

112TH CONGRESS  
1ST SESSION

**S.** \_\_\_\_\_

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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IN THE SENATE OF THE UNITED STATES

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Mr. AKAKA (for himself, Ms. COLLINS, Mr. GRASSLEY, Mr. LIEBERMAN, Mr. LEVIN, Mr. CARPER, Mr. LEAHY, Mr. HARKIN, Mr. PRYOR, Ms. LANDRIEU, Mrs. McCASKILL, Mr. TESTER, Mr. BEGICH, and Mr. CARDIN) introduced the following bill; which was read twice and referred to the Committee on \_\_\_\_\_

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**A BILL**

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.

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

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Whistleblower Protec-  
3 tion Enhancement Act of 2011”.

4 **TITLE I—PROTECTION OF CER-**  
5 **TAIN DISCLOSURES OF IN-**  
6 **FORMATION BY FEDERAL EM-**  
7 **PLOYEES**

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

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

11 (1) in subparagraph (A)(i), by striking “a viola-  
12 tion” and inserting “any violation”; and

13 (2) in subparagraph (B)(i), by striking “a viola-  
14 tion” and inserting “any violation (other than a vio-  
15 lation of this section)”.

16 (b) PROHIBITED PERSONNEL PRACTICES UNDER  
17 SECTION 2302(b)(9).—

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

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

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

8           (i) by striking subparagraph (A) and insert-  
9 ing the following:

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

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

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

17           and

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

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

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

24           “(A) the disclosure was made to a person, in-  
25 cluding a supervisor, who participated in an activity

1 that the employee or applicant reasonably believed to  
2 be covered by subsection (b)(8)(A)(ii);

3 “(B) the disclosure revealed information that  
4 had been previously disclosed;

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

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

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

10 “(F) of the amount of time which has passed  
11 since the occurrence of the events described in the  
12 disclosure.

13 “(2) If a disclosure is made during the normal course  
14 of duties of an employee, the disclosure shall not be ex-  
15 cluded from subsection (b)(8) if any employee who has au-  
16 thority to take, direct others to take, recommend, or ap-  
17 prove any personnel action with respect to the employee  
18 making the disclosure, took, failed to take, or threatened  
19 to take or fail to take a personnel action with respect to  
20 that employee in reprisal for the disclosure.”.

21 **SEC. 102. DEFINITIONAL AMENDMENTS.**

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

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

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

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

4 “(D) ‘disclosure’ means a formal or informal  
5 communication or transmission, but does not include  
6 a communication concerning policy decisions that  
7 lawfully exercise discretionary authority unless the  
8 employee or applicant providing the disclosure rea-  
9 sonably believes that the disclosure evidences—

10 “(i) any violation of any law, rule, or regu-  
11 lation, and occurs during the conscientious car-  
12 rying out of official duties; or

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

16 **SEC. 103. REBUTTABLE PRESUMPTION.**

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

20 “This subsection shall not be construed to authorize the  
21 withholding of information from Congress or the taking  
22 of any personnel action against an employee who discloses  
23 information to Congress. For purposes of paragraph (8),  
24 any presumption relating to the performance of a duty by  
25 an employee whose conduct is the subject of a disclosure

1 as defined under subsection (a)(2)(D) may be rebutted by  
 2 substantial evidence. For purposes of paragraph (8), a de-  
 3 termination as to whether an employee or applicant rea-  
 4 sonably believes that such employee or applicant has dis-  
 5 closed information that evidences any violation of law,  
 6 rule, regulation, gross mismanagement, a gross waste of  
 7 funds, an abuse of authority, or a substantial and specific  
 8 danger to public health or safety shall be made by deter-  
 9 mining whether a disinterested observer with knowledge  
 10 of the essential facts known to and readily ascertainable  
 11 by the employee could reasonably conclude that the actions  
 12 of the Government evidence such violations, mismanage-  
 13 ment, waste, abuse, or danger.”.

14 **SEC. 104. PERSONNEL ACTIONS AND PROHIBITED PER-**  
 15 **SONNEL PRACTICES.**

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

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

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

22 “(xi) the implementation or enforce-  
 23 ment of any nondisclosure policy, form, or  
 24 agreement; and”.

25 (b) PROHIBITED PERSONNEL PRACTICE.—

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

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

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

7           (C) by inserting after paragraph (12) the  
8 following:

9           “(13) implement or enforce any nondisclosure  
10 policy, form, or agreement, if such policy, form, or  
11 agreement does not contain the following statement:  
12 ‘These provisions are consistent with and do not su-  
13 persede, conflict with, or otherwise alter the em-  
14 ployee obligations, rights, or liabilities created by  
15 Executive Order 13526 (75 Fed. Reg. 707; relating  
16 to classified national security information), or any  
17 successor thereto; Executive Order 12968 (60 Fed.  
18 Reg. 40245; relating to access to classified informa-  
19 tion), or any successor thereto; section 7211 of title  
20 5, United States Code (governing disclosures to Con-  
21 gress); section 1034 of title 10, United States Code  
22 (governing disclosure to Congress by members of the  
23 military); section 2302(b)(8) of title 5, United  
24 States Code (governing disclosures of illegality,  
25 waste, fraud, abuse, or public health or safety

1 threats); the Intelligence Identities Protection Act of  
2 1982 (50 U.S.C. 421 et seq.) (governing disclosures  
3 that could expose confidential Government agents);  
4 and the statutes which protect against disclosures  
5 that could compromise national security, including  
6 sections 641, 793, 794, 798, and 952 of title 18,  
7 United States Code, and section 4(b) of the Subver-  
8 sive Activities Control Act of 1950 (50 U.S.C.  
9 783(b)). The definitions, requirements, obligations,  
10 rights, sanctions, and liabilities created by such Ex-  
11 ecutive order and such statutory provisions are in-  
12 corporated into this agreement and are control-  
13 ling.’”.

14 (2) NONDISCLOSURE POLICY, FORM, OR AGREE-  
15 MENT IN EFFECT BEFORE THE DATE OF ENACT-  
16 MENT.—A nondisclosure policy, form, or agreement  
17 that was in effect before the date of enactment of  
18 this Act, but that does not contain the statement re-  
19 quired under section 2302(b)(13) of title 5, United  
20 States Code, (as added by this Act) for implementa-  
21 tion or enforcement—

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

1 (B) may continue to be enforced after the  
2 effective date of this Act with regard to a  
3 former employee if the agency posts notice of  
4 the statement on the agency website for the 1-  
5 year period following that effective date.

6 (c) RETALIATORY INVESTIGATIONS.—

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

10 “(h) Any corrective action ordered under this section  
11 to correct a prohibited personnel practice may include fees,  
12 costs, or damages reasonably incurred due to an agency  
13 investigation of the employee, if such investigation was  
14 commenced, expanded, or extended in retaliation for the  
15 disclosure or protected activity that formed the basis of  
16 the corrective action.”.

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

20 “(4) Any corrective action ordered under this  
21 section to correct a prohibited personnel practice  
22 may include fees, costs, or damages reasonably in-  
23 curred due to an agency investigation of the em-  
24 ployee, if such investigation was commenced, ex-  
25 panded, or extended in retaliation for the disclosure

1 or protected activity that formed the basis of the  
2 corrective action.”.

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

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

7 “(ii)(I) the Federal Bureau of Inves-  
8 tigation, the Central Intelligence Agency,  
9 the Defense Intelligence Agency, the Na-  
10 tional Geospatial-Intelligence Agency, the  
11 National Security Agency, the Office of the  
12 Director of National Intelligence, and the  
13 National Reconnaissance Office; and

14 “(II) as determined by the President,  
15 any executive agency or unit thereof the  
16 principal function of which is the conduct  
17 of foreign intelligence or counterintel-  
18 ligence activities, provided that the deter-  
19 mination be made prior to a personnel ac-  
20 tion; or”.

21 **SEC. 106. DISCIPLINARY ACTION.**

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

24 “(3)(A) A final order of the Board may im-  
25 pose—

1           “(i) disciplinary action consisting of re-  
2           moval, reduction in grade, debarment from  
3           Federal employment for a period not to exceed  
4           5 years, suspension, or reprimand;

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

7           “(iii) any combination of disciplinary ac-  
8           tions described under clause (i) and an assess-  
9           ment described under clause (ii).

10          “(B) In any case brought under paragraph (1)  
11          in which the Board finds that an employee has com-  
12          mitted a prohibited personnel practice under section  
13          2302(b)(8), or 2302(b)(9) (A)(i), (B), (C), or (D),  
14          the Board may impose disciplinary action if the  
15          Board finds that the activity protected under section  
16          2302(b)(8), or 2302(b)(9) (A)(i), (B), (C), or (D)  
17          was a significant motivating factor, even if other fac-  
18          tors also motivated the decision, for the employee’s  
19          decision to take, fail to take, or threaten to take or  
20          fail to take a personnel action, unless that employee  
21          demonstrates, by preponderance of evidence, that  
22          the employee would have taken, failed to take, or  
23          threatened to take or fail to take the same personnel  
24          action, in the absence of such protected activity.”.

1 **SEC. 107. REMEDIES.**

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

7 (b) **DAMAGES.**—Sections 1214(g)(2) and  
8 1221(g)(1)(A)(ii) of title 5, United States Code, are  
9 amended by striking all after “travel expenses,” and in-  
10 serting “any other reasonable and foreseeable consequen-  
11 tial damages, and compensatory damages (including inter-  
12 est, reasonable expert witness fees, and costs).” each place  
13 it appears.

14 **SEC. 108. JUDICIAL REVIEW.**

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

18 “(b)(1)(A) Except as provided in subparagraph (B)  
19 and paragraph (2) of this subsection, a petition to review  
20 a final order or final decision of the Board shall be filed  
21 in the United States Court of Appeals for the Federal Cir-  
22 cuit. Notwithstanding any other provision of law, any peti-  
23 tion for review shall be filed within 60 days after the  
24 Board issues notice of the final order or decision of the  
25 Board.

1       “(B) During the 5-year period beginning on the effec-  
2 tive date of the Whistleblower Protection Enhancement  
3 Act of 2011, a petition to review a final order or final  
4 decision of the Board that raises no challenge to the  
5 Board’s disposition of allegations of a prohibited personnel  
6 practice described in section 2302(b) other than practices  
7 described in section 2302(b)(8), or 2302(b)(9) (A)(i), (B),  
8 (C), or (D) shall be filed in the United States Court of  
9 Appeals for the Federal Circuit or any court of appeals  
10 of competent jurisdiction as provided under paragraph  
11 (2).”.

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

15       “(d)(1) Except as provided under paragraph (2), this  
16 paragraph shall apply to any review obtained by the Direc-  
17 tor of the Office of Personnel Management. The Director  
18 of the Office of Personnel Management may obtain review  
19 of any final order or decision of the Board by filing, within  
20 60 days after the Board issues notice of the final order  
21 or decision of the Board, a petition for judicial review in  
22 the United States Court of Appeals for the Federal Circuit  
23 if the Director determines, in the discretion of the Direc-  
24 tor, that the Board erred in interpreting a civil service  
25 law, rule, or regulation affecting personnel management

1 and that the Board’s decision will have a substantial im-  
2 pact on a civil service law, rule, regulation, or policy direc-  
3 tive. If the Director did not intervene in a matter before  
4 the Board, the Director may not petition for review of a  
5 Board decision under this section unless the Director first  
6 petitions the Board for a reconsideration of its decision,  
7 and such petition is denied. In addition to the named re-  
8 spondent, the Board and all other parties to the pro-  
9 ceedings before the Board shall have the right to appear  
10 in the proceeding before the Court of Appeals. The grant-  
11 ing of the petition for judicial review shall be at the discre-  
12 tion of the Court of Appeals.

13 “(2) During the 5-year period beginning on the effec-  
14 tive date of the Whistleblower Protection Enhancement  
15 Act of 2011, this paragraph shall apply to any review ob-  
16 tained by the Director of the Office of Personnel Manage-  
17 ment that raises no challenge to the Board’s disposition  
18 of allegations of a prohibited personnel practice described  
19 in section 2302(b) other than practices described in sec-  
20 tion 2302(b)(8), or 2302(b)(9) (A)(i), (B), (C), or (D).  
21 The Director of the Office of Personnel Management may  
22 obtain review of any final order or decision of the Board  
23 by filing, within 60 days after the Board issues notice of  
24 the final order or decision of the Board, a petition for judi-  
25 cial review in the United States Court of Appeals for the

1 Federal Circuit or any court of appeals of competent juris-  
2 diction as provided under subsection (b)(2) if the Director  
3 determines, in the discretion of the Director, that the  
4 Board erred in interpreting a civil service law, rule, or reg-  
5 ulation affecting personnel management and that the  
6 Board's decision will have a substantial impact on a civil  
7 service law, rule, regulation, or policy directive. If the Di-  
8 rector did not intervene in a matter before the Board, the  
9 Director may not petition for review of a Board decision  
10 under this section unless the Director first petitions the  
11 Board for a reconsideration of its decision, and such peti-  
12 tion is denied. In addition to the named respondent, the  
13 Board and all other parties to the proceedings before the  
14 Board shall have the right to appear in the proceeding  
15 before the court of appeals. The granting of the petition  
16 for judicial review shall be at the discretion of the court  
17 of appeals.”.

18 **SEC. 109. PROHIBITED PERSONNEL PRACTICES AFFECTING**  
19 **THE TRANSPORTATION SECURITY ADMINIS-**  
20 **TRATION.**

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

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

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

3   **“§ 2304. Prohibited personnel practices affecting the**  
4                           **Transportation Security Administration**

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

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

11                   “(2) any provision of law implementing section  
12           2302(b) (1), (8), or (9) by providing any right or  
13           remedy available to an employee or applicant for em-  
14           ployment in the civil service; and

15                   “(3) any rule or regulation prescribed under  
16           any provision of law referred to in paragraph (1) or  
17           (2).

18           “(b) RULE OF CONSTRUCTION.—Nothing in this sec-  
19           tion shall be construed to affect any rights, apart from  
20           those described in subsection (a), to which an individual  
21           described in subsection (a) might otherwise be entitled  
22           under law.”.

23           (b) TECHNICAL AND CONFORMING AMENDMENT.—  
24           The table of sections for chapter 23 of title 5, United  
25           States Code, is amended by striking the items relating to

1 sections 2304 and 2305, respectively, and by inserting the  
2 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.”.

3 (c) **EFFECTIVE DATE.**—The amendments made by  
4 this section shall take effect on the date of enactment of  
5 this section.

6 **SEC. 110. DISCLOSURE OF CENSORSHIP RELATED TO RE-**  
7 **SEARCH, ANALYSIS, OR TECHNICAL INFOR-**  
8 **MATION.**

9 (a) **DEFINITIONS.**—In this subsection—

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

13 (2) the term “applicant” means an applicant  
14 for a covered position;

15 (3) the term “censorship related to research,  
16 analysis, or technical information” means any effort  
17 to distort, misrepresent, or suppress research, anal-  
18 ysis, or technical information;

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

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

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

4 (b) PROTECTED DISCLOSURE.—

5           (1) IN GENERAL.—Any disclosure of informa-  
6 tion by an employee or applicant for employment  
7 that the employee or applicant reasonably believes is  
8 evidence of censorship related to research, analysis,  
9 or technical information—

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

13           (i) the employee or applicant reason-  
14 ably believes that the censorship related to  
15 research, analysis, or technical information  
16 is or will cause—

17           (I) any violation of law, rule, or  
18 regulation, and occurs during the con-  
19 scientious carrying out of official du-  
20 ties; or

21           (II) gross mismanagement, a  
22 gross waste of funds, an abuse of au-  
23 thority, or a substantial and specific  
24 danger to public health or safety; and

1           (ii) such disclosure is not specifically  
2 prohibited by law or such information is  
3 not specifically required by Executive order  
4 to be kept classified in the interest of na-  
5 tional defense or the conduct of foreign af-  
6 fairs; and

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

10           (i) the employee or applicant reason-  
11 ably believes that the censorship related to  
12 research, analysis, or technical information  
13 is or will cause—

14           (I) any violation of law, rule, or  
15 regulation, and occurs during the con-  
16 scientious carrying out of official du-  
17 ties; or

18           (II) gross mismanagement, a  
19 gross waste of funds, an abuse of au-  
20 thority, or a substantial and specific  
21 danger to public health or safety; and

22           (ii) the disclosure is made to the Spe-  
23 cial Counsel, or to the Inspector General of  
24 an agency or another person designated by  
25 the head of the agency to receive such dis-

1 closures, consistent with the protection of  
2 sources and methods.

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

7 (3) RULE OF CONSTRUCTION.—Nothing in this  
8 section shall be construed to imply any limitation on  
9 the protections of employees and applicants afforded  
10 by any other provision of law, including protections  
11 with respect to any disclosure of information be-  
12 lieved to be evidence of censorship related to re-  
13 search, analysis, or technical information.

14 **SEC. 111. CLARIFICATION OF WHISTLEBLOWER RIGHTS**  
15 **FOR CRITICAL INFRASTRUCTURE INFORMA-**  
16 **TION.**

17 Section 214(c) of the Homeland Security Act of 2002  
18 (6 U.S.C. 133(c)) is amended by adding at the end the  
19 following: “For purposes of this section a permissible use  
20 of independently obtained information includes the disclo-  
21 sure of such information under section 2302(b)(8) of title  
22 5, United States Code.”.

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

24 Section 2302(c) of title 5, United States Code, is  
25 amended by inserting “, including how to make a lawful

1 disclosure of information that is specifically required by  
2 law or Executive order to be kept classified in the interest  
3 of national defense or the conduct of foreign affairs to the  
4 Special Counsel, the Inspector General of an agency, Con-  
5 gress, or other agency employee designated to receive such  
6 disclosures” after “chapter 12 of this title”.

7 **SEC. 113. SPECIAL COUNSEL AMICUS CURIAE APPEAR-**  
8 **ANCE.**

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

11 “(h)(1) The Special Counsel is authorized to appear  
12 as amicus curiae in any action brought in a court of the  
13 United States related to any civil action brought in con-  
14 nection with section 2302(b) (8) or (9), or as otherwise  
15 authorized by law. In any such action, the Special Counsel  
16 is authorized to present the views of the Special Counsel  
17 with respect to compliance with section 2302(b) (8) or (9)  
18 and the impact court decisions would have on the enforce-  
19 ment of such provisions of law.

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

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

24 (a) SPECIAL COUNSEL.—Section 1214(b)(4)(B)(ii) of  
25 title 5, United States Code, is amended by inserting “,

1 after a finding that a protected disclosure was a contrib-  
2 uting factor,” after “ordered if”.

3 (b) INDIVIDUAL ACTION.—Section 1221(e)(2) of title  
4 5, United States Code, is amended by inserting “, after  
5 a finding that a protected disclosure was a contributing  
6 factor,” after “ordered if”.

7 **SEC. 115. NONDISCLOSURE POLICIES, FORMS, AND AGREE-**  
8 **MENTS.**

9 (a) IN GENERAL.—

10 (1) REQUIREMENT.—Each agreement in Stand-  
11 ard Forms 312 and 4414 of the Government and  
12 any other nondisclosure policy, form, or agreement  
13 of the Government shall contain the following state-  
14 ment: “These restrictions are consistent with and do  
15 not supersede, conflict with, or otherwise alter the  
16 employee obligations, rights, or liabilities created by  
17 Executive Order 13526 (75 Fed. Reg. 707; relating  
18 to classified national security information), or any  
19 successor thereto; Executive Order 12968 (60 Fed.  
20 Reg. 40245; relating to access to classified informa-  
21 tion), or any successor thereto; section 7211 of title  
22 5, United States Code (governing disclosures to Con-  
23 gress); section 1034 of title 10, United States Code  
24 (governing disclosure to Congress by members of the  
25 military); section 2302(b)(8) of title 5, United

1 States Code (governing disclosures of illegality,  
2 waste, fraud, abuse, or public health or safety  
3 threats); the Intelligence Identities Protection Act of  
4 1982 (50 U.S.C. 421 et seq.) (governing disclosures  
5 that could expose confidential Government agents);  
6 and the statutes which protect against disclosure  
7 that may compromise the national security, includ-  
8 ing sections 641, 793, 794, 798, and 952 of title 18,  
9 United States Code, and section 4(b) of the Subver-  
10 sive Activities Act of 1950 (50 U.S.C. 783(b)). The  
11 definitions, requirements, obligations, rights, sanc-  
12 tions, and liabilities created by such Executive order  
13 and such statutory provisions are incorporated into  
14 this agreement and are controlling.”.

15 (2) ENFORCEABILITY.—

16 (A) IN GENERAL.—Any nondisclosure pol-  
17 icy, form, or agreement described under para-  
18 graph (1) that does not contain the statement  
19 required under paragraph (1) may not be im-  
20 plemented or enforced to the extent such policy,  
21 form, or agreement is inconsistent with that  
22 statement.

23 (B) NONDISCLOSURE POLICY, FORM, OR  
24 AGREEMENT IN EFFECT BEFORE THE DATE OF  
25 ENACTMENT.—A nondisclosure policy, form, or

1 agreement that was in effect before the date of  
2 enactment of this Act, but that does not con-  
3 tain the statement required under paragraph  
4 (1)—

5 (i) may be enforced with regard to a  
6 current employee if the agency gives such  
7 employee notice of the statement; and

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

14 (b) PERSONS OTHER THAN GOVERNMENT EMPLOY-  
15 EES.—Notwithstanding subsection (a), a nondisclosure  
16 policy, form, or agreement that is to be executed by a per-  
17 son connected with the conduct of an intelligence or intel-  
18 ligence-related activity, other than an employee or officer  
19 of the United States Government, may contain provisions  
20 appropriate to the particular activity for which such docu-  
21 ment is to be used. Such policy, form, or agreement shall,  
22 at a minimum, require that the person will not disclose  
23 any classified information received in the course of such  
24 activity unless specifically authorized to do so by the  
25 United States Government. Such nondisclosure policy,

1 form, or agreement shall also make it clear that such  
2 forms do not bar disclosures to Congress or to an author-  
3 ized official of an executive agency or the Department of  
4 Justice that are essential to reporting a substantial viola-  
5 tion of law, consistent with the protection of sources and  
6 methods.

7 **SEC. 116. REPORTING REQUIREMENTS.**

8 (a) GOVERNMENT ACCOUNTABILITY OFFICE.—

9 (1) REPORT.—Not later than 40 months after  
10 the date of enactment of this Act, the Comptroller  
11 General shall submit a report to the Committee on  
12 Homeland Security and Governmental Affairs of the  
13 Senate and the Committee on Oversight and Govern-  
14 ment Reform of the House of Representatives on the  
15 implementation of this title.

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

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

23 (B) the outcome of the cases described  
24 under subparagraph (A), including whether or  
25 not the United States Merit Systems Protection

1 Board, the Federal Circuit Court of Appeals, or  
2 any other court determined the allegations to be  
3 frivolous or malicious;

4 (C) an analysis of the outcome of cases de-  
5 scribed under subparagraph (A) that were de-  
6 cided by a United States District Court and the  
7 impact the process has on the Merit Systems  
8 Protection Board and the Federal court system;  
9 and

10 (D) any other matter as determined by the  
11 Comptroller General.

12 (b) MERIT SYSTEMS PROTECTION BOARD.—

13 (1) IN GENERAL.—Each report submitted an-  
14 nually by the Merit Systems Protection Board under  
15 section 1116 of title 31, United States Code, shall,  
16 with respect to the period covered by such report, in-  
17 clude as an addendum the following:

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

23 (B) The number of such cases filed in the  
24 regional and field offices, the number of peti-

1           tions for review filed in such cases, and the out-  
2           comes of such cases.

3           (2) FIRST REPORT.—The first report described  
4           under paragraph (1) submitted after the date of en-  
5           actment of this Act shall include an addendum re-  
6           quired under that subparagraph that covers the pe-  
7           riod beginning on January 1, 2009 through the end  
8           of the fiscal year 2009.

9   **SEC. 117. ALTERNATIVE REVIEW.**

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

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

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

19           “(B) the employee, former employee, or appli-  
20         cant for employment allegedly affected by such prac-  
21         tice resides.

22           “(2)(A) An employee, former employee, or applicant  
23         for employment in any case to which paragraph (3) or (4)  
24         applies may file an action at law or equity for de novo

1 review in the appropriate United States district court in  
2 accordance with this subsection.

3 “(B) Upon initiation of any action under subpara-  
4 graph (A), the Board shall stay any other claims of such  
5 employee, former employee, or applicant pending before  
6 the Board at that time which arise out of the same set  
7 of operative facts. Such claims shall be stayed pending  
8 completion of the action filed under subparagraph (A) be-  
9 fore the appropriate United States district court and any  
10 associated appellate review.

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

12 “(A) an employee, former employee, or appli-  
13 cant for employment—

14 “(i) seeks corrective action from the Merit  
15 Systems Protection Board under section  
16 1221(a) based on an alleged prohibited per-  
17 sonnel practice described in section 2302(b) (8)  
18 or (9) (A)(i), (B), (C), or (D) for which the as-  
19 sociated personnel action is an action covered  
20 under section 7512 or 7542; or

21 “(ii) files an appeal under section 7701(a)  
22 alleging as an affirmative defense the commis-  
23 sion of a prohibited personnel practice described  
24 in section 2302(b) (8) or (9) (A)(i), (B), (C),  
25 or (D) for which the associated personnel action

1 is an action covered under section 7512 or  
2 7542;

3 “(B) no final order or decision is issued by the  
4 Board within 270 days after the date on which a re-  
5 quest for that corrective action or appeal has been  
6 duly submitted, unless the Board determines that  
7 the employee, former employee, or applicant for em-  
8 ployment engaged in conduct intended to delay the  
9 issuance of a final order or decision by the Board;  
10 and

11 “(C) such employee, former employee, or appli-  
12 cant provides written notice to the Board of filing an  
13 action under this subsection before the filing of that  
14 action.

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

16 “(A) an employee, former employee, or applicant for  
17 employment —

18 “(i) seeks corrective action from the Merit Sys-  
19 tems Protection Board under section 1221(a) based  
20 on an alleged prohibited personnel practice described  
21 in section 2302(b) (8) or (9) (A)(i), (B), (C), or (D)  
22 for which the associated personnel action is an ac-  
23 tion covered under section 7512 or 7542; or

24 “(ii) files an appeal under section 7701(a)(1)  
25 alleging as an affirmative defense the commission of

1 a prohibited personnel practice described in section  
2 2302(b) (8) or (9) (A)(i), (B), (C), or (D) for which  
3 the associated personnel action is an action covered  
4 under section 7512 or 7542;

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

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

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

22 “(i) under standard applicable to the review of  
23 motions to dismiss under rule 12(b)(6) of the Fed-  
24 eral Rules of Civil Procedure, including rule 12(d),  
25 the request for corrective action (including any alle-

1 gations made with the motion under subparagraph  
2 (B)) would not be subject to dismissal; and

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

7 “(II) the case—

8 “(aa) consists of multiple claims;

9 “(bb) requires complex or extensive  
10 discovery;

11 “(cc) arises out of the same set of op-  
12 erative facts as any civil action against the  
13 Government filed by the employee, former  
14 employee, or applicant pending in a Fed-  
15 eral court; or

16 “(dd) involves a novel question of law.

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

23 “(6)(A) Any decision of the Board, any administra-  
24 tive law judge appointed by the Board under section 3105  
25 of this title and assigned to the case, or any employee of

1 the Board designated by the Board and assigned to the  
2 case to grant or deny a certification described under para-  
3 graph (4)(ii) shall be reviewed on appeal of a final order  
4 or decision of the Board under section 7703 only if—

5           “(i) a motion requesting a certification was de-  
6           nied; and

7           “(ii) the reviewing court vacates the decision of  
8           the Board on the merits of the claim under the  
9           standards set forth in section 7703(c).

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

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

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

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

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

3           “(C) the court—

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

6                 “(ii) may award any relief which the court  
7 considers appropriate under subsection (g), ex-  
8 cept—

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

11                    “(II) relief may not include punitive  
12 damages; and

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

18           “(D) the Special Counsel may not represent the  
19 employee, former employee, or applicant for employ-  
20 ment.

21           “(8) An appeal from a final decision of a district  
22 court in an action under this subsection shall be taken  
23 to the Court of Appeals for the Federal Circuit or any  
24 court of appeals of competent jurisdiction.

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

7 (b) SUNSET.—

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

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

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

18 **JUDGMENT.**

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

21 (1) by redesignating paragraph (3) as para-  
22 graph (4);

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

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

15          (b) SUNSET.—

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

20               (2) PENDING CLAIMS.—The amendments made  
21          by this section shall continue to apply with respect  
22          to any claim pending before the Board on the last  
23          day of the 5-year period described under paragraph  
24          (1).

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

2 (a) PROHIBITED PERSONNEL PRACTICES.—Section  
3 2302(b)(8) of title 5, United States Code, is amended—

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

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

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

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

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

16 (1) in subsection (a)(1), by adding at the end  
17 the following:

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

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

4           (3) in subsection (d)—

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

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

13           (4) in subsection (h)—

14                 (A) in paragraph (1)—

15                         (i) in subparagraph (A), by striking  
16 “intelligence”; and

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

20                 (B) by striking paragraph (2), and insert-  
21 ing the following:

22                 “(2) The term ‘appropriate committees’ means  
23 the Permanent Select Committee on Intelligence of  
24 the House of Representatives and the Select Com-  
25 mittee on Intelligence of the Senate, except that with

1       respect to disclosures made by employees described  
2       in subsection (a)(1)(D), the term ‘appropriate com-  
3       mittees’ means the committees of appropriate juris-  
4       diction.”.

5       **SEC. 120. WHISTLEBLOWER PROTECTION OMBUDSMAN.**

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

9       “(d)(1) Each Inspector General shall, in accordance  
10      with applicable laws and regulations governing the civil  
11      service—

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

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

20           “(C) designate a Whistleblower Protection Om-  
21      budsman who shall educate agency employees—

22           “(i) about prohibitions on retaliation for  
23      protected disclosures; and

24           “(ii) who have made or are contemplating  
25      making a protected disclosure about the rights

1           and remedies against retaliation for protected  
2           disclosures.

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

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

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

13          “(B) as determined by the President, any execu-  
14          tive agency or unit thereof the principal function of  
15          which is the conduct of foreign intelligence or  
16          counter intelligence activities.”.

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

20                 (1) by striking “section 3(d)(1)” and inserting  
21                 “section 3(d)(1)(A)”; and

22                 (2) by striking “section 3(d)(2)” and inserting  
23                 “section 3(d)(1)(B)”.

24          (c) SUNSET.—

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

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

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

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

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

18 **“§ 2303A. Prohibited personnel practices in the intel-**  
19 **ligence community**

20           “(a) DEFINITIONS.—In this section—

21                   “(1) the term ‘agency’ means an executive de-  
22 partment or independent establishment, as defined  
23 under sections 101 and 104, that contains an intel-  
24 ligence community element, except the Federal Bu-  
25 reau of Investigation;

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

3           “(A) means—

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

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

16                   “(B) does not include the Federal Bureau  
17                   of Investigation; and

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

24           “(b) IN GENERAL.—Any employee of an agency who  
25           has authority to take, direct others to take, recommend,

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

11           “(1) a violation of any law, rule, or regulation,  
12           except for an alleged violation that occurs during the  
13           conscientious carrying out of official duties; or

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

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

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

22           “(1) preempt or preclude any employee, or ap-  
23           plicant for employment, at the Federal Bureau of  
24           Investigation from exercising rights currently pro-

1 vided under any other law, rule, or regulation, in-  
2 cluding section 2303;

3 “(2) repeal section 2303; or

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

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

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

12 **SEC. 202. REVIEW OF SECURITY CLEARANCE OR ACCESS**  
13 **DETERMINATIONS.**

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

17 (1) in the matter preceding paragraph (1), by  
18 striking “Not” and inserting “Except as otherwise  
19 provided, not”;

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

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

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

1           “(7) not later than 180 days after the date of  
2 enactment of the Whistleblower Protection Enhance-  
3 ment Act of 2011—

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

11           “(B) developing and implementing uniform  
12 and consistent policies and procedures to ensure  
13 proper protections during the process for deny-  
14 ing, suspending, or revoking a security clear-  
15 ance or access to classified information, includ-  
16 ing the provision of a right to appeal such a de-  
17 nial, suspension, or revocation, except that  
18 there shall be no appeal of an agency’s suspen-  
19 sion of a security clearance or access determina-  
20 tion for purposes of conducting an investiga-  
21 tion, if that suspension lasts no longer than 1  
22 year or the head of the agency certifies that a  
23 longer suspension is needed before a final deci-  
24 sion on denial or revocation to prevent immi-  
25 nent harm to the national security.

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

16                   “(A) for an independent and impartial  
17                   fact-finder;

18                   “(B) for notice and the opportunity to be  
19                   heard, including the opportunity to present rel-  
20                   evant evidence, including witness testimony;

21                   “(C) that the employee or former employee  
22                   may be represented by counsel;

23                   “(D) that the employee or former employee  
24                   has a right to a decision based on the record  
25                   developed during the appeal;

1           “(E) that not more than 180 days shall  
2 pass from the filing of the appeal to the report  
3 of the impartial fact-finder to the agency head  
4 or the designee of the agency head, unless—

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

7                   “(ii) the impartial fact-finder deter-  
8 mines in writing that a greater period of  
9 time is required in the interest of fairness  
10 or national security;

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

19           “(G) that the employee or former employee  
20 shall have no right to compel the production of  
21 information specifically required by Executive  
22 order to be kept classified in the interest of na-  
23 tional defense or the conduct of foreign affairs,  
24 except evidence necessary to establish that the  
25 employee made the disclosure or communication

1           such employee alleges was protected by sub-  
2           paragraphs (A), (B), and (C) of subsection  
3           (j)(1).”.

4           (b) RETALIATORY REVOCATION OF SECURITY  
5 CLEARANCES AND ACCESS DETERMINATIONS.—Section  
6 3001 of the Intelligence Reform and Terrorism Prevention  
7 Act of 2004 (50 U.S.C. 435b) is amended by adding at  
8 the end the following:

9           “(j) RETALIATORY REVOCATION OF SECURITY  
10 CLEARANCES AND ACCESS DETERMINATIONS.—

11           “(1) IN GENERAL.—Agency personnel with au-  
12           thority over personnel security clearance or access  
13           determinations shall not take or fail to take, or  
14           threaten to take or fail to take, any action with re-  
15           spect to any employee’s security clearance or access  
16           determination because of—

17           “(A) any disclosure of information to the  
18           Director of National Intelligence (or an em-  
19           ployee designated by the Director of National  
20           Intelligence for such purpose) or the head of  
21           the employing agency (or employee designated  
22           by the head of that agency for such purpose) by  
23           an employee that the employee reasonably be-  
24           lieves evidences—

1                   “(i) a violation of any law, rule, or  
2                   regulation, and occurs during the conscien-  
3                   tious carrying out of official duties; or

4                   “(ii) gross mismanagement, a gross  
5                   waste of funds, an abuse of authority, or  
6                   a substantial and specific danger to public  
7                   health or safety;

8                   “(B) any disclosure to the Inspector Gen-  
9                   eral of an agency or another employee des-  
10                  ignated by the head of the agency to receive  
11                  such disclosures, of information which the em-  
12                  ployee reasonably believes evidences—

13                   “(i) a violation of any law, rule, or  
14                   regulation, and occurs during the conscien-  
15                   tious carrying out of official duties; or

16                   “(ii) gross mismanagement, a gross  
17                   waste of funds, an abuse of authority, or  
18                   a substantial and specific danger to public  
19                   health or safety;

20                   “(C) any communication that complies  
21                  with—

22                   “(i) subsection (a)(1), (d), or (h) of  
23                   section 8H of the Inspector General Act of  
24                   1978 (5 U.S.C. App.);

1                   “(ii) subsection (d)(5)(A), (D), or (G)  
2                   of section 17 of the Central Intelligence  
3                   Agency Act of 1949 (50 U.S.C. 403q); or

4                   “(iii) subsection (k)(5)(A), (D), or  
5                   (G), of section 103H of the National Secu-  
6                   rity Act of 1947 (50 U.S.C. 403–3h);

7                   “(D) the exercise of any appeal, complaint,  
8                   or grievance right granted by any law, rule, or  
9                   regulation;

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

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

24                   “(2) RULE OF CONSTRUCTION.—Consistent  
25                   with the protection of sources and methods, nothing

1 in paragraph (1) shall be construed to authorize the  
2 withholding of information from the Congress or the  
3 taking of any personnel action against an employee  
4 who discloses information to the Congress.

5 “(3) DISCLOSURES.—

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

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

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

15 “(iii) of the employee’s motive for  
16 making the disclosure;

17 “(iv) the disclosure was not made in  
18 writing;

19 “(v) the disclosure was made while  
20 the employee was off duty; or

21 “(vi) of the amount of time which has  
22 passed since the occurrence of the events  
23 described in the disclosure.

24 “(B) REPRISALS.—If a disclosure is made  
25 during the normal course of duties of an em-

1           employee, the disclosure shall not be excluded from  
2           paragraph (1) if any employee who has author-  
3           ity to take, direct others to take, recommend, or  
4           approve any personnel action with respect to  
5           the employee making the disclosure, took, failed  
6           to take, or threatened to take or fail to take a  
7           personnel action with respect to that employee  
8           in reprisal for the disclosure.

9           “(4) AGENCY ADJUDICATION.—

10           “(A) REMEDIAL PROCEDURE.—An em-  
11           ployee or former employee who believes that he  
12           or she has been subjected to a reprisal prohib-  
13           ited by paragraph (1) of this subsection may,  
14           within 90 days after the issuance of notice of  
15           such decision, appeal that decision within the  
16           agency of that employee or former employee  
17           through proceedings authorized by paragraph  
18           (7) of subsection (a), except that there shall be  
19           no appeal of an agency’s suspension of a secu-  
20           rity clearance or access determination for pur-  
21           poses of conducting an investigation, if that  
22           suspension lasts not longer than 1 year (or a  
23           longer period in accordance with a certification  
24           made under subsection (b)(7)).

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

16           “(C) CONTRIBUTING FACTOR.—In deter-  
17 mining whether the adverse security clearance  
18 or access determination violated paragraph (1)  
19 of this subsection, the agency shall find that  
20 paragraph (1) of this subsection was violated if  
21 a disclosure described in paragraph (1) was a  
22 contributing factor in the adverse security clear-  
23 ance or access determination taken against the  
24 individual, unless the agency demonstrates by a  
25 preponderance of the evidence that it would

1           have taken the same action in the absence of  
2           such disclosure, giving the utmost deference to  
3           the agency’s assessment of the particular threat  
4           to the national security interests of the United  
5           States in the instant matter.

6           “(5) APPELLATE REVIEW OF SECURITY CLEAR-  
7           ANCE ACCESS DETERMINATIONS BY DIRECTOR OF  
8           NATIONAL INTELLIGENCE.—

9                   “(A) DEFINITION.—In this paragraph, the  
10           term ‘Board’ means the appellate review board  
11           established under section 204 of the Whistle-  
12           blower Protection Enhancement Act of 2011.

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

18                   “(C) POLICIES AND PROCEDURES.—The  
19           Board, in consultation with the Attorney Gen-  
20           eral, Director of National Intelligence, and the  
21           Secretary of Defense, shall develop and imple-  
22           ment policies and procedures for adjudicating  
23           the appeals authorized by subparagraph (B).  
24           The Director of National Intelligence and Sec-  
25           retary of Defense shall jointly approve any

1 rules, regulations, or guidance issued by the  
2 Board concerning the procedures for the use or  
3 handling of classified information.

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

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

22 “(F) DE NOVO DETERMINATION.—The  
23 Board shall make a de novo determination,  
24 based on the entire record and under the stand-  
25 ards specified in paragraph (4), of whether the

1 employee or former employee received an ad-  
2 verse security clearance or access determination  
3 in violation of paragraph (1). In considering the  
4 record, the Board may weigh the evidence,  
5 judge the credibility of witnesses, and determine  
6 controverted questions of fact. In doing so, the  
7 Board may consider the prior fact-finder's op-  
8 portunity to see and hear the witnesses.

9 “(G) ADVERSE SECURITY CLEARANCE OR  
10 ACCESS DETERMINATION.—If the Board finds  
11 that the adverse security clearance or access de-  
12 termination violated paragraph (1), it shall then  
13 separately determine whether reinstating the se-  
14 curity clearance or access determination is  
15 clearly consistent with the interests of national  
16 security, with any doubt resolved in favor of na-  
17 tional security, under Executive Order 12968  
18 (60 Fed. Reg. 40245; relating to access to clas-  
19 sified information) or any successor thereto (in-  
20 cluding any adjudicative guidelines promulgated  
21 under such orders) or any subsequent Executive  
22 order, regulation, or policy concerning access to  
23 classified information.

24 “(H) REMEDIES.—

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

1 ordered within 90 days, unless the Director  
2 of National Intelligence, the Secretary of  
3 Energy, or the Secretary of Defense, in the  
4 case of any component of the Department  
5 of Defense, determines that doing so would  
6 endanger national security.

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

15 “(I) CONGRESSIONAL NOTIFICATION.—

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

20 “(I) the Committee on Homeland  
21 Security and Government Affairs of  
22 the Senate;

23 “(II) the Select Committee on In-  
24 telligence of the Senate;

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

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

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

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

1                   mittees described in subclauses (I) through  
2                   (V) of clause (i).

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

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

7                   “(B) action of the appellate review board  
8                   established under section 204 of the Whistle-  
9                   blower Protection Enhancement Act of 2011.

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

14                  (c) ACCESS DETERMINATION DEFINED.—Section  
15                  3001(a) of the Intelligence Reform and Terrorism Preven-  
16                  tion Act of 2004 (50 U.S.C. 435b(a)) is amended by add-  
17                  ing at the end the following:

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

20                  “(A) is eligible for access to classified in-  
21                  formation in accordance with Executive Order  
22                  12968 (60 Fed. Reg. 40245; relating to access  
23                  to classified information), or any successor  
24                  thereto, and Executive Order 10865 (25 Fed.

1           Reg. 1583; relating to safeguarding classified  
2           information with industry); 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 12968 (60 Fed. Reg. 40245; relating to classified national  
11 security information), or any successor thereto, and Exec-  
12 utive Order 10865 (25 Fed. Reg. 1583; relating to safe-  
13 guarding classified information with industry), or any suc-  
14 cessor thereto, that meet the requirements of section  
15 3001(b)(7) of such Act, as so amended.

16 **SEC. 203. REVISIONS RELATING TO THE INTELLIGENCE**  
17                   **COMMUNITY WHISTLEBLOWER PROTECTION**  
18                   **ACT.**

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

21                   (1) in subsection (b)—

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

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

24                   “(2) If the head of an establishment determines that  
25 a complaint or information transmitted under paragraph

1 (1) would create a conflict of interest for the head of the  
2 establishment, the head of the establishment shall return  
3 the complaint or information to the Inspector General with  
4 that determination and the Inspector General shall make  
5 the transmission to the Director of National Intelligence.  
6 In such a case, the requirements of this section for the  
7 head of the establishment apply to the recipient of the In-  
8 spector General's transmission. The Director of National  
9 Intelligence shall consult with the members of the appel-  
10 late review board established under section 204 of the  
11 Whistleblower Protection Enhancement Review Act of  
12 2011 regarding all transmissions under this paragraph.”;

13 (2) by designating subsection (h) as subsection  
14 (i); and

15 (3) by inserting after subsection (g), the fol-  
16 lowing:

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

23 (b) CENTRAL INTELLIGENCE AGENCY.—Section  
24 17(d)(5) of the Central Intelligence Agency Act of 1949  
25 (50 U.S.C. 403q) is amended—

1 (1) in subparagraph (B)—

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

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

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

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

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

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

21 **NONAPPLICABILITY TO CERTAIN TERMI-**

22 **NATIONS.**

23 (a) DEFINITIONS.—In this section—

24 (1) the term “congressional oversight commit-  
25 tees” means the—

1 (A) the Committee on Homeland Security  
2 and Government Affairs of the Senate;

3 (B) the Select Committee on Intelligence  
4 of the Senate;

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

8 (D) the Permanent Select Committee on  
9 Intelligence of the House of Representatives;  
10 and

11 (2) the term “intelligence community ele-  
12 ment”—

13 (A) means—

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

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

1 (B) does not include the Federal Bureau of  
2 Investigation.

3 (b) REGULATIONS.—

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

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

21 (A) to hear whistleblower appeals related  
22 to security clearance access determinations de-  
23 scribed in section 3001(j) of the Intelligence  
24 Reform and Terrorism Prevention Act of 2004  
25 (50 U.S.C. 435b), as added by this Act; and

1 (B) that shall include a subpanel that re-  
2 flects the composition of the intelligence com-  
3 mittee, which shall be composed of intelligence  
4 community elements and inspectors general  
5 from intelligence community elements, for the  
6 purpose of hearing cases that arise in elements  
7 of the intelligence community.

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

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

21 (1) section 1609 of title 10, United States  
22 Code;

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

1 (A) the Director personally summarily ter-  
2 minates the individual; and

3 (B) the Director—

4 (i) determines the termination to be in  
5 the interest of the United States;

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

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

15 (3) the authority of the Director of the Central  
16 Intelligence Agency under section 104A(e) of the  
17 National Security Act of 1947 (50 U.S.C. 403–  
18 4a(e)), if—

19 (A) the Director personally summarily ter-  
20 minates the individual; and

21 (B) the Director—

22 (i) determines the termination to be in  
23 the interest of the United States;

24 (ii) determines that the procedures  
25 prescribed in other provisions of law that

1 authorize the termination of the employ-  
2 ment of such employee cannot be invoked  
3 in a manner consistent with the national  
4 security; and

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

8 (4) section 7532 of title 5, United States Code,  
9 if—

10 (A) the agency head personally terminates  
11 the individual; and

12 (B) the agency head—

13 (i) determines the termination to be in  
14 the interest of the United States;

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

21 (iii) not later than 5 days after such  
22 termination, notifies the congressional  
23 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.