

107TH CONGRESS  
1ST SESSION

# S. 995

To amend chapter 23 of title 5, United States Code, to clarify the disclosures of information protected from prohibited personnel practices, require a statement in nondisclosure policies, forms, and agreements that such policies, forms, and agreements conform with certain disclosure protections, provide certain authority for the Special Counsel, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

JUNE 7, 2001

Mr. AKAKA (for himself, Mr. LEVIN, and Mr. GRASSLEY) introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

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## A BILL

To amend chapter 23 of title 5, United States Code, to clarify the disclosures of information protected from prohibited personnel practices, require a statement in nondisclosure policies, forms, and agreements that such policies, forms, and agreements conform with certain disclosure protections, provide certain authority for the Special Counsel, and for other purposes.

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

1 **SECTION 1. PROTECTION OF CERTAIN DISCLOSURES OF IN-**  
2 **FORMATION BY FEDERAL EMPLOYEES.**

3 (a) CLARIFICATION OF DISCLOSURES COVERED.—  
4 Section 2302(b)(8) of title 5, United States Code, is  
5 amended—

6 (1) in subparagraph (A)—

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

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

18 (2) in subparagraph (B)—

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

1 agency or another employee designated by the  
2 head of the agency to receive such disclosures,  
3 of information that the employee or applicant  
4 reasonably believes is credible evidence of”; and

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

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

8 “(C) a disclosure that—

9 “(i) is made by an employee or appli-  
10 cant of information required by law or Ex-  
11 ecutive order to be kept secret in the inter-  
12 est of national defense or the conduct of  
13 foreign affairs that the employee or appli-  
14 cant reasonably believes is credible evi-  
15 dence of—

16 “(I) any violation of any law,  
17 rule, or regulation;

18 “(II) gross mismanagement, a  
19 gross waste of funds, an abuse of au-  
20 thority, or a substantial and specific  
21 danger to public health or safety; or

22 “(III) a false statement to Con-  
23 gress on an issue of material fact; and

24 “(ii) is made to—

1                   “(I) a member of a committee of  
2                   Congress having a primary responsi-  
3                   bility for oversight of a department,  
4                   agency, or element of the Federal  
5                   Government to which the disclosed in-  
6                   formation relates;

7                   “(II) any other Member of Con-  
8                   gress who is authorized to receive in-  
9                   formation of the type disclosed; or

10                   “(III) an employee of the execu-  
11                   tive branch or Congress who has the  
12                   appropriate security clearance for ac-  
13                   cess to the information disclosed.”.

14           (b) COVERED DISCLOSURES.—Section 2302(b) of  
15 title 5, United States Code, is amended—

16                   (1) in the matter following paragraph (12), by  
17                   striking “This subsection” and inserting the fol-  
18                   lowing:

19                   “‘This subsection’; and

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

21                   “‘In this subsection, the term ‘disclosure’ means a for-  
22                   mal or informal communication or transmission.’”.

23           (c) NONDISCLOSURE POLICIES, FORMS, AND AGREE-  
24           MENTS.—

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

4                   (A) in clause (x), by striking “and” after  
5           the semicolon; and

6                   (B) by redesignating clause (xi) as clause  
7           (xii) and inserting after clause (x) the following:

8                   “(xi) the implementation or enforcement of  
9           any nondisclosure policy, form, or agreement;  
10           and”.

11           (2) PROHIBITED PERSONNEL PRACTICE.—Sec-  
12           tion 2302(b) of title 5, United States Code, is  
13           amended—

14                   (A) in paragraph (11), by striking “or” at  
15           the end;

16                   (B) in paragraph (12), by striking the pe-  
17           riod and inserting “; or”; and

18                   (C) by inserting after paragraph (12) the  
19           following:

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

23                   ““These provisions are consistent with and  
24           do not supersede, conflict with, or otherwise  
25           alter the employee obligations, rights, or liabil-

1           ities created by Executive Order No. 12958;  
2           section 7211 of title 5, United States Code  
3           (governing disclosures to Congress); section  
4           1034 of title 10, United States Code (governing  
5           disclosure to Congress by members of the mili-  
6           tary); section 2302(b)(8) of title 5, United  
7           States Code (governing disclosures of illegality,  
8           waste, fraud, abuse, or public health or safety  
9           threats); the Intelligence Identities Protection  
10          Act of 1982 (50 U.S.C. 421 et seq.) (governing  
11          disclosures that could expose confidential Gov-  
12          ernment agents); and the statutes which protect  
13          against disclosures that could compromise na-  
14          tional security, including sections 641, 793,  
15          794, 798, and 952 of title 18, United States  
16          Code, and section 4(b) of the Subversive Activi-  
17          ties Control Act of 1950 (50 U.S.C. 783(b)).  
18          The definitions, requirements, obligations,  
19          rights, sanctions, and liabilities created by such  
20          Executive order and such statutory provisions  
21          are incorporated into this agreement and are  
22          controlling.’”.

23           (d) AUTHORITY OF SPECIAL COUNSEL RELATING TO  
24    CIVIL ACTIONS.—

1           (1) REPRESENTATION OF SPECIAL COUNSEL.—

2           Section 1212 of title 5, United States Code, is  
3           amended by adding at the end the following:

4           “(h) Except as provided in section 518 of title 28,  
5 relating to litigation before the Supreme Court, attorneys  
6 designated by the Special Counsel may appear for the Spe-  
7 cial Counsel and represent the Special Counsel in any civil  
8 action brought in connection with section 2302(b)(8) or  
9 subchapter III of chapter 73, or as otherwise authorized  
10 by law.”.

11           (2) JUDICIAL REVIEW OF MERIT SYSTEMS PRO-

12           TECTION BOARD DECISIONS.—Section 7703 of title  
13           5, United States Code, is amended by adding at the  
14           end the following:

15           “(e) The Special Counsel may obtain review of any  
16 final order or decision of the Board by filing a petition  
17 for judicial review in the United States Court of Appeals  
18 for the Federal Circuit if the Special Counsel determines,  
19 in the discretion of the Special Counsel, that the Board  
20 erred in deciding a case arising under section 2302(b)(8)  
21 or subchapter III of chapter 73 and that the Board’s deci-  
22 sion will have a substantial impact on the enforcement of  
23 section 2302(b)(8) or subchapter III of chapter 73. If the  
24 Special Counsel was not a party or did not intervene in  
25 a matter before the Board, the Special Counsel may not

1 petition for review of a Board decision under this section  
2 unless the Special Counsel first petitions the Board for  
3 reconsideration of its decision, and such petition is denied.  
4 In addition to the named respondent, the Board and all  
5 other parties to the proceedings before the Board shall  
6 have the right to appear in the proceedings before the  
7 Court of Appeals. The granting of the petition for judicial  
8 review shall be at the discretion of the Court of Appeals.”.

9 (e) JUDICIAL REVIEW.—Section 7703 of title 5,  
10 United States Code, is amended—

11 (1) in the first sentence of subsection (b)(1) by  
12 inserting before the period “or the United States  
13 court of appeals for the circuit in which the peti-  
14 tioner resides”; and

15 (2) in subsection (d)—

16 (A) in the first sentence by striking “the  
17 United States Court of Appeals for the Federal  
18 Circuit” and inserting “any appellate court of  
19 competent jurisdiction as provided under sub-  
20 section (b)(2)”; and

21 (B) in the third and fourth sentences by  
22 striking “Court of Appeals” each place it ap-  
23 pears and inserting “court of appeals” in each  
24 such place.

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