IN THE SENATE OF THE UNITED STATES

MARCH 15, 2007

Received; read twice and referred to the Committee on Homeland Security and
Governmental Affairs

AN ACT

To amend title 5, United States Code, to clarify which disclosures of information are protected from prohibited personnel practices; to require a statement in nondisclosure policies, forms, and agreements to the effect that such policies, forms, and agreements are consistent with certain disclosure protections, and for other purposes.
Be it enacted by the Senate and House of Representa-
tives 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 2007”.

(b) TABLE OF CONTENTS.—The table of contents for
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.
Sec. 6. Exclusion of agencies by the President.
Sec. 7. Disciplinary action.
Sec. 8. Government Accountability Office study on revocation of security clear-
ances.
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. Clarification of whistleblower rights relating to scientific and other re-
search.
Sec. 14. 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 ap-
plicant reasonably believes evidences” and in-
serting “, without restriction as to time, place,
form, motive, context, forum, or prior disclosure
made to any person by an employee or appli-
cant, including a disclosure made in the ordi-
nary 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.

(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 (xii); and
(3) by inserting after clause (x) the following:

“(xi) the implementation or enforcement of any nondisclosure policy, form, or agreement; 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); the Intelligence Identities Protection Act of 1982 (50 U.S.C. 421 and following) (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 factfinding 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:

“(ii)(I) the Federal Bureau of Investigation, the Central Intelligence Agency, the Defense Intelligence Agency, the National
Geospatial-Intelligence Agency, or the National Security Agency; or
“(II) as determined by the President, any Executive agency or unit thereof the principal function of which is the conduct of foreign intelligence or counterintelligence activities, if the determination (as that determination relates to a personnel action) is made before that personnel action; 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) (as the case may be) was the primary motivating factor, unless that employee demonstrates, by a preponderance of the 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) REQUIREMENT.—The Comptroller General shall conduct a study of security clearance revocations, taking effect after 1996, with respect to personnel that filed claims under chapter 12 of title 5, United States Code, in connection therewith. The study shall consist of an examination of the number of such clearances revoked, the number restored, and the relationship, if any, between the resolution of claims filed under such chapter and the restoration of such clearances.

(b) REPORT.—Not later than 270 days after the date of the enactment of this Act, the Comptroller General shall submit to the Committee on Oversight and Government Reform of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate a report on the results of the study required by subsection (a).
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

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“(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 MSPB 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 the first sentence of paragraph (1), 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) COMPENSATORY DAMAGES.—Section 1221(g)(1)(A)(ii) of such title 5 is amended by striking
all after “travel expenses,” and inserting “any other reason-
able and foreseeable consequential damages, and comp-
ensatory damages (including attorney’s fees, interest, rea-
sonable expert witness fees, and costs).”.

(d) 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 “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:

“§ 2303a. National security whistleblower rights

“(a) Prohibition of Reprisals.—
“(1) IN GENERAL.—In addition to any rights provided in section 2303 of this title, title VII of Public Law 105–272, or any other provision of law, an employee or former employee in 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 any disclosure of covered information which is made—

“(A) by an employee or former employee in 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 in which such employee or former employee is or was employed.
“(b) Investigation of Complaints.—An employee or former employee in 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 the complaint, the head of the covered agency shall, taking into consideration the report of the Inspector General under subsection (b) (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 he would have held had the reprisal not occurred, including voiding any directive or order denying, suspending, or revoking a security clearance or otherwise restricting access to classified or sen-
sitive information that constituted a reprisal, as well as 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, he shall issue a report to the employee or former employee detailing the reasons for the denial.

“(2)(A) If the head of the 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 the 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 to its Inspector General and to authorized Members of Congress (with a classified annex, if necessary), detailing the circumstances of the 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. The head of the covered agency shall also provide periodic updates to the Inspector General and authorized Members of Congress detailing any significant actions taken as a result of those procedures, and shall respond promptly to inquiries from authorized Members of Congress regarding the status of those procedures.

“(3) If the head of the covered agency has not made a determination under paragraph (1) within 180 days of the filing of the complaint (or he 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 described 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. An appeal from a final decision of a dis-


tinct 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 em-
bracing the district in which the action was brought.

“(4) An employee or former employee adversely
affected or aggrieved by an order issued under para-


graph (1), or who seeks review of any corrective ac-
tion determined under paragraph (1), may obtain ju-
dicial review of such order or determination in the
United States Court of Appeals for the Federal Cir-
cuit or any United States court of appeals having ju-
risdiction over appeals from any United States dis-


tRICT court which, 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 deter-
mination to implement corrective action by the head
of the 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 na-
tional 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 em-
ployee, provided that an Inspector General investiga-
tion 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 sub-
section (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 as-
sertion, 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 in 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)) which 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) of this section 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 Follette Act).

No court or administrative agency may require the ex-
haustion 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.—For purposes of this section—

“(1) the term ‘covered information’, as used
with respect to an employee or former employee,
means any information (including classified or sen-
sitive information) which the employee or former
employee reasonably believes evidences—

“(A) any violation of any law, rule, or reg-
ulation; 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,
the Office of the Director of National Intel-
ligence, the Central Intelligence Agency, the
Defense Intelligence Agency, the National
Geospatial-Intelligence Agency, the National Se-
curity Agency, and the National Reconnaissance
Office; and

“(B) any other Executive agency, or ele-
ment or unit thereof, determined by the Presi-
dent under section 2302(a)(2)(C)(ii)(II) to have
as its principal function the conduct of foreign
intelligence or counterintelligence activities;

“(3) the term ‘authorized Member of Congress’
means—

“(A) with respect to covered information
about sources and methods of the Central Intel-
ligence Agency, the Director of National Intel-
ligence, and the National Intelligence Program
(as defined in section 3(6) of the National Se-
curity Act of 1947), a member of the House
Permanent Select Committee on Intelligence,
the Senate Select Committee on Intelligence, or
any other committees of the House of Rep-
resentatives or Senate to which this type of in-
formation is customarily provided;

“(B) with respect to special access pro-
grams specified in section 119 of title 10, an
appropriate member of the Congressional de-
fense committees (as defined in such section); and
“(C) with respect to other covered information, a member of the House Permanent Select Committee on Intelligence, the Senate Select Committee on Intelligence, the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, or any other committees of the House of Representatives or the Senate that have oversight over the program which the covered information concerns; and

“(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) CIVILIAN AGENCY CONTRACTS.—Section 315(c) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 265(c)) is amended—

(1) in paragraph (1), by striking “If the head” and all that follows through “actions:” and inserting the following: “Not later than 180 days after submission of a complaint under subsection (b), the head of the executive agency concerned shall determine whether the contractor concerned has subjected the complainant to a reprisal prohibited by subsection (a) and shall either issue an order denying relief or shall take one or more of the following actions:”; and

(2) by redesignating paragraph (3) as paragraph (4) and adding after paragraph (2) the following new paragraph (3):

“(3) If the head of an executive agency has not issued an order within 180 days after the submission of a complaint under subsection (b) 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 his administrative remedies with respect to the complaint, and the complainant may bring an action at law or equity for de novo review to seek compensatory damages and other re-
lief 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 con-
troversy, and which action shall, at the request of either
party to such action, be tried by the court with a jury.”.

(b) ARMED SERVICES CONTRACTS.—Section 2409(c)
of title 10, United States Code, is amended—

(1) in paragraph (1), by striking “If the head”
and all that follows through “actions:” and inserting
the following: “Not later than 180 days after sub-
mission of a complaint under subsection (b), the
head of the agency concerned shall determine wheth-
er the contractor concerned has subjected the com-
plainant to a reprisal prohibited by subsection (a)
and shall either issue an order denying relief or shall
take one or more of the following actions:”; and

(2) by redesignating paragraph (3) as para-
graph (4) and adding after paragraph (2) the fol-
lowing new paragraph (3):

“(3) If the head of an agency has not issued an order
within 180 days after the submission of a complaint under
subsection (b) 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 his administrative rem-
edies with respect to the complaint, and the complainant
may bring an action at law or equity for de novo review
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, and
which action shall, at the request of either party to such
action, be tried by the court with a jury.”.

SEC. 12. PROHIBITED PERSONNEL PRACTICES AFFECTING
THE TRANSPORTATION SECURITY ADMINIS-
TRATION.

(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:

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

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

“(1) the provisions of section 2302(b)(1), (8),
and (9);
“(2) any provision of law implementing section 2302(b)(1), (8), or (9) 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.


“2306. Coordination with certain other provisions of law.”.
SEC. 13. CLARIFICATION OF WHISTLEBLOWER RIGHTS RELATING TO SCIENTIFIC AND OTHER RESEARCH.

(a) In General.—Section 2302 of title 5, United States Code, is amended by adding at the end the following:

“(f) As used in section 2302(b)(8), the term ‘abuse of authority’ includes—

“(1) any action that compromises the validity or accuracy of federally funded research or analysis;

“(2) the dissemination of false or misleading scientific, medical, or technical information;

“(3) any action that restricts or prevents an employee or any person performing federally funded research or analysis from publishing in peer-reviewed journals or other scientific publications or making oral presentations at professional society meetings or other meetings of their peers; and

“(4) any action that discriminates for or against any employee or applicant for employment on the basis of religion, as defined by section 13(b) of the Whistleblower Protection Enhancement Act of 2007.”.

(b) Definition.—As used in section 2302(f)(3) of title 5, United States Code (as amended by subsection (a)), the term “on the basis of religion” means—
(1) prohibiting personal religious expression by Federal employees to the greatest extent possible, consistent with requirements of law and interests in workplace efficiency;

(2) requiring religious participation or non-participation as a condition of employment, or permitting religious harassment;

(3) failing to accommodate employees’ exercise of their religion;

(4) failing to treat all employees with the same respect and consideration, regardless of their religion (or lack thereof);

(5) restricting personal religious expression by employees in the Federal workplace except where the employee’s interest in the expression is outweighed by the government’s interest in the efficient provision of public services or where the expression intrudes upon the legitimate rights of other employees or creates the appearance, to a reasonable observer, of an official endorsement of religion;

(6) regulating employees’ personal religious expression on the basis of its content or viewpoint, or suppressing employees’ private religious speech in the workplace while leaving unregulated other private employee speech that has a comparable effect
on the efficiency of the workplace, including ideological speech on politics and other topics;

(7) failing to exercise their authority in an evenhanded and restrained manner, and with regard for the fact that Americans are used to expressions of disagreement on controversial subjects, including religious ones;

(8) failing to permit an employee to engage in private religious expression in personal work areas not regularly open to the public to the same extent that they may engage in nonreligious private expression, subject to reasonable content- and viewpoint-neutral standards and restrictions;

(9) failing to permit an employee to engage in religious expression with fellow employees, to the same extent that they may engage in comparable nonreligious private expression, subject to reasonable and content-neutral standards and restrictions;

(10) failing to permit an employee to engage in religious expression directed at fellow employees, and may even attempt to persuade fellow employees of the correctness of their religious views, to the same extent as those employees may engage in comparable speech not involving religion;
(11) inhibiting an employee from urging a colleague to participate or not to participate in religious activities to the same extent that, consistent with concerns of workplace efficiency, they may urge their colleagues to engage in or refrain from other personal endeavors, except that the employee must refrain from such expression when a fellow employee asks that it stop or otherwise demonstrates that it is unwelcome;

(12) failing to prohibit expression that is part of a larger pattern of verbal attacks on fellow employees (or a specific employee) not sharing the faith of the speaker;

(13) preventing an employee from—

(A) wearing personal religious jewelry absent special circumstances (such as safety concerns) that might require a ban on all similar nonreligious jewelry; or

(B) displaying religious art and literature in their personal work areas to the same extent that they may display other art and literature, so long as the viewing public would reasonably understand the religious expression to be that of the employee acting in her personal capacity, and not that of the government itself;
(14) prohibiting an employee from using their private time to discuss religion with willing coworkers in public spaces to the same extent as they may discuss other subjects, so long as the public would reasonably understand the religious expression to be that of the employees acting in their personal capacities;

(15) discriminating against an employee on the basis of their religion, religious beliefs, or views concerning their religion by promoting, refusing to promote, hiring, refusing to hire, or otherwise favoring or disfavoring, an employee or potential employee because of his or her religion, religious beliefs, or views concerning religion, or by explicitly or implicitly, insisting that the employee participate in religious activities as a condition of continued employment, promotion, salary increases, preferred job assignments, or any other incidents of employment or insisting that an employee refrain from participating in religious activities outside the workplace except pursuant to otherwise legal, neutral restrictions that apply to employees’ off-duty conduct and expression in general (such as restrictions on political activities prohibited by the Hatch Act);
(16) prohibiting a supervisor’s religious expression where it is not coercive and is understood to be his or her personal view, in the same way and to the same extent as other constitutionally valued speech;

(17) permitting a hostile environment, or religious harassment, in the form of religiously discriminatory intimidation, or pervasive or severe religious ridicule or insult, whether by supervisors or fellow workers, as determined by its frequency or repetitiveness, and severity;

(18) failing to accommodate an employee’s exercise of their religion unless such accommodation would impose an undue hardship on the conduct of the agency’s operations, based on real rather than speculative or hypothetical cost and without disfavoring other, nonreligious accommodations; and

(19) in those cases where an agency’s work rule imposes a substantial burden on a particular employee’s exercise of religion, failing to grant the employee an exemption from that rule, absent a compelling interest in denying the exemption and where there is no less restrictive means of furthering that interest.

(c) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to create any new right, benefit,
1 or trust responsibility, substantive or procedural, enforce-
2 able at law or equity by a party against the United States,
3 its agencies, its officers, or any person.

4 **SEC. 14. EFFECTIVE DATE.**

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


Attest: LORRAINE C. MILLER,

_Clerk._