

110TH CONGRESS
1ST SESSION

H. R. 985

AN ACT

To amend title 5, United States Code, to clarify which disclosures of information are protected from prohibited personnel practices; to require a statement in nondisclosure policies, forms, and agreements to the effect that such policies, forms, and agreements are consistent with certain disclosure protections, 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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
 5 “Whistleblower Protection Enhancement Act of 2007”.

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

- Sec. 1. Short title; table of contents.
- Sec. 2. Clarification of disclosures covered.
- Sec. 3. Definitional amendments.
- Sec. 4. Rebuttable presumption.
- Sec. 5. Nondisclosure policies, forms, and agreements.
- Sec. 6. Exclusion of agencies by the President.
- Sec. 7. Disciplinary action.
- Sec. 8. Government Accountability Office study on revocation of security clearances.
- Sec. 9. Alternative recourse.
- Sec. 10. National security whistleblower rights.
- Sec. 11. Enhancement of contractor employee whistleblower protections.
- Sec. 12. Prohibited personnel practices affecting the Transportation Security Administration.
- Sec. 13. Clarification of whistleblower rights relating to scientific and other research.
- Sec. 14. Effective date.

8 **SEC. 2. CLARIFICATION OF DISCLOSURES COVERED.**

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

11 (1) in subparagraph (A)—

12 (A) by striking “which the employee or ap-
 13 plicant reasonably believes evidences” and in-
 14 serting “, without restriction as to time, place,
 15 form, motive, context, forum, or prior disclosure
 16 made to any person by an employee or appli-
 17 cant, including a disclosure made in the ordi-

1 nary course of an employee’s duties, that the
2 employee or applicant reasonably believes is evi-
3 dence of”; and

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

6 (2) in subparagraph (B)—

7 (A) by striking “which the employee or ap-
8 plicant reasonably believes evidences” and in-
9 serting “, without restriction as to time, place,
10 form, motive, context, forum, or prior disclosure
11 made to any person by an employee or appli-
12 cant, including a disclosure made in the ordi-
13 nary course of an employee’s duties, of informa-
14 tion that the employee or applicant reasonably
15 believes is evidence of”; and

16 (B) in clause (i), by striking “a violation”
17 and inserting “any violation (other than a viola-
18 tion of this section)”.

19 (b) PROHIBITED PERSONNEL PRACTICES UNDER
20 SECTION 2302(b)(9).—Title 5, United States Code, is
21 amended in subsections (a)(3), (b)(4)(A), and (b)(4)(B)(i)
22 of section 1214 and in subsections (a) and (e)(1) of sec-
23 tion 1221 by inserting “or 2302(b)(9)(B)–(D)” after “sec-
24 tion 2302(b)(8)” each place it appears.

1 **SEC. 3. DEFINITIONAL AMENDMENTS.**

2 (a) DISCLOSURE.—Section 2302(a)(2) of title 5,
3 United States Code, is amended—

4 (1) in subparagraph (B)(ii), by striking “and”
5 at the end;

6 (2) in subparagraph (C)(iii), by striking the pe-
7 riod at the end and inserting “; and”; and

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

9 “(D) ‘disclosure’ means a formal or informal
10 communication, but does not include a communica-
11 tion concerning policy decisions that lawfully exer-
12 cise discretionary authority unless the employee or
13 applicant providing the disclosure reasonably believes
14 that the disclosure evidences—

15 “(i) any violation of any law, rule, or regu-
16 lation; or

17 “(ii) gross mismanagement, a gross waste
18 of funds, an abuse of authority, or a substantial
19 and specific danger to public health or safety.”.

20 (b) CLEAR AND CONVINCING EVIDENCE.—Sections
21 1214(b)(4)(B)(ii) and 1221(e)(2) of title 5, United States
22 Code, are amended by adding at the end the following:

23 “For purposes of the preceding sentence, ‘clear and con-
24 vincing evidence’ means evidence indicating that the mat-
25 ter to be proved is highly probable or reasonably certain.”.

1 **SEC. 4. REBUTTABLE PRESUMPTION.**

2 Section 2302(b) of title 5, United States Code, is
3 amended by adding at the end the following: “For pur-
4 poses of paragraph (8), any presumption relating to the
5 performance of a duty by an employee who has authority
6 to take, direct others to take, recommend, or approve any
7 personnel action may be rebutted by substantial evidence.
8 For purposes of paragraph (8), a determination as to
9 whether an employee or applicant reasonably believes that
10 such employee or applicant has disclosed information that
11 evidences any violation of law, rule, regulation, gross mis-
12 management, a gross waste of funds, an abuse of author-
13 ity, or a substantial and specific danger to public health
14 or safety shall be made by determining whether a disin-
15 terested observer with knowledge of the essential facts
16 known to or readily ascertainable by the employee or appli-
17 cant could reasonably conclude that the actions of the
18 Government evidence such violations, mismanagement,
19 waste, abuse, or danger.”.

20 **SEC. 5. NONDISCLOSURE POLICIES, FORMS, AND AGREE-**
21 **MENTS.**

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

24 (1) in clause (x), by striking “and” at the end;

25 (2) by redesignating clause (xi) as clause (xii);

26 and

1 (3) by inserting after clause (x) the following:

2 “(xi) the implementation or enforcement of
3 any nondisclosure policy, form, or agreement;
4 and”.

5 (b) PROHIBITED PERSONNEL PRACTICE.—Section
6 2302(b) of title 5, United States Code, is amended—

7 (1) in paragraph (11), by striking “or” at the
8 end;

9 (2) by redesignating paragraph (12) as para-
10 graph (14); and

11 (3) by inserting after paragraph (11) the fol-
12 lowing:

13 “(12) implement or enforce any nondisclosure
14 policy, form, or agreement, if such policy, form, or
15 agreement does not contain the following statement:
16 ‘These provisions are consistent with and do not su-
17 perse, conflict with, or otherwise alter the em-
18 ployee obligations, rights, or liabilities created by
19 Executive Order No. 12958; section 7211 of title 5,
20 United States Code (governing disclosures to Con-
21 gress); section 1034 of title 10, United States Code
22 (governing disclosures to Congress by members of
23 the military); section 2302(b)(8) of title 5, United
24 States Code (governing disclosures of illegality,
25 waste, fraud, abuse, or public health or safety

1 threats); the Intelligence Identities Protection Act of
2 1982 (50 U.S.C. 421 and following) (governing dis-
3 closures that could expose confidential Government
4 agents); and the statutes which protect against dis-
5 closures that could compromise national security, in-
6 cluding sections 641, 793, 794, 798, and 952 of title
7 18, United States Code, and section 4(b) of the Sub-
8 versive Activities Control Act of 1950 (50 U.S.C.
9 783(b)). The definitions, requirements, obligations,
10 rights, sanctions, and liabilities created by such Ex-
11 ecutive order and such statutory provisions are in-
12 corporated into this agreement and are controlling.’;

13 “(13) conduct, or cause to be conducted, an in-
14 vestigation, other than any ministerial or nondis-
15 cretionary factfinding activities necessary for the
16 agency to perform its mission, of an employee or ap-
17 plicant for employment because of any activity pro-
18 tected under this section; or”.

19 **SEC. 6. EXCLUSION OF AGENCIES BY THE PRESIDENT.**

20 Section 2302(a)(2)(C) of title 5, United States Code,
21 is amended by striking clause (ii) and inserting the fol-
22 lowing:

23 “(ii)(I) the Federal Bureau of Investiga-
24 tion, the Central Intelligence Agency, the De-
25 fense Intelligence Agency, the National

1 Geospatial-Intelligence Agency, or the National
2 Security Agency; or

3 “(II) as determined by the President, any
4 Executive agency or unit thereof the principal
5 function of which is the conduct of foreign in-
6 telligence or counterintelligence activities, if the
7 determination (as that determination relates to
8 a personnel action) is made before that per-
9 sonnel action; or”.

10 **SEC. 7. DISCIPLINARY ACTION.**

11 Section 1215(a)(3) of title 5, United States Code, is
12 amended to read as follows:

13 “(3)(A) A final order of the Board may impose—

14 “(i) disciplinary action consisting of removal,
15 reduction in grade, debarment from Federal employ-
16 ment for a period not to exceed 5 years, suspension,
17 or reprimand;

18 “(ii) an assessment of a civil penalty not to ex-
19 ceed \$1,000; or

20 “(iii) any combination of disciplinary actions
21 described under clause (i) and an assessment de-
22 scribed under clause (ii).

23 “(B) In any case in which the Board finds that an
24 employee has committed a prohibited personnel practice
25 under paragraph (8) or (9) of section 2302(b), the Board

1 shall impose disciplinary action if the Board finds that the
2 activity protected under such paragraph (8) or (9) (as the
3 case may be) was the primary motivating factor, unless
4 that employee demonstrates, by a preponderance of the
5 evidence, that the employee would have taken, failed to
6 take, or threatened to take or fail to take the same per-
7 sonnel action, in the absence of such protected activity.”.

8 **SEC. 8. GOVERNMENT ACCOUNTABILITY OFFICE STUDY ON**
9 **REVOCAION OF SECURITY CLEARANCES.**

10 (a) REQUIREMENT.—The Comptroller General shall
11 conduct a study of security clearance revocations, taking
12 effect after 1996, with respect to personnel that filed
13 claims under chapter 12 of title 5, United States Code,
14 in connection therewith. The study shall consist of an ex-
15 amination of the number of such clearances revoked, the
16 number restored, and the relationship, if any, between the
17 resolution of claims filed under such chapter and the res-
18 toration of such clearances.

19 (b) REPORT.—Not later than 270 days after the date
20 of the enactment of this Act, the Comptroller General shall
21 submit to the Committee on Oversight and Government
22 Reform of the House of Representatives and the Com-
23 mittee on Homeland Security and Governmental Affairs
24 of the Senate a report on the results of the study required
25 by subsection (a).

1 **SEC. 9. ALTERNATIVE RECOURSE.**

2 (a) IN GENERAL.—Section 1221 of title 5, United
3 States Code, is amended by adding at the end the fol-
4 lowing:

5 “(k)(1) If, in the case of an employee, former em-
6 ployee, or applicant for employment who seeks corrective
7 action (or on behalf of whom corrective action is sought)
8 from the Merit Systems Protection Board based on an al-
9 leged prohibited personnel practice described in section
10 2302(b)(8) or 2302(b)(9)(B)–(D), no final order or deci-
11 sion is issued by the Board within 180 days after the date
12 on which a request for such corrective action has been duly
13 submitted (or, in the event that a final order or decision
14 is issued by the Board, whether within that 180-day period
15 or thereafter, then, within 90 days after such final order
16 or decision is issued, and so long as such employee, former
17 employee, or applicant has not filed a petition for judicial
18 review of such order or decision under subsection (h))—

19 “(A) such employee, former employee, or appli-
20 cant may, after providing written notice to the
21 Board, bring an action at law or equity for de novo
22 review in the appropriate United States district
23 court, which shall have jurisdiction over such action
24 without regard to the amount in controversy, and
25 which action shall, at the request of either party to
26 such action, be tried by the court with a jury; and

1 “(B) in any such action, the court—

2 “(i) shall apply the standards set forth in
3 subsection (e); and

4 “(ii) may award any relief which the court
5 considers appropriate, including any relief de-
6 scribed in subsection (g).

7 An appeal from a final decision of a district court in an
8 action under this paragraph may, at the election of the
9 appellant, be taken to the Court of Appeals for the Federal
10 Circuit (which shall have jurisdiction of such appeal), in
11 lieu of the United States court of appeals for the circuit
12 embracing the district in which the action was brought.

13 “(2) For purposes of this subsection, the term ‘appro-
14 priate United States district court’, as used with respect
15 to an alleged prohibited personnel practice, means the
16 United States district court for the district in which the
17 prohibited personnel practice is alleged to have been com-
18 mitted, the judicial district in which the employment
19 records relevant to such practice are maintained and ad-
20 ministered, or the judicial district in which resides the em-
21 ployee, former employee, or applicant for employment al-
22 legedly affected by such practice.

23 “(3) This subsection applies with respect to any ap-
24 peal, petition, or other request for corrective action duly
25 submitted to the Board, whether pursuant to section

1 1214(b)(2), the preceding provisions of this section, sec-
2 tion 7513(d), or any otherwise applicable provisions of
3 law, rule, or regulation.”.

4 (b) REVIEW OF MSPB DECISIONS.—Section 7703(b)
5 of such title 5 is amended—

6 (1) in the first sentence of paragraph (1), by
7 striking “the United States Court of Appeals for the
8 Federal Circuit” and inserting “the appropriate
9 United States court of appeals”; and

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

11 “(3) For purposes of the first sentence of paragraph
12 (1), the term ‘appropriate United States court of appeals’
13 means the United States Court of Appeals for the Federal
14 Circuit, except that in the case of a prohibited personnel
15 practice described in section 2302(b)(8) or
16 2302(b)(9)(B)–(D) (other than a case that, disregarding
17 this paragraph, would otherwise be subject to paragraph
18 (2)), such term means the United States Court of Appeals
19 for the Federal Circuit and any United States court of
20 appeals having jurisdiction over appeals from any United
21 States district court which, under section 1221(k)(2),
22 would be an appropriate United States district court for
23 purposes of such prohibited personnel practice.”.

24 (c) COMPENSATORY DAMAGES.—Section
25 1221(g)(1)(A)(ii) of such title 5 is amended by striking

1 all after “travel expenses,” and inserting “any other rea-
2 sonable and foreseeable consequential damages, and com-
3 pensatory damages (including attorney’s fees, interest,
4 reasonable expert witness fees, and costs).”.

5 (d) CONFORMING AMENDMENTS.—

6 (1) Section 1221(h) of such title 5 is amended
7 by adding at the end the following:

8 “(3) Judicial review under this subsection shall not
9 be available with respect to any decision or order as to
10 which the employee, former employee, or applicant has
11 filed a petition for judicial review under subsection (k).”.

12 (2) Section 7703(c) of such title 5 is amended
13 by striking “court.” and inserting “court, and in the
14 case of a prohibited personnel practice described in
15 section 2302(b)(8) or 2302(b)(9)(B)–(D) brought
16 under any provision of law, rule, or regulation de-
17 scribed in section 1221(k)(3), the employee or appli-
18 cant shall have the right to de novo review in accord-
19 ance with section 1221(k).”.

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

21 (a) IN GENERAL.—Chapter 23 of title 5, United
22 States Code, is amended by inserting after section 2303
23 the following:

24 **“§ 2303a. National security whistleblower rights**

25 “(a) PROHIBITION OF REPRISALS.—

1 “(1) IN GENERAL.—In addition to any rights
2 provided in section 2303 of this title, title VII of
3 Public Law 105–272, or any other provision of law,
4 an employee or former employee in a covered agency
5 may not be discharged, demoted, or otherwise dis-
6 criminated against (including by denying, sus-
7 pending, or revoking a security clearance, or by oth-
8 erwise restricting access to classified or sensitive in-
9 formation) as a reprisal for making a disclosure de-
10 scribed in paragraph (2).

11 “(2) DISCLOSURES DESCRIBED.—A disclosure
12 described in this paragraph is any disclosure of cov-
13 ered information which is made—

14 “(A) by an employee or former employee in
15 a covered agency (without restriction as to time,
16 place, form, motive, context, or prior disclosure
17 made to any person by an employee or former
18 employee, including a disclosure made in the
19 course of an employee’s duties); and

20 “(B) to an authorized Member of Con-
21 gress, an authorized official of an Executive
22 agency, or the Inspector General of the covered
23 agency in which such employee or former em-
24 ployee is or was employed.

1 “(b) INVESTIGATION OF COMPLAINTS.—An employee
2 or former employee in a covered agency who believes that
3 such employee or former employee has been subjected to
4 a reprisal prohibited by subsection (a) may submit a com-
5 plaint to the Inspector General and the head of the cov-
6 ered agency. The Inspector General shall investigate the
7 complaint and, unless the Inspector General determines
8 that the complaint is frivolous, submit a report of the find-
9 ings of the investigation within 120 days to the employee
10 or former employee (as the case may be) and to the head
11 of the covered agency.

12 “(c) REMEDY.—

13 “(1) Within 180 days of the filing of the com-
14 plaint, the head of the covered agency shall, taking
15 into consideration the report of the Inspector Gen-
16 eral under subsection (b) (if any), determine whether
17 the employee or former employee has been subjected
18 to a reprisal prohibited by subsection (a), and shall
19 either issue an order denying relief or shall imple-
20 ment corrective action to return the employee or
21 former employee, as nearly as possible, to the posi-
22 tion he would have held had the reprisal not oc-
23 curred, including voiding any directive or order de-
24 nying, suspending, or revoking a security clearance
25 or otherwise restricting access to classified or sen-

1 sitive information that constituted a reprisal, as well
2 as providing back pay and related benefits, medical
3 costs incurred, travel expenses, any other reasonable
4 and foreseeable consequential damages, and compen-
5 satory damages (including attorney’s fees, interest,
6 reasonable expert witness fees, and costs). If the
7 head of the covered agency issues an order denying
8 relief, he shall issue a report to the employee or
9 former employee detailing the reasons for the denial.

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

23 “(B) In any case in which the head of a covered
24 agency re-initiates procedures under subparagraph
25 (A), the head of the covered agency shall issue an

1 unclassified report to its Inspector General and to
2 authorized Members of Congress (with a classified
3 annex, if necessary), detailing the circumstances of
4 the agency's re-initiated procedures and describing
5 the manner in which those procedures are based ex-
6 clusively on national security concerns and are unre-
7 lated to the actions constituting the original reprisal.
8 The head of the covered agency shall also provide
9 periodic updates to the Inspector General and au-
10 thorized Members of Congress detailing any signifi-
11 cant actions taken as a result of those procedures,
12 and shall respond promptly to inquiries from author-
13 ized Members of Congress regarding the status of
14 those procedures.

15 “(3) If the head of the covered agency has not
16 made a determination under paragraph (1) within
17 180 days of the filing of the complaint (or he has
18 issued an order denying relief, in whole or in part,
19 whether within that 180-day period or thereafter,
20 then, within 90 days after such order is issued), the
21 employee or former employee may bring an action at
22 law or equity for de novo review to seek any correc-
23 tive action described in paragraph (1) in the appro-
24 priate United States district court (as defined by
25 section 1221(k)(2)), which shall have jurisdiction

1 over such action without regard to the amount in
2 controversy. An appeal from a final decision of a dis-
3 trict court in an action under this paragraph may,
4 at the election of the appellant, be taken to the
5 Court of Appeals for the Federal Circuit (which
6 shall have jurisdiction of such appeal), in lieu of the
7 United States court of appeals for the circuit em-
8 bracing the district in which the action was brought.

9 “(4) An employee or former employee adversely
10 affected or aggrieved by an order issued under para-
11 graph (1), or who seeks review of any corrective ac-
12 tion determined under paragraph (1), may obtain ju-
13 dicial review of such order or determination in the
14 United States Court of Appeals for the Federal Cir-
15 cuit or any United States court of appeals having ju-
16 risdiction over appeals from any United States dis-
17 trict court which, under section 1221(k)(2), would
18 be an appropriate United States district court. No
19 petition seeking such review may be filed more than
20 60 days after issuance of the order or the deter-
21 mination to implement corrective action by the head
22 of the agency. Review shall conform to chapter 7.

23 “(5)(A) If, in any action for damages or relief
24 under paragraph (3) or (4), an Executive agency
25 moves to withhold information from discovery based

1 on a claim that disclosure would be inimical to na-
2 tional security by asserting the privilege commonly
3 referred to as the ‘state secrets privilege’, and if the
4 assertion of such privilege prevents the employee or
5 former employee from establishing an element in
6 support of the employee’s or former employee’s
7 claim, the court shall resolve the disputed issue of
8 fact or law in favor of the employee or former em-
9 ployee, provided that an Inspector General investiga-
10 tion under subsection (b) has resulted in substantial
11 confirmation of that element, or those elements, of
12 the employee’s or former employee’s claim.

13 “(B) In any case in which an Executive agency
14 asserts the privilege commonly referred to as the
15 ‘state secrets privilege’, whether or not an Inspector
16 General has conducted an investigation under sub-
17 section (b), the head of that agency shall, at the
18 same time it asserts the privilege, issue a report to
19 authorized Members of Congress, accompanied by a
20 classified annex if necessary, describing the reasons
21 for the assertion, explaining why the court hearing
22 the matter does not have the ability to maintain the
23 protection of classified information related to the as-
24 sertion, detailing the steps the agency has taken to
25 arrive at a mutually agreeable settlement with the

1 employee or former employee, setting forth the date
2 on which the classified information at issue will be
3 declassified, and providing all relevant information
4 about the underlying substantive matter.

5 “(d) APPLICABILITY TO NON-COVERED AGENCIES.—

6 An employee or former employee in an Executive agency
7 (or element or unit thereof) that is not a covered agency
8 shall, for purposes of any disclosure of covered information
9 (as described in subsection (a)(2)) which consists in whole
10 or in part of classified or sensitive information, be entitled
11 to the same protections, rights, and remedies under this
12 section as if that Executive agency (or element or unit
13 thereof) were a covered agency.

14 “(e) CONSTRUCTION.—Nothing in this section may
15 be construed—

16 “(1) to authorize the discharge of, demotion of,
17 or discrimination against an employee or former em-
18 ployee for a disclosure other than a disclosure pro-
19 tected by subsection (a) or (d) of this section or to
20 modify or derogate from a right or remedy otherwise
21 available to an employee or former employee; or

22 “(2) to preempt, modify, limit, or derogate any
23 rights or remedies available to an employee or
24 former employee under any other provision of law,

1 rule, or regulation (including the Lloyd-La Follette
2 Act).

3 No court or administrative agency may require the ex-
4 haustion of any right or remedy under this section as a
5 condition for pursuing any other right or remedy otherwise
6 available to an employee or former employee under any
7 other provision of law, rule, or regulation (as referred to
8 in paragraph (2)).

9 “(f) DEFINITIONS.—For purposes of this section—

10 “(1) the term ‘covered information’, as used
11 with respect to an employee or former employee,
12 means any information (including classified or sen-
13 sitive information) which the employee or former
14 employee reasonably believes evidences—

15 “(A) any violation of any law, rule, or reg-
16 ulation; or

17 “(B) gross mismanagement, a gross waste
18 of funds, an abuse of authority, or a substantial
19 and specific danger to public health or safety;

20 “(2) the term ‘covered agency’ means—

21 “(A) the Federal Bureau of Investigation,
22 the Office of the Director of National Intel-
23 ligence, the Central Intelligence Agency, the
24 Defense Intelligence Agency, the National
25 Geospatial-Intelligence Agency, the National Se-

1 security Agency, and the National Reconnaissance
2 Office; and

3 “(B) any other Executive agency, or ele-
4 ment or unit thereof, determined by the Presi-
5 dent under section 2302(a)(2)(C)(ii)(II) to have
6 as its principal function the conduct of foreign
7 intelligence or counterintelligence activities;

8 “(3) the term ‘authorized Member of Congress’
9 means—

10 “(A) with respect to covered information
11 about sources and methods of the Central Intel-
12 ligence Agency, the Director of National Intel-
13 ligence, and the National Intelligence Program
14 (as defined in section 3(6) of the National Se-
15 curity Act of 1947), a member of the House
16 Permanent Select Committee on Intelligence,
17 the Senate Select Committee on Intelligence, or
18 any other committees of the House of Rep-
19 resentatives or Senate to which this type of in-
20 formation is customarily provided;

21 “(B) with respect to special access pro-
22 grams specified in section 119 of title 10, an
23 appropriate member of the Congressional de-
24 fense committees (as defined in such section);
25 and

1 “(C) with respect to other covered informa-
2 tion, a member of the House Permanent Select
3 Committee on Intelligence, the Senate Select
4 Committee on Intelligence, the House Com-
5 mittee on Oversight and Government Reform,
6 the Senate Committee on Homeland Security
7 and Governmental Affairs, or any other com-
8 mittees of the House of Representatives or the
9 Senate that have oversight over the program
10 which the covered information concerns; and

11 “(4) the term ‘authorized official of an Execu-
12 tive agency’ shall have such meaning as the Office
13 of Personnel Management shall by regulation pre-
14 scribe, except that such term shall, with respect to
15 any employee or former employee in an agency, in-
16 clude the head, the general counsel, and the ombuds-
17 man of such agency.”.

18 (b) CLERICAL AMENDMENT.—The table of sections
19 for chapter 23 of title 5, United States Code, is amended
20 by inserting after the item relating to section 2303 the
21 following:

“2303a. National security whistleblower rights.”.

1 **SEC. 11. ENHANCEMENT OF CONTRACTOR EMPLOYEE**
2 **WHISTLEBLOWER PROTECTIONS.**

3 (a) CIVILIAN AGENCY CONTRACTS.—Section 315(c)
4 of the Federal Property and Administrative Services Act
5 of 1949 (41 U.S.C. 265(c)) is amended—

6 (1) in paragraph (1), by striking “If the head”
7 and all that follows through “actions:” and inserting
8 the following: “Not later than 180 days after sub-
9 mission of a complaint under subsection (b), the
10 head of the executive agency concerned shall deter-
11 mine whether the contractor concerned has subjected
12 the complainant to a reprisal prohibited by sub-
13 section (a) and shall either issue an order denying
14 relief or shall take one or more of the following ac-
15 tions:”; and

16 (2) by redesignating paragraph (3) as para-
17 graph (4) and adding after paragraph (2) the fol-
18 lowing new paragraph (3):

19 “(3) If the head of an executive agency has not issued
20 an order within 180 days after the submission of a com-
21 plaint under subsection (b) and there is no showing that
22 such delay is due to the bad faith of the complainant, the
23 complainant shall be deemed to have exhausted his admin-
24 istrative remedies with respect to the complaint, and the
25 complainant may bring an action at law or equity for de
26 novo review to seek compensatory damages and other re-

1 lief available under this section in the appropriate district
2 court of the United States, which shall have jurisdiction
3 over such an action without regard to the amount in con-
4 troversy, and which action shall, at the request of either
5 party to such action, be tried by the court with a jury.”.

6 (b) ARMED SERVICES CONTRACTS.—Section 2409(c)
7 of title 10, United States Code, is amended—

8 (1) in paragraph (1), by striking “If the head”
9 and all that follows through “actions:” and inserting
10 the following: “Not later than 180 days after sub-
11 mission of a complaint under subsection (b), the
12 head of the agency concerned shall determine wheth-
13 er the contractor concerned has subjected the com-
14 plainant to a reprisal prohibited by subsection (a)
15 and shall either issue an order denying relief or shall
16 take one or more of the following actions:”; and

17 (2) by redesignating paragraph (3) as para-
18 graph (4) and adding after paragraph (2) the fol-
19 lowing new paragraph (3):

20 “(3) If the head of an agency has not issued an order
21 within 180 days after the submission of a complaint under
22 subsection (b) and there is no showing that such delay
23 is due to the bad faith of the complainant, the complainant
24 shall be deemed to have exhausted his administrative rem-
25 edies with respect to the complaint, and the complainant

1 may bring an action at law or equity for de novo review
2 to seek compensatory damages and other relief available
3 under this section in the appropriate district court of the
4 United States, which shall have jurisdiction over such an
5 action without regard to the amount in controversy, and
6 which action shall, at the request of either party to such
7 action, be tried by the court with a jury.”.

8 **SEC. 12. PROHIBITED PERSONNEL PRACTICES AFFECTING**
9 **THE TRANSPORTATION SECURITY ADMINIS-**
10 **TRATION.**

11 (a) IN GENERAL.—Chapter 23 of title 5, United
12 States Code, is amended—

13 (1) by redesignating sections 2304 and 2305 as
14 sections 2305 and 2306, respectively; and

15 (2) by inserting after section 2303a (as inserted
16 by section 10) the following:

17 **“§ 2304. Prohibited personnel practices affecting the**
18 **Transportation Security Administration**

19 “(a) IN GENERAL.—Notwithstanding any other pro-
20 vision of law, any individual holding or applying for a posi-
21 tion within the Transportation Security Administration
22 shall be covered by—

23 “(1) the provisions of section 2302(b)(1), (8),
24 and (9);

1 “(2) any provision of law implementing section
2 2302(b)(1), (8), or (9) by providing any right or
3 remedy available to an employee or applicant for em-
4 ployment in the civil service; and

5 “(3) any rule or regulation prescribed under
6 any provision of law referred to in paragraph (1) or
7 (2).

8 “(b) RULE OF CONSTRUCTION.—Nothing in this sec-
9 tion shall be construed to affect any rights, apart from
10 those described in subsection (a), to which an individual
11 described in subsection (a) might otherwise be entitled
12 under law.

13 “(c) EFFECTIVE DATE.—This section shall take ef-
14 fect as of the date of the enactment of this section.”.

15 (b) CLERICAL AMENDMENT.—The table of sections
16 for chapter 23 of title 5, United States Code, is amended
17 by striking the items relating to sections 2304 and 2305,
18 respectively, and by inserting the following:

“2304. Prohibited personnel practices affecting the Transportation Security Ad-
 ministration.

“2305. Responsibility of the Government Accountability Office.

“2306. Coordination with certain other provisions of law.”.

1 **SEC. 13. CLARIFICATION OF WHISTLEBLOWER RIGHTS RE-**
2 **LATING TO SCIENTIFIC AND OTHER RE-**
3 **SEARCH.**

4 (a) IN GENERAL.—Section 2302 of title 5, United
5 States Code, is amended by adding at the end the fol-
6 lowing:

7 “(f) As used in section 2302(b)(8), the term ‘abuse
8 of authority’ includes—

9 “(1) any action that compromises the validity
10 or accuracy of federally funded research or analysis;

11 “(2) the dissemination of false or misleading
12 scientific, medical, or technical information;

13 “(3) any action that restricts or prevents an
14 employee or any person performing federally funded
15 research or analysis from publishing in peer-reviewed
16 journals or other scientific publications or making
17 oral presentations at professional society meetings or
18 other meetings of their peers; and

19 “(4) any action that discriminates for or
20 against any employee or applicant for employment
21 on the basis of religion, as defined by section 13(b)
22 of the Whistleblower Protection Enhancement Act of
23 2007.”.

24 (b) DEFINITION.—As used in section 2302(f)(3) of
25 title 5, United States Code (as amended by subsection
26 (a)), the term “on the basis of religion” means—

1 (1) prohibiting personal religious expression by
2 Federal employees to the greatest extent possible,
3 consistent with requirements of law and interests in
4 workplace efficiency;

5 (2) requiring religious participation or non-par-
6 ticipation as a condition of employment, or permit-
7 ting religious harassment;

8 (3) failing to accommodate employees' exercise
9 of their religion;

10 (4) failing to treat all employees with the same
11 respect and consideration, regardless of their religion
12 (or lack thereof);

13 (5) restricting personal religious expression by
14 employees in the Federal workplace except where the
15 employee's interest in the expression is outweighed
16 by the government's interest in the efficient provi-
17 sion of public services or where the expression in-
18 trudes upon the legitimate rights of other employees
19 or creates the appearance, to a reasonable observer,
20 of an official endorsement of religion;

21 (6) regulating employees' personal religious ex-
22 pression on the basis of its content or viewpoint, or
23 suppressing employees' private religious speech in
24 the workplace while leaving unregulated other pri-
25 vate employee speech that has a comparable effect

1 on the efficiency of the workplace, including ideolog-
2 ical speech on politics and other topics;

3 (7) failing to exercise their authority in an
4 evenhanded and restrained manner, and with regard
5 for the fact that Americans are used to expressions
6 of disagreement on controversial subjects, including
7 religious ones;

8 (8) failing to permit an employee to engage in
9 private religious expression in personal work areas
10 not regularly open to the public to the same extent
11 that they may engage in nonreligious private expres-
12 sion, subject to reasonable content- and viewpoint-
13 neutral standards and restrictions;

14 (9) failing to permit an employee to engage in
15 religious expression with fellow employees, to the
16 same extent that they may engage in comparable
17 nonreligious private expression, subject to reasonable
18 and content-neutral standards and restrictions;

19 (10) failing to permit an employee to engage in
20 religious expression directed at fellow employees, and
21 may even attempt to persuade fellow employees of
22 the correctness of their religious views, to the same
23 extent as those employees may engage in comparable
24 speech not involving religion;

1 (11) inhibiting an employee from urging a col-
2 league to participate or not to participate in reli-
3 gious activities to the same extent that, consistent
4 with concerns of workplace efficiency, they may urge
5 their colleagues to engage in or refrain from other
6 personal endeavors, except that the employee must
7 refrain from such expression when a fellow employee
8 asks that it stop or otherwise demonstrates that it
9 is unwelcome;

10 (12) failing to prohibit expression that is part
11 of a larger pattern of verbal attacks on fellow em-
12 ployees (or a specific employee) not sharing the faith
13 of the speaker;

14 (13) preventing an employee from—

15 (A) wearing personal religious jewelry ab-
16 sent special circumstances (such as safety con-
17 cerns) that might require a ban on all similar
18 nonreligious jewelry; or

19 (B) displaying religious art and literature
20 in their personal work areas to the same extent
21 that they may display other art and literature,
22 so long as the viewing public would reasonably
23 understand the religious expression to be that
24 of the employee acting in her personal capacity,
25 and not that of the government itself;

1 (14) prohibiting an employee from using their
2 private time to discuss religion with willing cowork-
3 ers in public spaces to the same extent as they may
4 discuss other subjects, so long as the public would
5 reasonably understand the religious expression to be
6 that of the employees acting in their personal capac-
7 ities;

8 (15) discriminating against an employee on the
9 basis of their religion, religious beliefs, or views con-
10 cerning their religion by promoting, refusing to pro-
11 mote, hiring, refusing to hire, or otherwise favoring
12 or disfavoring, an employee or potential employee
13 because of his or her religion, religious beliefs, or
14 views concerning religion, or by explicitly or implic-
15 itly, insisting that the employee participate in reli-
16 gious activities as a condition of continued employ-
17 ment, promotion, salary increases, preferred job as-
18 signments, or any other incidents of employment or
19 insisting that an employee refrain from participating
20 in religious activities outside the workplace except
21 pursuant to otherwise legal, neutral restrictions that
22 apply to employees' off-duty conduct and expression
23 in general (such as restrictions on political activities
24 prohibited by the Hatch Act);

1 (16) prohibiting a supervisor’s religious expres-
2 sion where it is not coercive and is understood to be
3 his or her personal view, in the same way and to the
4 same extent as other constitutionally valued speech;

5 (17) permitting a hostile environment, or reli-
6 gious harassment, in the form of religiously discrimi-
7 natory intimidation, or pervasive or severe religious
8 ridicule or insult, whether by supervisors or fellow
9 workers, as determined by its frequency or repet-
10 itiveness, and severity;

11 (18) failing to accommodate an employee’s exer-
12 cise of their religion unless such accommodation
13 would impose an undue hardship on the conduct of
14 the agency’s operations, based on real rather than
15 speculative or hypothetical cost and without
16 disfavoring other, nonreligious accommodations; and

17 (19) in those cases where an agency’s work rule
18 imposes a substantial burden on a particular em-
19 ployee’s exercise of religion, failing to grant the em-
20 ployee an exemption from that rule, absent a com-
21 pelling interest in denying the exemption and where
22 there is no less restrictive means of furthering that
23 interest.

24 (c) RULE OF CONSTRUCTION.—Nothing in this sec-
25 tion shall be construed to create any new right, benefit,

1 or trust responsibility, substantive or procedural, enforce-
2 able at law or equity by a party against the United States,
3 its agencies, its officers, or any person.

4 **SEC. 14. EFFECTIVE DATE.**

5 This Act shall take effect 30 days after the date of
6 the enactment of this Act, except as provided in the
7 amendment made by section 12(a)(2).

Passed the House of Representatives March 14,
2007.

Attest:

Clerk.

110TH CONGRESS
1ST SESSION

H. R. 985

AN ACT

To amend title 5, United States Code, to clarify which disclosures of information are protected from prohibited personnel practices; to require a statement in nondisclosure policies, forms, and agreements to the effect that such policies, forms, and agreements are consistent with certain disclosure protections, and for other purposes.