

110TH CONGRESS
1ST SESSION

H. R. 985

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.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 12, 2007

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

A BILL

To amend 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.

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; TABLE OF CONTENTS.**

2 (a) SHORT TITLE.—This Act may be cited as the
3 “Whistleblower Protection Enhancement Act of 2007”.

4 (b) TABLE OF CONTENTS.—The table of contents for
5 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Clarification of disclosures covered.
- Sec. 3. Covered disclosures.
- 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 clearances.
- Sec. 9. Alternative recourse.
- Sec. 10. National security whistleblower rights.
- Sec. 11. Enhancement of contractor employee whistleblower protections.
- Sec. 12. Prohibited personnel practices affecting the Transportation Security Administration.
- Sec. 13. Clarification of whistleblower rights relating to scientific and other research.
- Sec. 14. Effective date.

6 **SEC. 2. CLARIFICATION OF DISCLOSURES COVERED.**

7 Section 2302(b)(8) of title 5, United States Code, is
8 amended—

9 (1) in subparagraph (A)—

10 (A) by striking “which the employee or ap-
11 plicant reasonably believes evidences” and in-
12 serting “, without restriction as to time, place,
13 form, motive, context, or prior disclosure made
14 to any person by an employee or applicant, in-
15 cluding a disclosure made in the ordinary
16 course of an employee’s duties, that the em-

1 employee or applicant reasonably believes is evi-
2 dence of”; and

3 (B) in clause (i), by striking “a violation”
4 and inserting “any violation”; and
5 (2) in subparagraph (B)—

6 (A) by striking “which the employee or ap-
7 plicant reasonably believes evidences” and in-
8 serting “, without restriction as to time, place,
9 form, motive, context, or prior disclosure made
10 to any person by an employee or applicant, in-
11 cluding a disclosure made in the ordinary
12 course of an employee’s duties, of information
13 that the employee or applicant reasonably be-
14 lieves is evidence of”; and

15 (B) in clause (i), by striking “a violation”
16 and inserting “any violation (other than a viola-
17 tion of this section)”.

18 **SEC. 3. COVERED DISCLOSURES.**

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

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

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

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

1 “(D) ‘disclosure’ means a formal or informal
2 communication, but does not include a communica-
3 tion concerning policy decisions that lawfully exer-
4 cise discretionary authority unless the employee pro-
5 viding the disclosure reasonably believes that the dis-
6 closure evidences—

7 “(i) any violation of any law, rule, or regu-
8 lation; or

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

12 **SEC. 4. REBUTTABLE PRESUMPTION.**

13 Section 2302(b) of title 5, United States Code, is
14 amended by adding at the end the following: “For pur-
15 poses of paragraph (8), any presumption relating to the
16 performance of a duty by an employee who has authority
17 to take, direct others to take, recommend, or approve any
18 personnel action may be rebutted by substantial evidence.
19 For purposes of paragraph (8), a determination as to
20 whether an employee or applicant reasonably believes that
21 such employee or applicant has disclosed information that
22 evidences any violation of law, rule, regulation, gross mis-
23 management, a gross waste of funds, an abuse of author-
24 ity, or a substantial and specific danger to public health
25 or safety shall be made by determining whether a disin-

1 terested observer with knowledge of the essential facts
2 known to or readily ascertainable by the employee or appli-
3 cant could reasonably conclude that the actions of the
4 Government evidence such violations, mismanagement,
5 waste, abuse, or danger.”.

6 **SEC. 5. NONDISCLOSURE POLICIES, FORMS, AND AGREE-**
7 **MENTS.**

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

10 (1) in clause (x), by striking “and” at the end;

11 (2) by redesignating clause (xi) as clause (xii);

12 and

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

14 “(xi) the implementation or enforcement of
15 any nondisclosure policy, form, or agreement;
16 and”.

17 (b) **PROHIBITED PERSONNEL PRACTICE.**—Section
18 2302(b) of title 5, United States Code, is amended—

19 (1) in paragraph (11), by striking “or” at the
20 end;

21 (2) by redesignating paragraph (12) as para-
22 graph (14); and

23 (3) by inserting after paragraph (11) the fol-
24 lowing:

1 “(12) implement or enforce any nondisclosure
2 policy, form, or agreement, if such policy, form, or
3 agreement does not contain the following statement:
4 ‘These provisions are consistent with and do not su-
5 percede, conflict with, or otherwise alter the em-
6 ployee obligations, rights, or liabilities created by
7 Executive Order No. 12958; section 7211 of title 5,
8 United States Code (governing disclosures to Con-
9 gress); section 1034 of title 10, United States Code
10 (governing disclosures to Congress by members of
11 the military); section 2302(b)(8) of title 5, United
12 States Code (governing disclosures of illegality,
13 waste, fraud, abuse, or public health or safety
14 threats); the Intelligence Identities Protection Act of
15 1982 (50 U.S.C. 421 and following) (governing dis-
16 closures that could expose confidential Government
17 agents); and the statutes which protect against dis-
18 closures that could compromise national security, in-
19 cluding sections 641, 793, 794, 798, and 952 of title
20 18, United States Code, and section 4(b) of the Sub-
21 versive Activities Control Act of 1950 (50 U.S.C.
22 783(b)). The definitions, requirements, obligations,
23 rights, sanctions, and liabilities created by such Ex-
24 ecutive order and such statutory provisions are in-
25 corporated into this agreement and are controlling.’;

1 “(13) conduct, or cause to be conducted, an in-
2 vestigation, other than any ministerial or nondis-
3 cretionary factfinding activities necessary for the
4 agency to perform its mission, of an employee or ap-
5 plicant for employment because of any activity pro-
6 tected under this section; or”.

7 **SEC. 6. EXCLUSION OF AGENCIES BY THE PRESIDENT.**

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

11 “(ii)(I) the Federal Bureau of Investiga-
12 tion, the Central Intelligence Agency, the De-
13 fense Intelligence Agency, the National
14 Geospatial-Intelligence Agency, or the National
15 Security Agency; or

16 “(II) as determined by the President, any
17 Executive agency or unit thereof the principal
18 function of which is the conduct of foreign in-
19 telligence or counterintelligence activities, if the
20 determination (as that determination relates to
21 a personnel action) is made before that per-
22 sonnel action; or”.

23 **SEC. 7. DISCIPLINARY ACTION.**

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

1 “(3)(A) A final order of the Board may impose—

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

6 “(ii) an assessment of a civil penalty not to ex-
7 ceed \$1,000; or

8 “(iii) any combination of disciplinary actions
9 described under clause (i) and an assessment de-
10 scribed under clause (ii).

11 “(B) In any case in which the Board finds that an
12 employee has committed a prohibited personnel practice
13 under paragraph (8) or (9) of section 2302(b), the Board
14 shall impose disciplinary action if the Board finds that the
15 activity protected under such paragraph (8) or (9) (as the
16 case may be) was the primary motivating factor, unless
17 that employee demonstrates, by a preponderance of the
18 evidence, that the employee would have taken, failed to
19 take, or threatened to take or fail to take the same per-
20 sonnel action, in the absence of such protected activity.”.

21 **SEC. 8. GOVERNMENT ACCOUNTABILITY OFFICE STUDY ON**

22 **REVOCAION OF SECURITY CLEARANCES.**

23 (a) REQUIREMENT.—The Comptroller General shall
24 conduct a study of security clearance revocations, taking
25 effect after 1996, with respect to personnel that filed

1 claims under chapter 12 of title 5, United States Code,
2 in connection therewith. The study shall consist of an ex-
3 amination of the number of such clearances revoked, the
4 number restored, and the relationship, if any, between the
5 resolution of claims filed under such chapter and the res-
6 toration of such clearances.

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

14 **SEC. 9. ALTERNATIVE RECOURSE.**

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

18 “(k)(1) If, in the case of an employee, former em-
19 ployee, or applicant for employment who seeks corrective
20 action (or on behalf of whom corrective action is sought)
21 from the Merit Systems Protection Board based on an al-
22 leged prohibited personnel practice described in section
23 2302(b)(8), no final order or decision is issued by the
24 Board within 180 days after the date on which a request
25 for such corrective action has been duly submitted (or, in

1 the event that a final order or decision is issued by the
2 Board, whether within that 180-day period or thereafter,
3 then, within 90 days after such final order or decision is
4 issued, and so long as such employee, former employee,
5 or applicant has not filed a petition for judicial review of
6 such order or decision under subsection (h))—

7 “(A) such employee, former employee, or appli-
8 cant may, after providing written notice to the
9 Board, bring an action at law or equity for de novo
10 review in the appropriate United States district
11 court, which shall have jurisdiction over such action
12 without regard to the amount in controversy; and

13 “(B) in any such action, the court—

14 “(i) shall apply the standards set forth in
15 subsection (e); and

16 “(ii) may award any relief which the court
17 considers appropriate, including any relief de-
18 scribed in subsection (g).

19 “(2) For purposes of this subsection, the term ‘appro-
20 priate United States district court’, as used with respect
21 to an alleged prohibited personnel practice, means the
22 United States district court for the district in which the
23 prohibited personnel practice is alleged to have been com-
24 mitted, the judicial district in which the employment
25 records relevant to such practice are maintained and ad-

1 ministered, or the judicial district in which resides the em-
2 ployee, former employee, or applicant for employment al-
3 legedly affected by such practice.

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

10 (b) REVIEW OF MSPB DECISIONS.—Section 7703(b)
11 of such title 5 is amended—

12 (1) in the first sentence of paragraph (1), by
13 striking “the United States Court of Appeals for the
14 Federal Circuit” and inserting “the appropriate
15 United States court of appeals”; and

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

17 “(3) For purposes of the first sentence of paragraph
18 (1), the term ‘appropriate United States court of appeals’
19 means the United States Court of Appeals for the Federal
20 Circuit.”.

21 (c) CONFORMING AMENDMENTS.—

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

24 “(3) Judicial review under this subsection shall not
25 be available with respect to any decision or order as to

1 which the employee, former employee, or applicant has
2 filed a petition for judicial review under subsection (k).”.

3 (2) Section 7703(c) of such title 5 is amended
4 by striking “court.” and inserting “court, and in the
5 case of a prohibited personnel practice described in
6 section 2302(b)(8) brought under any provision of
7 law, rule, or regulation described in section
8 1221(k)(3), the employee or applicant shall have the
9 right to de novo review in accordance with section
10 1221(k).”.

11 **SEC. 10. NATIONAL SECURITY WHISTLEBLOWER RIGHTS.**

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

15 **“§ 2303a. National security whistleblower rights**

16 “(a) PROHIBITION OF REPRISALS.—

17 “(1) IN GENERAL.—In addition to any rights
18 provided in section 2303 of this title, title VII of
19 Public Law 105–272, or any other provision of law,
20 an employee, former employee, or applicant for em-
21 ployment in a covered agency may not be dis-
22 charged, demoted, or otherwise discriminated
23 against (including by denying, suspending, or revok-
24 ing a security clearance, or by otherwise restricting
25 access to classified or sensitive information) as a re-

1 prisal for making a disclosure described in para-
2 graph (2).

3 “(2) DISCLOSURES DESCRIBED.—A disclosure
4 described in this paragraph is any disclosure of cov-
5 ered information which is made—

6 “(A) by an employee, former employee, or
7 applicant for employment in a covered agency
8 (without restriction as to time, place, form, mo-
9 tive, context, or prior disclosure made to any
10 person by an employee, former employee, or ap-
11 plicant, including a disclosure made in the
12 course of an employee’s duties); and

13 “(B) to an authorized Member of Con-
14 gress, an authorized official of an Executive
15 agency, an authorized official of the Depart-
16 ment of Justice, or the Inspector General of the
17 covered agency in which such employee is em-
18 ployed, such former employee was employed, or
19 such applicant seeks employment.

20 “(b) INVESTIGATION OF COMPLAINTS.—An em-
21 ployee, former employee, or applicant for employment in
22 a covered agency who believes that such employee, former
23 employee, or applicant has been subjected to a reprisal
24 prohibited by subsection (a) may submit a complaint to
25 the Inspector General and the head of the covered agency.

1 The Inspector General shall investigate the complaint and,
2 unless the Inspector General determines that the com-
3 plaint is frivolous, submit a report of the findings of the
4 investigation within 120 days to the employee, former em-
5 ployee, or applicant and to the head of the covered agency.

6 “(c) REMEDY.—

7 “(1) Within 180 days of the filing of the com-
8 plaint, the head of the covered agency shall, taking
9 into consideration the report of the Inspector Gen-
10 eral under subsection (b) (if any), determine whether
11 the employee, former employee, or applicant has
12 been subjected to a reprisal prohibited by subsection
13 (a), and shall either issue an order denying relief or
14 shall implement corrective action to return the em-
15 ployee, former employee, or applicant, as nearly as
16 possible, to the position he would have held had the
17 reprisal not occurred, including voiding any directive
18 or order denying, suspending, or revoking a security
19 clearance or otherwise restricting access to classified
20 or sensitive information that constituted a reprisal,
21 as well as providing back pay and related benefits,
22 medical costs incurred, travel expenses, and any
23 other reasonable and foreseeable consequential dam-
24 ages including attorney’s fees and costs. If the head
25 of the covered agency issues an order denying relief,

1 he shall issue a report to the employee, former em-
2 ployee, or applicant detailing the reasons for the de-
3 nial.

4 “(2)(A) If the head of the covered agency, in
5 the process of implementing corrective action under
6 paragraph (1), voids a directive or order denying,
7 suspending, or revoking a security clearance or oth-
8 erwise restricting access to classified or sensitive in-
9 formation that constituted a reprisal, the head of the
10 covered agency may re-initiate procedures to issue a
11 directive or order denying, suspending, or revoking
12 a security clearance or otherwise restricting access
13 to classified or sensitive information only if those re-
14 initiated procedures are based exclusively on national
15 security concerns and are unrelated to the actions
16 constituting the original reprisal.

17 “(B) In any case in which the head of a covered
18 agency re-initiates procedures under subparagraph
19 (A), the head of the covered agency shall issue an
20 unclassified report to its Inspector General and to
21 authorized Members of Congress (with a classified
22 annex, if necessary), detailing the circumstances of
23 the agency’s re-initiated procedures and describing
24 the manner in which those procedures are based ex-
25 clusively on national security concerns and are unre-

1 lated to the actions constituting the original reprisal.
2 The head of the covered agency shall also provide
3 periodic updates to the Inspector General and au-
4 thorized Members of Congress detailing any signifi-
5 cant actions taken as a result of those procedures,
6 and shall respond promptly to inquiries from author-
7 ized Members of Congress regarding the status of
8 those procedures.

9 “(3) If the head of the covered agency has not
10 made a determination under paragraph (1) within
11 180 days of the filing of the complaint (or he has
12 issued an order denying relief, in whole or in part,
13 whether within that 180-day period or thereafter,
14 then, within 90 days after such order is issued), the
15 employee, former employee, or applicant for employ-
16 ment may bring an action at law or equity for de
17 novo review to seek any corrective action described
18 in paragraph (1) in the appropriate United States
19 district court (as defined by section 1221(k)(2)),
20 which shall have jurisdiction over such action with-
21 out regard to the amount in controversy. A petition
22 to review a final decision under this paragraph shall
23 be filed in the United States Court of Appeals for
24 the Federal Circuit.

1 “(4) An employee, former employee, or appli-
2 cant adversely affected or aggrieved by an order
3 issued under paragraph (1), or who seeks review of
4 any corrective action determined under paragraph
5 (1), may obtain judicial review of such order or de-
6 termination in the United States Court of Appeals
7 for the Federal Circuit. No petition seeking such re-
8 view may be filed more than 60 days after issuance
9 of the order or the determination to implement cor-
10 rective action by the head of the agency. Review
11 shall conform to chapter 7.

12 “(5)(A) If, in any action for damages or relief
13 under paragraph (3) or (4), an Executive agency
14 moves to withhold information from discovery based
15 on a claim that disclosure would be inimical to na-
16 tional security by asserting the privilege commonly
17 referred to as the ‘state secrets privilege’, and if the
18 assertion of such privilege prevents the plaintiff from
19 establishing an element in support of the plaintiff’s
20 claim, the court shall resolve the disputed issue of
21 fact or law in favor of the plaintiff, provided that an
22 Inspector General investigation under subsection (b)
23 has resulted in substantial confirmation of that ele-
24 ment, or those elements, of the plaintiff’s claim.

1 “(B) In any case in which an Executive agency
2 asserts the privilege commonly referred to as the
3 ‘state secrets privilege’, whether or not an Inspector
4 General has conducted an investigation under sub-
5 section (b), the head of that agency shall, at the
6 same time it asserts the privilege, issue a report to
7 authorized Members of Congress, accompanied by a
8 classified annex if necessary, describing the reasons
9 for the assertion, explaining why the court hearing
10 the matter does not have the ability to maintain the
11 protection of classified information related to the as-
12 sertion, detailing the steps the agency has taken to
13 arrive at a mutually agreeable settlement with the
14 employee, former employee, or applicant for employ-
15 ment, setting forth the date on which the classified
16 information at issue will be declassified, and pro-
17 viding all relevant information about the underlying
18 substantive matter.

19 “(d) APPLICABILITY TO NON-COVERED AGENCIES.—
20 An employee, former employee, or applicant for employ-
21 ment in an Executive agency (or element or unit thereof)
22 that is not a covered agency shall, for purposes of any
23 disclosure of covered information (as described in sub-
24 section (a)(2)) which consists in whole or in part of classi-
25 fied or sensitive information, be entitled to the same pro-

1 tectations, rights, and remedies under this section as if that
2 Executive agency (or element or unit thereof) were a cov-
3 ered agency.

4 “(e) CONSTRUCTION.—Nothing in this section may
5 be construed—

6 “(1) to authorize the discharge of, demotion of,
7 or discrimination against an employee for a disclo-
8 sure other than a disclosure protected by subsection
9 (a) or (d) of this section or to modify or derogate
10 from a right or remedy otherwise available to an em-
11 ployee, former employee, or applicant for employ-
12 ment; or

13 “(2) to preempt, modify, limit, or derogate any
14 rights or remedies available to an employee, former
15 employee, or applicant for employment under any
16 other provision of law, rule, or regulation (including
17 the Lloyd-La Follette Act).

18 No court or administrative agency may require the ex-
19 haustion of any right or remedy under this section as a
20 condition for pursuing any other right or remedy otherwise
21 available to an employee, former employee, or applicant
22 under any other provision of law, rule, or regulation (as
23 referred to in paragraph (2)).

24 “(f) DEFINITIONS.—For purposes of this section—

1 “(1) the term ‘covered information’, as used
2 with respect to an employee, former employee, or ap-
3 plicant for employment, means any information (in-
4 cluding classified or sensitive information) which the
5 employee, former employee, or applicant reasonably
6 believes evidences—

7 “(A) any violation of any law, rule, or reg-
8 ulation; or

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

12 “(2) the term ‘covered agency’ means—

13 “(A) the Federal Bureau of Investigation,
14 the Central Intelligence Agency, the Defense In-
15 telligence Agency, the National Geospatial-In-
16 telligence Agency, the National Security Agen-
17 cy, and the National Reconnaissance Office;
18 and

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

24 “(3) the term ‘authorized Member of Congress’
25 means a member of the House Permanent Select

1 Committee on Intelligence, the Senate Select Com-
2 mittee on Intelligence, the House Committee on
3 Oversight and Government Reform, the Senate Com-
4 mittee on Homeland Security and Governmental Af-
5 fairs, and the committees of the House of Rep-
6 resentatives or the Senate that have oversight over
7 the program about which the covered information is
8 disclosed;

9 “(4) the term ‘authorized official of an Execu-
10 tive agency’ shall have such meaning as the Office
11 of Personnel Management shall by regulation pre-
12 scribe, except that such term shall, with respect to
13 any employee, former employee, or applicant for em-
14 ployment in an agency, include—

15 “(A) the immediate supervisor of the em-
16 ployee or former employee and each successive
17 supervisor (immediately above such immediate
18 supervisor) within the employee’s or former em-
19 ployee’s chain of authority (as determined
20 under such regulations); and

21 “(B) the head, general counsel, and om-
22 budsman of such agency; and

23 “(5) the term ‘authorized official of the Depart-
24 ment of Justice’ means any employee of the Depart-
25 ment of Justice, the duties of whose position include

1 the investigation, enforcement, or prosecution of any
2 law, rule, or regulation.”.

3 (b) CLERICAL AMENDMENT.—The table of sections
4 for chapter 23 of title 5, United States Code, is amended
5 by inserting after the item relating to section 2303 the
6 following:

“2303a. National security whistleblower rights.”.

7 **SEC. 11. ENHANCEMENT OF CONTRACTOR EMPLOYEE**
8 **WHISTLEBLOWER PROTECTIONS.**

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

12 (1) in paragraph (1), by striking “If the head”
13 and all that follows through “actions:” and inserting
14 the following: “Not later than 180 days after sub-
15 mission of a complaint under subsection (b), the
16 head of the executive agency concerned shall deter-
17 mine whether the contractor concerned has subjected
18 the complainant to a reprisal prohibited by sub-
19 section (a) and shall either issue an order denying
20 relief or shall take one or more of the following ac-
21 tions:”; and

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

1 “(3) If the head of an executive agency has not issued
2 an order within 180 days after the submission of a com-
3 plaint under subsection (b) and there is no showing that
4 such delay is due to the bad faith of the complainant, the
5 complainant shall be deemed to have exhausted his admin-
6 istrative remedies with respect to the complaint, and the
7 complainant may bring an action at law or equity for de
8 novo review to seek compensatory damages and other re-
9 lief available under this section in the appropriate district
10 court of the United States, which shall have jurisdiction
11 over such an action without regard to the amount in con-
12 troversy.”.

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

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

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

4 “(3) If the head of an agency has not issued an order
5 within 180 days after the submission of a complaint under
6 subsection (b) and there is no showing that such delay
7 is due to the bad faith of the complainant, the complainant
8 shall be deemed to have exhausted his administrative rem-
9 edies with respect to the complaint, and the complainant
10 may bring an action at law or equity for de novo review
11 to seek compensatory damages and other relief available
12 under this section in the appropriate district court of the
13 United States, which shall have jurisdiction over such an
14 action without regard to the amount in controversy.”.

15 **SEC. 12. PROHIBITED PERSONNEL PRACTICES AFFECTING**
16 **THE TRANSPORTATION SECURITY ADMINIS-**
17 **TRATION.**

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

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

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

1 **“§ 2304. Prohibited personnel practices affecting the**
2 **Transportation Security Administration**

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

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

9 “(2) any provision of law implementing section
10 2302(b)(1), (8), or (9) by providing any right or
11 remedy available to an employee or applicant for em-
12 ployment in the civil service; and

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

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

21 “(c) EFFECTIVE DATE.—This section shall take ef-
22 fect as of the date of the enactment of this section.”.

23 (b) CLERICAL AMENDMENT.—The table of sections
24 for chapter 23 of title 5, United States Code, is amended
25 by striking the items relating to sections 2304 and 2305,
26 respectively, and by inserting the following:

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

“2305. Responsibility of the Government Accountability Office.

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

1 **SEC. 13. CLARIFICATION OF WHISTLEBLOWER RIGHTS RE-**
2 **LATING TO SCIENTIFIC AND OTHER RE-**
3 **SEARCH.**

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

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

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

11 “(2) the dissemination of false or misleading
12 scientific, medical, or technical information.”.

13 **SEC. 14. EFFECTIVE DATE.**

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

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