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110TH CONGRESS
1ST SESSION

H. R. 985

[Report No. 110–42, Part 1]

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

MARCH 9, 2007

Additional sponsors: Mr. CUMMINGS, Mrs. MALONEY of New York, Ms. NORTON, Mr. KUCINICH, Ms. MCCOLLUM of Minnesota, Ms. WATSON, Mr. COOPER, Mr. BRALEY of Iowa, Mr. YARMUTH, Mr. CLAY, Mr. KANJORSKI, Mr. DAVIS of Illinois, Mr. SHAYS, Mr. MURPHY of Connecticut, Mr. WELCH of Vermont, Mr. BERMAN, Mr. NADLER, Mr. GEORGE MILLER of California, Mr. ALLEN, Mr. ELLISON, Mr. ISRAEL, Mr. MCHUGH, Ms. ZOE LOFGREN of California, Mr. CONYERS, Ms. SCHWARTZ, and Mr. ACKERMAN

MARCH 9, 2007

Reported from the Committee on Oversight and Government Reform with amendments

[Omit the part struck through and insert the part printed in italic]

MARCH 9, 2007

Committee on Armed Services discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

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

6 (b) TABLE OF CONTENTS.—The table of contents for
 7 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.

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

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

11 (1) in subparagraph (A)—

1 (A) by striking “which the employee or ap-
2 plicant reasonably believes evidences” and in-
3 sserting “, without restriction as to time, place,
4 form, motive, context, or prior disclosure made
5 to any person by an employee or applicant, in-
6 cluding a disclosure made in the ordinary
7 course of an employee’s duties, that the em-
8 ployee or applicant reasonably believes is evi-
9 dence of”; and

10 (B) in clause (i), by striking “a violation”
11 and inserting “any violation”; and
12 (2) in subparagraph (B)—

13 (A) by striking “which the employee or ap-
14 plicant reasonably believes evidences” and in-
15 sserting “, without restriction as to time, place,
16 form, motive, context, or prior disclosure made
17 to any person by an employee or applicant, in-
18 cluding a disclosure made in the ordinary
19 course of an employee’s duties, of information
20 that the employee or applicant reasonably be-
21 lieves is evidence of”; and

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

1 **SEC. 3. COVERED DISCLOSURES.**

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

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

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

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

9 “(D) ‘disclosure’ means a formal or informal
10 communication, but does not include a communica-
11 tion concerning policy decisions that lawfully exer-
12 cise discretionary authority unless the ~~employee~~ *em-*
13 *ployee or applicant* providing the disclosure reason-
14 ably believes that the disclosure evidences—

15 “(i) any violation of any law, rule, or regu-
16 lation; or

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

20 **SEC. 4. REBUTTABLE PRESUMPTION.**

21 Section 2302(b) of title 5, United States Code, is
22 amended by adding at the end the following: “For pur-
23 poses of paragraph (8), any presumption relating to the
24 performance of a duty by an employee who has authority
25 to take, direct others to take, recommend, or approve any
26 personnel action may be rebutted by substantial evidence.

1 For purposes of paragraph (8), a determination as to
2 whether an employee or applicant reasonably believes that
3 such employee or applicant has disclosed information that
4 evidences any violation of law, rule, regulation, gross mis-
5 management, a gross waste of funds, an abuse of author-
6 ity, or a substantial and specific danger to public health
7 or safety shall be made by determining whether a disin-
8 terested observer with knowledge of the essential facts
9 known to or readily ascertainable by the employee or appli-
10 cant could reasonably conclude that the actions of the
11 Government evidence such violations, mismanagement,
12 waste, abuse, or danger.”.

13 **SEC. 5. NONDISCLOSURE POLICIES, FORMS, AND AGREE-**
14 **MENTS.**

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

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

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

19 and

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

21 “(xi) the implementation or enforcement of
22 any nondisclosure policy, form, or agreement;
23 and”.

24 (b) PROHIBITED PERSONNEL PRACTICE.—Section
25 2302(b) of title 5, United States Code, is amended—

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

3 (2) by redesignating paragraph (12) as para-
4 graph (14); and

5 (3) by inserting after paragraph (11) the fol-
6 lowing:

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

1 18, United States Code, and section 4(b) of the Sub-
2 versive Activities Control Act of 1950 (50 U.S.C.
3 783(b)). The definitions, requirements, obligations,
4 rights, sanctions, and liabilities created by such Ex-
5 ecutive order and such statutory provisions are in-
6 corporated into this agreement and are controlling.’;

7 “(13) conduct, or cause to be conducted, an in-
8 vestigation, other than any ministerial or nondis-
9 cretionary factfinding activities necessary for the
10 agency to perform its mission, of an employee or ap-
11 plicant for employment because of any activity pro-
12 tected under this section; or”.

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

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

17 “(ii)(I) the Federal Bureau of Investiga-
18 tion, the Central Intelligence Agency, the De-
19 fense Intelligence Agency, the National
20 Geospatial-Intelligence Agency, or the National
21 Security Agency; or

22 “(II) as determined by the President, any
23 Executive agency or unit thereof the principal
24 function of which is the conduct of foreign in-
25 telligence or counterintelligence activities, if the

1 determination (as that determination relates to
2 a personnel action) is made before that per-
3 sonnel action; or”.

4 **SEC. 7. DISCIPLINARY ACTION.**

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

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

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

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

14 “(iii) any combination of disciplinary actions
15 described under clause (i) and an assessment de-
16 scribed under clause (ii).

17 “(B) In any case in which the Board finds that an
18 employee has committed a prohibited personnel practice
19 under paragraph (8) or (9) of section 2302(b), the Board
20 shall impose disciplinary action if the Board finds that the
21 activity protected under such paragraph (8) or (9) (as the
22 case may be) was the primary motivating factor, unless
23 that employee demonstrates, by a preponderance of the
24 evidence, that the employee would have taken, failed to

1 take, or threatened to take or fail to take the same per-
2 sonnel action, in the absence of such protected activity.”.

3 **SEC. 8. GOVERNMENT ACCOUNTABILITY OFFICE STUDY ON**
4 **REVOCAION OF SECURITY CLEARANCES.**

5 (a) REQUIREMENT.—The Comptroller General shall
6 conduct a study of security clearance revocations, taking
7 effect after 1996, with respect to personnel that filed
8 claims under chapter 12 of title 5, United States Code,
9 in connection therewith. The study shall consist of an ex-
10 amination of the number of such clearances revoked, the
11 number restored, and the relationship, if any, between the
12 resolution of claims filed under such chapter and the res-
13 toration of such clearances.

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

21 **SEC. 9. ALTERNATIVE RECOURSE.**

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

1 “(k)(1) If, in the case of an employee, former em-
2 ployee, or applicant for employment who seeks corrective
3 action (or on behalf of whom corrective action is sought)
4 from the Merit Systems Protection Board based on an al-
5 leged prohibited personnel practice described in section
6 2302(b)(8), no final order or decision is issued by the
7 Board within 180 days after the date on which a request
8 for such corrective action has been duly submitted (or, in
9 the event that a final order or decision is issued by the
10 Board, whether within that 180-day period or thereafter,
11 then, within 90 days after such final order or decision is
12 issued, and so long as such employee, former employee,
13 or applicant has not filed a petition for judicial review of
14 such order or decision under subsection (h))—

15 “(A) such employee, former employee, or appli-
16 cant may, after providing written notice to the
17 Board, bring an action at law or equity for de novo
18 review in the appropriate United States district
19 court, which shall have jurisdiction over such action
20 without regard to the amount in ~~controversy~~; *con-*
21 *troversy, and which action shall, at the request of ei-*
22 *ther party to such action, be tried by the court with*
23 *a jury; and*

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

1 “(i) shall apply the standards set forth in
2 subsection (e); and

3 “(ii) may award any relief which the court
4 considers appropriate, including any relief de-
5 scribed in subsection (g).

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

12 “(2) For purposes of this subsection, the term ‘appro-
13 priate United States district court’, as used with respect
14 to an alleged prohibited personnel practice, means the
15 United States district court for the district in which the
16 prohibited personnel practice is alleged to have been com-
17 mitted, the judicial district in which the employment
18 records relevant to such practice are maintained and ad-
19 ministered, or the judicial district in which resides the em-
20 ployee, former employee, or applicant for employment al-
21 legedly affected by such practice.

22 “(3) This subsection applies with respect to any ap-
23 peal, petition, or other request for corrective action duly
24 submitted to the Board, whether pursuant to section
25 1214(b)(2), the preceding provisions of this section, sec-

1 tion 7513(d), or any otherwise applicable provisions of
2 law, rule, or regulation.”.

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

5 (1) in the first sentence of paragraph (1), by
6 striking “the United States Court of Appeals for the
7 Federal Circuit” and inserting “the appropriate
8 United States court of appeals”; and

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

10 “(3) For purposes of the first sentence of paragraph
11 (1), the term ‘appropriate United States court of appeals’
12 means the United States Court of Appeals for the Federal
13 ~~Circuit~~. *Circuit, except that in the case of a prohibited per-*
14 *sonnel practice described in section 2302(b)(8) (other than*
15 *a case that, disregarding this paragraph, would otherwise*
16 *be subject to paragraph (2)), such term means the United*
17 *States Court of Appeals for the Federal Circuit and any*
18 *United States court of appeals having jurisdiction over ap-*
19 *peals from any United States district court which, under*
20 *section 1221(k)(2), would be an appropriate United States*
21 *district court for purposes of such prohibited personnel*
22 *practice.”.*

23 (c) COMPENSATORY DAMAGES.—Section
24 1221(g)(1)(A)(ii) of such title 5 is amended by striking all
25 after “travel expenses,” and inserting “any other reasonable

1 *and foreseeable consequential damages, and compensatory*
2 *damages (including attorney’s fees, interest, reasonable ex-*
3 *pert witness fees, and costs).”.*

4 ~~(e)~~ (d) CONFORMING AMENDMENTS.—

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

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

11 (2) Section 7703(c) of such title 5 is amended
12 by striking “court.” and inserting “court, and in the
13 case of a prohibited personnel practice described in
14 section 2302(b)(8) brought under any provision of
15 law, rule, or regulation described in section
16 1221(k)(3), the employee or applicant shall have the
17 right to de novo review in accordance with section
18 1221(k).”.

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

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

23 **“§ 2303a. National security whistleblower rights**

24 “(a) PROHIBITION OF REPRISALS.—

1 “(1) IN GENERAL.—In addition to any rights
2 provided in section 2303 of this title, title VII of
3 Public Law 105–272, or any other provision of law,
4 an employee, former employee, or applicant for em-
5 ployment in a covered agency may not be dis-
6 charged, demoted, or otherwise discriminated
7 against (including by denying, suspending, or revok-
8 ing a security clearance, or by otherwise restricting
9 access to classified or sensitive information) as a re-
10 prisal for making a disclosure described in para-
11 graph (2).

12 “(2) DISCLOSURES DESCRIBED.—A disclosure
13 described in this paragraph is any disclosure of cov-
14 ered information which is made—

15 “(A) by an employee, former employee, or
16 applicant for employment in a covered agency
17 (without restriction as to time, place, form, mo-
18 tive, context, or prior disclosure made to any
19 person by an employee, former employee, or ap-
20 plicant, including a disclosure made in the
21 course of an employee’s duties); and

22 “(B) to an authorized Member of Con-
23 gress, an authorized official of an Executive
24 agency, an authorized official of the Depart-
25 ment of Justice, or the Inspector General of the

1 covered agency in which such employee is em-
2 ployed, such former employee was employed, or
3 such applicant seeks employment.

4 “(b) INVESTIGATION OF COMPLAINTS.—An em-
5 ployee, former employee, or applicant for employment in
6 a covered agency who believes that such employee, former
7 employee, or applicant has been subjected to a reprisal
8 prohibited by subsection (a) may submit a complaint to
9 the Inspector General and the head of the covered agency.
10 The Inspector General shall investigate the complaint and,
11 unless the Inspector General determines that the com-
12 plaint is frivolous, submit a report of the findings of the
13 investigation within 120 days to the employee, former em-
14 ployee, or applicant and to the head of the covered agency.

15 “(c) REMEDY.—

16 “(1) Within 180 days of the filing of the com-
17 plaint, the head of the covered agency shall, taking
18 into consideration the report of the Inspector Gen-
19 eral under subsection (b) (if any), determine whether
20 the employee, former employee, or applicant has
21 been subjected to a reprisal prohibited by subsection
22 (a), and shall either issue an order denying relief or
23 shall implement corrective action to return the em-
24 ployee, former employee, or applicant, as nearly as
25 possible, to the position he would have held had the

1 reprisal not occurred, including voiding any directive
2 or order denying, suspending, or revoking a security
3 clearance or otherwise restricting access to classified
4 or sensitive information that constituted a reprisal,
5 as well as providing back pay and related benefits,
6 medical costs incurred, travel expenses, ~~and any~~
7 ~~other reasonable and foreseeable consequential dam-~~
8 ~~ages including attorney's fees and costs.~~ *any other*
9 *reasonable and foreseeable consequential damages, and*
10 *compensatory damages (including attorney's fees, in-*
11 *terest, reasonable expert witness fees, and costs).* If
12 the head of the covered agency issues an order deny-
13 ing relief, he shall issue a report to the employee,
14 former employee, or applicant detailing the reasons
15 for the denial.

16 “(2)(A) If the head of the covered agency, in
17 the process of implementing corrective action under
18 paragraph (1), voids a directive or order denying,
19 suspending, or revoking a security clearance or oth-
20 erwise restricting access to classified or sensitive in-
21 formation that constituted a reprisal, the head of the
22 covered agency may re-initiate procedures to issue a
23 directive or order denying, suspending, or revoking
24 a security clearance or otherwise restricting access
25 to classified or sensitive information only if those re-

1 initiated procedures are based exclusively on national
2 security concerns and are unrelated to the actions
3 constituting the original reprisal.

4 “(B) In any case in which the head of a covered
5 agency re-initiates procedures under subparagraph
6 (A), the head of the covered agency shall issue an
7 unclassified report to its Inspector General and to
8 authorized Members of Congress (with a classified
9 annex, if necessary), detailing the circumstances of
10 the agency’s re-initiated procedures and describing
11 the manner in which those procedures are based ex-
12 clusively on national security concerns and are unre-
13 lated to the actions constituting the original reprisal.
14 The head of the covered agency shall also provide
15 periodic updates to the Inspector General and au-
16 thorized Members of Congress detailing any signifi-
17 cant actions taken as a result of those procedures,
18 and shall respond promptly to inquiries from author-
19 ized Members of Congress regarding the status of
20 those procedures.

21 “(3) If the head of the covered agency has not
22 made a determination under paragraph (1) within
23 180 days of the filing of the complaint (or he has
24 issued an order denying relief, in whole or in part,
25 whether within that 180-day period or thereafter,

1 then, within 90 days after such order is issued), the
2 employee, former employee, or applicant for employ-
3 ment may bring an action at law or equity for de
4 novo review to seek any corrective action described
5 in paragraph (1) in the appropriate United States
6 district court (as defined by section 1221(k)(2)),
7 which shall have jurisdiction over such action with-
8 out regard to the amount in ~~controversy~~. *con-*
9 *troversy, and which action shall, at the request of ei-*
10 *ther party to such action, be tried by the court with*
11 *a jury. A petition to review a final decision under*
12 *this paragraph shall be filed in the United States*
13 *Court of Appeals for the Federal Circuit. An appeal*
14 *from a final decision of a district court in an action*
15 *under this paragraph may, at the election of the ap-*
16 *pellant, be taken to the Court of Appeals for the Fed-*
17 *eral Circuit (which shall have jurisdiction of such ap-*
18 *peal), in lieu of the United States court of appeals for*
19 *the circuit embracing the district in which the action*
20 *was brought.*

21 “(4) An employee, former employee, or appli-
22 cant adversely affected or aggrieved by an order
23 issued under paragraph (1), or who seeks review of
24 any corrective action determined under paragraph
25 (1), may obtain judicial review of such order or de-

1 termination in the United States Court of Appeals
2 for the Federal ~~Circuit~~. *Circuit or any United States*
3 *court of appeals having jurisdiction over appeals from*
4 *any United States district court which, under section*
5 *1221(k)(2), would be an appropriate United States*
6 *district court. No petition seeking such review may*
7 *be filed more than 60 days after issuance of the*
8 *order or the determination to implement corrective*
9 *action by the head of the agency. Review shall con-*
10 *form to chapter 7.*

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

1 ments, of the ~~plaintiff's~~ *employee's, former employ-*
2 *ee's, or applicant's* claim.

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

21 “(d) APPLICABILITY TO NON-COVERED AGENCIES.—
22 An employee, former employee, or applicant for employ-
23 ment in an Executive agency (or element or unit thereof)
24 that is not a covered agency shall, for purposes of any
25 disclosure of covered information (as described in sub-

1 section (a)(2)) which consists in whole or in part of classi-
2 fied or sensitive information, be entitled to the same pro-
3 tections, rights, and remedies under this section as if that
4 Executive agency (or element or unit thereof) were a cov-
5 ered agency.

6 “(e) CONSTRUCTION.—Nothing in this section may
7 be construed—

8 “(1) to authorize the discharge of, demotion of,
9 or discrimination against an ~~employee~~ *employee*,
10 *former employee, or applicant for employment* for a
11 disclosure other than a disclosure protected by sub-
12 section (a) or (d) of this section or to modify or der-
13 ogate from a right or remedy otherwise available to
14 an employee, former employee, or applicant for em-
15 ployment; or

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

21 No court or administrative agency may require the ex-
22 haustion of any right or remedy under this section as a
23 condition for pursuing any other right or remedy otherwise
24 available to an employee, former employee, or applicant

1 under any other provision of law, rule, or regulation (as
2 referred to in paragraph (2)).

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

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

10 “(A) any violation of any law, rule, or reg-
11 ulation; or

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

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

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

22 “(B) any other Executive agency, or ele-
23 ment or unit thereof, determined by the Presi-
24 dent under section 2302(a)(2)(C)(ii)(II) to have

1 as its principal function the conduct of foreign
2 intelligence or counterintelligence activities;

3 “(3) the term ‘authorized Member of Congress’
4 means a member of the House Permanent Select
5 Committee on Intelligence, the Senate Select Com-
6 mittee on Intelligence, the House Committee on
7 Oversight and Government Reform, the Senate Com-
8 mittee on Homeland Security and Governmental Af-
9 fairs, and the committees of the House of Rep-
10 resentatives or the Senate that have oversight over
11 the program about which the covered information is
12 disclosed;

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

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

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

3 “(5) the term ‘authorized official of the Depart-
4 ment of Justice’ means any employee of the Depart-
5 ment of Justice, the duties of whose position include
6 the investigation, enforcement, or prosecution of any
7 law, rule, or regulation.”.

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

 “2303a. National security whistleblower rights.”.

12 **SEC. 11. ENHANCEMENT OF CONTRACTOR EMPLOYEE**
13 **WHISTLEBLOWER PROTECTIONS.**

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

17 (1) in paragraph (1), by striking “If the head”
18 and all that follows through “actions:” and inserting
19 the following: “Not later than 180 days after sub-
20 mission of a complaint under subsection (b), the
21 head of the executive agency concerned shall deter-
22 mine whether the contractor concerned has subjected
23 the complainant to a reprisal prohibited by sub-
24 section (a) and shall either issue an order denying

1 relief or shall take one or more of the following ac-
2 tions:”; and

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

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

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

22 (1) in paragraph (1), by striking “If the head”
23 and all that follows through “actions:” and inserting
24 the following: “Not later than 180 days after sub-
25 mission of a complaint under subsection (b), the

1 head of the agency concerned shall determine wheth-
2 er the contractor concerned has subjected the com-
3 plainant to a reprisal prohibited by subsection (a)
4 and shall either issue an order denying relief or shall
5 take one or more of the following actions:”;

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

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

1 **SEC. 12. PROHIBITED PERSONNEL PRACTICES AFFECTING**
2 **THE TRANSPORTATION SECURITY ADMINIS-**
3 **TRATION.**

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

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

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

10 **“§ 2304. Prohibited personnel practices affecting the**
11 **Transportation Security Administration**

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

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

18 “(2) any provision of law implementing section
19 2302(b)(1), (8), or (9) by providing any right or
20 remedy available to an employee or applicant for em-
21 ployment in the civil service; and

22 “(3) any rule or regulation prescribed under
23 any provision of law referred to in paragraph (1) or
24 (2).

25 “(b) RULE OF CONSTRUCTION.—Nothing in this sec-
26 tion shall be construed to affect any rights, apart from

1 those described in subsection (a), to which an individual
2 described in subsection (a) might otherwise be entitled
3 under law.

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

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

“2304. Prohibited personnel practices affecting the Transportation Security Ad-
ministration.

“2305. Responsibility of the Government Accountability Office.

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

10 **SEC. 13. CLARIFICATION OF WHISTLEBLOWER RIGHTS RE-**
11 **LATING TO SCIENTIFIC AND OTHER RE-**
12 **SEARCH.**

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

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

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

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

1 **SEC. 14. EFFECTIVE DATE.**

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

Union Calendar No. 18

110TH CONGRESS
1ST Session

H. R. 985

[Report No. 110-42, Part 1]

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.

MARCH 9, 2007

Reported from the Committee on Oversight and
Government Reform with amendments

MARCH 9, 2007

Committee on Armed Services discharged; committed to
the Committee of the Whole House on the State of the
Union and ordered to be printed