Board concerning the procedures for the use or  
7           handling of classified information.

8           “(D) REVIEW.—The Board’s review shall  
9           be on the complete agency record, which shall  
10          be made available to the Board. The Board may  
11          not hear witnesses or admit additional evidence.  
12          Any portions of the record that were submitted  
13          ex parte during the agency proceedings shall be  
14          submitted ex parte to the Board.

15          “(E) FURTHER FACT-FINDING OR IM-  
16          PROPER DENIAL.—If the Board concludes that  
17          further fact-finding is necessary or finds that  
18          the agency improperly denied the employee or  
19          former employee the opportunity to present evi-  
20          dence that, if admitted, would have a substan-  
21          tial likelihood of altering the outcome, the  
22          Board shall remand the matter to the agency  
23          from which it originated for additional pro-  
24          ceedings in accordance with the rules of proce-  
25          dure issued by the Board.

1           “(F) DE NOVO DETERMINATION.—The  
2           Board shall make a de novo determination,  
3           based on the entire record, of whether the em-  
4           ployee or former employee received an adverse  
5           security clearance or access determination in  
6           violation of paragraph (1). In considering the  
7           record, the Board may weigh the evidence,  
8           judge the credibility of witnesses, and determine  
9           controverted questions of fact. In doing so, the  
10          Board may consider the prior fact-finder’s op-  
11          portunity to see and hear the witnesses.

12           “(G) ADVERSE SECURITY CLEARANCE OR  
13          ACCESS DETERMINATION.—If the Board finds  
14          that the adverse security clearance or access de-  
15          termination violated paragraph (1), it shall then  
16          separately determine whether reinstating the se-  
17          curity clearance or access determination is  
18          clearly consistent with the interests of national  
19          security, with any doubt resolved in favor of na-  
20          tional security, under Executive Order 13526  
21          (75 Fed. Reg. 707; relating to classified na-  
22          tional security information) or any successor  
23          thereto (including any adjudicative guidelines  
24          promulgated under such orders) or any subse-

1           quent Executive order, regulation, or policy con-  
2           cerning access to classified information.

3           “(H) REMEDIES.—

4           “(i) CORRECTIVE ACTION.—If the  
5           Board finds that the adverse security  
6           clearance or access determination violated  
7           paragraph (1), it shall order the agency  
8           head to take specific corrective action to  
9           return the employee or former employee,  
10          as nearly as practicable and reasonable, to  
11          the position such employee or former em-  
12          ployee would have held had the violation  
13          not occurred. Such corrective action shall  
14          include reasonable attorney’s fees and any  
15          other reasonable costs incurred, and may  
16          include back pay and related benefits, trav-  
17          el expenses, and compensatory damages  
18          not to exceed \$300,000. The Board may  
19          recommend, but may not order, reinstatement  
20          or hiring of a former employee. The  
21          Board may order that the former employee  
22          be treated as though the employee were  
23          transferring from the most recent position  
24          held when seeking other positions within  
25          the executive branch. Any corrective action



1 shall not include the reinstating of any se-  
2 curity clearance or access determination.  
3 The agency head shall take the actions so  
4 ordered within 90 days, unless the Director  
5 of National Intelligence, the Secretary of  
6 Energy, or the Secretary of Defense, in the  
7 case of any component of the Department  
8 of Defense, determines that doing so would  
9 endanger national security.

10 “(ii) RECOMMENDED ACTION.—If the  
11 Board finds that reinstating the employee  
12 or former employee’s security clearance or  
13 access determination is clearly consistent  
14 with the interests of national security, it  
15 shall recommend such action to the head of  
16 the entity selected under subsection (b)  
17 and the head of the affected agency.

18 “(I) CONGRESSIONAL NOTIFICATION.—

19 “(i) ORDERS.—Consistent with the  
20 protection of sources and methods, at the  
21 time the Board issues an order, the Chair-  
22 person of the Board shall notify—

23 “(I) the Committee on Homeland  
24 Security and Government Affairs of  
25 the Senate;

1                   “(II) the Select Committee on In-  
2                   telligence of the Senate;

3                   “(III) the Committee on Over-  
4                   sight and Government Reform of the  
5                   House of Representatives;

6                   “(IV) the Permanent Select Com-  
7                   mittee on Intelligence of the House of  
8                   Representatives; and

9                   “(V) the committees of the Sen-  
10                  ate and the House of Representatives  
11                  that have jurisdiction over the employ-  
12                  ing agency, including in the case of a  
13                  final order or decision of the Defense  
14                  Intelligence Agency, the National  
15                  Geospatial-Intelligence Agency, the  
16                  National Security Agency, or the Na-  
17                  tional Reconnaissance Office, the  
18                  Committee on Armed Services of the  
19                  Senate and the Committee on Armed  
20                  Services of the House of Representa-  
21                  tives.

22                  “(ii) RECOMMENDATIONS.—If the  
23                  agency head and the head of the entity se-  
24                  lected under subsection (b) do not follow  
25                  the Board’s recommendation to reinstate a

1           clearance, the head of the entity selected  
2           under subsection (b) shall notify the com-  
3           mittees described in subclauses (I) through  
4           (V) of clause (i).

5           “(6) JUDICIAL REVIEW.—Nothing in this sec-  
6           tion shall be construed to permit or require judicial  
7           review of any—

8           “(A) agency action under this section; or

9           “(B) action of the appellate review board  
10          established under section 204 of the Whistle-  
11          blower Protection Enhancement Act of 2010.

12          “(7) PRIVATE CAUSE OF ACTION.—Nothing in  
13          this section shall be construed to permit, authorize,  
14          or require a private cause of action to challenge the  
15          merits of a security clearance determination.”.

16          (c) ACCESS DETERMINATION DEFINED.—Section  
17          3001(a) of the Intelligence Reform and Terrorism Preven-  
18          tion Act of 2004 (50 U.S.C. 435b(a)) is amended by add-  
19          ing at the end the following:

20                 “(9) The term ‘access determination’ means the  
21                 process for determining whether an employee—

22                 “(A) is eligible for access to classified in-  
23                 formation in accordance with Executive Order  
24                 13526 (75 Fed. Reg. 707; relating to classified

1 national security information), or any successor  
2 thereto; and

3 “(B) possesses a need to know under that  
4 Order.”.

5 (d) RULE OF CONSTRUCTION.—Nothing in section  
6 3001 of the Intelligence Reform and Terrorism Prevention  
7 Act of 2004 (50 U.S.C. 435b), as amended by this Act,  
8 shall be construed to require the repeal or replacement of  
9 agency appeal procedures implementing Executive Order  
10 13526 (75 Fed. Reg. 707; relating to classified national  
11 security information), or any successor thereto, that meet  
12 the requirements of section 3001(b)(7) of such Act, as so  
13 amended.

14 **SEC. 203. REVISIONS RELATING TO THE INTELLIGENCE**  
15 **COMMUNITY WHISTLEBLOWER PROTECTION**  
16 **ACT.**

17 (a) IN GENERAL.—Section 8H of the Inspector Gen-  
18 eral Act of 1978 (5 U.S.C. App.) is amended—

19 (1) in subsection (b)—

20 (A) by inserting “(1)” after “(b)”; and

21 (B) by adding at the end the following:

22 “(2) If the head of an establishment determines that  
23 a complaint or information transmitted under paragraph  
24 (1) would create a conflict of interest for the head of the  
25 establishment, the head of the establishment shall return

1 the complaint or information to the Inspector General with  
2 that determination and the Inspector General shall make  
3 the transmission to the Director of National Intelligence.  
4 In such a case, the requirements of this section for the  
5 head of the establishment apply to the recipient of the In-  
6 spector General's transmission. The Director of National  
7 Intelligence shall consult with the members of the appel-  
8 late review board established under section 204 of the  
9 Whistleblower Protection Enhancement Review Act of  
10 2010 regarding all transmissions under this paragraph.”;

11 (2) by designating subsection (h) as subsection  
12 (i); and

13 (3) by inserting after subsection (g), the fol-  
14 lowing:

15 “(h) An individual who has submitted a complaint or  
16 information to an Inspector General under this section  
17 may notify any member of Congress or congressional staff  
18 member of the fact that such individual has made a sub-  
19 mission to that particular Inspector General, and of the  
20 date on which such submission was made.”.

21 (b) CENTRAL INTELLIGENCE AGENCY.—Section  
22 17(d)(5) of the Central Intelligence Agency Act of 1949  
23 (50 U.S.C. 403q) is amended—

24 (1) in subparagraph (B)—

25 (A) by inserting “(i)” after “(B)”; and

1 (B) by adding at the end the following:

2 “(ii) If the Director determines that a complaint or  
3 information transmitted under paragraph (1) would create  
4 a conflict of interest for the Director, the Director shall  
5 return the complaint or information to the Inspector Gen-  
6 eral with that determination and the Inspector General  
7 shall make the transmission to the Director of National  
8 Intelligence. In such a case the requirements of this sub-  
9 section for the Director apply to the recipient of the In-  
10 spector General’s submission; and”;

11 (2) by adding at the end the following:

12 “(H) An individual who has submitted a complaint  
13 or information to the Inspector General under this section  
14 may notify any member of Congress or congressional staff  
15 member of the fact that such individual has made a sub-  
16 mission to the Inspector General, and of the date on which  
17 such submission was made.”.

18 **SEC. 204. REGULATIONS; REPORTING REQUIREMENTS;**

19 **NONAPPLICABILITY TO CERTAIN TERMI-**  
20 **NATIONS.**

21 (a) DEFINITIONS.—In this section—

22 (1) the term “congressional oversight commit-  
23 tees” means the—

24 (A) the Committee on Homeland Security  
25 and Government Affairs of the Senate;

1 (B) the Select Committee on Intelligence  
2 of the Senate;

3 (C) the Committee on Oversight and Gov-  
4 ernment Reform of the House of Representa-  
5 tives; and

6 (D) the Permanent Select Committee on  
7 Intelligence of the House of Representatives;  
8 and

9 (2) the term “intelligence community ele-  
10 ment”—

11 (A) means—

12 (i) the Central Intelligence Agency,  
13 the Defense Intelligence Agency, the Na-  
14 tional Geospatial-Intelligence Agency, the  
15 National Security Agency, the Office of the  
16 Director of National Intelligence, and the  
17 National Reconnaissance Office; and

18 (ii) any executive agency or unit  
19 thereof determined by the President under  
20 section 2302(a)(2)(C)(ii) of title 5, United  
21 States Code, to have as its principal func-  
22 tion the conduct of foreign intelligence or  
23 counterintelligence activities; and

24 (B) does not include the Federal Bureau of  
25 Investigation.

1 (b) REGULATIONS.—

2 (1) IN GENERAL.—The Director of National In-  
3 telligence shall prescribe regulations to ensure that  
4 a personnel action shall not be taken against an em-  
5 ployee of an intelligence community element as a re-  
6 prisal for any disclosure of information described in  
7 section 2303A(b) of title 5, United States Code, as  
8 added by this Act.

9 (2) APPELLATE REVIEW BOARD.—Not later  
10 than 180 days after the date of enactment of this  
11 Act, the Director of National Intelligence, in con-  
12 sultation with the Secretary of Defense, the Attor-  
13 ney General, and the heads of appropriate agencies,  
14 shall establish an appellate review board that is  
15 broadly representative of affected Departments and  
16 agencies and is made up of individuals with expertise  
17 in merit systems principles and national security  
18 issues—

19 (A) to hear whistleblower appeals related  
20 to security clearance access determinations de-  
21 scribed in section 3001(j) of the Intelligence  
22 Reform and Terrorism Prevention Act of 2004  
23 (50 U.S.C. 435b), as added by this Act; and

24 (B) that shall include a subpanel that re-  
25 flects the composition of the intelligence com-



1           mittee, which shall be composed of intelligence  
2           community elements and inspectors general  
3           from intelligence community elements, for the  
4           purpose of hearing cases that arise in elements  
5           of the intelligence community.

6           (c) REPORT ON THE STATUS OF IMPLEMENTATION  
7 OF REGULATIONS.—Not later than 2 years after the date  
8 of enactment of this Act, the Director of National Intel-  
9 ligence shall submit a report on the status of the imple-  
10 mentation of the regulations promulgated under sub-  
11 section (b) to the congressional oversight committees.

12          (d) NONAPPLICABILITY TO CERTAIN TERMI-  
13 NATIONS.—Section 2303A of title 5, United States Code,  
14 as added by this Act, and section 3001 of the Intelligence  
15 Reform and Terrorism Prevention Act of 2004 (50 U.S.C.  
16 435b), as amended by this Act, shall not apply to adverse  
17 security clearance or access determinations if the affected  
18 employee is concurrently terminated under—

19           (1) section 1609 of title 10, United States  
20           Code;

21           (2) the authority of the Director of National In-  
22           telligence under section 102A(m) of the National Se-  
23           curity Act of 1947 (50 U.S.C. 403-1(m)), if—

24           (A) the Director personally summarily ter-  
25           minates the individual; and

1 (B) the Director—

2 (i) determines the termination to be in  
3 the interest of the United States;

4 (ii) determines that the procedures  
5 prescribed in other provisions of law that  
6 authorize the termination of the employ-  
7 ment of such employee cannot be invoked  
8 in a manner consistent with the national  
9 security; and

10 (iii) not later than 5 days after such  
11 termination, notifies the congressional  
12 oversight committees of the termination;

13 (3) the authority of the Director of the Central  
14 Intelligence Agency under section 104A(e) of the  
15 National Security Act of 1947 (50 U.S.C. 403-  
16 4a(e)), if—

17 (A) the Director personally summarily ter-  
18 minates the individual; and

19 (B) the Director—

20 (i) determines the termination to be in  
21 the interest of the United States;

22 (ii) determines that the procedures  
23 prescribed in other provisions of law that  
24 authorize the termination of the employ-  
25 ment of such employee cannot be invoked

1 in a manner consistent with the national  
2 security; and

3 (iii) not later than 5 days after such  
4 termination, notifies the congressional  
5 oversight committees of the termination; or

6 (4) section 7532 of title 5, United States Code,  
7 if—

8 (A) the agency head personally terminates  
9 the individual; and

10 (B) the agency head—

11 (i) determines the termination to be in  
12 the interest of the United States;

13 (ii) determines that the procedures  
14 prescribed in other provisions of law that  
15 authorize the termination of the employ-  
16 ment of such employee cannot be invoked  
17 in a manner consistent with the national  
18 security; and

19 (iii) not later than 5 days after such  
20 termination, notifies the congressional  
21 oversight committees of the termination.

1       **TITLE III—SAVINGS CLAUSE;**  
2                   **EFFECTIVE DATE**

3   **SEC. 301. SAVINGS CLAUSE.**

4       Nothing in this Act shall be construed to imply any  
5   limitation on any protections afforded by any other provi-  
6   sion of law to employees and applicants.

7   **SEC. 302. EFFECTIVE DATE.**

8       This Act shall take effect 30 days after the date of  
9   enactment of this Act.