

Calendar No. 219

111TH CONGRESS }
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SENATE

{ REPORT
{ 111-101

WHISTLEBLOWER PROTECTION
ENHANCEMENT ACT OF 2009

REPORT

OF THE

COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

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 NONDISCLOSURE 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



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(E) the disclosure was not made in writing;
 (F) the disclosure was made while the employee was off duty;

or

(G) of the amount of time which has passed since the occurrence of the events described in the disclosure.

(3) Nothing in this subsection shall be construed to authorize the withholding of information from the Congress or the taking of any personnel action against an employee who discloses information to the Congress.

* (c) REMEDIAL PROCEDURE.—(1)(A) An employee, applicant, or former employee of an intelligence community element who believes that such employee, applicant, or former employee has been subjected to a prohibited personnel practice may petition for an appeal of the personnel action to the agency head or the designee of the agency head within 60 days after discovery of the alleged adverse personnel action.

(B) The appeal shall be conducted within the agency according to rules of procedure issued by the Intelligence Community Whistleblower Protection Board under section 120(c)(4). Those rules shall be based on those pertaining to prohibited personnel practices defined under section 2302(b)(8) of title 5, United States Code, and provide—

(i) for an independent and impartial fact-finder;

(ii) for notice and the opportunity to be heard, including the opportunity to present relevant evidence, including witness testimony;

(iii) that the employee, applicant, or former employee may be represented by counsel;

(iv) that the employee, applicant, or former employee has a right to a decision based on the record developed during the appeal;

(v) that, unless agreed to by the employee and the agency concerned, not more than 180 days shall pass from the filing of the appeal to the report of the impartial fact-finder to the agency head or the designee of the agency head;

(vi) for the use of information specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs in a manner consistent with the interests of national security, including *ex parte* submissions where the agency determines that the interests of national security so warrant; and

(vii) that the employee, applicant, or former employee shall have no right to compel the production of information specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs, except evidence necessary to establish that the employee made the disclosure or communication such employee alleges was protected by subsection (b)(1)(A) through (C).

* (C) If the Board certifies that agency procedures in effect on the date of enactment of this section, including procedures promulgated under section 2303 of title 5, United States Code, before that date, adequately provide guaranties required under subparagraph (B)(i) through (vi), the appeal may be conducted according to those procedures.