

117TH CONGRESS
1ST SESSION

H. R. 2988

To amend title 5, United States Code, to modify and enhance protections for Federal Government whistleblowers, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 4, 2021

Mrs. CAROLYN B. MALONEY of New York (for herself, Mr. CONNOLLY, Ms. SPEIER, Ms. MACE, Ms. JOHNSON of Texas, and Miss RICE of New York) introduced the following bill; which was referred to the Committee on Oversight and Reform

A BILL

To amend title 5, United States Code, to modify and enhance protections for Federal Government whistleblowers, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Whistleblower Protec-
5 tion Improvement Act of 2021”.

6 **SEC. 2. ADDITIONAL WHISTLEBLOWER PROTECTIONS.**

7 (a) INVESTIGATIONS AS PERSONNEL ACTIONS.—

8 (1) IN GENERAL.—Section 2302(a)(2)(A) of
9 title 5, United States Code, is amended—

1 (A) in clause (xi), by striking “and” at the
2 end;

3 (B) by redesignating clause (xii) as clause
4 (xiii); and

5 (C) by adding after the clause (xi) the fol-
6 lowing:

7 “(xii) the opening of any investigation
8 as a result of a disclosure protected by
9 subsection (b)(8), but not including—

10 “(I) any investigation that is
11 ministerial or nondiscretionary; or

12 “(II) any investigation that is
13 conducted by an Inspector General of
14 an entity of the Federal Government
15 of an employee not employed by the
16 office of that Inspector General; and”.

17 (2) APPLICATION.—The amendment made by
18 paragraph (1) shall apply to any investigation
19 opened (as described under section
20 2302(a)(2)(A)(xii) of title 5, United States Code, as
21 added by such paragraph) on or after the date of en-
22 actment of this Act.

23 (b) RIGHT TO PETITION CONGRESS.—

24 (1) IN GENERAL.—Section 2302(b)(9) of title
25 5, United States Code, is amended—

1 (A) in subparagraph (C), by striking “or”
2 at the end;

3 (B) in subparagraph (D), by adding “or”
4 at the end after the semicolon; and

5 (C) by adding at the end the following:

6 “(E) the exercise of any right protected
7 under section 7211;”.

8 (2) APPLICATION.—The amendment made by
9 paragraph (1) shall apply to the exercise of any
10 right described in section 2302(b)(9)(E) of title 5,
11 United States Code, as added by paragraph (1), oc-
12 ccurring on or after the date of enactment of this
13 Act.

14 (c) PROHIBITION ON DISCLOSURE OF WHISTLE-
15 BLOWER IDENTITY.—

16 (1) IN GENERAL.—Section 2302 of title 5,
17 United States Code, is amended by adding at the
18 end the following:

19 “(g)(1) No employee of an agency may willfully com-
20 municate or transmit to any individual who is not an offi-
21 cer or employee of the Government the identity of, or per-
22 sonally identifiable information about, any other employee
23 who has made, or is suspected to have made, a disclosure
24 protected by subsection (b)(8), unless—

1 “(A) the other employee provides express
2 written consent prior to the communication or
3 transmission;

4 “(B) the communication or transmission is
5 made in accordance with the provisions of sec-
6 tion 552a;

7 “(C) the communication or transmission is
8 made to a lawyer for the sole purpose of pro-
9 viding legal advice to an employee accused of
10 whistleblower retaliation; or

11 “(D) the communication or transmission is
12 required or permitted by any other provision of
13 law.

14 “(2) In this subsection, the term ‘officer or employee
15 of the Government’ means—

16 “(A) the President;

17 “(B) a Member of Congress;

18 “(C) a member of the uniformed services;

19 “(D) an employee as that term is defined in
20 section 2105, including an employee of the United
21 States Postal Service, the Postal Regulatory Com-
22 mission, or the Department of Veterans Affairs (in-
23 cluding any employee appointed pursuant to chapter
24 73 or 74 of title 38); and

1 “(E) any other officer or employee in any
2 branch of the Government of the United States.”.

3 (2) APPLICATION.—The amendment made by
4 paragraph (1) shall apply to any transmission or
5 communication described in subsection (g) of section
6 2302 of title 5, United States Code, as added by
7 paragraph (1), made on or after the date of enact-
8 ment of this Act.

9 (d) RIGHT TO PETITION CONGRESS.—

10 (1) IN GENERAL.—Section 7211 of title 5,
11 United States Code, is amended to read as follows:

12 **“§ 7211. Employees’ right to petition or furnish infor-**
13 **mation or respond to Congress**

14 “(a) IN GENERAL.—Each officer or employee of the
15 Federal Government, individually or collectively, has a
16 right to—

17 “(1) petition Congress or a Member of Con-
18 gress;

19 “(2) furnish information, documents, or testi-
20 mony to either House of Congress, any Member of
21 Congress, or any committee or subcommittee of the
22 Congress; or

23 “(3) respond to any request for information,
24 documents, or testimony from either House of Con-

1 gress or any Committee or subcommittee of Con-
2 gress.

3 “(b) PROHIBITED ACTIONS.—No officer or employee
4 of the Federal Government may interfere with or deny the
5 right set forth in subsection (a), including by—

6 “(1) prohibiting or preventing, or attempting or
7 threatening to prohibit or prevent, any other officer
8 or employee of the Federal Government from engag-
9 ing in activity protected in subsection (a); or

10 “(2) removing, suspending from duty without
11 pay, demoting, reducing in rank, seniority, status,
12 pay, or performance or efficiency rating, denying
13 promotion to, relocating, reassigning, transferring,
14 disciplining, or discriminating in regard to any em-
15 ployment right, entitlement, or benefit, or any term
16 or condition of employment of, any other officer or
17 employee of the Federal Government or attempting
18 or threatening to commit any of the foregoing ac-
19 tions protected in subsection (a).

20 “(c) APPLICATION.—This section shall not be con-
21 strued to authorize disclosure of any information that is—

22 “(1) specifically prohibited from disclosure by
23 any other provision of Federal law; or

24 “(2) specifically required by Executive order to
25 be kept secret in the interest of national defense or

1 the conduct of foreign affairs, unless disclosure is
 2 otherwise authorized by law.

3 “(d) DEFINITION OF OFFICER OR EMPLOYEE OF
 4 THE FEDERAL GOVERNMENT.—For purposes of this sec-
 5 tion, the term ‘officer or employee of the Federal Govern-
 6 ment’ includes—

7 “(1) the President;

8 “(2) a Member of Congress;

9 “(3) a member of the uniformed services;

10 “(4) an employee (as that term is defined in
 11 section 2105);

12 “(5) an employee of the United States Postal
 13 Service or the Postal Regulatory Commission; and

14 “(6) an employee appointed under chapter 73
 15 or 74 of title 38.”.

16 (2) CLERICAL AMENDMENT.—The table of sec-
 17 tions for subchapter II of chapter 72 of title 5,
 18 United States Code, is amended by striking the item
 19 related to section 7211 and inserting the following:

“7211. Employees’ right to petition or furnish information or respond to Con-
 gress.”.

20 **SEC. 3. ENHANCEMENT OF WHISTLEBLOWER PROTEC-**
 21 **TIONS.**

22 (a) DISCLOSURES RELATING TO OFFICERS OR EM-
 23 PLOYEES OF AN OFFICE OF INSPECTOR GENERAL.—Sec-

1 tion 1213(c) of title 5, United States Code, is amended
2 by adding at the end the following:

3 “(3) If the information transmitted under this
4 subsection disclosed a violation of law, rule, or regu-
5 lation, or gross waste, gross mismanagement, abuse
6 of authority, or a substantial and specific danger to
7 public health or safety, by any officer or employee
8 of an Office of Inspector General, the Special Coun-
9 sel may refer the matter to the Committee of Inspec-
10 tors General for Integrity and Efficiency, which shall
11 comply with the standards and procedures applicable
12 to investigations and reports under subsection (c).”.

13 (b) ENSURING TIMELY RELIEF.—

14 (1) INDIVIDUAL RIGHT OF ACTION.—Section
15 1221 of title 5, United States Code, is amended by
16 striking “section 2302(b)(8) or section
17 2302(b)(9)(A)(i), (B), (C), or (D),” in each instance
18 and inserting “section 2302(b)(8), section
19 2302(b)(9)(A)(i), (B), (C), (D), or (E), section
20 2302(b)(13), or section 2302(g),”.

21 (2) STAYS.—Section 1221(c)(2) of title 5,
22 United States Code, is amended to read as follows:

23 “(2) Any stay requested under paragraph (1)
24 shall be granted within 10 calendar days (excluding

1 Saturdays, Sundays, and legal holidays) after the
2 date the request is made, if the Board determines—

3 “(A) that there is a substantial likelihood
4 that protected activity was a contributing factor
5 to the personnel action involved; or

6 “(B) the Board otherwise determines that
7 such a stay would be appropriate.”.

8 (3) APPEAL OF STAY.—Section 1221(c) of title
9 5, United States Code, is amended by adding at the
10 end the following:

11 “(4) If any stay requested under paragraph (1)
12 is denied, the employee, former employee, or appli-
13 cant may, within 7 days after receiving notice of the
14 denial, file an appeal for expedited review by the
15 Board. The agency shall have 7 days thereafter to
16 respond. The Board shall provide a decision not
17 later than 21 days after receiving the appeal. During
18 the period of appeal, both parties may supplement
19 the record with information unavailable to them at
20 the time the stay was first requested.”.

21 (4) ACCESS TO DISTRICT COURT; JURY
22 TRIALS.—Section 1221(i) of title 5, United States
23 Code, is amended—

24 (A) by striking “(i) Subsections” and in-
25 serting “(i)(1) Subsections”; and

1 (B) by adding at the end the following:

2 “(2)(A) If, in the case of an employee, former em-
3 ployee, or applicant for employment who seeks corrective
4 action from the Merit Systems Protection Board based on
5 an alleged prohibited personnel practice described in sec-
6 tion 2302(b)(8), section 2302(b)(9)(A)(i), (B), (C), (D),
7 or (E), section 2302(b)(13), or section 2302(g), no final
8 order or decision is issued by the Board within 180 days
9 after the date on which a request for such corrective action
10 has been duly submitted to the Board, such employee,
11 former employee, or applicant may, after providing written
12 notice to the Special Counsel and the Board and only with-
13 in 20 days after providing such notice, bring an action
14 for review de novo before the appropriate United States
15 district court, and such action shall, at the request of ei-
16 ther party to such action, be tried before a jury. Upon
17 filing of an action with the appropriate United States dis-
18 trict court, any proceedings before the Board shall cease
19 and the employee, former employee, or applicant for em-
20 ployment waives any right to refile with the Board.

21 “(B) If the Board certifies (in writing) to the parties
22 of a case that the complexity of such case requires a longer
23 period of review, subparagraph (A) shall be applied by
24 substituting ‘240 days’ for ‘180 days’.

1 “(C) In any such action brought before a United
2 States district court under subparagraph (A), the court—

3 “(i) shall apply the standards set forth in sub-
4 section (e); and

5 “(ii) may award any relief which the court con-
6 sider appropriate, including any relief described in
7 subsection (g).”.

8 (c) RECIPIENTS OF WHISTLEBLOWER DISCLO-
9 SURES.—Section 2302(b)(8)(B) of title 5, United States
10 Code, is amended by striking “or to the Inspector General
11 of an agency or another employee designated by the head
12 of the agency to receive such disclosures” and inserting
13 “the Inspector General of an agency, a supervisor in the
14 employee’s direct chain of command up to and including
15 the head of the employing agency, or to an employee des-
16 ignated by any of the aforementioned individuals for the
17 purpose of receiving such disclosures”.

18 (d) ATTORNEY FEES.—Section 7703(a) of title 5,
19 United States Code, is amended by adding at the end the
20 following:

21 “(3) If an employee, former employee, or appli-
22 cant for employment is the prevailing party under
23 an appeal under this section, the employee, former
24 employee, or applicant for employment shall be enti-
25 tled to attorney fees for all representation carried

1 out pursuant to this section. In such an action for
 2 attorney fees, the agency responsible for taking the
 3 personnel action shall be the respondent and shall be
 4 responsible for paying the fees.”.

5 (e) EXTENDING WHISTLEBLOWER PROTECTION ACT
 6 TO CERTAIN EMPLOYEES.—

7 (1) IN GENERAL.—Section 2302(a)(2)(A) of
 8 title 5, United States Code, is amended in the mat-
 9 ter following clause (xiii)—

10 (A) by inserting “subsection (b)(9)(A)(i),
 11 (B), (C), (D), or (E), subsection (b)(13), or
 12 subsection (g),” after “subsection (b)(8),”; and

13 (B) by inserting after “title 31” the fol-
 14 lowing: “, a commissioned officer or applicant
 15 for employment in the Public Health Service,
 16 an officer or applicant for employment in the
 17 commissioned officer corps of the National Oce-
 18 anic and Atmospheric Administration, and a
 19 noncareer appointee in the Senior Executive
 20 Service”.

21 (2) CONFORMING AMENDMENTS.—Section 261
 22 of the National Oceanic and Atmospheric Adminis-
 23 tration Commissioned Officer Corps Act of 2002 (33
 24 U.S.C. 3071) is amended—

25 (A) in subsection (a)—

1 (i) by striking paragraph (8); and
2 (ii) by redesignating paragraphs (9)
3 through (25) as paragraphs (8) through
4 (24), respectively; and
5 (B) in subsection (b), by striking the sec-
6 ond sentence.

7 (3) APPLICATION.—

8 (A) IN GENERAL.—With respect to an offi-
9 cer or applicant for employment in the commis-
10 sioned officer corps of the National Oceanic and
11 Atmospheric Administration, the amendments
12 made by paragraphs (1) and (2) shall apply to
13 any personnel action taken against such officer
14 or applicant on or after the date of enactment
15 of the National Oceanic and Atmospheric Ad-
16 ministration Commissioned Officer Corps
17 Amendments Act of 2020 (Public Law 116–
18 259) for making any disclosure protected under
19 section 2302(8) of title 5, United States Code.

20 (B) EXCEPTION.—Subparagraph (A) shall
21 not apply to any personnel action with respect
22 to which a complaint has been filed pursuant to
23 section 1034 of title 10, United States Code,
24 and a final decision has been rendered regard-
25 ing such complaint.

1 (f) RELIEF.—Section 7701(b)(2)(A) of title 5,
2 United States Code, is amended by striking “upon the
3 making of the decision” and inserting “upon making of
4 the decision, necessary to make the employee whole as if
5 there had been no prohibited personnel practice, including
6 training, seniority and promotions consistent with the em-
7 ployee’s prior record,”.

8 **SEC. 4. CLASSIFYING CERTAIN FURLOUGHS AS ADVERSE**
9 **PERSONNEL ACTIONS.**

10 (a) IN GENERAL.—Section 7512 of title 5, United
11 States Code, is amended—

12 (1) in paragraph (4), by striking “and” at the
13 end; and

14 (2) by striking paragraph (5) and inserting the
15 following:

16 “(5) a furlough of more than 14 days but less
17 than 30 days; and

18 “(6) a furlough of 13 days or less that is not
19 due to a lapse in appropriations;”.

20 (b) APPLICATION.—The amendment made by sub-
21 section (a) shall apply to any furlough covered by such
22 section 7512(5) or (6) (as amended by such subsection)
23 occurring on or after the date of enactment of this Act.

1 **SEC. 5. CODIFICATION OF PROTECTIONS FOR DISCLO-**
2 **SURES OF CENSORSHIP RELATED TO RE-**
3 **SEARCH, ANALYSIS, OR TECHNICAL INFOR-**
4 **MATION.**

5 (a) IN GENERAL.—Section 2302 of title 5, United
6 States Code, as amended by section 2(c)(1), is further
7 amended by adding at the end the following:

8 “(h)(1) In this subsection—

9 “(A) the term ‘applicant’ means an applicant
10 for a covered position;

11 “(B) the term ‘censorship related to research,
12 analysis, or technical information’ means any effort
13 to distort, misrepresent, or suppress research, anal-
14 ysis, or technical information; and

15 “(C) the term ‘employee’ means an employee in
16 a covered position in an agency.

17 “(2)(A) Any disclosure of information by an employee
18 or applicant for employment that the employee or appli-
19 cant reasonably believes is evidence of censorship related
20 to research, analysis, or technical information—

21 “(i) shall come within the protections of sub-
22 section (b)(8)(A) if—

23 “(I) the employee or applicant reasonably
24 believes that the censorship related to research,
25 analysis, or technical information is or will
26 cause—

1 “(aa) any violation of law, rule, or
2 regulation; or

3 “(bb) gross mismanagement, a gross
4 waste of funds, an abuse of authority, or
5 a substantial and specific danger to public
6 health or safety; and

7 “(II) such disclosure is not specifically pro-
8 hibited by law or such information is not spe-
9 cifically required by Executive order to be kept
10 classified in the interest of national defense or
11 the conduct of foreign affairs; and

12 “(ii) shall come within the protections of sub-
13 section (b)(8)(B) if—

14 “(I) the employee or applicant reasonably
15 believes that the censorship related to research,
16 analysis, or technical information is or will
17 cause—

18 “(aa) any violation of law, rule, or
19 regulation; or

20 “(bb) gross mismanagement, a gross
21 waste of funds, an abuse of authority, or
22 a substantial and specific danger to public
23 health or safety; and

24 “(II) the disclosure is made to the Special
25 Counsel, or to the Inspector General of an

1 agency or another person designated by the
2 head of the agency to receive such disclosures,
3 consistent with the protection of sources and
4 methods.

5 “(3) A disclosure shall not be excluded from para-
6 graph (2) for any reason described under subsection (f)(1)
7 or (2).

8 “(4) Nothing in this subsection shall be construed to
9 imply any limitation on the protections of employees and
10 applicants afforded by any other provision of law, includ-
11 ing protections with respect to any disclosure of informa-
12 tion believed to be evidence of censorship related to re-
13 search, analysis, or technical information.”.

14 (b) REPEAL.—

15 (1) IN GENERAL.—Section 110 of the Whistle-
16 blower Protection Enhancement Act of 2012 (Public
17 Law 112–199) is hereby repealed.

18 (2) RULE OF CONSTRUCTION.—Nothing in this
19 section shall be construed to limit or otherwise affect
20 any action under such section 110 commenced be-
21 fore the date of enactment of this Act or any protec-
22 tions afforded by such section with respect to such
23 action.

1 **SEC. 6. TITLE 5 TECHNICAL AND CONFORMING AMEND-**
2 **MENTS.**

3 Title 5, United States Code, is amended—

4 (1) in section 1212(h), by striking “or (9)” in
5 each instance and inserting “, (b)(9), (b)(13), or
6 (g)”;

7 (2) in section 1214(a)—

8 (A) by striking “section 2302(b)(8) or sec-
9 tion 2302(b)(9)(A)(i), (B), (C), or (D)” in each
10 instance and inserting “section 2302(b)(8), sec-
11 tion 2302(b)(9)(A)(i), (B), (C), (D), or (E),
12 section 2302(b)(13), or section 2302(g)”;

13 (B) in subsection (i), by striking “section
14 2302(b)(8) or subparagraph (A)(i), (B), (C), or
15 (D) of section 2302(b)(9)” and inserting “sec-
16 tion 2302(b)(8), subparagraph (A)(i), (B), (C),
17 (D), or (E) of section 2302(b)(9), section
18 2302(b)(13), or section 2302(g)”;

19 (3) in section 1215, by striking “section
20 2302(b)(8), or 2302(b)(9)(A)(i), (B), (C), or (D)” in
21 each instance and inserting “section 2302(b)(8), sec-
22 tion 2302(b)(9)(A)(i), (B), (C), (D), or (E), section
23 2302(b)(13), or section 2302(g)”;

24 (4) in section 2302—

25 (A) in subsection (a)—

1 (i) in paragraph (1), by inserting “or
2 (g)” after “subsection (b)”; and

3 (ii) in paragraph (2)(C)(i), by striking
4 “subsection (b)(8) or section
5 2302(b)(9)(A)(i), (B), (C), or (D)” and in-
6 serting “section 2302(b)(8), section
7 2302(b)(9)(A)(i), (B), (C), (D), or (E),
8 section 2302(b)(13), or section 2302(g)”;
9 and

10 (B) in subsection (c)(1)(B), by striking
11 “paragraph (8) or subparagraph (A)(i), (B),
12 (C), or (D) of paragraph (9) of subsection (b)”
13 and inserting “paragraph (8), subparagraph
14 (A)(i), (B), (C), or (D) of paragraph (9), or
15 paragraph (13) of subsection (b) or subsection
16 (g)”;

17 (5) in section 7515(a)(2), by striking “para-
18 graph (8), (9), or (14) of section 2302(b)” and in-
19 serting “paragraph (8), (9), (13), or (14) of section
20 2302(b) or section 2302(g)”;

21 (6) in section 7701(c)(2)(B), by inserting “or
22 section 2302(g)” after “section 2302(b)”; and

23 (7) in section 7703(b)(1)(B), by striking “sec-
24 tion 2302(b)(8), or 2302(b)(9)(A)(i), (B), (C), or
25 (D)” in each instance and inserting “section

- 1 2302(b)(8), section 2302(b)(9)(A)(i), (B), (C), (D),
- 2 or (E), section 2302(b)(13), or section 2302(g)’’.

○