

112TH CONGRESS  
2D SESSION

# H. R. 6409

To streamline the administration of whistleblower protections for private sector employees.

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## IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 13, 2012

Ms. WOOLSEY (for herself, Mr. GEORGE MILLER of California, and Mr. KILDEE) introduced the following bill; which was referred to the Committee on Education and the Workforce, and in addition to the Committees on the Judiciary and Energy and Commerce, 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

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## A BILL

To streamline the administration of whistleblower protections for private sector employees.

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 “Private Sector Whistleblower Protection Streamlining  
6 Act of 2012”.

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

Sec. 1. Short title; table of contents.

## TITLE I—PRIVATE SECTOR EMPLOYMENT WHISTLEBLOWER PROTECTIONS

Sec. 101. Definitions.

Sec. 102. Protection against retaliation or discrimination.

Sec. 103. Enforcement.

Sec. 104. Restrictions on whistleblowing prohibited; confidentiality of whistleblower.

Sec. 105. Nonpreemption.

Sec. 106. Effective date and rules.

## TITLE II—WHISTLEBLOWER PROTECTION OFFICE

Sec. 201. Establishment.

Sec. 202. Other private sector whistleblower protections.

Sec. 203. Duties, powers, and functions.

## TITLE III—CONFORMING AMENDMENTS

Sec. 301. Occupational Safety and Health Act of 1970.

Sec. 302. Federal Mine Safety and Health Act.

Sec. 303. Amendment to title 18 provisions related to the Sarbanes-Oxley Act of 2002.

Sec. 304. Energy Reorganization Act of 1974.

## TITLE IV—ADMINISTRATIVE REVIEW BOARD

Sec. 401. Administrative Review Board.

# 1 **TITLE I—PRIVATE SECTOR EM-** 2 **PLOYMENT WHISTLEBLOWER** 3 **PROTECTIONS**

## 4 **SEC. 101. DEFINITIONS.**

5 As used in this title, the following definitions apply:

6 (1) APPLICABLE LAW.—

7 (A) IN GENERAL.—Subject to subpara-  
8 graph (B), the term “applicable law” means  
9 any Federal law, rule, regulation, or Executive  
10 order, or a law, rule or regulation of a State or  
11 political subdivision of a State implementing

any Federal law, rule or regulation, relating  
to—

(i) health and health care;

(ii) environmental protection and resource management;

(iii) food and drug safety (including relating to the production, manufacturing, and product safety of pharmaceuticals, medical devices, and agricultural products);

(iv) transportation (including maritime);

(v) working conditions and benefits (including social insurance such as workers compensation and unemployment insurance);

(vi) building and construction-related requirements, including safety requirements, structural and engineering standards, and building codes;

(vii) energy production, transportation, storage, security, safety, and use (including operations on the outer Continental Shelf (as defined in section 2 of the Outer Continental Shelf Lands Act (43 U.S.C. 1331)));

1 (viii) homeland security;

2 (ix) financial services (including bank-  
3 ing, insurance, accounting, commodities,  
4 and securities);

5 (x) consumer protection (including  
6 consumer product safety);

7 (xi) education;

8 (xii) antitrust, copyright, or patent;

9 (xiii) transactions involving the Fed-  
10 eral Government or use of Federal funds  
11 for grants, contracts, cooperative agree-  
12 ments, or program payments (including  
13 laws pertaining to fraud, waste, or abuse);

14 (xiv) the assessment, collection, or any  
15 other action regarding royalties, customs  
16 duties, tariffs, taxes, or any other sources  
17 of revenue due the Federal Government or  
18 its entities; or

19 (xv) communications and tele-  
20 communications.

21 (B) EXCEPTIONS AND EXCLUSIONS.—Not-  
22 withstanding subparagraph (A), the following  
23 Federal laws, rules, and regulations shall not be  
24 considered applicable laws for purposes of this  
25 Act:

1 (i) Civil rights laws administered by  
2 the Equal Employment Opportunity Com-  
3 mission that provide anti-retaliation pro-  
4 tections for employees exercising their  
5 rights under such laws.

6 (ii) Whistleblower Protection Act (5  
7 U.S.C. 1201 note) and laws administered  
8 by the Merit Systems Protection Board.

9 (iii) Federal laws, rules, or regulations  
10 that provide employees with the following  
11 minimum anti-retaliation protections:

12 (I) At least 180 days to file a  
13 complaint.

14 (II) A right to investigation and  
15 adjudication by an independent hear-  
16 ing officer, and an appeal to either an  
17 administrative or judicial body.

18 (III) A right to a decision within  
19 365 days of filing a complaint.

20 (IV) A right to remove to Fed-  
21 eral or State court any complaint that  
22 has not received a decision after 210  
23 days from the filing of such com-  
24 plaint.

1 (V) A right to appropriate relief,  
2 including injunctive relief, compen-  
3 satory and exemplary damages, attor-  
4 neys and experts fees, and costs.

5 (2) EMPLOYEE.—The term “employee”  
6 means—

7 (A) any person receiving compensation  
8 from or whose employment is subject to the  
9 control of an employer, being considered for  
10 employment by the employer, or previously em-  
11 ployed by an employer, including any person  
12 working as an associate;

13 (B) a person employed on a temporary or  
14 part-time basis;

15 (C) a person employed by a contractor or  
16 subcontractor of an employer; or

17 (D) a member of a professional member-  
18 ship organization or other professional body (in-  
19 cluding professional with institutional privileges  
20 or appointments to an organization).

21 (3) EMPLOYER.—The term “employer” means  
22 one or more individuals, partnerships, associations,  
23 corporations, legal representatives, mutual compa-  
24 nies, joint-stock companies, trusts, unincorporated  
25 organizations, nongovernmental organizations, trust-

1       ees, professional membership organizations (includ-  
2       ing a certification, disciplinary, or other professional  
3       body), including the agents of the employer or a per-  
4       son acting directly or indirectly in the interests of  
5       the employer, engaged in for profit or nonprofit  
6       business affecting commerce, including any subsidi-  
7       aries, affiliates, and foreign operations of any busi-  
8       ness that are subject to applicable law, any entity of  
9       a State government or political subdivision of a  
10      State, or any nongovernmental organization, and  
11      any contractor or subcontractor of another employer.

12           (4) MANAGER.—The term “manager” means  
13      any person who has direct, implied, apparent author-  
14      ity over the work performance of an employee, or  
15      other supervisory relationship, directly or indirectly  
16      through subordinates, or a person who has the di-  
17      rect, implied, or apparent authority to recommend or  
18      to take corrective action regarding the activities or  
19      policies of the employer or to remedy a violation of  
20      an applicable law.

21           (5) MEDIA.—The term “media” includes a  
22      member of the print, radio, television, or internet  
23      media.

1           (6) PROTECTED INFORMATION.—The term  
2           “protected information” means any information that  
3           an employee reasonably believes evidences—

4                   (A) a violation or the intent to commit a  
5                   violation by the employer of an applicable law;

6                   (B) a hazard or potential danger to the  
7                   health or safety of any employee or to the pub-  
8                   lic, including any injury or illness; or

9                   (C) fraud on the part of the employer in  
10                  connection with the implementation of or com-  
11                  pliance with an applicable law or a standard of  
12                  practice established by a professional standards  
13                  setting body.

14          (7) PUBLIC BODY.—The term “public body”  
15          means Congress, any State legislature or popularly  
16          elected local government body, any Federal, State or  
17          local regulatory, administrative, or public agency,  
18          authority, or instrumentality or combination thereof,  
19          any Federal, State, or local law enforcement agency,  
20          prosecutorial office, or police or peace officer, any  
21          Federal, State or local court or other adjudicative  
22          body, or any division, board, bureau, office, com-  
23          mittee, or commission of any such public bodies, or  
24          any organization or credentialing body that estab-  
25          lishes or enforces standards of professional conduct.



1           (8) REASONABLE CAUSE TO BELIEVE.—The  
2       term “reasonable cause to believe”, when used with  
3       respect to a temporary reinstatement of a complaint,  
4       means that a claim in the complaint appears to have  
5       merit.

6           (9) REASONABLY BELIEVES.—The term “rea-  
7       sonably believes”, when used with respect to infor-  
8       mation that may be protected information, means  
9       that a disinterested observer with a similar level of  
10      education, skill, and experience and with knowledge  
11      of the essential facts known to or readily ascertained  
12      by an employee could conclude that such information  
13      is protected information.

14          (10) SECRETARY.—The term “Secretary”  
15      means the Secretary of Labor.

16          (11) UNFAVORABLE PERSONNEL ACTION.—The  
17      term “unfavorable personnel action” means any ac-  
18      tion or inaction, whether taken, recommended, or  
19      threatened, directly or indirectly unfavorable to an  
20      employee, or the parent, sibling, spouse, or child of  
21      an employee, by any employer, including the current  
22      employer of the employee, including termination,  
23      performance appraisal or action, discipline, reduction  
24      in pay or benefits, transfer, reassignment, demotion,  
25      withholding of training or other advancement oppor-

1       tunities, removal of resources, the denial, suspen-  
2       sion, or revocation of a security clearance, investiga-  
3       tion, peer review, law enforcement referral, or pros-  
4       ecution, filing criminal or civil charges, change in se-  
5       niority rights, denial of advancement, denial of con-  
6       tract, revocation of security credentials, blacklisting,  
7       listing on a practitioner databank, violence or other  
8       physical action, any other discrimination or other ac-  
9       tion that negatively affects the terms or conditions,  
10      or privileges of employment of such employee, or any  
11      other conduct that would dissuade a reasonable per-  
12      son from engaging in activities protected by this  
13      title.

14   **SEC. 102. PROTECTION AGAINST RETALIATION OR DIS-**  
15                   **CRIMINATION.**

16       (a) IN GENERAL.—No employer shall take any unfav-  
17      orable personnel action against an employee if such ac-  
18      tion is due, in whole or in part, to any lawful act done,  
19      perceived to have been done, or intended to be done by  
20      the employee to—

21           (1) communicate or disclose, without restriction  
22      as to place, form, motive, context, forum, or prior  
23      disclosure, including disclosure in the ordinary  
24      course of the employee's duties, to an employer or  
25      manager, public body, or the media, or to the public,

1 any protected information, where disclosure is not  
2 specifically prohibited by law or because such infor-  
3 mation is classified, in which case the information  
4 may be disclosed to an official eligible by law to re-  
5 ceive such information and designated by the em-  
6 ployer, or to a relevant regulatory authority, law en-  
7 forcement agency, or Inspector General;

8 (2) take action to initiate, testify, cooperate, or  
9 otherwise assist or participate in an investigation or  
10 proceeding by a public body, or any proceeding au-  
11 thorized by applicable law, or take action indicating  
12 that the employee is about to testify, cooperate, or  
13 otherwise assist such an investigation or proceeding;

14 (3) object to or refuse to participate in any ac-  
15 tivity, policy, practice, or assigned task which the  
16 employee reasonably believes is or would be in viola-  
17 tion of an applicable law or endangers the safety or  
18 health of the employee or others;

19 (4) inform or discuss with co-workers of the  
20 employee, experts or corroborating witnesses, a rep-  
21 resentative of the employee, a safety and health or  
22 similar workplace committee, or a family member of  
23 the employee, any protected information, where dis-  
24 closure is not prohibited by law or because it is clas-  
25 sified; or

1           (5) otherwise avail the employee of the rights  
2       set forth in this title or other applicable law, or as-  
3       sist another employee in asserting the rights avail-  
4       able under this title.

5       (b) BROAD CONSTRUCTION.—It is the sense of Con-  
6       gress that the provisions of this section and section 101  
7       should be construed broadly to maximize this Act’s reme-  
8       dial objectives.

9       **SEC. 103. ENFORCEMENT.**

10       (a) COMPLAINT.—

11           (1) IN GENERAL.—Subject to paragraph (2), an  
12       employee who believes that he or she has been sub-  
13       jected to an unfavorable personnel action by his or  
14       her employer in violation of section 102(a) may seek  
15       the relief described in this section by filing a com-  
16       plaint with the Secretary as described in subsection

17       (b) not later than 180 days after the later of—

18           (A) the date on which such violation oc-  
19       curs, or in the case of a violation that is a re-  
20       peated violation, the last date on which such  
21       violation occurs; or

22           (B) the date on which the employee knows  
23       or should reasonably have known that such vio-  
24       lation occurred, or in the case of a violation  
25       that is a repeated violation, the last date on

1           which the employee knows or should reasonably  
2           have known that such violation occurred.

3           (2) DEADLINE EXCEPTIONS.—Notwithstanding  
4           paragraph (1), a complaint filed after the filing  
5           deadlines set forth in such paragraph shall not deny  
6           the Secretary, administrative law judge, or review  
7           board, as applicable, jurisdiction of such complaint.  
8           The filing deadlines set forth in paragraph (1) may  
9           be tolled by mutual agreement between the employee  
10          seeking to file a complaint under this section and  
11          that employee’s employer.

12          (b) DEPARTMENT OF LABOR COMPLAINT PROCEDURE.—The Secretary shall establish appropriate proce-  
13          dures to ensure complaints under this section are proc-  
14          dures to ensure complaints under this section are proc-  
15          essed efficiently, which shall provide for the following:

16               (1) NOTIFICATION OF PUBLIC BODY.—Upon de-  
17               termining that the allegations made in a complaint  
18               under this section are credible and prior to notifying  
19               an employer of the complaint, the Secretary shall—

20                       (A) notify the appropriate public body hav-  
21                       ing jurisdiction over the violations of applicable  
22                       law raised in the complaint; and

23                       (B) if appropriate, coordinate with the ap-  
24                       propriate public body having jurisdiction re-  
25                       garding an enforcement inspection.

1 (2) ELECTION OF PROCEDURE; EXCLUSION.—

2 (A) INFORMATION TO COMPLAINANT.—

3 Upon receipt of a complaint under this section,  
4 the Secretary shall inform the complainant (or  
5 any legal counsel retained by complainant) of  
6 any authority that the Secretary has that may  
7 be applicable to the complainant's situation.

8 (B) EFFICIENCY OF PROCEEDINGS.—The  
9 Secretary shall establish procedures to prevent  
10 duplicative investigations actions brought under  
11 this title and any provision of law listed in sec-  
12 tion 202. Such procedures shall not limit a  
13 complainant's ability to bring a complaint under  
14 authorities covering conduct not protected  
15 under this title, nor a complainant's right to  
16 proceed under any authority providing greater  
17 coverage, due process protections, statute of  
18 limitations, or remedies.

19 (C) AMENDMENTS TO COMPLAINTS.—The  
20 Secretary shall establish rules and procedures  
21 to allow complainants to amend their com-  
22 plaints, which shall extend the period of time  
23 for the Secretary to issue a decision as nec-  
24 essary.

1           (3) DECISION TO INVESTIGATE OR DISMISS  
2 COMPLAINT.—The Secretary shall, based on the cri-  
3 teria set forth in paragraph (d)(1), either—

4           (A) make a decision to investigate the com-  
5 plaint under paragraph (5); or

6           (B) make a final decision to dismiss the  
7 complaint and inform the complainant of his or  
8 her right to request a hearing under subpara-  
9 graph (7) and the process for filing such a re-  
10 quest.

11          (4) TEMPORARY RELIEF DURING INVESTIGA-  
12 TION.—The Secretary shall, upon request of a com-  
13 plainant, determine, for the purposes of issuing a  
14 temporary reinstatement order described in this  
15 paragraph, whether there is reasonable cause to be-  
16 lieve that the complainant’s complaint makes a  
17 prima facie showing that any conduct described in  
18 paragraphs (1) through (5) of section 102(a) was a  
19 contributing factor in the unfavorable personnel ac-  
20 tion alleged in the complaint. If the Secretary deter-  
21 mines that there is reasonable cause to believe that  
22 the complaint makes a prima facie showing, the Sec-  
23 retary shall issue a temporary reinstatement order  
24 for the complainant while the Secretary is con-  
25 ducting an investigation pursuant to paragraph (5).

1 If a hearing is not requested as provided for in para-  
2 graph (7), such order shall be deemed a final order  
3 that is not subject to judicial review during the  
4 pendency of the complainant's administrative or ju-  
5 dicial investigation, hearing, or appeal. Upon a de-  
6 termination by the Secretary that the respondent is  
7 not liable for retaliation under this title, such rein-  
8 statement shall end.

9 (5) INVESTIGATION.—The Secretary shall inves-  
10 tigate any complaint not dismissed under paragraph  
11 (3). Before dismissing such a complaint based on  
12 the inadequacy of the complaint, the Secretary shall  
13 make a good faith effort to interview the complain-  
14 ant to determine whether he or she has a claim. The  
15 Secretary shall afford the employer (in this sub-  
16 section referred to as the “respondent”) named in  
17 the complaint an opportunity to submit to the Sec-  
18 retary a written response to the complaint and to  
19 meet with a representative of the Secretary to  
20 present statements from witnesses and other evi-  
21 dence. The complainant shall be provided an oppor-  
22 tunity to meet with a representative of the Secretary  
23 and rebut any statements or evidence provided to  
24 the Secretary by the respondent named in the com-  
25 plaint. In conducting such investigation, the Sec-



1       retary may issue subpoenas requiring the deposition  
2       of or the attendance and testimony of witnesses and  
3       the production of any evidence, including any books,  
4       papers, or documents, relating to the matter under  
5       investigation. The Secretary shall complete the in-  
6       vestigation and issue a decision in accordance with  
7       the criteria set forth in subsection (d)(2) not later  
8       than 90 days after the date of receipt of a com-  
9       plaint. The Secretary shall notify, in writing, the  
10      complainant and the respondent named in the com-  
11      plaint of the Secretary's findings.

12           (6) PRELIMINARY ORDER FOLLOWING INVES-  
13      TIGATION.—If the Secretary finds that a violation of  
14      section 102(a) has occurred, the Secretary shall  
15      issue a preliminary order providing the relief pre-  
16      scribed by paragraph (10). If a hearing is not timely  
17      requested as provided for in paragraph (7), such  
18      preliminary order shall be deemed a final order of  
19      the Secretary that is not subject to judicial review.

20           (7) HEARING.—

21           (A) REQUEST FOR HEARING.—The com-  
22      plainant or respondent may request a hearing  
23      on the record before an administrative law  
24      judge—

1 (i) if the complainant or the respondent  
2 ent objects to a temporary reinstatement  
3 order or preliminary order for relief and  
4 files such objections and request for a  
5 hearing not later than 30 days after receiving  
6 notification of such preliminary order;

7 (ii) if the complainant requests a  
8 hearing not later than 30 days after receiving  
9 notice of the Secretary's dismissal of  
10 his or her complaint; or

11 (iii) if the Secretary has not issued a  
12 decision under paragraph (5) within 90  
13 days of the receipt of the complaint.

14 The filing of objections under clause (i) shall  
15 not operate to stay any reinstatement remedy  
16 contained in a temporary reinstatement order  
17 issued pursuant to paragraph (4) or a preliminary  
18 order issued pursuant to paragraph (6).

19 (B) PROCEDURES.—Such hearing request  
20 shall be granted, and shall be conducted expeditiously  
21 and in accordance with the section 554  
22 of title 5, United States Code. In conducting  
23 such proceeding, the Secretary may issue subpoenas  
24 requiring the deposition of or the attendance  
25 and testimony of witnesses and the

1 production of any evidence, including any  
2 books, papers, or documents, relating to the  
3 matter under consideration. A decision issued in  
4 accordance with the criteria set forth in sub-  
5 section (d)(2), shall be issued not later than 90  
6 days after the date on which a hearing was re-  
7 quested under this paragraph. The parties and  
8 the Secretary shall promptly be notified of the  
9 decision. If the administrative law judge finds  
10 that a violation of section 102(a) has occurred,  
11 the judge shall issue a preliminary order pro-  
12 viding the relief prescribed by paragraph (10).  
13 If review under paragraph (8) is not timely re-  
14 quested, such preliminary order shall be deemed  
15 a final order of the Secretary that is not subject  
16 to judicial review.

17 (8) FURTHER ADMINISTRATIVE REVIEW.—Not  
18 later than 30 days after the date of notification of  
19 a decision by an administrative law judge under  
20 paragraph (7), the complainant or the respondent al-  
21 leged to have committed a violation of section 102(a)  
22 may file objections to specified portions thereof and  
23 request a further review by an administrative review  
24 board designated by the Secretary under title IV (in  
25 this section referred to as the “review board”). The

1 review board's review shall be limited to determining  
2 whether the decision of the administrative law judge  
3 was based upon substantial evidence and in accord-  
4 ance with all applicable law. The decision of the ad-  
5 ministrative law judge shall be stayed pending the  
6 completion of further review, except for any order of  
7 reinstatement which shall be stayed only upon mo-  
8 tion. If review is granted, the review board shall  
9 issue a final decision and order affirming or revers-  
10 ing, in whole or in part, the decision under review  
11 by not later than 90 days after receipt of the admin-  
12 istrative appeal. If it is determined that a violation  
13 of section 102 has occurred, the review board shall  
14 issue a final decision and order providing relief au-  
15 thorized under paragraph (10). Such decision and  
16 order shall constitute final agency action with re-  
17 spect to the matter appealed. If judicial review  
18 under paragraph (12) is not timely requested, such  
19 preliminary order shall be deemed a final order of  
20 the Secretary that is not subject to judicial review.

21 (9) SETTLEMENT.—At any time before issuance  
22 of a final order, a proceeding under this subsection  
23 may be terminated on the basis of a settlement  
24 agreement approved by the Secretary, administrative  
25 law judge, or review board conducting a hearing, the

1 complainant, and the employer alleged to have com-  
2 mitted the violation. The Secretary, administrative  
3 law judge, or review board conducting a hearing may  
4 not accept any settlement that contains conditions  
5 that are contrary to the public policy of this title, in-  
6 cluding any restrictions on activity protected by this  
7 Act, and the right to seek future employment with  
8 an employer other than a specific employer named in  
9 the underlying complaint without discrimination.

10 (10) REMEDY.—If, in response to a complaint  
11 filed under subsection (a)(1), the Secretary, adminis-  
12 trative law judge, or the review board determines  
13 that a violation of section 102(a) has occurred, the  
14 Secretary, administrative law judge, or review board  
15 shall order the respondent who committed such vio-  
16 lation to—

17 (A) take affirmative action to abate the  
18 violation;

19 (B) reinstate the complainant to his or her  
20 former position and with the same seniority sta-  
21 tus together with the compensation (including  
22 back pay and interest) and restore the terms,  
23 rights, conditions, and privileges associated with  
24 his or her employment, and provide preference  
25 to the complainant to transfer to any available

1 position that provides equivalent or better com-  
2 pensation, terms, conditions, and privileges of  
3 employment for which the complainant is quali-  
4 fied;

5 (C) provide all appropriate relief, including  
6 injunctive relief, compensatory, and exemplary  
7 damages;

8 (D) expunge all warnings, reprimands, or  
9 derogatory references that have been placed in  
10 paper or electronic records or databases of any  
11 type relating to the actions by the complainant  
12 that gave rise to the unfavorable personnel ac-  
13 tion, and, at the complainant's direction, send  
14 a copy of the decision on the complaint to any  
15 person whom the complainant reasonably be-  
16 lieves may have received such unfavorable infor-  
17 mation; and

18 (E) post appropriate public notice of the  
19 violation.

20 If such an order is issued under this paragraph, the  
21 Secretary, administrative law judge, or the review  
22 board, at the request of the complainant, shall as-  
23 sess against the respondent against whom the order  
24 is issued a sum equal to the aggregate amount of all  
25 costs and expenses (including attorneys' and expert

1 witness fees) reasonably incurred, as determined by  
2 the Secretary, administrative law judge, or the re-  
3 view board, by the complainant for, or in connection  
4 with, the bringing the complaint upon which the  
5 order was issued.

6 (11) ENFORCEMENT OF ORDER.—Whenever  
7 any respondent has failed to comply with a final  
8 order issued under this subsection, including a final  
9 order for temporary relief, the Secretary or the com-  
10 plainant on whose behalf the order was issued may  
11 file a civil action in the United States district court  
12 for the district in which the violation was found to  
13 occur to enforce such order. If both the Secretary  
14 and the person on whose behalf the order was issued  
15 file such an action for enforcement, the action of the  
16 Secretary shall take precedence. In actions brought  
17 under this paragraph, the district courts shall have  
18 jurisdiction to grant all appropriate relief including,  
19 injunctive relief, compensatory damages, and reason-  
20 able attorneys and expert witness fees. In addition  
21 to enforcing the order, the court shall assess a pen-  
22 alty of not greater than \$10,000 a month against  
23 any person who fails to comply with a final order  
24 issued under this subsection, which shall be awarded  
25 to the party seeking enforcement.

1           (12) JUDICIAL REVIEW.—

2           (A) APPEAL TO COURT OF APPEALS.—Any  
3 complainant or respondent adversely affected or  
4 aggrieved by a final order issued under this  
5 subsection for which review is available, may  
6 obtain review of the order in the United States  
7 Court of Appeals for the circuit in which the  
8 violation, with respect to which the order was  
9 issued, allegedly occurred or the circuit in which  
10 the complainant resided on the date of such vio-  
11 lation. The petition for review shall be filed not  
12 later than 60 days after the date the final order  
13 of the Secretary, administrative law judge, or  
14 the review board was received. Review shall con-  
15 form to chapter 7 of title 5, United States  
16 Code. The commencement of proceedings under  
17 this subparagraph shall not, unless ordered by  
18 the court, operate as a stay of the order.

19           (B) LIMITATION ON COLLATERAL AT-  
20 TACK.—An order of the Secretary with respect  
21 to which review could have been obtained under  
22 subparagraph (A) shall not be subject to judi-  
23 cial review in any criminal or other civil pro-  
24 ceeding.



1           (13) INACTION BY THE SECRETARY, ADMINIS-  
2           TRATIVE LAW JUDGE, OR THE REVIEW BOARD.—If,  
3           after a hearing is requested pursuant to paragraph  
4           (7) or a review is requested under paragraph (8),  
5           the administrative law judge or the review board, re-  
6           spectively, has not issued a final decision within 90  
7           days after such hearing or review is requested, the  
8           complainant may bring an action at law or equity  
9           for de novo review in the appropriate district court  
10          of the United States, as described in subsection (c),  
11          which shall have jurisdiction over such an action  
12          without regard to the amount in controversy, and  
13          which action shall, at the request of either party to  
14          such action, be tried by the court with a jury.

15          (c) DISTRICT COURT PROCEDURE.—

16               (1) DISMISSAL.—The court shall not dismiss  
17               under subsection (b)(6) or (e) of rule 12 of the Fed-  
18               eral Rules of Civil Procedure a complaint filed under  
19               this section unless there are no conceivable grounds  
20               upon which a complainant may prevail.

21               (2) TEMPORARY RELIEF.—The court shall,  
22               upon request of the complainant, determine whether  
23               there is reasonable cause to believe that the com-  
24               plainant makes the prima facie showing described in  
25               subsection (b)(4), and if the court so determines,

1 issue an order providing for temporary reinstate-  
2 ment of the complainant.

3 (3) DECISION.—The complainant in a case  
4 brought under subsection (b)(11) shall be entitled to  
5 a trial by jury. The jury or the court shall determine  
6 whether a violation of section 102(a) has occurred  
7 based upon the criteria set forth in paragraph  
8 (d)(2).

9 (4) RELIEF.—The Court shall have jurisdiction  
10 to grant all appropriate relief to a prevailing com-  
11 plainant available by law or equity, including, in-  
12 junctive relief, compensatory and consequential dam-  
13 ages, exemplary damages, reasonable attorneys and  
14 expert witness fees, and court costs, and notification  
15 to the appropriate public body having jurisdiction  
16 over the violations of applicable law raised by the  
17 complainant.

18 (d) CRITERIA FOR DISMISSAL AND FOR DECISION.—

19 (1) DISMISSAL.—The Secretary shall dismiss a  
20 complaint filed under this section unless that com-  
21 plainant alleges facts in the complaint, supplemented  
22 as appropriate through interviews, affidavits, or  
23 other relevant evidence, which could conceivably sup-  
24 port a prima facie claim that conduct described in  
25 paragraphs (1) through (5) of section 102(a) was a

1 contributing factor in the unfavorable personnel ac-  
2 tion alleged in the complaint. The Secretary shall  
3 not dismiss a complaint without interviewing a com-  
4 plainant and providing him or her the opportunity to  
5 provide additional evidence in support of his or her  
6 prima facie claim. An administrative law judge or  
7 the review board may refer to the Secretary for fur-  
8 ther investigation any appeal from the Secretary's  
9 dismissal in which the administrative law judge or  
10 review board determines the complainant alleges  
11 facts that could conceivably support such a prima  
12 facie claim.

13 (2) DECISION.—The Secretary, administrative  
14 law judge, administrative review board, or a court  
15 may determine that a violation of section 102(a) has  
16 occurred only if the complainant demonstrates that  
17 any conduct described in paragraphs (1) through (5)  
18 of section 102(a) was a contributing factor in the  
19 unfavorable personnel action alleged in the com-  
20 plaint. Relief may not be ordered if the respondent  
21 demonstrates by clear and convincing evidence that  
22 the respondent would have taken the same unfavor-  
23 able personnel action in the absence of the conduct  
24 described in paragraphs (1) through (5) of section  
25 102(a).

1 **SEC. 104. RESTRICTIONS ON WHISTLEBLOWING PROHIB-**  
2 **ITED; CONFIDENTIALITY OF WHISTLE-**  
3 **BLOWER.**

4 (a) RESTRICTIONS ON REPORTING PROHIBITED; IN-  
5 VALID CONTRACT CLAUSES.—No employer shall by con-  
6 tract, policy, or procedure prohibit or restrict any person  
7 from engaging in any action for which a protection against  
8 discrimination or retaliation is provided under section 102.  
9 Any clause or provision of any contract for employment  
10 or contract with an independent contractor for the provi-  
11 sion of services which purports to limit or restrain an indi-  
12 vidual from engaging in any of the actions described in  
13 paragraphs (1) through (5) of section 102(a) as a condi-  
14 tion of employment or a condition of the contract, whether  
15 in force before, on, or after the date of enactment of this  
16 title, shall be invalid and void as violative of public policy  
17 as established by this title.

18 (b) RESTRICTIONS ON RELIEF PROVIDED UNDER  
19 THIS ACT PROHIBITED; INVALID ARBITRATION  
20 CLAUSES.—Any clause of any agreement between an em-  
21 ployer and an employee that requires arbitration of a  
22 claim arising under this title, whether in force before, on,  
23 or after the date of enactment of this Act, shall not be  
24 enforceable. An employee may not submit to binding arbi-  
25 tration of a claim arising under this title unless the em-  
26 ployee's agreement is made after the employee becomes

1 aware of an unfavorable personnel action and such agree-  
2 ment is made in direct contemplation of that specific unfav-  
3 orable personnel action. No agreement, settlement, or de-  
4 cision reached in arbitration shall be enforced that violates  
5 the public policies established under this Act, including  
6 any restriction or activity protected by this Act.

7 (c) CONFIDENTIALITY.—The identity or identifying  
8 information of an employee (in this subsection referred to  
9 as the “complainant”) who complains or discloses infor-  
10 mation as described in section 102(a) to a public body  
11 shall remain confidential and shall not be disclosed by any  
12 person except—

13 (1) upon the knowing written consent of the  
14 complainant;

15 (2) in the case in which there is imminent dan-  
16 ger to health or public safety or an imminent viola-  
17 tion of criminal law; or

18 (3) as otherwise required by law.

19 An employee of a public body shall provide reasonable ad-  
20 vance notice to the affected employee if disclosure of that  
21 person’s identity or identifying information is to occur. An  
22 employee of a public body who is grossly negligent in dis-  
23 closing the identity of a complainant in violation of this  
24 subsection may be considered to be acting outside such  
25 employee’s official duties.

1 **SEC. 105. NONPREEMPTION.**

2 (a) EFFECT ON OTHER LAWS.—Nothing in this title  
 3 shall be construed to preempt any law, rule, or regulation  
 4 of a State or political subdivision of a State and nothing  
 5 in this title shall be construed or interpreted to impair  
 6 or diminish in any way the authority of any State to enact  
 7 and enforce any law which provides equivalent or greater  
 8 protections for employees engaging in conduct protected  
 9 under this title.

10 (b) RIGHTS RETAINED BY WHISTLEBLOWERS.—Ex-  
 11 cept as provided in section 103(b)(2)(A), nothing in this  
 12 title shall be construed to diminish the rights, privileges,  
 13 or remedies of any employee under any Federal or State  
 14 law, or under any collective bargaining agreement.

15 **SEC. 106. EFFECTIVE DATE AND RULES.**

16 This title shall take effect on the date of enactment  
 17 of this Act, and the procedures described in section 103  
 18 shall apply to complaints and actions filed under this title  
 19 after such date of enactment. The Secretary shall establish  
 20 interim final rules to implement this title within 120 days  
 21 of such date of enactment. The time periods for processing  
 22 complaints shall start once such interim rules are in effect.

23 **TITLE II—WHISTLEBLOWER**  
 24 **PROTECTION OFFICE**

25 **SEC. 201. ESTABLISHMENT.**

26 (a) ESTABLISHMENT AND PURPOSE.—

1           (1) IN GENERAL.—There is established in the  
2     Department of Labor the Whistleblower Protection  
3     Office (in this title referred to as “the Office”) to  
4     administer the duties of the Secretary under title I,  
5     the provisions of law listed in section 202 of this  
6     Act, section 11(c) of the Occupational Safety and  
7     Health Act of 1970 (29 U.S.C. 660(c)), and the  
8     other provisions of law assigned to the Office by the  
9     Secretary, except that duties involving hearings and  
10    subsequent review and legal representation shall not  
11    be assigned to the Office, but may be assigned to  
12    other offices and agencies within the Department of  
13    Labor.

14           (2) CONSTRUCTION.—Nothing in this title shall  
15    in any way remove or transfer the authorities cur-  
16    rently under the jurisdiction of the Mine Safety and  
17    Health Administration and the Federal Mine Safety  
18    and Health Review Commission.

19           (b) ADMINISTRATOR.—The Whistleblower Protection  
20    Office shall be under the direction of an Administrator of  
21    Whistleblower Protection, referred to in this title as “the  
22    Administrator”, who shall be appointed by the President  
23    with the advice and consent of the Senate. The Adminis-  
24    trator’s compensation shall be set at level IV of the Execu-  
25    tive Schedule.

1 (c) APPOINTMENT OF PERSONNEL.—

2 (1) APPOINTMENT AND COMPENSATION.—The  
3 Administrator may, subject to the civil service laws,  
4 appoint such employees as the Administrator con-  
5 sider necessary to carry out the functions and du-  
6 ties of the Office, and shall fix their compensation  
7 in accordance with the provisions of chapter 51 and  
8 subchapter III of chapter 53 of title 5, United  
9 States Code.

10 (d) TRANSFER OF PERSONNEL; BUDGET.—

11 (1) BUDGETS AND PERSONNEL.—All unex-  
12 pended balances of appropriations, personnel, prop-  
13 erty, records, obligations, and commitments which  
14 are used primarily with respect to any functions  
15 transferred under the provisions of paragraph (1) to  
16 the Administrator shall be transferred to the Office,  
17 as appropriate. The transfer of personnel pursuant  
18 to this paragraph shall be without reduction in clas-  
19 sification or compensation for 1 year after such  
20 transfer, except that the Administrator shall have  
21 full authority to assign personnel during such 1-year  
22 period in order to efficiently carry out functions  
23 transferred to the Administrator under this title.

24 (2) CONTINUATION.—All orders, decisions, de-  
25 terminations, rules, and regulations, (A) which have



1        been issued, made, granted, or allowed to become ef-  
2        fective in the exercise of functions which are trans-  
3        ferred under this subsection; and (B) which are in  
4        effect at the time this section takes effect, shall con-  
5        tinue in effect according to their terms until modi-  
6        fied, terminated, superseded, set aside, revoked, or  
7        repealed by the Secretary, the Administrator, or  
8        other authorized officials, by any court of competent  
9        jurisdiction, or by operation of law. The provisions  
10       of this subsection shall not affect any proceedings  
11       pending at the time this title takes effect. The provi-  
12       sions of this section shall not affect suits commenced  
13       prior to the date this section takes effect and in all  
14       such suits proceedings shall be had, appeals taken,  
15       and judgments rendered, in the same manner and  
16       effect as if this section had not been enacted.

17       (e) COORDINATION.—The Office shall, where appro-  
18       priate, take all the steps necessary, including entering into  
19       memorandum of understanding, to coordinate investiga-  
20       tion and adjudication of retaliation claims under this Act  
21       with the Occupational Safety and Health Administration  
22       and other appropriate public bodies having jurisdiction  
23       over the enforcement of the underlying violations of appli-  
24       cable law.

1 (f) PRINCIPAL OFFICE.—The principal location of  
2 the Office shall be in the District of Columbia, but the  
3 Administrator or a duly authorized representative may ex-  
4 ercise any or all of the Administrator’s powers in any  
5 place.

6 **SEC. 202. OTHER PRIVATE SECTOR WHISTLEBLOWER PRO-**  
7 **TECTIONS.**

8 (a) PROVISIONS TO BE ENFORCED IN ACCORDANCE  
9 WITH THIS ACT.—Notwithstanding any procedures set  
10 forth in the following provisions of law, such provisions  
11 shall, after the effective date of this Act, be administered  
12 in accordance with this Act by the Office established by  
13 this title:

14 (1) Sections 20109, 30171, 31105, 42121, and  
15 60129 of title 49, United States Code.

16 (2) Section 211 of the Asbestos Hazard Emer-  
17 gency Response Act of 1986 (15 U.S.C. 2651).

18 (3) Section 7 of the International Safe Con-  
19 tainer Act (46 U.S.C. 1506).

20 (4) Section 1450 of the Safe Drinking Water  
21 Act of 1974 (42 U.S.C. 300j–9i).

22 (5) Section 507 of the Federal Water Pollution  
23 Control Act, Amendments of 1972 (33 U.S.C.  
24 1367).

1           (6) Section 40 of the Consumer Product Safety  
2     Act (15 U.S.C. 2087).

3           (7) Section 23(a)(1) through (3) of the Toxic  
4     Substances Control Act (15 U.S.C. 2622).

5           (8) Section 7001 of the Solid Waste Disposal  
6     Act of 1976 (42 U.S.C. 6971).

7           (9) Section 322 of the Clean Air Act, amend-  
8     ments of 1977 (42 U.S.C. 7622).

9           (10) Section 10 of the Comprehensive Environ-  
10    mental Response, Compensation, and Liability Act  
11    of 1980 (42 U.S.C. 9610).

12          (11) Section 211 of the Energy Reorganization  
13    Act of 1978 (42 U.S.C. 5851).

14          (12) Section 806 of the Sarbanes-Oxley Act of  
15    2002 (18 U.S.C. 1514A).

16          (13) Section 1413 of the Implementing Rec-  
17    ommendations of the 9/11 Commission Act of 2007  
18    (6 U.S.C. 1142).

19          (14) Section 18C of the Fair Labor Standards  
20    Act of 1938 (29 U.S.C. 218C).

21          (15) Section 21F of the Securities Exchange  
22    Act of 1934 (15 U.S.C. 78u–6).

23          (16) Section 23 of the Commodity Exchange  
24    Act (7 U.S.C. 26).

1           (17) The Seaman’s Protection Act (46 U.S.C.  
2       2114).

3           (18) Section 1012 of the Federal Food, Drug,  
4       and Cosmetic Act (21 U.S.C. 399d).

5       (b) CLARIFICATION.—Any protections, rights, privi-  
6 leges, or remedies available to a covered employee under  
7 the provisions of law described in subsection (a), which  
8 are additional to and not inconsistent with those set forth  
9 in section 102, shall not be limited by subsection (a). To  
10 the extent that any such provisions are inconsistent with  
11 section 102, such provisions shall, at the request of a com-  
12 plainant, be given effect over any inconsistent provision  
13 in section 102.

14 **SEC. 203. DUTIES, POWERS, AND FUNCTIONS.**

15       (a) SUBPOENAS, EVIDENCE, AND TESTIMONY.—In  
16 carrying out its duties under title I of this Act or under  
17 any of the provisions of law referred to by section 202,  
18 the Administrator may issue subpoenas requiring the dep-  
19 osition of or the attendance and testimony of witnesses  
20 and the production of any evidence, including any books,  
21 papers, or documents, relating to any matter under inves-  
22 tigation by the Commission, or required in connection with  
23 a hearing.

24       (b) MONITORING OF COMPLAINTS REMOVED TO  
25 FEDERAL DISTRICT COURT.—The Administrator shall re-

1 view the decision in each action removed to a district court  
2 of the United States under section 103(b)(11) to deter-  
3 mine whether an employer violated an applicable law, and  
4 upon determining that an applicable law was so violated,  
5 notify the appropriate public body having jurisdiction over  
6 the violation of the applicable law regarding such violation.

7 (c) RULES.—The Secretary is authorized to prescribe  
8 such rules as are necessary for the orderly transaction of  
9 the proceedings of the Office and for the implementation  
10 of the programs of the Office.

11 (d) EFFECTIVE DATE.—The Administrator shall  
12 begin to carry out the duties and exercise the powers set  
13 forth in this title on the date that is 1 year after the date  
14 of enactment of this Act, or such earlier date as the Sec-  
15 retary may determine that the Office is sufficiently estab-  
16 lished, staffed, and funded.

17 (e) ANNUAL REPORTS.—

18 (1) ADMINISTRATOR.—The Administrator shall  
19 annually—

20 (A) transmit a report to Congress detailing  
21 the activities of the Office during the previous  
22 year, including information relating to the num-  
23 ber and nature of complaints filed, the number  
24 of merit and non-merit cases, the number of  
25 such complaints disposed of without investiga-

tion, the number of complaints that have not received an adjudication within the time period required under this Act and the duration of the delay for such complaints, investigations conducted, orders issued, and statistics related to settlements; and

(B) make available the full text of all settlements approved by the Office, following the elimination from such text of all personal identifying information about the complainant, the employer, and any other party.

(2) APPROVED SETTLEMENTS.—No settlement approved by the Office may prohibit the disclosure described in paragraph (1)(B).

(f) STUDY ON TRANSITION TO WHISTLEBLOWER PROTECTION OFFICE.—

(1) ONE YEAR AFTER ENACTMENT.—Not later than 6 months after the date of enactment of this Act, the Comptroller General shall initiate a review of the Secretary's progress in establishing the Whistleblower Protection Office as required under section 201, and not later than 1 year after such date of enactment, provide a report to the Congress on the effectiveness of the transition, including—

1 (A) whether existing funds, staff, informa-  
2 tion systems, and authorities have been prop-  
3 erly transferred to the Office and make rec-  
4 ommendations as necessary; and

5 (B) the status of cases currently before the  
6 Office, the progress made by the Office in elimi-  
7 nating the current backlog of whistleblower  
8 cases, and the plans of the Office for ensuring  
9 that the backlog is eliminated.

10 (2) TWO YEARS AFTER ENACTMENT.—Not later  
11 than 2 years after such date of enactment, the  
12 Comptroller General shall report to Congress on—

13 (A) whether the Office’s operational proce-  
14 dures have been established, whether necessary  
15 regulations have been promulgated, whether  
16 there are adequate internal controls, whether  
17 program outcomes are being effectively meas-  
18 ured, whether previous recommendations re-  
19 garding this program have been effectively im-  
20 plemented, whether investigative and super-  
21 visory staff have received necessary training  
22 and equipment, whether the Office is fulfilling  
23 its mission to fairly, efficiently, and effectively  
24 investigate whistleblower complaints, assure

1           timely enforcement, and to fully implement the  
 2           statutory authorities assigned to the Office; and  
 3           (B) the information described in paragraph  
 4           (1)(B).

## 5           **TITLE III—CONFORMING** 6           **AMENDMENTS**

7   **SEC. 301. OCCUPATIONAL SAFETY AND HEALTH ACT OF**  
 8           **1970.**

9           (a) **EMPLOYEE ACTIONS.**—Section 11(c)(1) of the  
 10   Occupational Safety and Health Act of 1970 (29 U.S.C.  
 11   660(c)(1)) is amended—

12           (1) by striking “discharge” and all that follows  
 13           through “because such” and inserting the following:  
 14           “discharge or cause to be discharged, or in any man-  
 15           ner discriminate against or cause to be discriminated  
 16           against, any employee because—

17           “(A) such”;

18           (2) by striking “this Act or has” and inserting  
 19           the following: “this Act;

20           “(B) such employee has”;

21           (3) by striking “in any such proceeding or be-  
 22           cause of the exercise” and inserting the following:  
 23           “before Congress or in any Federal or State pro-  
 24           ceeding related to safety or health;



1           “(C) such employee has refused to violate any  
2       provision of this Act; or

3           “(D) of the exercise”; and

4           (4) by inserting before the period at the end the  
5       following: “, including the reporting of any injury,  
6       illness, or unsafe condition to the employer, agent of  
7       the employer, safety and health committee involved,  
8       or employee safety and health representative in-  
9       volved”.

10       (b) PROHIBITION OF RETALIATION.—Section 11(c)  
11   of such Act (29 U.S.C. 660(c)) is amended by striking  
12   paragraph (2) and inserting the following:

13           “(2) PROHIBITION OF RETALIATION.—(A) No  
14       person shall discharge, or cause to be discharged, or  
15       in any manner discriminate against, or cause to be  
16       discriminated against, an employee for refusing to  
17       perform the employee’s duties if the employee has a  
18       reasonable apprehension that performing such duties  
19       would result in serious injury to, or serious impair-  
20       ment of the health of, the employee or other employ-  
21       ees.

22           “(B) For purposes of subparagraph (A), the  
23       circumstances causing the employee’s good-faith be-  
24       lief that performing such duties would pose a safety  
25       or health hazard shall be of such a nature that a

1 reasonable person, under the circumstances con-  
2 fronting the employee, would conclude that there is  
3 such a hazard. In order to qualify for protection  
4 under this paragraph, the employee, when prac-  
5 ticable, shall have communicated or attempted to  
6 communicate the safety or health concern to the em-  
7 ployer and have not received from the employer a re-  
8 sponse reasonably calculated to allay such concern.”.

9 (c) PROCEDURE.—Section 11(c) of such Act (29  
10 U.S.C. 660(c)) is amended by striking paragraph (3) and  
11 inserting the following:

12 “(3) COMPLAINT.—Any employee who believes  
13 that the employee has been discharged, disciplined,  
14 or otherwise discriminated against by any person in  
15 violation of paragraph (1) or (2) may seek relief for  
16 such violation by filing a complaint with the Sec-  
17 retary under paragraph (5).

18 “(4) STATUTE OF LIMITATIONS.—

19 “(A) IN GENERAL.—An employee may take  
20 the action permitted by paragraph (3)(A) not  
21 later than 180 days after the later of—

22 “(i) the date on which an alleged vio-  
23 lation of paragraph (1) or (2) occurs; or

1 “(ii) the date on which the employee  
2 knows or should reasonably have known  
3 that such alleged violation occurred.

4 “(B) REPEAT VIOLATION.—Except in  
5 cases when the employee has been discharged,  
6 a violation of paragraph (1) or (2) shall be con-  
7 sidered to have occurred on the last date an al-  
8 leged repeat violation occurred.

9 “(5) INVESTIGATION.—

10 “(A) IN GENERAL.—An employee may,  
11 within the time period required under para-  
12 graph (4)(B), file a complaint with the Sec-  
13 retary alleging a violation of paragraph (1) or  
14 (2). If the complaint alleges a prima facie case,  
15 the Secretary shall conduct an investigation of  
16 the allegations in the complaint, which—

17 “(i) shall include—

18 “(I) interviewing the complain-  
19 ant;

20 “(II) providing the respondent an  
21 opportunity to—

22 “(aa) submit to the Sec-  
23 retary a written response to the  
24 complaint; and

1 “(bb) meet with the Sec-  
2 retary to present statements from  
3 witnesses or provide evidence;  
4 and

5 “(III) providing the complainant  
6 an opportunity to—

7 “(aa) receive any statements  
8 or evidence provided to the Sec-  
9 retary;

10 “(bb) meet with the Sec-  
11 retary; and

12 “(cc) rebut any statements  
13 or evidence; and

14 “(ii) may include issuing subpoenas  
15 for the purposes of such investigation.

16 “(B) DECISION.—Not later than 90 days  
17 after the filing of the complaint, the Secretary  
18 shall—

19 “(i) determine whether reasonable  
20 cause exists to believe that a violation of  
21 paragraph (1) or (2) has occurred; and

22 “(ii) issue a decision granting or de-  
23 nying relief.

24 “(6) PRELIMINARY ORDER FOLLOWING INVES-  
25 TIGATION.—If, after completion of an investigation

1       under paragraph (5)(A), the Secretary finds reason-  
2       able cause to believe that a violation of paragraph  
3       (1) or (2) has occurred, the Secretary shall issue a  
4       preliminary order providing relief authorized under  
5       paragraph (14) at the same time the Secretary  
6       issues a decision under paragraph (5)(B). If a de  
7       novo hearing is not requested within the time period  
8       required under paragraph (7)(A)(i), such prelimi-  
9       nary order shall be deemed a final order of the Sec-  
10      retary and is not subject to judicial review.

11               “(7) HEARING.—

12                       “(A) REQUEST FOR HEARING.—

13                               “(i) IN GENERAL.—A de novo hearing  
14                               on the record before an administrative law  
15                               judge may be requested—

16                                       “(I) by the complainant or re-  
17                                       spondent within 30 days after receiv-  
18                                       ing notification of a decision granting  
19                                       or denying relief issued under para-  
20                                       graph (5)(B) or paragraph (6) respec-  
21                                       tively;

22                                       “(II) by the complainant within  
23                                       30 days after the date the complaint  
24                                       is dismissed without investigation by

1 the Secretary under paragraph (5)(A);  
2 or

3 “(III) by the complainant within  
4 120 days after the date of filing the  
5 complaint, if the Secretary has not  
6 issued a decision under paragraph  
7 (5)(B).

8 “(ii) REINSTATEMENT ORDER.—The  
9 request for a hearing shall not operate to  
10 stay any preliminary reinstatement order  
11 issued under paragraph (6).

12 “(B) PROCEDURES.—

13 “(i) IN GENERAL.—A hearing re-  
14 quested under this paragraph shall be con-  
15 ducted expeditiously and in accordance  
16 with rules established by the Secretary for  
17 hearings conducted by administrative law  
18 judges.

19 “(ii) SUBPOENAS; PRODUCTION OF  
20 EVIDENCE.—In conducting any such hear-  
21 ing, the administrative law judge may issue  
22 subpoenas. The respondent or complainant  
23 may request the issuance of subpoenas  
24 that require the deposition of, or the at-  
25 tendance and testimony of, witnesses and

1 the production of any evidence (including  
2 any books, papers, documents, or record-  
3 ings) relating to the matter under consid-  
4 eration.

5 “(iii) DECISION.—The administrative  
6 law judge shall issue a decision not later  
7 than 90 days after the date on which a  
8 hearing was requested under this para-  
9 graph and promptly notify, in writing, the  
10 parties and the Secretary of such decision,  
11 including the findings of fact and conclu-  
12 sions of law. If the administrative law  
13 judge finds that a violation of paragraph  
14 (1) or (2) has occurred, the judge shall  
15 issue an order for relief under paragraph  
16 (14). If review under paragraph (8) is not  
17 timely requested, such order shall be  
18 deemed a final order of the Secretary that  
19 is not subject to judicial review.

20 “(8) ADMINISTRATIVE APPEAL.—

21 “(A) IN GENERAL.—Not later than 30  
22 days after the date of notification of a decision  
23 and order issued by an administrative law judge  
24 under paragraph (7), the complainant or re-  
25 spondent may file, with objections, an adminis-

1           trative appeal with an administrative review  
2           body designated by the Secretary under title IV  
3           of the Private Sector Whistleblower Protection  
4           Streamlining Act of 2012 (in this subsection re-  
5           ferred to as the ‘review board’).

6           “(B) STANDARD OF REVIEW.—In review-  
7           ing the decision and order of the administrative  
8           law judge, the review board shall affirm the de-  
9           cision and order if it is determined that the fac-  
10          tual findings set forth therein are supported by  
11          substantial evidence and the decision and order  
12          are made in accordance with applicable law.

13          “(C) DECISIONS.—If the review board  
14          grants an administrative appeal, the review  
15          board shall issue a final decision and order af-  
16          firming or reversing, in whole or in part, the  
17          decision under review by not later than 90 days  
18          after receipt of the administrative appeal. If it  
19          is determined that a violation of paragraph (1)  
20          or (2) has occurred, the review board shall issue  
21          a final decision and order providing relief au-  
22          thorized under paragraph (14). Such decision  
23          and order shall constitute final agency action  
24          with respect to the matter appealed.



1           “(9) SETTLEMENT IN THE ADMINISTRATIVE  
2       PROCESS.—

3           “(A) IN GENERAL.—At any time before  
4       issuance of a final order, an investigation or  
5       proceeding under this subsection may be termi-  
6       nated on the basis of a settlement agreement  
7       entered into by the parties.

8           “(B) PUBLIC POLICY CONSIDERATIONS.—  
9       Neither the Secretary, an administrative law  
10      judge, nor the review board conducting a hear-  
11      ing under this subsection shall accept a settle-  
12      ment that contains conditions conflicting with  
13      the rights protected under this Act or that are  
14      contrary to public policy, including a restriction  
15      on a complainant’s right to future employment  
16      with employers other than the specific employ-  
17      ers named in a complaint.

18          “(10) INACTION BY THE REVIEW BOARD OR AD-  
19      MINISTRATIVE LAW JUDGE.—

20          “(A) IN GENERAL.—The complainant may  
21      bring a de novo action described in subpara-  
22      graph (B) if—

23                  “(i) an administrative law judge has  
24                  not issued a decision and order within the

1           90-day time period required under para-  
2           graph (7)(B)(iii); or

3           “(ii) the review board has not issued  
4           a decision and order within the 90-day  
5           time period required under paragraph  
6           (8)(C).

7           “(B) DE NOVO ACTION.—Such de novo ac-  
8           tion may be brought at law or equity in the  
9           United States district court for the district  
10          where a violation of paragraph (1) or (2) alleg-  
11          edly occurred or where the complainant resided  
12          on the date of such alleged violation. The court  
13          shall have jurisdiction over such action without  
14          regard to the amount in controversy and to  
15          order appropriate relief under paragraph (14).  
16          Such action shall, at the request of either party  
17          to such action, be tried by the court with a  
18          jury.

19          “(11) JUDICIAL REVIEW.—

20          “(A) TIMELY APPEAL TO THE COURT OF  
21          APPEALS.—Any party adversely affected or ag-  
22          grieved by a final decision and order issued  
23          under this subsection may obtain review of such  
24          decision and order in the United States Court  
25          of Appeals for the circuit where the violation,

1 with respect to which such final decision and  
2 order was issued, allegedly occurred or where  
3 the complainant resided on the date of such al-  
4 leged violation. To obtain such review, a party  
5 shall file a petition for review not later than 60  
6 days after the final decision and order was  
7 issued. Such review shall conform to chapter 7  
8 of title 5, United States Code. The commence-  
9 ment of proceedings under this subparagraph  
10 shall not, unless ordered by the court, operate  
11 as a stay of the final decision and order.

12 “(B) LIMITATION ON COLLATERAL AT-  
13 TACK.—An order and decision with respect to  
14 which review may be obtained under subpara-  
15 graph (A) shall not be subject to judicial review  
16 in any criminal or other civil proceeding.

17 “(12) ENFORCEMENT OF ORDER.—If a re-  
18 spondent fails to comply with an order issued under  
19 this subsection, the Secretary or the complainant on  
20 whose behalf the order was issued may file a civil ac-  
21 tion for enforcement in the United States district  
22 court for the district in which the violation was  
23 found to occur to enforce such order. If both the  
24 Secretary and the complainant file such action, the  
25 action of the Secretary shall take precedence. The

1 district court shall have jurisdiction to grant all ap-  
2 propriate relief described in paragraph (14).

3 “(13) BURDENS OF PROOF.—

4 “(A) CRITERIA FOR DETERMINATION.—In  
5 making a determination or adjudicating a com-  
6 plaint pursuant to this subsection, the Sec-  
7 retary, administrative law judge, review board,  
8 or a court may determine that a violation of  
9 paragraph (1) or (2) has occurred only if the  
10 complainant demonstrates that any conduct de-  
11 scribed in paragraph (1) or (2) with respect to  
12 the complainant was a contributing factor in  
13 the adverse action alleged in the complaint.

14 “(B) PROHIBITION.—Notwithstanding sub-  
15 paragraph (A), a decision or order that is favor-  
16 able to the complainant shall not be issued in  
17 any administrative or judicial action pursuant  
18 to this subsection if the respondent dem-  
19 onstrates by clear and convincing evidence that  
20 the respondent would have taken the same ad-  
21 verse action in the absence of such conduct.

22 “(14) RELIEF.—

23 “(A) ORDER FOR RELIEF.—If the Sec-  
24 retary, administrative law judge, review board,  
25 or a court determines that a violation of para-

graph (1) or (2) has occurred, the Secretary or court, respectively, shall have jurisdiction to order all appropriate relief, including injunctive relief and compensatory and exemplary damages, including—

“(i) affirmative action to abate the violation;

“(ii) reinstatement without loss of position or seniority, and restoration of the terms, rights, conditions, and privileges associated with the complainant’s employment, including opportunities for promotions to positions with equivalent or better compensation for which the complainant is qualified;

“(iii) compensatory and consequential damages sufficient to make the complainant whole, (including back pay, prejudgment interest, and other damages);

“(iv) expungement of all warnings, reprimands, or derogatory references that have been placed in paper or electronic records or databases of any type relating to the actions by the complainant that gave rise to the unfavorable personnel ac-

1           tion, and, at the complainant's direction,  
2           transmission of a copy of the decision on  
3           the complaint to any person whom the  
4           complainant reasonably believes may have  
5           received such unfavorable information; and

6           “(v) notwithstanding section 9, civil  
7           penalties not to exceed \$100,000, which  
8           may be assessed by the Secretary as part  
9           of a preliminary order or by the adminis-  
10          trative law judge following a request by the  
11          Secretary.

12          “(B) ATTORNEYS’ FEES AND COSTS.—If  
13          the Secretary or an administrative law judge,  
14          review board, or court grants an order for relief  
15          under subparagraph (A), the Secretary, admin-  
16          istrative law judge, review board, or court, re-  
17          spectively, shall assess, at the request of the  
18          employee against the employer—

19               “(i) reasonable attorneys’ fees; and

20               “(ii) costs (including expert witness  
21               fees) reasonably incurred, as determined  
22               by the Secretary, administrative law judge,  
23               review board, or court, respectively, in con-  
24               nection with bringing the complaint upon  
25               which the order was issued.

1           “(15) PROCEDURAL RIGHTS.—The rights and  
 2 remedies provided for in this subsection may not be  
 3 waived by any agreement, policy, form, or condition  
 4 of employment, including by any pre-dispute arbitra-  
 5 tion agreement or collective bargaining agreement.

6           “(16) SAVINGS.—Nothing in this subsection  
 7 shall be construed to diminish the rights, privileges,  
 8 or remedies of any employee who exercises rights  
 9 under any Federal or State law or common law, or  
 10 under any collective bargaining agreement.

11           “(17) ELECTION OF VENUE.—

12           “(A) IN GENERAL.—An employee of an  
 13 employer who is located in a State that has a  
 14 State plan approved under section 18 may file  
 15 a complaint alleging a violation of paragraph  
 16 (1) or (2) by such employer with—

17           “(i) the Secretary under paragraph  
 18 (5); or

19           “(ii) a State plan administrator in  
 20 such State.

21           “(B) REFERRALS.—If—

22           “(i) the Secretary receives a complaint  
 23 pursuant to subparagraph (A)(i), the Sec-  
 24 retary shall not refer such complaint to a  
 25 State plan administrator for resolution; or

1                   “(ii) a State plan administrator re-  
2                   ceives a complaint pursuant to subpara-  
3                   graph (A)(ii), the State plan administrator  
4                   shall not refer such complaint to the Sec-  
5                   retary for resolution.”.

6           (d) RELATION TO ENFORCEMENT.—Section 17(j) of  
7 such Act (29 U.S.C. 666) is amended by inserting before  
8 the period the following: “, including the history of viola-  
9 tions under section 11(c)”.

10          (e) EFFECTIVE DATE.—

11               (1) GENERAL RULE.—Except as provided in  
12 paragraph (1), the amendments made by this section  
13 shall take effect not later than 90 days after the  
14 date of the enactment of this Act.

15               (2) EXCEPTION FOR STATES AND POLITICAL  
16 SUBDIVISIONS.—Notwithstanding paragraph (1), a  
17 State that has a State plan approved under section  
18 18 of the Occupational Safety and Health Act of  
19 1970 (29 U.S.C. 667) shall amend its State plan to  
20 conform with the requirements of the amendments  
21 made by this section not later than 12 months after  
22 the date of enactment of this Act, except that if the  
23 State’s legislature is not in session during the 12-  
24 month period beginning on the date of the enact-  
25 ment of this Act, the Secretary of Labor may extend



1 the period for the State to make such amendments  
2 to its State plan by not more than 12 months. Such  
3 amendments to the State plan shall take effect not  
4 later than 90 days after the adoption of such  
5 amendments by such State.

6 **SEC. 302. FEDERAL MINE SAFETY AND HEALTH ACT.**

7 Section 105(c) of the Federal Mine Safety and  
8 Health Act of 1977 (30 U.S.C. 815(c)) is amended to read  
9 as follows:

10 “(c) PROTECTION FROM RETALIATION.—

11 “(1) RETALIATION PROHIBITED.—

12 “(A) RETALIATION FOR COMPLAINT OR  
13 TESTIMONY.—No person shall discharge or in  
14 any manner discriminate against or cause to be  
15 discharged or cause discrimination against or  
16 otherwise interfere with the exercise of the stat-  
17 utory rights of any miner or other employee of  
18 an operator, representative of miners, or appli-  
19 cant for employment (including the spouse, sib-  
20 ling, child, or parent of such miner or employee,  
21 if such individual is employed or is applying for  
22 employment at a mine under the control of the  
23 operator), because—

1           “(i) such miner or other employee,  
2           representative, or applicant for employ-  
3           ment—

4                   “(I) has filed or made a com-  
5                   plaint, is about to file or make a com-  
6                   plaint (or is perceived to have filed or  
7                   be about to file such a complaint), in-  
8                   cluding a complaint notifying the op-  
9                   erator or the operator’s agent, or the  
10                  representative of the miners at the  
11                  coal or other mine of an alleged dan-  
12                  ger or safety or health violation in a  
13                  coal or other mine;

14                  “(II) instituted or caused to be  
15                  instituted, or is about to institute or  
16                  cause to be instituted (or is perceived  
17                  to have instituted or be about to insti-  
18                  tute such a complaint), any pro-  
19                  ceeding under or related to this Act or  
20                  has testified or is about to testify in  
21                  any such proceeding or because of the  
22                  exercise by such miner or other em-  
23                  ployee, representative, or applicant for  
24                  employment on behalf of him or her-  
25                  self or others of any right afforded by

1                   this Act, or has reported any injury or  
2                   illness to an operator, or agent;

3                   “(III) has testified or is about to  
4                   testify before Congress or any Federal  
5                   or State proceeding related to safety  
6                   or health in a coal or other mine; or

7                   “(IV) refused to violate any pro-  
8                   vision of this Act, including any man-  
9                   datory health and safety standard or  
10                  regulation; or

11                  “(ii) such miner is the subject of med-  
12                  ical evaluations and potential transfer  
13                  under a standard published pursuant to  
14                  section 101.

15                  “(B) RETALIATION FOR REFUSAL TO PER-  
16                  FORM DUTIES.—

17                  “(i) IN GENERAL.—No person shall  
18                  discharge or in any manner discriminate  
19                  against a miner or other employee of an  
20                  operator for refusing to perform the min-  
21                  er’s or other employee’s duties if the miner  
22                  or other employee has a good-faith and  
23                  reasonable belief that performing such du-  
24                  ties would pose a safety or health hazard

1 to the miner or other employee or to any  
2 other miner or employee.

3 “(ii) STANDARD.—For purposes of  
4 clause (i), the circumstances causing the  
5 miner’s or other employee’s good-faith be-  
6 lief that performing such duties would pose  
7 a safety or health hazard shall be of such  
8 a nature that a reasonable person, under  
9 the circumstances confronting the miner or  
10 other employee, would conclude that there  
11 is such a hazard. In order to qualify for  
12 protection under this paragraph, the miner  
13 or other employee, when practicable, shall  
14 have communicated or attempted to com-  
15 municate the safety or health concern to  
16 the operator and have not received from  
17 the operator a response reasonably cal-  
18 culated to allay such concern.

19 “(2) COMPLAINT.—Any miner or other em-  
20 ployee or representative of miners or applicant for  
21 employment who believes that he or she has been  
22 discharged, disciplined, or otherwise discriminated  
23 against by any person in violation of paragraph (1)  
24 may file a complaint with the Secretary alleging

1 such discrimination not later than 180 days after  
2 the later of—

3 “(A) the last date on which an alleged vio-  
4 lation of paragraph (1) occurs; or

5 “(B) the date on which the miner or other  
6 employee or representative knows or should rea-  
7 sonably have known that such alleged violation  
8 occurred, or in the case of a violation that is a  
9 repeated violation, the last date on which the  
10 whistleblower knows or should reasonably have  
11 known that such violation occurred.

12 “(3) INVESTIGATION AND HEARING.—

13 “(A) COMMENCEMENT OF INVESTIGATION  
14 AND INITIAL DETERMINATION.—Upon receipt  
15 of such complaint, the Secretary shall forward  
16 a copy of the complaint to the respondent, and  
17 shall commence an investigation within 15 days  
18 of the Secretary’s receipt of the complaint, and,  
19 as soon as practicable after commencing such  
20 investigation, make the determination required  
21 under subparagraph (B) regarding the rein-  
22 statement of the miner or other employee.

23 “(B) REINSTATEMENT.—If the Secretary  
24 finds that such complaint was not frivolously  
25 brought, the Commission, on an expedited basis

1           upon application of the Secretary, shall order  
2           the immediate reinstatement of the miner or  
3           other employee until there has been a final  
4           Commission order disposing of the underlying  
5           complaint of the miner or other employee. If ei-  
6           ther the Secretary or the miner or other em-  
7           ployee pursues the underlying complaint, such  
8           reinstatement shall remain in effect until the  
9           Commission has disposed of such complaint on  
10          the merits, regardless of whether the Secretary  
11          pursues such complaint by filing a complaint  
12          under subparagraph (D) or the miner or other  
13          employee pursues such complaint by filing an  
14          action under paragraph (4). If neither the Sec-  
15          retary nor the miner or other employee pursues  
16          the underlying complaint within the periods  
17          specified in paragraph (4), such reinstatement  
18          shall remain in effect until such time as the  
19          Commission may, upon motion of the operator  
20          and after providing notice and an opportunity  
21          to be heard to the parties, vacate such com-  
22          plaint for failure to prosecute.

23               “(C) INVESTIGATION.—Such investigation  
24               shall include interviewing the complainant  
25               and—

1           “(i) providing the respondent an op-  
2           portunity to submit to the Secretary a  
3           written response to the complaint and to  
4           present statements from witnesses or pro-  
5           vide evidence; and

6           “(ii) providing the complainant an op-  
7           portunity to receive any statements or evi-  
8           dence provided to the Secretary and to  
9           provide additional information or evidence,  
10          or rebut any statements or evidence.

11          “(D) ACTION BY THE SECRETARY.—If,  
12          upon such investigation, the Secretary deter-  
13          mines that the provisions of this subsection  
14          have been violated, the Secretary shall imme-  
15          diately file a complaint with the Commission,  
16          with service upon the alleged violator and the  
17          miner or other employee, applicant for employ-  
18          ment, and representative of miners alleging  
19          such discrimination or interference and propose  
20          an order granting appropriate relief.

21          “(E) ACTION OF THE COMMISSION.—The  
22          Commission shall afford an opportunity for a  
23          hearing on the record (in accordance with sec-  
24          tion 554 of title 5, United States Code, but  
25          without regard to subsection (a)(3) of such sec-

tion) and thereafter shall issue an order, based upon findings of fact, affirming, modifying, or vacating the Secretary's proposed order, or directing other appropriate relief. Such order shall become final 30 days after its issuance. The complaining miner or other employee, representative, or applicant for employment may present additional evidence on his or her own behalf during any hearing held pursuant to this paragraph.

“(F) RELIEF.—The Commission shall have authority in such proceedings to require a person committing a violation of this subsection to take such affirmative action to abate the violation and prescribe a remedy as the Commission considers appropriate, including—

“(i) the rehiring or reinstatement of the miner or other employee with back pay and interest and without loss of position or seniority, and restoration of the terms, rights, conditions, and privileges associated with the complainant's employment;

“(ii) any other compensatory and consequential damages sufficient to make the



complainant whole, and exemplary damages where appropriate; and

“(iii) expungement of all warnings, reprimands, or derogatory references that have been placed in paper or electronic records or databases of any type relating to the actions by the complainant that gave rise to the unfavorable personnel action, and, at the complainant’s direction, transmission of a copy of the decision on the complaint to any person whom the complainant reasonably believes may have received such unfavorable information.

“(4) NOTICE TO AND ACTION OF COMPLAINANT.—

“(A) NOTICE TO COMPLAINANT.—Not later than 90 days of the receipt of a complaint filed under paragraph (2), the Secretary shall notify, in writing, the miner or other employee, applicant for employment, or representative of miners of his determination whether a violation has occurred.

“(B) ACTION OF COMPLAINANT.—If the Secretary, upon investigation, determines that the provisions of this subsection have not been

1           violated, the complainant shall have the right,  
2           within 30 days after receiving notice of the Sec-  
3           retary's determination, to file an action in his  
4           or her own behalf before the Commission,  
5           charging discrimination or interference in viola-  
6           tion of paragraph (1).

7           “(C) HEARING AND DECISION.—The Com-  
8           mission shall afford an opportunity for a hear-  
9           ing on the record (in accordance with section  
10          554 of title 5, United States Code, but without  
11          regard to subsection (a)(3) of such section),  
12          and thereafter shall issue an order, based upon  
13          findings of fact, dismissing or sustaining the  
14          complainant's charges and, if the charges are  
15          sustained, granting such relief as it deems ap-  
16          propriate as described in paragraph (3)(D).  
17          Such order shall become final 30 days after its  
18          issuance.

19          “(5) BURDEN OF PROOF.—In adjudicating a  
20          complaint pursuant to this subsection, the Commis-  
21          sion may determine that a violation of paragraph (1)  
22          has occurred only if the complainant demonstrates  
23          that any conduct described in paragraph (1) with re-  
24          spect to the complainant was a contributing factor  
25          in the adverse action alleged in the complaint. A de-

1 cision or order that is favorable to the complainant  
2 shall not be issued pursuant to this subsection if the  
3 respondent demonstrates by clear and convincing  
4 evidence that the respondent would have taken the  
5 same adverse action in the absence of such conduct.

6 “(6) ATTORNEYS’ FEES.—Whenever an order is  
7 issued sustaining the complainant’s charges under  
8 this subsection, a sum equal to the aggregate  
9 amount of all costs and expenses, including attor-  
10 ney’s fees, as determined by the Commission to have  
11 been reasonably incurred by the complainant for, or  
12 in connection with, the institution and prosecution of  
13 such proceedings shall be assessed against the per-  
14 son committing such violation. The Commission  
15 shall determine whether such costs and expenses  
16 were reasonably incurred by the complainant without  
17 reference to whether the Secretary also participated  
18 in the proceeding.

19 “(7) EXPEDITED PROCEEDINGS; JUDICIAL RE-  
20 VIEW.—Proceedings under this subsection shall be  
21 expedited by the Secretary and the Commission. Any  
22 order issued by the Commission under this sub-  
23 section shall be subject to judicial review in accord-  
24 ance with section 106. Violations by any person of

1 paragraph (1) shall be subject to the provisions of  
2 sections 108 and 110(a)(4).

3 “(8) PROCEDURAL RIGHTS.—The rights and  
4 remedies provided for in this subsection may not be  
5 waived by any agreement, policy, form, or condition  
6 of employment, including by any pre-dispute arbitra-  
7 tion agreement or collective bargaining agreement.

8 “(9) SAVINGS.—Nothing in this subsection shall  
9 be construed to diminish the rights, privileges, or  
10 remedies of any employee who exercises rights under  
11 any Federal or State law or common law, or under  
12 any collective bargaining agreement.”.

13 **SEC. 303. AMENDMENT TO TITLE 18 PROVISIONS RELATED**  
14 **TO THE SARBANES-OXLEY ACT OF 2002.**

15 Section 1514A(a) of title 18, United States Code, is  
16 amended by inserting “, whether employed inside or out-  
17 side the United States,” after “any other manner discrimi-  
18 nate against an employee”.

19 **SEC. 304. ENERGY REORGANIZATION ACT OF 1974.**

20 Section 211(a)(2) of the Energy Reorganization Act  
21 of 1974 (42 U.S.C. 5851(a)(2)) is amended by redesign-  
22 ating subparagraphs (F) and (G) as subparagraphs (G)  
23 and (H), respectively, and inserting after subparagraph  
24 (E) the following:

1 “(F) a Federal agency to the extent such  
2 agency is a licensee or applicant for a license  
3 under subparagraph (A) or (B);”.

4 **TITLE IV—ADMINISTRATIVE**  
5 **REVIEW BOARD**

6 **SEC. 401. ADMINISTRATIVE REVIEW BOARD.**

7 (a) ESTABLISHMENT.—Not later than 90 days after  
8 the date of enactment of this Act, there is established an  
9 Administrative Review Board (in this section referred to  
10 as the “Board”) within the Department of Labor which  
11 shall be composed of 5 members appointed by the Sec-  
12 retary, not more than 3 of whom may be adherents of the  
13 same political party. No member of the Board may hold  
14 another office or position in the Government of the United  
15 States, except as otherwise provided by law or at the direc-  
16 tion of the Secretary.

17 (b) APPOINTMENT.—The members of the Board shall  
18 be individuals who, by ability, background, training, or ex-  
19 perience are especially qualified to carry out the functions  
20 of the Board. The Secretary shall appoint these members  
21 in consultation with the Chairs and Ranking Members of  
22 the House Committee on Education and the Workforce  
23 and the Senate Committee on Health, Education, Labor,  
24 and Pensions.

1       (c) QUORUM; PANELS.—For the purposes of carrying  
2 out its functions under this Act and any other area in  
3 which the Secretary delegates his or her authority, 3 mem-  
4 bers of the Board shall constitute a quorum and official  
5 actions can be taken only on the affirmative vote of 2  
6 members. The Board may delegate its authority to panels  
7 comprised of three members of the Board. Any party ag-  
8 grieved by a decision of a panel of the Board may, within  
9 10 days after the date of entry of the decision, petition  
10 the full Board for review of the panel’s decision. Upon an  
11 affirmative vote of the majority of the Board, the petition  
12 for hearing by the full Board shall be granted.

13       (d) TERMS OF OFFICE; FILLING VACANCIES; RE-  
14 MOVAL.—

15           (1) TERMS.—Each member shall be appointed  
16 to a single 5-year term, which shall be staggered so  
17 that no more than one vacancy is scheduled per  
18 year. The initial 5 members shall be appointed to  
19 terms of the following lengths: 1 year, 2 years, 3  
20 years, 4 years, and 5 years.

21           (2) VACANCIES.—A member appointed to fill a  
22 vacancy occurring before the end of a term of office  
23 for the member’s predecessor serves for the remain-  
24 der of that term. Any appointment is subject to the  
25 terms of subsection (b). A member appointed ini-

1 tially to a 5-year term, may not be reappointed to  
2 another 5-year term, but members appointed to fill  
3 a vacancy may be appointed to their own full 5-year  
4 term. Upon expiration of his or her term, the mem-  
5 ber may continue to serve until a successor is ap-  
6 pointed and has qualified, except that such member  
7 may not continue to serve for more than one year  
8 after the date on which his or her term expired.

9 (3) REMOVAL.—A member may be removed by  
10 the Secretary only for inefficiency, neglect of duty,  
11 or malfeasance in office.

12 (e) CHAIR AND VICE CHAIR.—The Secretary of  
13 Labor shall from time to time appoint one of the members  
14 of the Board as Chair of the Board. The Chair is the chief  
15 executive and administrative officer of the Board, and  
16 shall have the authority to exercise all administrative func-  
17 tions necessary to operate the Board. The Secretary of  
18 Labor shall from time to time designate one of the mem-  
19 bers of the Board as Vice Chair of the Board, with such  
20 duties and responsibilities as the Secretary shall prescribe.  
21 During the absence or disability of the Chair, or when the  
22 office of Chair is vacant, the Vice Chair shall perform the  
23 functions vested in the Chair. During the absence or dis-  
24 ability of both the Chair and Vice Chair, the Secretary

1 shall designate one of the remaining Board members to  
2 perform the functions vested in the Chair and Vice Chair.

3 (f) JURISDICTION AND AUTHORITY.—

4 (1) IN GENERAL.—The Board shall have juris-  
5 diction and authority to decide appeals from admin-  
6 istrative decisions and issue final agency decisions  
7 on behalf of the Secretary of Labor with respect to  
8 all matters delegated or prescribed by order of the  
9 Secretary of Labor or pursuant to any other law,  
10 rule, or regulation.

11 (2) SUPERSEDURE.—The Board shall supersede  
12 in function and authority the Administrative Review  
13 Board established by the Secretary of Labor pursu-  
14 ant to the Secretary's order 1–2000 (67 Fed. Reg.  
15 64272) effective 90 days after the date of the enact-  
16 ment of this Act.

17 (g) PAY.—The members of the Board shall receive  
18 compensation not to exceed level III of the Executive  
19 Schedule.

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