

HR 1507 IH

111th CONGRESS

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H. R. 1507

To amend chapter 23 of title 5, United States Code, relating to disclosures of information protected from prohibited personnel practices, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES**March 12, 2009**

Mr. VAN HOLLEN (for himself, Mr. WAXMAN, Mr. TOWNS, Mr. BRALEY of Iowa, and Mr. PLATTS) introduced the following bill; which was referred to the Committee on Oversight and Government Reform, and in addition to the Committee on Homeland Security, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend chapter 23 of title 5, United States Code, relating to disclosures of information protected from prohibited personnel practices, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) Short Title- This Act may be cited as the 'Whistleblower Protection Enhancement Act of 2009'.

(b) Table of Contents- The table of contents of this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Clarification of disclosures covered.
- Sec. 3. Definitional amendments.
- Sec. 4. Rebuttable presumption.
- Sec. 5. Nondisclosure policies, forms, and agreements; security clearances; and retaliatory investigations.
- Sec. 6. Exclusion of agencies by the president.
- Sec. 7. Disciplinary action.
- Sec. 8. Government Accountability Office study on revocation of security clearances.
- Sec. 9. Alternative recourse.
- Sec. 10. National security whistleblower rights.
- Sec. 11. Enhancement of contractor employee whistleblower protections.
- Sec. 12. Prohibited personnel practices affecting the Transportation Security Administration.
- Sec. 13. Disclosure of censorship related to Federal research or technical information.
- Sec. 14. Security clearances.
- Sec. 15. Scope of due process.
- Sec. 16. Clarification of whistleblower rights for critical infrastructure information.
- Sec. 17. Advising employees of rights.
- Sec. 18. Special counsel amicus curiae appearance.
- Sec. 19. Attorney fees.
- Sec. 20. Effective date.

SEC. 2. CLARIFICATION OF DISCLOSURES COVERED.

(a) In General- Section 2302(b)(8) of title 5, United States Code, is amended--

(1) in subparagraph (A)--

(A) by striking `which the employee or applicant reasonably believes evidences' and inserting `, without restriction as to time, place, form, motive, context, forum, or prior disclosure made to any person by an employee or applicant, including a disclosure made in the ordinary course of an employee's duties, that the employee or applicant reasonably believes is evidence of'; and

(B) in clause (i), by striking `a violation' and inserting `any violation'; and

(2) in subparagraph (B)--

(A) by striking `which the employee or applicant reasonably believes evidences' and inserting `, without restriction as to time, place, form, motive, context, forum, or prior disclosure made to any person by an employee or applicant, including a disclosure made in the ordinary course of an employee's duties, of information that the employee or applicant reasonably believes is evidence of'; and

(B) in clause (i), by striking `a violation' and inserting `any violation (other than a violation of this section)'.

(b) Prohibited Personnel Practices Under Section 2302(b)(9)- Title 5, United States Code, is amended in subsections (a)(3), (b)(4)(A), and (b)(4)(B)(i) of section 1214 and in subsections (a) and (e)(1) of section 1221 by inserting `or 2302(b)(9)(B)-(D)' after `section 2302(b)(8)' each place it appears.

SEC. 3. DEFINITIONAL AMENDMENTS.

(a) Disclosure- Section 2302(a)(2) of title 5, United States Code, is amended--

(1) in subparagraph (B)(ii), by striking `and' at the end;

(2) in subparagraph (C)(iii), by striking the period at the end and inserting `; and'; and

(3) by adding at the end the following:

`(D) `disclosure' means a formal or informal communication, but does not include a communication concerning policy decisions that lawfully exercise discretionary authority unless the employee or applicant providing the disclosure reasonably believes that the disclosure evidences--

(i) any violation of any law, rule, or regulation; or

(ii) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.'.

(b) Clear and Convincing Evidence- Sections 1214(b)(4)(B)(ii) and 1221(e)(2) of title 5, United States Code, are amended by adding at the end the following: `For purposes of the preceding sentence, `clear and convincing evidence' means evidence indicating that the matter to be proved is highly probable or reasonably certain.'.

SEC. 4. REBUTTABLE PRESUMPTION.

Section 2302(b) of title 5, United States Code, is amended by adding at the end the following: `For purposes of paragraph (8), any presumption relating to the performance of a duty by an employee who has authority to take, direct others to take, recommend, or approve any personnel action may be rebutted by substantial evidence. For purposes of paragraph (8), a determination as to whether an employee or applicant reasonably believes that such employee or applicant has disclosed information that evidences any violation of law, rule, regulation, gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety shall be made by determining whether a disinterested observer with knowledge of the essential facts known to or readily ascertainable by the employee or applicant could reasonably conclude that the actions of the Government evidence such violations, mismanagement, waste, abuse, or danger.'.

SEC. 5. NONDISCLOSURE POLICIES, FORMS, AND AGREEMENTS; SECURITY CLEARANCES; AND RETALIATORY INVESTIGATIONS.

(a) Personnel Action- Section 2302(a)(2)(A) of title 5, United States Code, is amended--

(1) in clause (x), by striking `and' at the end;

(2) by redesignating clause (xi) as clause (xiv); and

(3) by inserting after clause (x) the following:

(xi) the implementation or enforcement of any nondisclosure policy, form, or agreement;

(xii) a suspension, revocation, or other determination relating to a security clearance or any other access determination by a covered agency;

`(xiii) an investigation, other than any ministerial or nondiscretionary fact-finding activities necessary for the agency to perform its mission, of an employee or applicant for employment because of any activity protected under this section; and'.

(b) Prohibited Personnel Practice- Section 2302(b) of title 5, United States Code, is amended--

(1) in paragraph (11), by striking `or' at the end;

(2) by redesignating paragraph (12) as paragraph (14); and

(3) by inserting after paragraph (11) the following:

`(12) implement or enforce any nondisclosure policy, form, or agreement, if such policy, form, or agreement does not contain the following statement: `These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by Executive Order No. 12958; section 7211 of title 5, United States Code (governing disclosures to Congress); section 1034 of title 10, United States Code (governing disclosures to Congress by members of the military); section 2302(b)(8) of title 5, United States Code (governing disclosures of illegality, waste, fraud, abuse, or public health or safety threats); title VI of the National Security Act of 1947 (50 U.S.C. 421 et seq.) (governing disclosures that could expose confidential Government agents); and the statutes which protect against disclosures that could compromise national security, including sections 641, 793, 794, 798, and 952 of title 18, United States Code, and section 4(b) of the Subversive Activities Control Act of 1950 (50 U.S.C. 783(b)). The definitions, requirements, obligations, rights, sanctions, and liabilities created by such Executive order and such statutory provisions are incorporated into this agreement and are controlling.'.

`(13) conduct, or cause to be conducted, an investigation, other than any ministerial or nondiscretionary fact-finding activities necessary for the agency to perform its mission, of an employee or applicant for employment because of any activity protected under this section; or'.

SEC. 6. EXCLUSION OF AGENCIES BY THE PRESIDENT.

Section 2302(a)(2)(C) of title 5, United States Code, is amended by striking clause (ii) and inserting the following:

`(i)(I) the Federal Bureau of Investigation; or

`(II) an element of the intelligence community (as defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4))); or'.

SEC. 7. DISCIPLINARY ACTION.

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

`(3)(A) A final order of the Board may impose--

`(i) disciplinary action consisting of removal, reduction in grade, debarment from Federal employment for a period not to exceed 5 years, suspension, or reprimand;

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

`(iii) any combination of disciplinary actions described under clause (i) and an assessment described under clause (ii).

`(B) In any case in which the Board finds that an employee has committed a prohibited personnel practice under paragraph (8) or (9) of section 2302(b), the Board shall impose disciplinary action if the Board finds that the activity protected under such paragraph (8) or (9) was a significant motivating factor, even if other factors also motivated the decision, for the employee's decision to take, fail to take, or threaten to take or fail to take a personnel action, unless that employee demonstrates, by preponderance of evidence, that the employee would have taken, failed to take, or threatened to take or fail to take the same personnel action, in the absence of such protected activity.'.

SEC. 8. GOVERNMENT ACCOUNTABILITY OFFICE STUDY ON REVOCATION OF SECURITY CLEARANCES.

(a) Study- The Comptroller General shall conduct a study of security clearance revocations of Federal employees at a select sample of executive branch agencies. The study shall consist of an examination of the number of security clearances revoked, the process employed by each agency in revoking a clearance, the pay and employment status of agency employees during the revocation process, how often such revocations result in termination of employment or reassignment, how often such revocations are based on an improper disclosure of information, and such other factors the Comptroller General deems appropriate.

(b) Report- Not later than 18 months after the date of enactment of this Act, the Comptroller General shall submit to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Oversight and Government Reform of the House of Representatives a report on the results of the study required under this section.

SEC. 9. ALTERNATIVE RECOURSE.

(a) In General- Section 1221 of title 5, United States Code, is amended by adding at the end the following:

`(k)(1) If, in the case of an employee, former employee, or applicant for employment who seeks corrective action (or on behalf of whom corrective action is sought) from the Merit Systems Protection Board based on an alleged prohibited personnel practice described in section 2302(b)(8) or 2302(b)(9)(B)-(D), no final order or decision is issued by the Board within 180 days after the date on which a request for such corrective action has been duly submitted (or, in the event that a final order or decision is issued by the Board, whether within that 180-day period or thereafter, then, within 90 days after such final order or decision is issued, and so long as such employee, former employee, or applicant has not filed a petition for judicial review of such order or decision under subsection (h))--

`(A) such employee, former employee, or applicant may, after providing written notice to the Board, bring an action at law or equity for de novo review in the appropriate United States district court, which shall have jurisdiction over such action without regard to the amount in controversy, and which action shall, at the request of either party to such action, be tried by the court with a jury; and

`(B) in any such action, the court--

`(i) shall apply the standards set forth in subsection (e); and

`(ii) may award any relief which the court considers appropriate, including any relief described in subsection (g).

An appeal from a final decision of a district court in an action under this paragraph may, at the election of the appellant, be taken to the Court of Appeals for the Federal Circuit (which shall have jurisdiction of such appeal), in lieu of the United States court of appeals for the circuit embracing the district in which the action was brought.

`(2) For purposes of this subsection, the term `appropriate United States district court', as used with respect to an alleged prohibited personnel practice, means the United States district court for the district in which the prohibited personnel practice is alleged to have been committed, the judicial district in which the employment records relevant to such practice are maintained and administered, or the judicial district in which resides the employee, former employee, or applicant for employment allegedly affected by such practice.

`(3) This subsection applies with respect to any appeal, petition, or other request for corrective action duly submitted to the Board, whether pursuant to section 1214(b)(2), the preceding provisions of this section, section 7513(d), or any otherwise applicable provisions of law, rule, or regulation.'

(b) Review of MSB Decisions- Section 7703(b) of such title 5 is amended--

(1) in the first sentence of paragraph (1), by striking `the United States Court of Appeals for the Federal Circuit' and inserting `the appropriate United States court of appeals'; and

(2) by adding at the end the following:

`(3) For purposes of this section, the term `appropriate United States court of appeals' means the United States Court of Appeals for the Federal Circuit, except that in the case of a prohibited personnel practice described in section 2302(b)(8) or 2302(b)(9)(B)-(D) (other than a case that, disregarding this paragraph, would otherwise be subject to paragraph (2)), such term means the United States Court of Appeals for the Federal Circuit and any United States court of appeals having jurisdiction over appeals from any United States district court which, under section 1221(k)(2), would be an appropriate United States district court for purposes of such prohibited personnel practice.'

(c) Choice of Forum- Section 7703(d) of such title 5 is amended by inserting after `policy directive.' the following: `The petition shall be moved to an appropriate United States Court of Appeals other than the Federal Circuit at the request of the Director or of the employee.'

(d) Compensatory Damages- Sections 1214(g)(2) and 1221(g)(1)(A)(ii) of such title 5 are amended by striking all after `travel expenses,' and inserting `any other reasonable and foreseeable consequential damages, and compensatory damages (including attorney's fees, interest, reasonable expert witness fees, and costs).'

(e) Conforming Amendments-

(1) Section 1221(h) of such title 5 is amended by adding at the end the following:

`(3) Judicial review under this subsection shall not be available with respect to any decision or order as to which the employee, former employee, or applicant has filed a petition for judicial review under subsection (k).'

(2) Section 7703(c) of such title 5 is amended by striking `the United States Court of Appeals for the Federal Circuit' and inserting `the appropriate United States Court of Appeals' and by striking `court.' and inserting `court, and in the case of a prohibited personnel practice described in section 2302(b)(8) or 2302(b)(9)(B)-(D) brought under any provision of law, rule, or regulation described in section 1221(k)(3), the employee or applicant shall have the right to de novo review in accordance with section 1221(k).'

SEC. 10. NATIONAL SECURITY WHISTLEBLOWER RIGHTS.

(a) In General- Chapter 23 of title 5, United States Code, is amended by inserting after section 2303 the following:

`SEC. 2303a. NATIONAL SECURITY WHISTLEBLOWER RIGHTS.

`(a) Prohibition of Reprisals-

`(1) IN GENERAL- In addition to any rights provided under section 2303 of this title, section 17(d)(5) of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403q(d)(5)), section 8H of the Inspector General Act of 1978 (5 U.S.C. App.), or any other provision of law, an employee or former employee of a covered agency may not be discharged, demoted, or otherwise discriminated against (including by denying, suspending, or revoking a security clearance, or by otherwise restricting access to classified or sensitive information) as a reprisal for making a disclosure described in paragraph (2).

`(2) DISCLOSURES DESCRIBED- A disclosure described in this paragraph is a disclosure of covered information that is made--

`(A) by an employee or former employee of a covered agency, without restriction as to time, place, form, motive, context, or prior disclosure made to any person by an employee or former employee, including a disclosure made in the course of an employee's duties; and

`(B) to an authorized Member of Congress, an authorized official of an Executive agency, or the Inspector General of the covered agency of which such employee or former employee is or was employed.

`(b) Investigation of Complaints- An employee or former employee of a covered agency who believes that such employee or former employee has been subjected to a reprisal prohibited by subsection (a) may submit a complaint to the Inspector General and the head of the covered agency. The Inspector General shall investigate the complaint and, unless the Inspector General determines that the complaint is frivolous, submit a report of the findings of the investigation within 120 days to the employee or former employee (as the case may be) and to the head of the covered agency.

`(c) Remedy-

`(1) Within 180 days of the filing of a complaint under subsection (b), the head of the covered agency shall, taking into consideration the report of the Inspector General under such subsection (if any), determine whether the employee or former employee has been subjected to a reprisal prohibited by subsection (a), and shall either issue an order denying relief or shall implement corrective action to return the employee or former employee, as nearly as possible, to the position such employee or former employee would have held had the reprisal not occurred, including providing back pay and related benefits, medical costs incurred, travel expenses, any other reasonable and foreseeable consequential damages, and compensatory damages (including attorney's fees, interest, reasonable expert witness fees, and costs). If the head of the covered agency issues an order denying relief, such head shall issue a report to the employee or former employee detailing the reasons for the denial.

`(2)(A) If the head of a covered agency, in the process of implementing corrective action under paragraph (1), voids a directive or order denying, suspending, or revoking a security clearance or otherwise restricting access to classified or sensitive information that constituted a reprisal, the head of such covered agency may re-initiate procedures to issue a directive or order denying, suspending, or revoking a security clearance or otherwise restricting access to classified or sensitive information only if those re-initiated procedures are based exclusively on national security concerns and are unrelated to the actions constituting the original reprisal.

`(B) In any case in which the head of a covered agency re-initiates procedures under subparagraph (A), the head of the covered agency shall issue an unclassified report (that may include a classified annex, if necessary) to the Inspector General of such covered agency and to authorized Members of Congress, detailing the circumstances of such covered agency's re-initiated procedures and describing the manner in which those procedures are based exclusively on national security concerns and are unrelated to the actions constituting the original reprisal.

`(3) If the head of a covered agency has not made a determination under paragraph (1) within 180 days of the filing of a complaint under subsection (b) (or such head has issued an order denying relief, in whole or in part, whether within that 180-day period or thereafter, then, within 90 days after such order is issued), the employee or former employee may bring an action at law or equity for de novo review to seek any corrective action referred to in paragraph (1) in the appropriate United States district court (as defined by section 1221(k)(2)), which shall have jurisdiction over such action without regard to the amount in controversy.

`(4) An employee or former employee adversely affected or aggrieved by an order issued under paragraph (1), or who seeks review of any corrective action determined under paragraph (1), may obtain judicial review of such order or determination in the United States Court of Appeals for the Federal Circuit or any United States court of appeals having jurisdiction over appeals from any United States district court that, under section 1221(k)(2), would be an appropriate United States district court. No petition seeking such review may be filed more than 60 days after issuance of the order or the determination to implement corrective action by the head of a covered agency. Review shall conform to chapter 7.

`(5)(A) If, in any action for damages or relief under paragraph (3) or (4), an Executive agency moves to withhold information from discovery based on a claim that disclosure would be inimical to national security by asserting the privilege commonly referred to as the 'state secrets privilege', and if the assertion of such privilege prevents the employee or former employee from establishing an element in support of the employee's or former employee's claim, the court shall resolve the disputed issue of fact or law in favor of the employee or former employee, provided that an Inspector General investigation under subsection (b) has resulted in substantial confirmation of that element, or those elements, of the employee's or former employee's claim.

`(B) In any case in which an Executive agency asserts the privilege commonly referred to as the 'state secrets privilege', whether or not an Inspector General has conducted an investigation under subsection (b), the head of that agency shall, at the same time it asserts the privilege, issue a report to authorized Members of Congress, accompanied by a classified annex if necessary, describing the reasons for the assertion, explaining why the court hearing the matter does not have the ability to

maintain the protection of classified information related to the assertion, detailing the steps the agency has taken to arrive at a mutually agreeable settlement with the employee or former employee, setting forth the date on which the classified information at issue will be declassified, and providing all relevant information about the underlying substantive matter.

`(d) Applicability to Non-Covered Agencies- An employee or former employee of an Executive agency (or element or unit thereof) that is not a covered agency shall, for purposes of any disclosure of covered information (as described in subsection (a)(2)) that consists in whole or in part of classified or sensitive information, be entitled to the same protections, rights, and remedies under this section as if that Executive agency (or element or unit thereof) were a covered agency.

`(e) Construction- Nothing in this section may be construed--

`(1) to authorize the discharge of, demotion of, or discrimination against an employee or former employee for a disclosure other than a disclosure protected by subsection (a) or (d) or to modify or derogate from a right or remedy otherwise available to an employee or former employee; or

`(2) to preempt, modify, limit, or derogate any rights or remedies available to an employee or former employee under any other provision of law, rule, or regulation (including the Lloyd-La Failed Act).

No court or administrative agency may require the exhaustion of any right or remedy under this section as a condition for pursuing any other right or remedy otherwise available to an employee or former employee under any other provision of law, rule, or regulation (as referred to in paragraph (2)).

`(f) Definitions- In this section:

`(1) The term `covered information', as used with respect to an employee or former employee, means any information (including classified or sensitive information) which the employee or former employee reasonably believes evidences--

`(A) any violation of any law, rule, or regulation; or

`(B) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

`(2) The term `covered agency' means--

`(A) the Federal Bureau of Investigation; and

`(B) an element of the intelligence community (as defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4))).

`(3) The term `authorized Member of Congress' means--

`(A) with respect to covered information about sources, methods, and intelligence activities (as that term is defined in Executive Order 12333) of an element of the intelligence community (as defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4))), a member of the Permanent Select Committee on Intelligence of the House of Representatives, the Select Committee on Intelligence of the Senate, or any other committees of the House of Representatives or Senate to which this type of information is customarily provided;

`(B) with respect to special access programs specified in section 119 of title 10, an appropriate member of the Congressional defense committees (as defined in such section); and

`(C) with respect to other covered information, a member of the Permanent Select Committee on Intelligence or the Committee on Oversight and Government Reform of the House of Representatives, the Select Committee on Intelligence or the Committee on Homeland Security and Governmental Affairs of the Senate, or any other committees of the House of Representatives or the Senate that have oversight over the program which the covered information concerns.

`(4) The term `authorized official of an Executive agency' shall have such meaning as the Office of Personnel Management shall by regulation prescribe, except that such term shall, with respect to any employee or former employee in an agency, include the head, the general counsel, and the ombudsman of such agency.'

(b) Clerical Amendment- The table of sections for chapter 23 of title 5, United States Code, is amended by inserting after the item relating to section 2303 the following:

`2303a. National security whistleblower rights.'

SEC. 11. ENHANCEMENT OF CONTRACTOR EMPLOYEE WHISTLEBLOWER PROTECTIONS.

(a) Increased Protection From Reprisal- Section 315(a) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 265) is amended by striking `disclosing to a Member of Congress' and all that follows through the end of the subsection and inserting the following: `disclosing, including a disclosure in the ordinary course of an employee's duties, to a Member of Congress, a representative of a committee of Congress, an Inspector General, the Government Accountability Office, an agency employee responsible for contract oversight or management, an authorized official of an executive agency or the Department of Justice or other Federal regulatory or law enforcement agency, or a person with supervisory authority over the employee (or any other person who has the authority to investigate or act on misconduct, a court, or a grand jury) information that the employee reasonably believes is evidence of gross mismanagement of a contract or grant, gross waste of agency funds, an abuse of authority related to the

implementation of a contract or grant, a substantial and specific danger to public health or safety, or a violation of a law, rule, or regulation related to a contract (including the competition for or negotiation of a contract) or grant.'.

(b) Clarification of Inspector General Determination- Subsection (b) of section 315 of such Act is amended--

(1) by inserting '(1)' after 'Investigation of Complaints- ';

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

(2)(A) Except as provided under subparagraph (B), the Inspector General shall make a determination that a complaint is frivolous or submit a report under paragraph (1) within 180 days after receiving the complaint.

(B) If the Inspector General is unable to complete an investigation in time to submit a report within the 180-day period specified in subparagraph (A) and the person submitting the complaint agrees to an extension of time, the Inspector General shall submit a report under paragraph (1) within such additional period of time as shall be agreed upon between the Inspector General and the person submitting the complaint.

(3)(A) A person alleging a reprisal under this section shall affirmatively establish the occurrence of the reprisal if the person demonstrates that a disclosure described in subsection (a) was a contributing factor in the reprisal. A disclosure may be demonstrated as a contributing factor for purposes of this paragraph by circumstantial evidence, including evidence as follows:

(i) Evidence that the official undertaking the reprisal knew of the disclosure.

(ii) Evidence that the reprisal occurred within a period of time after the disclosure such that a reasonable person could conclude that the disclosure was a contributing factor in the reprisal.

(B) Except as provided in subparagraph (C), if a reprisal is affirmatively established under subparagraph (A), the Inspector General shall recommend in the report under paragraph (1) that corrective action be taken under subsection (c).

(C) The Inspector General may not recommend corrective action under subparagraph (B) with respect to a reprisal that is affirmatively established under subparagraph (A) if the contractor demonstrates by clear and convincing evidence that the contractor would have taken the action constituting the reprisal in the absence of the disclosure.

(4) The person alleging the reprisal shall have access to the complete investigation file of the Inspector General in accordance with section 552a of title 5, United States Code (popularly referred to as the 'Privacy Act'). The investigation of the Inspector General shall be deemed closed for purposes of disclosure under such section when an employee files an appeal to an agency head or a court of competent jurisdiction.'.

(c) Acceleration of Schedule for Denying Relief or Providing Remedy- Subsection (c) of such section is amended--

(1) in paragraph (1), by striking 'If the head of the agency determines that a contractor has subjected a person to a reprisal prohibited by subsection (a), the head of the agency may' and inserting the following: 'Not later than 30 days after receiving an Inspector General report pursuant to subsection (b), the head of the agency concerned shall determine whether there is sufficient basis to conclude that the contractor concerned has subjected the complainant to a reprisal prohibited by subsection (a) and shall either issue an order denying relief or shall';

(2) in paragraph (1)(B), by inserting after 'together with' the following: 'compensatory damages and';

(3) in paragraph (1)(C), by inserting at the end before the period the following: 'or a court of competent jurisdiction';

(4) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively; and

(5) by inserting after paragraph (1) the following new paragraph:

(2)(A) If the head of an executive agency issues an order denying relief under paragraph (1) or has not issued an order within 210 days after the submission of a complaint under subsection (b), or in the case of an extension of time under paragraph (b)(2)(B), not later than 30 days after the expiration of the extension of time, and there is no showing that such delay is due to the bad faith of the complainant, the complainant shall be deemed to have exhausted all administrative remedies with respect to the complaint, and the complainant may bring a de novo action at law or equity against the contractor to seek compensatory damages and other relief available under this section in the appropriate district court of the United States, which shall have jurisdiction over such an action without regard to the amount in controversy. Such an action shall, at the request of either party to the action, be tried by the court with a jury.

(B) In any action under subparagraph (A), the establishment of the occurrence of a reprisal shall be governed by the provisions of subsection (b)(3)(A), including the burden of proof in that subsection, and the establishment that an action alleged to constitute a reprisal did not constitute a reprisal shall be subject to the burden of proof specified in subsection (b)(3)(C).'; and

(6) in paragraph (4), as so redesignated, by inserting at the end before the period the following: 'and attorneys fees and costs'.

(d) Prohibition on Conditions of Employment- Section 315 of such Act is further amended by redesignating subsection (e) as subsection (f) and inserting after subsection (d) the following new subsection (e):

(e) Prohibition- Notwithstanding any other provision of law--

(1) subject to paragraph (3), the rights and remedies provided for in this section may not be waived by any agreement, policy,

form, or condition of employment, including by any predispute arbitration agreement;

`(2) subject to paragraph (3), no predispute arbitration agreement shall be valid or enforceable if it requires arbitration of a dispute arising under this section; and

`(3) an arbitration provision in a collective bargaining agreement shall be enforceable as to disputes arising under the collective bargaining agreement.'.

(e) Definitions- Subsection (f) of such section, as redesignated by subsection (d), is amended by inserting before the period at the end the following: `and any Inspector General that receives funding from, or has oversight over contracts awarded for or on behalf of, an executive agency'.

SEC. 12. PROHIBITED PERSONNEL PRACTICES AFFECTING THE TRANSPORTATION SECURITY ADMINISTRATION.

(a) In General- Chapter 23 of title 5, United States Code, is amended--

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

(2) by inserting after section 2303a (as inserted by section 10) the following:

`SEC. 2304. PROHIBITED PERSONNEL PRACTICES AFFECTING THE TRANSPORTATION SECURITY ADMINISTRATION.

`(a) In General- Notwithstanding any other provision of law, any individual holding or applying for a position within the Transportation Security Administration shall be covered by--

`(1) the provisions of paragraphs (1), (8), and (9) of section 2302(b);

`(2) any provision of law implementing paragraph (1), (8), or (9) of section 2302(b) by providing any right or remedy available to an employee or applicant for employment in the civil service; and

`(3) any rule or regulation prescribed under any provision of law referred to in paragraph (1) or (2).

`(b) Rule of Construction- Nothing in this section shall be construed to affect any rights, apart from those described in subsection (a), to which an individual described in subsection (a) might otherwise be entitled under law.

`(c) Effective Date- This section shall take effect as of the date of the enactment of this section.'.

(b) Clerical Amendment- The table of sections for chapter 23 of title 5, United States Code, is amended by striking the items relating to sections 2304 and 2305, respectively, and by inserting the following:

`2304. Prohibited personnel practices affecting the Transportation Security Administration.

`2305. Responsibility of the Government Accountability Office.

`2306. Coordination with certain other provisions of law.'.

SEC. 13. DISCLOSURE OF CENSORSHIP RELATED TO FEDERAL RESEARCH OR TECHNICAL INFORMATION.

(a) Definitions- In this section--

(1) the term `applicant' means an applicant for a covered position;

(2) the term `censorship related to Federal research or technical information' means any effort to alter, misrepresent, or suppress--

(A) Federal research; or

(B) technical information;

(3) the term `covered position' has the meaning given under section 2302(a)(2)(B) of title 5, United States Code;

(4) the term `employee' means an employee in a covered position; and

(5) the term `disclosure' has the meaning given under section 2302(a)(2)(D) of title 5, United States Code.

(b) Protected Disclosure-

(1) IN GENERAL- Any disclosure of information by an employee or applicant for employment that the employee or applicant reasonably believes is evidence of censorship related to Federal research or technical information--

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

(i) the employee or applicant reasonably believes that the censorship related to Federal research or technical

information is or will cause--

(I) any violation of law, rule, or regulation; or

(II) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety; and

(ii) the disclosure and information satisfy the conditions stated in the matter following clause (ii) of section 2302(b)(8)(A) of title 5, United States Code; and

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

(i) the conditions under subparagraph (A)(i) are satisfied; and

(ii) the disclosure is made to an individual referred to in the matter preceding clause (i) of section 2302(b)(8)(B) of title 5, United States Code, for the receipt of disclosures.

(2) APPLICATION- Paragraph (1) shall apply to any disclosure of information by an employee or applicant without restriction to time, place, form, motive, context, or prior disclosure made to any person by an employee or applicant, including a disclosure made in the ordinary course of an employee's duties.

(3) RULE OF CONSTRUCTION- Nothing in this section shall be construed to imply any limitation on the protections of employees and applicants afforded by any other provision of law, including protections with respect to any disclosure of information believed to be evidence of censorship related to Federal research or technical information.

SEC. 14. SECURITY CLEARANCES.

(a) In General- Chapter 77 of title 5, United States Code, is amended by inserting after section 7702 the following:

`SEC. 7702a. ACTIONS RELATING TO SECURITY CLEARANCES.

`(a) In any appeal relating to the suspension, revocation, or other determination relating to a security clearance or access determination, the Merit Systems Protection Board or any reviewing court--

`(1) shall determine whether paragraph (8) or (9) of section 2302(b) was violated; and

`(2) may issue declaratory relief and any other appropriate relief.

`(b)(1) If, in any final judgment, the Board or court declares that any suspension, revocation, or other determination with regard to a security clearance or access determination was made in violation of paragraph (8) or (9) of section 2302(b), the affected agency shall conduct a review of that suspension, revocation, access determination, or other determination, giving great weight to the Board or court judgment.

`(2) Not later than 30 days after any Board or court judgment declaring that a security clearance suspension, revocation, access determination, or other determination was made in violation of paragraph (8) or (9) of section 2302(b), the affected agency shall issue an unclassified report to the congressional committees of jurisdiction (with a classified annex if necessary), detailing the circumstances of the agency's security clearance suspension, revocation, other determination, or access determination. A report under this paragraph shall include any proposed agency action with regard to the security clearance or access determination.

`(c) An allegation that a security clearance or access determination was revoked or suspended in retaliation for a protected disclosure shall receive expedited review by the Office of Special Counsel, the Merit Systems Protection Board, and any reviewing court.

`(d) For purposes of this section, corrective action may not be ordered if the agency demonstrates by a preponderance of the evidence that it would have taken the same personnel action in the absence of such disclosure.'

(b) Technical and Conforming Amendment- The table of sections for chapter 77 of title 5, United States Code, is amended by inserting after the item relating to section 7702 the following:

`7702a. Actions relating to security clearances.'

SEC. 15. SCOPE OF DUE PROCESS.

(a) Special Counsel- Section 1214(b)(4)(B)(ii) of title 5, United States Code, is amended by inserting `, after a finding that a protected disclosure was a contributing factor,' after `ordered if'.

(b) Individual Action- Section 1221(e)(2) of title 5, United States Code, is amended by inserting `, after a finding that a protected disclosure was a contributing factor,' after `ordered if'.

SEC. 16. CLARIFICATION OF WHISTLEBLOWER RIGHTS FOR CRITICAL INFRASTRUCTURE INFORMATION.

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

SEC. 17. ADVISING EMPLOYEES OF RIGHTS.

Section 2302(c) of title 5, United States Code, is amended by inserting, ` , including how to make a lawful disclosure of information that is specifically required by law or Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs to the Special Counsel, the Inspector General of an agency, Congress, or other agency employee designated to receive disclosures' after ` chapter 12 of this title'.

SEC. 18. SPECIAL COUNSEL AMICUS CURIAE APPEARANCE.

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

`(h) The Special Counsel may appear as amicus curiae in any action brought in a court of the United States related to any civil action brought in connection with paragraph (8) or (9) of section 2302(b) or subchapter III of chapter 73, or as otherwise authorized by law. In any such action, the Special Counsel may present the views of the Special Counsel with respect to compliance with paragraph (8) or (9) of section 2302(b) or subchapter III of chapter 73 and the impact court decisions would have on the enforcement of those provisions of law.'

SEC. 19. ATTORNEY FEES.

Section 1204(m)(1) of title 5, United States Code, is amended by striking `agency involved' and inserting `agency where the prevailing party is employed or has applied for employment'.

SEC. 20. EFFECTIVE DATE.

This Act shall take effect 30 days after the date of the enactment of this Act, except as provided in the amendment made by section 12(a)(2).

END