

109<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 1317

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.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 15, 2005

Mr. PLATTS (for himself, Mr. BLUMENAUER, Mr. CUMMINGS, Mrs. BLACKBURN, Ms. WOOLSEY, Mr. PAUL, Mr. MARKEY, Mr. SHAYS, Ms. SCHAKOWSKY, Ms. BALDWIN, Mr. McNULTY, Mr. BERMAN, Mr. STARK, Mr. VAN HOLLEN, Ms. DEGETTE, Ms. MCCOLLUM of Minnesota, Mr. SIMMONS, and Mr. LAHOOD) introduced the following bill; which was referred to the Committee on Government Reform

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## 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.**

2 This Act may be cited as the “Federal Employee Pro-  
3 tection of Disclosures Act”.

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

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

7 (1) in subparagraph (A)—

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

17 (B) in clause (i), by striking “a violation”  
18 and inserting “any violation”; and

19 (2) in subparagraph (B)—

20 (A) by striking “which the employee or ap-  
21 plicant reasonably believes evidences” and in-  
22 sserting “, without restriction as to time, place,  
23 form, motive, context, or prior disclosure made  
24 to any person by an employee or applicant, in-  
25 cluding a disclosure made in the ordinary  
26 course of an employee’s duties, of information

1 that the employee or applicant reasonably be-  
2 lieves is evidence of”; and

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

6 **SEC. 3. COVERED DISCLOSURES.**

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

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

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

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

14 “(D) ‘disclosure’ means a formal or informal  
15 communication, but does not include a communica-  
16 tion concerning policy decisions that lawfully exer-  
17 cise discretionary authority unless the employee pro-  
18 viding the disclosure reasonably believes that the dis-  
19 closure evidences—

20 “(i) any violation of any law, rule, or regu-  
21 lation; or

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

1 **SEC. 4. REBUTTABLE PRESUMPTION.**

2 Section 2302(b) of title 5, United States Code, is  
3 amended by adding at the end the following: “For pur-  
4 poses of paragraph (8), any presumption relating to the  
5 performance of a duty by an employee who has authority  
6 to take, direct others to take, recommend, or approve any  
7 personnel action may be rebutted by substantial evidence.  
8 For purposes of paragraph (8), a determination as to  
9 whether an employee or applicant reasonably believes that  
10 such employee or applicant has disclosed information that  
11 evidences any violation of law, rule, regulation, gross mis-  
12 management, a gross waste of funds, an abuse of author-  
13 ity, or a substantial and specific danger to public health  
14 or safety shall be made by determining whether a disin-  
15 terested observer with knowledge of the essential facts  
16 known to or readily ascertainable by the employee or appli-  
17 cant would reasonably conclude that the actions of the  
18 Government evidence such violations, mismanagement,  
19 waste, abuse, or danger.”.

20 **SEC. 5. NONDISCLOSURE POLICIES, FORMS, AND AGREE-**  
21 **MENTS.**

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

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

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

26 and

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

2 “(xi) the implementation or enforcement of  
3 any nondisclosure policy, form, or agreement;  
4 and”.

5 (b) PROHIBITED PERSONNEL PRACTICE.—Section  
6 2302(b) of title 5, United States Code, is amended—

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

9 (2) in paragraph (12), by striking the period  
10 and inserting a semicolon; and

11 (3) by inserting after paragraph (12) the fol-  
12 lowing:

13 “(13) implement or enforce any nondisclosure  
14 policy, form, or agreement, if such policy, form, or  
15 agreement does not contain the following statement:

16 ““These provisions are consistent with and do not su-  
17 perse, conflict with, or otherwise alter the employee obli-  
18 gations, rights, or liabilities created by Executive Order  
19 No. 12958; section 7211 of title 5, United States Code  
20 (governing disclosures to Congress); section 1034 of title  
21 10, United States Code (governing disclosures to Congress  
22 by members of the military); section 2302(b)(8) of title  
23 5, United States Code (governing disclosures of illegality,  
24 waste, fraud, abuse, or public health or safety threats);  
25 the Intelligence Identities Protection Act of 1982 (50

1 U.S.C. 421 and following) (governing disclosures that  
2 could expose confidential Government agents); and the  
3 statutes which protect against disclosures that could com-  
4 promise national security, including sections 641, 793,  
5 794, 798, and 952 of title 18, United States Code, and  
6 section 4(b) of the Subversive Activities Control Act of  
7 1950 (50 U.S.C. 783(b)). The definitions, requirements,  
8 obligations, rights, sanctions, and liabilities created by  
9 such Executive order and such statutory provisions are in-  
10 corporated into this agreement and are controlling.’; or

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

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

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

21 “(ii)(I) the Federal Bureau of Investiga-  
22 tion, the Central Intelligence Agency, the De-  
23 fense Intelligence Agency, the National Imagery  
24 and Mapping Agency, the National Security  
25 Agency; and

1           “(II) as determined by the President, any  
2           Executive agency or unit thereof the principal  
3           function of which is the conduct of foreign in-  
4           telligence, counterintelligence activities, or  
5           homeland security, if the determination (as that  
6           determination relates to a personnel action) is  
7           made before that personnel action; or”.

8 **SEC. 7. DISCIPLINARY ACTION.**

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

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

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

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

18                 “(iii) any combination of disciplinary actions  
19                 described under clause (i) and an assessment de-  
20                 scribed under clause (ii).

21          “(B) In any case in which the Board finds that an  
22          employee has committed a prohibited personnel practice  
23          under paragraph (8) or (9) of section 2302(b), the Board  
24          shall impose disciplinary action if the Board finds that the  
25          activity protected under such paragraph (8) or (9) (as the

1 case may be) was the primary motivating factor, unless  
2 that employee demonstrates, by a preponderance of the  
3 evidence, that the employee would have taken, failed to  
4 take, or threatened to take or fail to take the same per-  
5 sonnel action, in the absence of such protected activity.”.

6 **SEC. 8. GOVERNMENT ACCOUNTABILITY OFFICE STUDY ON**  
7 **REVOCAION OF SECURITY CLEARANCES.**

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

17 (b) REPORT.—Not later than June 30, 2006, the  
18 Comptroller General shall submit to the Committee on  
19 Government Reform of the House of Representatives and  
20 the Committee on Governmental Affairs of the Senate a  
21 report on the results of the study required by subsection  
22 (a).

1 **SEC. 9. EFFECTIVE DATE.**

2       This Act shall take effect 30 days after the date of  
3 enactment of this Act.

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