

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.

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## 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

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## 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 siders 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 igned 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)”.

○