

109TH CONGRESS  
2D SESSION

# H. R. 5112

To provide for reform in the operations of the executive branch.

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 6, 2006

Mr. TOM DAVIS of Virginia (for himself, Mr. WAXMAN, Mr. SHAYS, Mr. LANTOS, Mr. GUTKNECHT, Mr. OWENS, Mr. PLATTS, Mr. TOWNS, Mrs. MILLER of Michigan, Mrs. MALONEY, Mr. ISSA, Mr. CUMMINGS, Mr. DENT, Mr. KUCINICH, Ms. FOXX, Mr. CLAY, Ms. WATSON, Mr. LYNCH, Mr. VAN HOLLEN, Mr. HIGGINS, Ms. NORTON, Mr. KANJORSKI, and Mr. DAVIS of Illinois) introduced the following bill; which was referred to the Committee on Government Reform

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## A BILL

To provide for reform in the operations of the executive  
branch.

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 “Executive Branch Re-  
5       form Act of 2006”.

1 **SEC. 2. REQUIREMENTS RELATING TO SIGNIFICANT CON-**  
2 **TACTS.**

3 (a) IN GENERAL.—The Ethics in Government Act of  
4 1978 (5 U.S.C. App. 4) is amended by adding at the end  
5 the following new title:

6 **“TITLE VI—EXECUTIVE BRANCH**  
7 **DISCLOSURE OF SIGNIFICANT**  
8 **CONTACTS**

9 **“SEC. 601. RECORDING AND REPORTING BY CERTAIN EXEC-**  
10 **UTIVE BRANCH OFFICIALS OF SIGNIFICANT**  
11 **CONTACTS MADE TO THOSE OFFICIALS.**

12 “(a) IN GENERAL.—Not later than 30 days after the  
13 end of a calendar quarter, each covered executive branch  
14 official shall make a record of, and file with the Office  
15 of Government Ethics a report on, any significant contacts  
16 during the quarter between the covered executive branch  
17 official and any private party relating to an official govern-  
18 ment action. If no such contacts occurred, each such offi-  
19 cial shall make a record of, and file with the Office a re-  
20 port on, this fact, at the same time.

21 “(b) CONTENTS OF RECORD AND REPORT.—Each  
22 record made, and each report filed, under subsection (a)  
23 shall contain—

24 “(1) the name of the covered executive branch  
25 official;

1 “(2) the name of each private party who had a  
2 significant contact with that official; and

3 “(3) for each private party so named, a sum-  
4 mary of the nature of the contact, including—

5 “(A) the date of the contact;

6 “(B) the subject matter of the contact and  
7 the specific executive branch action to which the  
8 contact relates; and

9 “(C) if the contact was made on behalf of  
10 a client, the name of the client.

11 “(c) WITHHOLDING FOIA-EXEMPT INFORMATION.—

12 This section does not require the filing with the Office of  
13 Government Ethics of information that is exempt from  
14 public disclosure under section 552(b) of title 5, United  
15 States Code (popularly referred to at the “Freedom of In-  
16 formation Act”).

17 **“SEC. 602. AUTHORITIES AND RESPONSIBILITIES OF OF-**  
18 **FICE OF GOVERNMENT ETHICS.**

19 “(a) IN GENERAL.—The Director of the Office of  
20 Government Ethics shall—

21 “(1) promulgate regulations to implement this  
22 title, provide guidance and assistance on the record-  
23 ing and reporting requirements of this title, and de-  
24 velop common standards, rules, and procedures for  
25 compliance with this title;

1           “(2) review, and, where necessary, verify the ac-  
2           curacy, completeness, and timeliness of reports;

3           “(3) develop filing, coding, and cross-indexing  
4           systems to carry out the purpose of this title, includ-  
5           ing—

6                   “(A) a publicly available list of all private  
7                   parties who made a significant contact; and

8                   “(B) computerized systems designed to  
9                   minimize the burden of filing and maximize  
10                  public access to reports filed under this title;

11           “(4) make available for public inspection and  
12           copying at reasonable times the reports filed under  
13           this title;

14           “(5) retain reports for a period of at least 6  
15           years after they are filed;

16           “(6) compile and summarize, with respect to  
17           each reporting period, the information contained in  
18           reports filed with respect to such period in a clear  
19           and complete manner;

20           “(7) notify any covered executive branch official  
21           in writing that may be in noncompliance with this  
22           title; and

23           “(8) notify the United States Attorney for the  
24           District of Columbia that a covered executive branch  
25           official may be in noncompliance with this title, if

1 the covered executive branch official has been noti-  
2 fied in writing and has failed to provide an appro-  
3 priate response within 60 days after notice was  
4 given under paragraph (7).

5 **“SEC. 603. PENALTIES.**

6 “Whoever knowingly fails to—

7 “(1) remedy a defective filing within 60 days  
8 after notice was given under paragraph (7); or

9 “(2) comply with any other provision of this  
10 title;

11 shall, upon proof of such knowing violation by a prepon-  
12 derance of the evidence, be subject to a civil fine of not  
13 more than \$50,000, depending on the extent and gravity  
14 of the violation.

15 **“SEC. 604. DEFINITIONS.**

16 “In this title:

17 “(1) COVERED EXECUTIVE BRANCH OFFI-  
18 CIAL.—The term ‘covered executive branch official’  
19 means—

20 “(A) any officer or employee serving in a  
21 position in level I, II, III, IV, or V of the Exec-  
22 utive Schedule, as designated by statute or Ex-  
23 ecutive order;

1           “(B) any member of the uniformed serv-  
2           ices whose pay grade is at or above O–7 under  
3           section 201 of title 37, United States Code;

4           “(C) any officer or employee serving in a  
5           position of a confidential, policy-determining,  
6           policy-making, or policy-advocating character  
7           described in section 7511(b)(2)(B) of title 5,  
8           United States Code; and

9           “(D) any officer or employee serving in a  
10          position of a confidential, policy-determining,  
11          policy-making, or policy advocating character,  
12          or any other individual functioning in the ca-  
13          pacity of such an officer or employee, in the Ex-  
14          ecutive Office of the President or the Office of  
15          the Vice President, but does not include the  
16          President or Vice President or the chief of staff  
17          of the President or Vice President.

18          “(2) SIGNIFICANT CONTACT.—The term ‘sig-  
19          nificant contact’ means oral or written communica-  
20          tion (including electronic communication) that is  
21          made by a private party to a covered executive  
22          branch official in which such private party seeks to  
23          influence, or obtain nonpublic information about, of-  
24          ficial action by any officer or employee of the execu-  
25          tive branch of the United States.

1           “(3) PRIVATE PARTY.—The term ‘private party’  
2       means any person or entity, but does not include a  
3       Federal, State, or local government official or a per-  
4       son representing such an official.”.

5       (b) EFFECTIVE DATE.—

6           (1) IN GENERAL.—Title VI of the Ethics in  
7       Government Act of 1978, as added by this section,  
8       takes effect 1 year after the date of the enactment  
9       of this Act, except as provided in paragraph (2).

10          (2) INITIAL REGULATIONS.—The initial regula-  
11       tions required by section 602 of that Act shall be  
12       promulgated—

13               (A) in draft form, not later than 270 days  
14               after the date of the enactment of this Act; and

15               (B) in final form, not later than 1 year  
16               after the date of the enactment of this Act.

17       **SEC. 3. REQUIREMENTS RELATING TO STOPPING THE RE-**  
18               **VOLVING DOOR.**

19       The Ethics in Government Act of 1978 (5 U.S.C.  
20       App. 4) is amended by adding at the end the following  
21       new title:

1       **“TITLE VII—STOPPING THE**  
2               **REVOLVING DOOR**

3       **“SEC. 701. TWO-YEAR COOLING-OFF PERIOD FOR PERSONS**  
4               **LEAVING GOVERNMENT SERVICE.**

5           “(a) IN GENERAL.—A covered executive branch offi-  
6       cial shall not, for a period of two years after the termi-  
7       nation of his employment, engage in any conduct that  
8       would be prohibited under subsections (c) or (d) of section  
9       207 of title 18, United States Code, if it occurred within  
10      one year after the termination of his employment.

11          “(b) NO EFFECT ON SECTION 207.—This section  
12      does not expand, contract, or otherwise affect the applica-  
13      tion of any waiver or criminal penalties under section 207  
14      of title 18, United States Code.

15      **“SEC. 702. PROHIBITION ON NEGOTIATION OF FUTURE EM-**  
16              **PLOYMENT.**

17          “(a) PROHIBITION.—A covered executive branch offi-  
18      cial shall not participate in any official matter in which,  
19      to the official’s knowledge, a person or organization with  
20      whom the official is negotiating or has any arrangement  
21      concerning prospective employment has a financial inter-  
22      est, unless a waiver has been granted under subsection (b).

23          “(b) WAIVERS ONLY WHEN EXCEPTIONAL CIR-  
24      CUMSTANCES EXIST.—A waiver to subsection (a) is not  
25      available, and shall not be granted, to any individual ex-



1 cept in a case which the Government official responsible  
2 for the individual's appointment as a covered executive  
3 branch official determines that exceptional circumstances  
4 exist. Whenever such a determination is made, the Direc-  
5 tor of the Office of Government Ethics shall independently  
6 investigate and review the circumstances relating to the  
7 determination, and the waiver shall not take effect until  
8 the date on which the Director certifies in writing that  
9 exceptional circumstances exist.

10 **“SEC. 703. COOLING-OFF PERIOD FOR CERTAIN PERSONS**  
11 **ENTERING GOVERNMENT SERVICE.**

12 “(a) IN GENERAL.—A covered executive branch offi-  
13 cial shall not engage in conduct relating to a covered entity  
14 that would be prohibited under section 208 of title 18,  
15 United States Code, if the official had a financial interest  
16 in the covered entity, unless a waiver has been granted  
17 under subsection (b).

18 “(b) WAIVER.—An agency's designated ethics officer  
19 may, if the Director of the Office of Government Ethics  
20 approves, waive the prohibition in subsection (a) with re-  
21 spect to a covered executive branch official of that agency  
22 upon a determination that the relationship between the  
23 covered executive branch official and the covered entity is  
24 not so substantial as to be deemed likely to affect the in-

1 tegrity of the services that the Government may expect  
2 from the official.

3 “(c) DEFINITION.—In this section, the term ‘covered  
4 entity’ means an entity—

5 “(1) in which the official, within the previous 2  
6 years, served as an officer, director, trustee, general  
7 partner, or employee; or

8 “(2) for which the official, within the previous  
9 2 years, worked as a lobbyist, lawyer, or other rep-  
10 resentative.

11 “(d) NO EFFECT ON SECTION 208.—This section  
12 does not expand, contract, or otherwise affect the applica-  
13 tion of any criminal penalties under section 208 of title  
14 18, United States Code.

15 **“SEC. 704. PENALTIES.**

16 “Whoever violates section 701, 702, or 703 of this  
17 title shall, upon proof of such knowing violation by a pre-  
18 ponderance of the evidence, be subject to a civil fine of  
19 not more than \$100,000, depending on the extent and  
20 gravity of the violation.

21 **“SEC. 705. DEFINITION.**

22 “In this title, the term ‘covered executive branch offi-  
23 cial’ means—

24 “(1) any officer or employee serving in a posi-  
25 tion in level I, II, III, IV, or V of the Executive

1 Schedule, as designated by statute or Executive  
2 order;

3 “(2) any member of the uniformed services  
4 whose pay grade is at or above O–7 under section  
5 201 of title 37, United States Code;

6 “(3) any officer or employee serving in a posi-  
7 tion of a confidential, policy-determining, policy-  
8 making, or policy-advocating character described in  
9 section 7511(b)(2)(B) of title 5, United States Code;

10 “(4) any officer or employee serving in a posi-  
11 tion of a confidential, policy-determining, policy-  
12 making, or policy advocating character, or any other  
13 individual functioning in the capacity of such an of-  
14 ficer or employee, in the Executive Office of the  
15 President or the Office of the Vice President; and

16 “(5) the Vice President.”.

17 **SEC. 4. ADDITIONAL PROVISIONS RELATING TO PROCURE-**  
18 **MENT OFFICIALS.**

19 (a) ELIMINATION OF LOOPHOLES THAT ALLOW  
20 FORMER FEDERAL OFFICIALS TO ACCEPT COMPENSA-  
21 TION FROM CONTRACTORS OR RELATED ENTITIES.—Sec-  
22 tion 27(d) of the Office of Federal Procurement Policy  
23 Act (41 U.S.C. 423(d)) is amended—

24 (1) in paragraph (1)—

1 (A) by striking “or consultant” and insert-  
2 ing “consultant, lawyer, or lobbyist”;

3 (B) by striking “one year” and inserting  
4 “two years”; and

5 (C) in subparagraph (C), by striking “per-  
6 sonally made for the Federal agency—” and in-  
7 serting “participated personally and substan-  
8 tially in—”; and

9 (2) by amending paragraph (2) to read as fol-  
10 lows:

11 “(2) Paragraph (1) shall not prohibit a former  
12 official of a Federal agency from accepting com-  
13 pensation from any division or affiliate of a con-  
14 tractor that does not produce the same or similar  
15 products or services as the entity of the contractor  
16 that is responsible for the contract referred to in  
17 subparagraph (A), (B), or (C) of such paragraph if  
18 the agency’s designated ethics officer determines  
19 that—

20 “(A) the offer of compensation is not a re-  
21 ward for any action described in paragraph (1);  
22 and

23 “(B) acceptance of the compensation is ap-  
24 propriate and will not affect the integrity of the  
25 procurement process.”.

1       (b) REQUIREMENT FOR FEDERAL PROCUREMENT  
2 OFFICERS TO DISCLOSE JOB OFFERS MADE TO REL-  
3 ATIVES.—Section 27(c)(1) of such Act (41 U.S.C.  
4 423(c)(1)) is amended by inserting after “that official”  
5 the following: “or for a relative of that official (as defined  
6 in section 3110 of title 5, United States Code),”.

7       (c) REQUIREMENT ON AWARD OF GOVERNMENT  
8 CONTRACTS TO FORMER EMPLOYERS.—Section 27 of  
9 such Act (41 U.S.C. 423) is amended by adding at the  
10 end the following new subsection:

11       “(i) PROHIBITION ON INVOLVEMENT BY CERTAIN  
12 FORMER CONTRACTOR EMPLOYEES IN PROCURE-  
13 MENTS.—An employee of the Federal Government who is  
14 a former employee of a contractor with the Federal Gov-  
15 ernment shall not be personally and substantially involved  
16 with any award of a contract to the employee’s former em-  
17 ployer, or the administration of such a contract, for the  
18 two-year period beginning on the date on which the em-  
19 ployee leaves the employment of the contractor.”.

20       (d) REGULATIONS.—Section 27 of such Act (41  
21 U.S.C. 423) is further amended by adding at the end of  
22 the following new subsection:

23       “(j) REGULATIONS.—The Administrator, in consulta-  
24 tion with the Director of the Office of Government Ethics,  
25 shall—

1 “(1) promulgate regulations to carry out and  
2 ensure the enforcement of this section; and

3 “(2) monitor and investigate individual and  
4 agency compliance with this section.”.

5 **SEC. 5. PROHIBITION ON UNAUTHORIZED EXPENDITURE**  
6 **OF FUNDS FOR PUBLICITY OR PROPAGANDA**  
7 **PURPOSES.**

8 (a) PROHIBITION.—Chapter 13 of title 31, United  
9 States Code, is amended by adding at the end the fol-  
10 lowing new section:

11 **“§ 1355. Prohibition on unauthorized expenditure of**  
12 **funds for publicity or propaganda pur-**  
13 **poses**

14 “An officer or employee of the United States Govern-  
15 ment may not make or authorize an expenditure or obliga-  
16 tion of funds for publicity or propaganda purposes within  
17 the United States unless authorized by law.”.

18 (b) CLERICAL AMENDMENT.—The table of sections  
19 for chapter 13 of such title is amended by adding at the  
20 end the following new item:

“1355. Prohibition on unauthorized expenditure of funds for propa-  
ganda purposes.”.

1 **SEC. 6. REQUIREMENT FOR DISCLOSURE OF FEDERAL**  
2 **SPONSORSHIP OF ALL FEDERAL ADVER-**  
3 **TISING OR OTHER COMMUNICATION MATE-**  
4 **RIALS.**

5 (a) **REQUIREMENT.**—Each advertisement or other  
6 communication paid for by an Executive agency, either di-  
7 rectly or through a contract awarded by the Executive  
8 agency, shall include a prominent notice informing the tar-  
9 get audience that the advertisement or other communica-  
10 tion is paid for by that Executive agency.

11 (b) **ADVERTISEMENT OR OTHER COMMUNICATION.**—  
12 In this section, the term “advertisement or other commu-  
13 nication” includes—

14 (1) an advertisement disseminated in any form,  
15 including print or by any electronic means; and

16 (2) a communication by an individual in any  
17 form, including speech, print, or by any electronic  
18 means.

19 (c) **EXECUTIVE AGENCY.**—In this section, the term  
20 “Executive agency” has the meaning provided in section  
21 105 of title 5, United States Code.

22 **SEC. 7. ELIMINATION OF “PSEUDO” CLASSIFICATION.**

23 (a) **REPORTS ON THE PROLIFERATING USE OF**  
24 **“PSEUDO” CLASSIFICATION DESIGNATIONS.**—

25 (1) **REPORT BY FEDERAL AGENCIES.**—Not later  
26 than six months after the date of the enactment of

1 this Act, each federal agency shall submit to the Ar-  
2 chivist of the United States and the congressional  
3 committees described in subsection (d) a report de-  
4 scribing the use of “pseudo” classification designa-  
5 tions.

6 (2) MATTERS COVERED.—Each such agency  
7 shall report on, at a minimum, the following:

8 (A) The number of “pseudo”classification  
9 designation policies used by the agency.

10 (B) Any existing guidance, instruction, di-  
11 rective, or regulations regarding the agency’s  
12 use of “pseudo” classification designations.

13 (C) The number and level of experience  
14 and training of Federal agency, office, and con-  
15 tractor personnel authorized to make “pseudo”  
16 classification designations.

17 (D) The cost of placing and maintaining  
18 information under each “pseudo” classification  
19 designation.

20 (E) The extent to which information  
21 placed under “pseudo” classification designa-  
22 tions has subsequently been released under sec-  
23 tion 552 of title 5, United States Code (popu-  
24 larly known as the Freedom of Information  
25 Act).



1 (F) The extent to which “pseudo” classi-  
2 fication designations have been used to withhold  
3 from the public information that is not author-  
4 ized to be withheld by Federal statute, or by an  
5 Executive order relating to the classification of  
6 national security information.

7 (G) The statutory provisions described in  
8 subsection (c).

9 (3) REPORT BY THE ARCHIVIST OF THE  
10 UNITED STATES.—Not later than 9 months after the  
11 date of the enactment of this Act, the Archivist of  
12 the United States shall issue to the congressional  
13 committees described in subsection (d) a report on  
14 the use of “pseudo” classification designations  
15 across the executive branch that is based on the in-  
16 formation provided by agencies, as well as input  
17 from the Director of National Intelligence, Federal  
18 agencies, offices, and contractors. All federal agen-  
19 cies, offices, and contractors shall cooperate fully  
20 and promptly with all requests by the Archivist in  
21 the fulfillment of this paragraph.

22 (4) NOTICE AND COMMENT.—The Archivist  
23 shall provide notice and an opportunity for public  
24 comment on the report.

1 (b) ELIMINATION OF “PSEUDO” CLASSIFICATION  
2 DESIGNATIONS.—

3 (1) REGULATIONS.—Not later than 15 months  
4 after the date of the enactment of this Act, the Ar-  
5 chivist of the United States shall promulgate regula-  
6 tions banning the use of “pseudo” classification des-  
7 ignations.

8 (2) STANDARDS FOR INFORMATION CONTROL  
9 DESIGNATIONS.—If the Archivist determines that  
10 there is a need for some agencies to use information  
11 control designations to safeguard information prior  
12 to review for disclosure, beyond those designations  
13 established by statute or by an Executive Order re-  
14 lating to the classification of national security infor-  
15 mation, the regulations under paragraph (1) shall  
16 establish standards for the use of those designations  
17 by agencies. Such standards shall address, at a min-  
18 imum, the following issues:

19 (A) Standards for utilizing the information  
20 control designations in a manner that is nar-  
21 rowly tailored to maximize public access to in-  
22 formation.

23 (B) Procedures for providing specified  
24 Federal officials with authority to utilize the in-

1           formation control designations, including train-  
2           ing and certification requirements.

3           (C) Categories of information that may be  
4           assigned the information control designations.

5           (D) The duration of the information con-  
6           trol designations and the process by which they  
7           will be removed.

8           (E) Procedures for identifying, marking,  
9           dating, and tracking information assigned the  
10          information control designations, including the  
11          identity of officials making the designations.

12          (F) Specific limitations and prohibitions  
13          against using the information control designa-  
14          tions.

15          (G) Procedures for members of the public  
16          to challenge the use of the information control  
17          designations.

18          (H) The manner in which the use of the  
19          information control designations relates to the  
20          procedures of each agency or office under sec-  
21          tion 552 of title 5, United States Code.

22          (3) REGULATION TO CONSTITUTE SOLE AU-  
23          THORITY.—A regulation promulgated pursuant to  
24          this subsection shall constitute the sole authority by  
25          which Federal agencies, offices, or contractors are

1 permitted to control information for the purposes of  
2 safeguarding information prior to review for disclo-  
3 sure, other than authority granted by Federal stat-  
4 ute or by an Executive order relating to the classi-  
5 fication of national security information.

6 (c) REVIEW OF STATUTORY BARRIERS TO PUBLIC  
7 ACCESS INFORMATION.—

8 (1) REVIEW OF STATUTES.—As part of the re-  
9 port required under subsection (a)(3), the Archivist  
10 shall examine existing Federal statutes that allow  
11 Federal agencies, offices, or contractors to control,  
12 protect, or otherwise withhold information based on  
13 security concerns.

14 (2) RECOMMENDATIONS.—The report shall  
15 make recommendations on potential changes to the  
16 Federal statutes examined under paragraph (1) that  
17 would improve public access to information governed  
18 by such statutes.

19 (d) DEFINITIONS.—In this section:

20 (1) The term “congressional committees”  
21 means the Committees on Government Reform, Ju-  
22 diciary, Homeland Security, and Appropriations of  
23 the House of Representatives and the Committees  
24 on Homeland Security and Governmental Affairs,  
25 Judiciary, and Appropriations of the Senate.

1           (2) The term “‘pseudo’ classification designa-  
2           tions” means information control designations, in-  
3           cluding “sensitive but unclassified” and “for official  
4           use only”, that are not defined by Federal statute,  
5           or by an Executive order relating to the classifica-  
6           tion of national security information, but that are  
7           used to manage, direct, or route Government infor-  
8           mation, or control the accessibility of Government  
9           information, regardless of its form or format.

10 **SEC. 8. NATIONAL SECURITY WHISTLEBLOWER RIGHTS.**

11           Chapter 23 of title 5, United States Code, is amended  
12 by adding after section 2303 the following new section:

13 **“§ 2303a. National security whistleblower rights**

14           “(a) PROHIBITION OF REPRISALS.—In addition to  
15 any rights provided in Title VII of Public Law 105–272,  
16 section 2303 of title 5, United States Code, or any other  
17 law, an employee or applicant for employment of a covered  
18 agency may not be discharged, demoted, or otherwise dis-  
19 criminated against, including denying, suspending, or re-  
20 voking a security clearance or otherwise restricting access  
21 to classified or sensitive information, as a reprisal for dis-  
22 closing covered information to an authorized Member of  
23 Congress or to an authorized official of an executive agen-  
24 cy, the Department of Justice, or the Inspector General  
25 of the employee’s employing covered agency.

1       “(b) INVESTIGATION OF COMPLAINTS.—An employee  
2 or applicant for employment of a covered agency who be-  
3 lieves he has been subjected to a reprisal prohibited by  
4 subsection (a) may submit a complaint to the Inspector  
5 General and head of the covered agency. The Inspector  
6 General shall investigate the complaint and, unless the In-  
7 spector General determines that the complaint is frivolous,  
8 submit a report of the findings of the investigation within  
9 180 days to the employee or applicant for employment and  
10 the head of the covered agency.

11       “(c) REMEDY.—

12               “(1) Within 210 days of the filing of the com-  
13 plaint, the head of the covered agency shall issue an  
14 order accepting or rejecting the complaint, or por-  
15 tions thereof, taking into consideration the report  
16 issued by the Inspector General under subsection  
17 (b), if any. If the head of the covered agency accepts  
18 the complaint, he shall implement corrective action  
19 to return the complainant, as nearly as possible, to  
20 the position he would have held had the reprisal not  
21 occurred, including voiding any directive or order de-  
22 nying, suspending, or revoking a security clearance  
23 or otherwise restricting access to classified or sen-  
24 sitive information that constituted a reprisal, as well  
25 as providing back pay and related benefits, medical

1 costs incurred, travel expenses, and any other rea-  
2 sonable and foreseeable consequential damages in-  
3 cluding attorney's fees and costs. If the head of the  
4 covered agency rejects the complaint, he shall issue  
5 a report to the employee or applicant for employ-  
6 ment detailing the reasons for the rejection.

7 “(2)(A) If the head of the covered agency, in  
8 the process of implementing corrective action under  
9 (c)(1), voids a directive or order denying, sus-  
10 pending, or revoking a security clearance or other-  
11 wise restricting access to classified or sensitive infor-  
12 mation that constituted a reprisal, the head of the  
13 covered agency may re-initiate procedures to issue a  
14 directive or order denying, suspending, or revoking  
15 a security clearance or otherwise restricting access  
16 to classified or sensitive information only if those re-  
17 initiated procedures are based exclusively on national  
18 security concerns and are unrelated to the actions  
19 constituting the original reprisal.

20 “(B) In any case in which the head of a covered  
21 agency re-initiates procedures under (2)(A), the  
22 head of the covered agency shall issue an unclassi-  
23 fied report to its IG and authorized members of  
24 Congress (with a classified annex if necessary), de-  
25 tailing the circumstances of the agency's re-initiated

1 procedures and describing the manner in which  
2 those procedures are based exclusively on national  
3 security concerns and are unrelated to the actions  
4 constituting the original reprisal. The head of the  
5 covered agency shall also provide periodic updates to  
6 the IG and authorized members of Congress detail-  
7 ing any significant actions taken as a result of those  
8 procedures, and shall respond promptly to inquiries  
9 from authorized Members of Congress regarding the  
10 status of those procedures.

11 “(3) If the head of the covered agency has not  
12 accepted or rejected the complaint within 210 days  
13 of the filing of the complaint, and there is no show-  
14 ing that such delay is due to the bad faith of the  
15 complainant, the complainant shall be deemed to  
16 have exhausted his or her administrative remedies  
17 with respect to the complaint, and the complainant  
18 may bring an action at law or equity for de novo re-  
19 view to seek any relief described in (c)(1) in the ap-  
20 propriate district court of the United States, which  
21 shall have jurisdiction over such action without re-  
22 gard to the amount in controversy. A petition to re-  
23 view a final decision under this subsection shall be  
24 filed in the United States Court of Appeals for the  
25 Federal Circuit.



1           “(4) The complainant may obtain review of any  
2           order issued under this section in the appropriate  
3           district court of the United States or the United  
4           States Court of Appeals for the Federal Circuit. No  
5           petition seeking such review may be filed more than  
6           60 days after issuance of the order by the head of  
7           the agency. Review shall conform to chapter 7 of  
8           title 5. A petition to review a final decision of a dis-  
9           trict court under this subsection shall be filed in the  
10          United States Court of Appeals for the Federal Cir-  
11          cuit.

12          “(5)(A) If, in any action for damages or relief  
13          under subsections (c)(3) or (c)(4), an executive  
14          branch agency moves to withhold information from  
15          discovery based on a claim that disclosure would be  
16          inimical to national security by asserting the privi-  
17          lege commonly referred to as the “state secrets privi-  
18          lege,” and if the assertion of such privilege prevents  
19          the plaintiff from establishing an element in support  
20          of the plaintiff’s claim, the court shall resolve the  
21          disputed issue of fact or law in favor of the plaintiff,  
22          provided that an inspector general investigation  
23          under subsection (b) has resulted in substantial con-  
24          firmation of that element, or those elements, of the  
25          plaintiff’s claim.

1           “(B) In any case in which an executive branch  
2           agency asserts the privilege commonly referred to as  
3           the “state secrets privilege,” whether or not an in-  
4           specter general has conducted an investigation under  
5           subsection (b), the head of that agency shall, at the  
6           same time it asserts the privilege, issue a report to  
7           authorized Members of Congress, accompanied by a  
8           classified annex if necessary, describing the reasons  
9           for the assertion, explaining why the court hearing  
10          the matter does not have the ability to maintain the  
11          protection of classified information related to the as-  
12          sertion, detailing the steps the agency has taken to  
13          arrive at a mutually agreeable settlement with the  
14          employee or applicant for employment, setting forth  
15          the date on which the classified information at issue  
16          will be declassified, and providing all relevant infor-  
17          mation about the underlying substantive matter.

18          “(d) CONSTRUCTION.—Nothing in this section may  
19          be construed to authorize the discharge of, demotion of,  
20          or discrimination against an employee for a disclosure  
21          other than a disclosure protected by subsection (a) of this  
22          section or to modify or derogate from a right or remedy  
23          otherwise available to the employee or applicant for em-  
24          ployment.

25          “(e) DEFINITIONS.—In this section:

1           “(1) The term “covered information,” including  
2           classified information, is information that an em-  
3           ployee reasonably believes to provide direct and spe-  
4           cific evidence of—

5                   “(A) a violation of any law, rule, or regula-  
6           tion, or

7                   “(B) gross mismanagement, a gross waste  
8           of funds, an abuse of authority, or a substantial  
9           and specific danger to public health or safety.

10           “(2) The term “covered agency” means one of  
11           the following:

12                   “(A) The Central Intelligence Agency.

13                   “(B) The Defense Intelligence Agency.

14                   “(C) The National Imagery and Mapping  
15           Agency.

16                   “(D) The National Security Agency.

17                   “(E) The Federal Bureau of Investigation.

18                   “(F) The National Reconnaissance Office.

19                   “(G) Any other Executive agency, or ele-  
20           ment or unit thereof, determined by the Presi-  
21           dent under section 2302(a)(2)(C)(ii) of title 5,  
22           United States Code, to have as its principal  
23           function the conduct of foreign intelligence or  
24           counterintelligence activities.

1           “(3) The term “authorized member of Con-  
2       gress” means a member of the House Permanent  
3       Select Committee on Intelligence, the Senate Select  
4       Committee on Intelligence, the House Committee on  
5       Government Reform, the Senate Committee on  
6       Homeland Security and Governmental Affairs, and  
7       the committees of the House of Representatives or  
8       the Senate that have oversight over the program  
9       about which the covered information is disclosed.”.

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