H. R. 6409

To streamline the administration of whistleblower protections for private sector employees.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 13, 2012

Ms. WOOLSEY (for herself, Mr. GEORGE MILLER of California, and Mr. KILDEE) introduced the following bill; which was referred to the Committee on Education and the Workforce, and in addition to the Committees on the Judiciary and Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To streamline the administration of whistleblower protections for private sector employees.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Private Sector Whistleblower Protection Streamlining Act of 2012”.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:
Sec. 1. Short title; table of contents.

TITLE I—PRIVATE SECTOR EMPLOYMENT WHISTLEBLOWER PROTECTIONS

Sec. 101. Definitions.
Sec. 102. Protection against retaliation or discrimination.
Sec. 103. Enforcement.
Sec. 104. Restrictions on whistleblowing prohibited; confidentiality of whistleblower.
Sec. 105. Nonpreemption.
Sec. 106. Effective date and rules.

TITLE II—WHISTLEBLOWER PROTECTION OFFICE

Sec. 201. Establishment.
Sec. 202. Other private sector whistleblower protections.
Sec. 203. Duties, powers, and functions.

TITLE III—CONFORMING AMENDMENTS

Sec. 301. Occupational Safety and Health Act of 1970.
Sec. 302. Federal Mine Safety and Health Act.
Sec. 303. Amendment to title 18 provisions related to the Sarbanes-Oxley Act of 2002.

TITLE IV—ADMINISTRATIVE REVIEW BOARD

Sec. 401. Administrative Review Board.

1 TITLE I—PRIVATE SECTOR EMPLOYMENT WHISTLEBLOWER PROTECTIONS

SEC. 101. DEFINITIONS.

As used in this title, the following definitions apply:

(1) APPLICABLE LAW.—

(A) IN GENERAL.—Subject to subparagraph (B), the term “applicable law” means any Federal law, rule, regulation, or Executive order, or a law, rule or regulation of a State or political subdivision of a State implementing
any Federal law, rule or regulation, relating to—

(i) health and health care;

(ii) environmental protection and resource management;

(iii) food and drug safety (including relating to the production, manufacturing, and product safety of pharmaceuticals, medical devices, and agricultural products);

(iv) transportation (including maritime);

(v) working conditions and benefits (including social insurance such as workers compensation and unemployment insurance);

(vi) building and construction-related requirements, including safety requirements, structural and engineering standards, and building codes;

(vii) energy production, transportation, storage, security, safety, and use (including operations on the outer Continental Shelf (as defined in section 2 of the Outer Continental Shelf Lands Act (43 U.S.C. 1331)));
(viii) homeland security;

(ix) financial services (including banking, insurance, accounting, commodities, and securities);

(x) consumer protection (including consumer product safety);

(xi) education;

(xii) antitrust, copyright, or patent;

(xiii) transactions involving the Federal Government or use of Federal funds for grants, contracts, cooperative agreements, or program payments (including laws pertaining to fraud, waste, or abuse);

(xiv) the assessment, collection, or any other action regarding royalties, customs duties, tariffs, taxes, or any other sources of revenue due the Federal Government or its entities; or

(xv) communications and telecommunications.

(B) EXCEPTIONS AND EXCLUSIONS.—Notwithstanding subparagraph (A), the following Federal laws, rules, and regulations shall not be considered applicable laws for purposes of this Act:
(i) Civil rights laws administered by the Equal Employment Opportunity Commission that provide anti-retaliation protections for employees exercising their rights under such laws.

(ii) Whistleblower Protection Act (5 U.S.C. 1201 note) and laws administered by the Merit Systems Protection Board.

(iii) Federal laws, rules, or regulations that provide employees with the following minimum anti-retaliation protections:

(I) At least 180 days to file a complaint.

(II) A right to investigation and adjudication by an independent hearing officer, and an appeal to either an administrative or judicial body.

(III) A right to a decision within 365 days of filing a complaint.

(IV) A right to remove to Federal or State court any complaint that has not received a decision after 210 days from the filing of such complaint.
(V) A right to appropriate relief, including injunctive relief, compensatory and exemplary damages, attorneys and experts fees, and costs.

(2) EMPLOYEE.—The term “employee” means—

(A) any person receiving compensation from or whose employment is subject to the control of an employer, being considered for employment by the employer, or previously employed by an employer, including any person working as an associate;

(B) a person employed on a temporary or part-time basis;

(C) a person employed by a contractor or subcontractor of an employer; or

(D) a member of a professional membership organization or other professional body (including professional with institutional privileges or appointments to an organization).

(3) EMPLOYER.—The term “employer” means one or more individuals, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, nongovernmental organizations, trust-
ees, professional membership organizations (including a certification, disciplinary, or other professional body), including the agents of the employer or a person acting directly or indirectly in the interests of the employer, engaged in for profit or nonprofit business affecting commerce, including any subsidiaries, affiliates, and foreign operations of any business that are subject to applicable law, any entity of a State government or political subdivision of a State, or any nongovernmental organization, and any contractor or subcontractor of another employer.

(4) MANAGER.—The term “manager” means any person who has direct, implied, apparent authority over the work performance of an employee, or other supervisory relationship, directly or indirectly through subordinates, or a person who has the direct, implied, or apparent authority to recommend or to take corrective action regarding the activities or policies of the employer or to remedy a violation of an applicable law.

(5) MEDIA.—The term “media” includes a member of the print, radio, television, or internet media.
(6) PROTECTED INFORMATION.—The term "protected information" means any information that an employee reasonably believes evidences—

(A) a violation or the intent to commit a violation by the employer of an applicable law;

(B) a hazard or potential danger to the health or safety of any employee or to the public, including any injury or illness; or

(C) fraud on the part of the employer in connection with the implementation of or compliance with an applicable law or a standard of practice established by a professional standards setting body.

(7) PUBLIC BODY.—The term "public body" means Congress, any State legislature or popularly elected local government body, any Federal, State or local regulatory, administrative, or public agency, authority, or instrumentality or combination thereof, any Federal, State, or local law enforcement agency, prosecutorial office, or police or peace officer, any Federal, State or local court or other adjudicative body, or any division, board, bureau, office, committee, or commission of any such public bodies, or any organization or credentialing body that establishes or enforces standards of professional conduct.
(8) **Reasonable cause to believe.**—The term “reasonable cause to believe”, when used with respect to a temporary reinstatement of a complaint, means that a claim in the complaint appears to have merit.

(9) **Reasonably believes.**—The term “reasonably believes”, when used with respect to information that may be protected information, means that a disinterested observer with a similar level of education, skill, and experience and with knowledge of the essential facts known to or readily ascertained by an employee could conclude that such information is protected information.

(10) **Secretary.**—The term “Secretary” means the Secretary of Labor.

(11) **Unfavorable personnel action.**—The term “unfavorable personnel action” means any action or inaction, whether taken, recommended, or threatened, directly or indirectly unfavorable to an employee, or the parent, sibling, spouse, or child of an employee, by any employer, including the current employer of the employee, including termination, performance appraisal or action, discipline, reduction in pay or benefits, transfer, reassignment, demotion, withholding of training or other advancement oppor-
tunities, removal of resources, the denial, suspen-
sion, or revocation of a security clearance, investiga-
tion, peer review, law enforcement referral, or pros-
secution, filing criminal or civil charges, change in se-
niority rights, denial of advancement, denial of con-
tract, revocation of security credentials, blacklisting,
listing on a practitioner databank, violence or other
physical action, any other discrimination or other ac-
tion that negatively affects the terms or conditions,
or privileges of employment of such employee, or any
other conduct that would dissuade a reasonable per-
son from engaging in activities protected by this
title.

SEC. 102. PROTECTION AGAINST RETALIATION OR DIS-
CRIMINATION.

(a) IN GENERAL.—No employer shall take any unfa-
vorable personnel action against an employee if such ac-
tion is due, in whole or in part, to any lawful act done,
perceived to have been done, or intended to be done by
the employee to—

(1) communicate or disclose, without restriction
as to place, form, motive, context, forum, or prior
disclosure, including disclosure in the ordinary
course of the employee’s duties, to an employer or
manager, public body, or the media, or to the public,
any protected information, where disclosure is not specifically prohibited by law or because such information is classified, in which case the information may be disclosed to an official eligible by law to receive such information and designated by the employer, or to a relevant regulatory authority, law enforcement agency, or Inspector General;

(2) take action to initiate, testify, cooperate, or otherwise assist or participate in an investigation or proceeding by a public body, or any proceeding authorized by applicable law, or take action indicating that the employee is about to testify, cooperate, or otherwise assist such an investigation or proceeding;

(3) object to or refuse to participate in any activity, policy, practice, or assigned task which the employee reasonably believes is or would be in violation of an applicable law or endangers the safety or health of the employee or others;

(4) inform or discuss with co-workers of the employee, experts or corroborating witnesses, a representative of the employee, a safety and health or similar workplace committee, or a family member of the employee, any protected information, where disclosure is not prohibited by law or because it is classified; or
(5) otherwise avail the employee of the rights set forth in this title or other applicable law, or assist another employee in asserting the rights available under this title.

(b) **Broad Construction.**—It is the sense of Congress that the provisions of this section and section 101 should be construed broadly to maximize this Act’s remedial objectives.

**SEC. 103. ENFORCEMENT.**

(a) **Complaint.**—

(1) **In General.**—Subject to paragraph (2), an employee who believes that he or she has been subjected to an unfavorable personnel action by his or her employer in violation of section 102(a) may seek the relief described in this section by filing a complaint with the Secretary as described in subsection (b) not later than 180 days after the later of—

(A) the date on which such violation occurs, or in the case of a violation that is a repeated violation, the last date on which such violation occurs; or

(B) the date on which the employee knows or should reasonably have known that such violation occurred, or in the case of a violation that is a repeated violation, the last date on
which the employee knows or should reasonably
have known that such violation occurred.

(2) DEADLINE EXCEPTIONS.—Notwithstanding
paragraph (1), a complaint filed after the filing
deadlines set forth in such paragraph shall not deny
the Secretary, administrative law judge, or review
board, as applicable, jurisdiction of such complaint.
The filing deadlines set forth in paragraph (1) may
be tolled by mutual agreement between the employee
seeking to file a complaint under this section and
that employee’s employer.

(b) DEPARTMENT OF LABOR COMPLAINT PROCE-
DURE.—The Secretary shall establish appropriate proce-
dures to ensure complaints under this section are proc-
essed efficiently, which shall provide for the following:

(1) NOTIFICATION OF PUBLIC BODY.—Upon de-
termining that the allegations made in a complaint
under this section are credible and prior to notifying
an employer of the complaint, the Secretary shall—

(A) notify the appropriate public body hav-
ing jurisdiction over the violations of applicable
law raised in the complaint; and

(B) if appropriate, coordinate with the ap-
propriate public body having jurisdiction re-
garding an enforcement inspection.
(2) Election of procedure; exclusion.—

(A) Information to complainant.—
Upon receipt of a complaint under this section, the Secretary shall inform the complainant (or any legal counsel retained by complainant) of any authority that the Secretary has that may be applicable to the complainant’s situation.

(B) Efficiency of proceedings.—The Secretary shall establish procedures to prevent duplicative investigations actions brought under this title and any provision of law listed in section 202. Such procedures shall not limit a complainant's ability to bring a complaint under authorities covering conduct not protected under this title, nor a complainant’s right to proceed under any authority providing greater coverage, due process protections, statute of limitations, or remedies.

(C) Amendments to complaints.—The Secretary shall establish rules and procedures to allow complainants to amend their complaints, which shall extend the period of time for the Secretary to issue a decision as necessary.
(3) Decision to Investigate or Dismiss Complaint.—The Secretary shall, based on the criteria set forth in paragraph (d)(1), either—

(A) make a decision to investigate the complaint under paragraph (5); or

(B) make a final decision to dismiss the complaint and inform the complainant of his or her right to request a hearing under subparagraph (7) and the process for filing such a request.

(4) Temporary Relief During Investigation.—The Secretary shall, upon request of a complainant, determine, for the purposes of issuing a temporary reinstatement order described in this paragraph, whether there is reasonable cause to believe that the complainant’s complaint makes a prima facie showing that any conduct described in paragraphs (1) through (5) of section 102(a) was a contributing factor in the unfavorable personnel action alleged in the complaint. If the Secretary determines that there is reasonable cause to believe that the complaint makes a prima facie showing, the Secretary shall issue a temporary reinstatement order for the complainant while the Secretary is conducting an investigation pursuant to paragraph (5).
If a hearing is not requested as provided for in paragraph (7), such order shall be deemed a final order that is not subject to judicial review during the pendency of the complainant’s administrative or judicial investigation, hearing, or appeal. Upon a determination by the Secretary that the respondent is not liable for retaliation under this title, such reinstatement shall end.

(5) INVESTIGATION.—The Secretary shall investigate any complaint not dismissed under paragraph (3). Before dismissing such a complaint based on the inadequacy of the complaint, the Secretary shall make a good faith effort to interview the complainant to determine whether he or she has a claim. The Secretary shall afford the employer (in this subsection referred to as the “respondent”) named in the complaint an opportunity to submit to the Secretary a written response to the complaint and to meet with a representative of the Secretary to present statements from witnesses and other evidence. The complainant shall be provided an opportunity to meet with a representative of the Secretary and rebut any statements or evidence provided to the Secretary by the respondent named in the complaint. In conducting such investigation, the Sec-
Secretary may issue subpoenas requiring the deposition
of or the attendance and testimony of witnesses and
the production of any evidence, including any books,
papers, or documents, relating to the matter under
investigation. The Secretary shall complete the in-
vestigation and issue a decision in accordance with
the criteria set forth in subsection (d)(2) not later
than 90 days after the date of receipt of a com-
plaint. The Secretary shall notify, in writing, the
complainant and the respondent named in the com-
plaint of the Secretary’s findings.

(6) Preliminary Order Following Investi-
gination.—If the Secretary finds that a violation of
section 102(a) has occurred, the Secretary shall
issue a preliminary order providing the relief pre-
scribed by paragraph (10). If a hearing is not timely
requested as provided for in paragraph (7), such
preliminary order shall be deemed a final order of
the Secretary that is not subject to judicial review.

(7) Hearing.—

(A) Request for hearing.—The com-
plainant or respondent may request a hearing
on the record before an administrative law
judge—
(i) if the complainant or the respondent objects to a temporary reinstatement order or preliminary order for relief and files such objections and request for a hearing not later than 30 days after receiving notification of such preliminary order;

(ii) if the complainant requests a hearing not later than 30 days after receiving notice of the Secretary’s dismissal of his or her complaint; or

(iii) if the Secretary has not issued a decision under paragraph (5) within 90 days of the receipt of the complaint.

The filing of objections under clause (i) shall not operate to stay any reinstatement remedy contained in a temporary reinstatement order issued pursuant to paragraph (4) or a preliminary order issued pursuant to paragraph (6).

(B) PROCEDURES.—Such hearing request shall be granted, and shall be conducted expeditiously and in accordance with the section 554 of title 5, United States Code. In conducting such proceeding, the Secretary may issue subpoenas requiring the deposition of or the attendance and testimony of witnesses and the
production of any evidence, including any books, papers, or documents, relating to the matter under consideration. A decision issued in accordance with the criteria set forth in subsection (d)(2), shall be issued not later than 90 days after the date on which a hearing was requested under this paragraph. The parties and the Secretary shall promptly be notified of the decision. If the administrative law judge finds that a violation of section 102(a) has occurred, the judge shall issue a preliminary order providing the relief prescribed by paragraph (10). If review under paragraph (8) is not timely requested, such preliminary order shall be deemed a final order of the Secretary that is not subject to judicial review.

(8) FURTHER ADMINISTRATIVE REVIEW.—Not later than 30 days after the date of notification of a decision by an administrative law judge under paragraph (7), the complainant or the respondent alleged to have committed a violation of section 102(a) may file objections to specified portions thereof and request a further review by an administrative review board designated by the Secretary under title IV (in this section referred to as the “review board”). The
review board’s review shall be limited to determining whether the decision of the administrative law judge was based upon substantial evidence and in accordance with all applicable law. The decision of the administrative law judge shall be stayed pending the completion of further review, except for any order of reinstatement which shall be stayed only upon motion. If review is granted, the review board shall issue a final decision and order affirming or reversing, in whole or in part, the decision under review by not later than 90 days after receipt of the administrative appeal. If it is determined that a violation of section 102 has occurred, the review board shall issue a final decision and order providing relief authorized under paragraph (10). Such decision and order shall constitute final agency action with respect to the matter appealed. If judicial review under paragraph (12) is not timely requested, such preliminary order shall be deemed a final order of the Secretary that is not subject to judicial review.

(9) SETTLEMENT.—At any time before issuance of a final order, a proceeding under this subsection may be terminated on the basis of a settlement agreement approved by the Secretary, administrative law judge, or review board conducting a hearing, the
complainant, and the employer alleged to have committed the violation. The Secretary, administrative law judge, or review board conducting a hearing may not accept any settlement that contains conditions that are contrary to the public policy of this title, including any restrictions on activity protected by this Act, and the right to seek future employment with an employer other than a specific employer named in the underlying complaint without discrimination.

(10) REMEDY.—If, in response to a complaint filed under subsection (a)(1), the Secretary, administrative law judge, or the review board determines that a violation of section 102(a) has occurred, the Secretary, administrative law judge, or review board shall order the respondent who committed such violation to—

(A) take affirmative action to abate the violation;

(B) reinstate the complainant to his or her former position and with the same seniority status together with the compensation (including back pay and interest) and restore the terms, rights, conditions, and privileges associated with his or her employment, and provide preference to the complainant to transfer to any available
position that provides equivalent or better compensation, terms, conditions, and privileges of employment for which the complainant is qualified;

(C) provide all appropriate relief, including injunctive relief, compensatory, and exemplary damages;

(D) expunge all warnings, reprimands, or derogatory references that have been placed in paper or electronic records or databases of any type relating to the actions by the complainant that gave rise to the unfavorable personnel action, and, at the complainant’s direction, send a copy of the decision on the complaint to any person whom the complainant reasonably believes may have received such unfavorable information; and

(E) post appropriate public notice of the violation.

If such an order is issued under this paragraph, the Secretary, administrative law judge, or the review board, at the request of the complainant, shall assess against the respondent against whom the order is issued a sum equal to the aggregate amount of all costs and expenses (including attorneys’ and expert
witness fees) reasonably incurred, as determined by
the Secretary, administrative law judge, or the re-
view board, by the complainant for, or in connection
with, the bringing the complaint upon which the
order was issued.

(11) Enforcement of Order.—Whenever
any respondent has failed to comply with a final
order issued under this subsection, including a final
order for temporary relief, the Secretary or the com-
plainant on whose behalf the order was issued may
file a civil action in the United States district court
for the district in which the violation was found to
occur to enforce such order. If both the Secretary
and the person on whose behalf the order was issued
file such an action for enforcement, the action of the
Secretary shall take precedence. In actions brought
under this paragraph, the district courts shall have
jurisdiction to grant all appropriate relief including,
injunctive relief, compensatory damages, and reason-
able attorneys and expert witness fees. In addition
to enforcing the order, the court shall assess a pen-
alty of not greater than $10,000 a month against
any person who fails to comply with a final order
issued under this subsection, which shall be awarded
to the party seeking enforcement.
(12) **Judicial review.**—

(A) **Appeal to Court of Appeals.**—Any complainant or respondent adversely affected or aggrieved by a final order issued under this subsection for which review is available, may obtain review of the order in the United States Court of Appeals for the circuit in which the violation, with respect to which the order was issued, allegedly occurred or the circuit in which the complainant resided on the date of such violation. The petition for review shall be filed not later than 60 days after the date the final order of the Secretary, administrative law judge, or the review board was received. Review shall conform to chapter 7 of title 5, United States Code. The commencement of proceedings under this subparagraph shall not, unless ordered by the court, operate as a stay of the order.

(B) **Limitation on Collateral Attack.**—An order of the Secretary with respect to which review could have been obtained under subparagraph (A) shall not be subject to judicial review in any criminal or other civil proceeding.
(13) INACTION BY THE SECRETARY, ADMINISTRATIVE LAW JUDGE, OR THE REVIEW BOARD.—If, after a hearing is requested pursuant to paragraph (7) or a review is requested under paragraph (8), the administrative law judge or the review board, respectively, has not issued a final decision within 90 days after such hearing or review is requested, the complainant may bring an action at law or equity for de novo review in the appropriate district court of the United States, as described in subsection (c), which shall have jurisdiction over such an action without regard to the amount in controversy, and which action shall, at the request of either party to such action, be tried by the court with a jury.

(c) DISTRICT COURT PROCEDURE.—

(1) DISMISSAL.—The court shall not dismiss under subsection (b)(6) or (e) of rule 12 of the Federal Rules of Civil Procedure a complaint filed under this section unless there are no conceivable grounds upon which a complainant may prevail.

(2) TEMPORARY RELIEF.—The court shall, upon request of the complainant, determine whether there is reasonable cause to believe that the complainant makes the prima facie showing described in subsection (b)(4), and if the court so determines,
issue an order providing for temporary reinstatement of the complainant.

(3) DECISION.—The complainant in a case brought under subsection (b)(11) shall be entitled to a trial by jury. The jury or the court shall determine whether a violation of section 102(a) has occurred based upon the criteria set forth in paragraph (d)(2).

(4) RELIEF.—The Court shall have jurisdiction to grant all appropriate relief to a prevailing complainant available by law or equity, including, injunctive relief, compensatory and consequential damages, exemplary damages, reasonable attorneys and expert witness fees, and court costs, and notification to the appropriate public body having jurisdiction over the violations of applicable law raised by the complainant.

(d) CRITERIA FOR DISMISSAL AND FOR DECISION.—

(1) DISMISSAL.—The Secretary shall dismiss a complaint filed under this section unless that complainant alleges facts in the complaint, supplemented as appropriate through interviews, affidavits, or other relevant evidence, which could conceivably support a prima facie claim that conduct described in paragraphs (1) through (5) of section 102(a) was a
contributing factor in the unfavorable personnel ac-
tion alleged in the complaint. The Secretary shall
not dismiss a complaint without interviewing a com-
plainant and providing him or her the opportunity to
provide additional evidence in support of his or her
prima facie claim. An administrative law judge or
the review board may refer to the Secretary for fur-
ther investigation any appeal from the Secretary's
dismissal in which the administrative law judge or
review board determines the complainant alleges
facts that could conceivably support such a prima
facie claim.

(2) DECISION.—The Secretary, administrative
law judge, administrative review board, or a court
may determine that a violation of section 102(a) has
occurred only if the complainant demonstrates that
any conduct described in paragraphs (1) through (5)
of section 102(a) was a contributing factor in the
unfavorable personnel action alleged in the com-
plaint. Relief may not be ordered if the respondent
demonstrates by clear and convincing evidence that
the respondent would have taken the same unfavor-
able personnel action in the absence of the conduct
described in paragraphs (1) through (5) of section
102(a).
SEC. 104. RESTRICTIONS ON WHISTLEBLOWING PROHIBITED; CONFIDENTIALITY OF WHISTLEBLOWER.

(a) Restrictions on Reporting Prohibited; Invalid Contract Clauses.—No employer shall by contract, policy, or procedure prohibit or restrict any person from engaging in any action for which a protection against discrimination or retaliation is provided under section 102. Any clause or provision of any contract for employment or contract with an independent contractor for the provision of services which purports to limit or restrain an individual from engaging in any of the actions described in paragraphs (1) through (5) of section 102(a) as a condition of employment or a condition of the contract, whether in force before, on, or after the date of enactment of this title, shall be invalid and void as violative of public policy as established by this title.

(b) Restrictions on Relief Provided Under This Act Prohibited; Invalid Arbitration Clauses.—Any clause of any agreement between an employer and an employee that requires arbitration of a claim arising under this title, whether in force before, on, or after the date of enactment of this Act, shall not be enforceable. An employee may not submit to binding arbitration of a claim arising under this title unless the employee’s agreement is made after the employee becomes
aware of an unfavorable personnel action and such agree-
ment is made in direct contemplation of that specific unfa-
vorable personnel action. No agreement, settlement, or de-
cision reached in arbitration shall be enforced that violates
the public policies established under this Act, including
any restriction or activity protected by this Act.

(e) CONFIDENTIALITY.—The identity or identifying
information of an employee (in this subsection referred to
as the “complainant”) who complains or discloses infor-
mation as described in section 102(a) to a public body
shall remain confidential and shall not be disclosed by any
person except—

(1) upon the knowing written consent of the
complainant;

(2) in the case in which there is imminent dan-
ger to health or public safety or an imminent viola-
tion of criminal law; or

(3) as otherwise required by law.

An employee of a public body shall provide reasonable ad-
advance notice to the affected employee if disclosure of that
person’s identity or identifying information is to occur. An
employee of a public body who is grossly negligent in dis-
closing the identity of a complainant in violation of this
subsection may be considered to be acting outside such
employee’s official duties.
SEC. 105. NONPREEMPTION.

(a) Effect on Other Laws.—Nothing in this title shall be construed to preempt any law, rule, or regulation of a State or political subdivision of a State and nothing in this title shall be construed or interpreted to impair or diminish in any way the authority of any State to enact and enforce any law which provides equivalent or greater protections for employees engaging in conduct protected under this title.

(b) Rights Retained by Whistleblowers.—Except as provided in section 103(b)(2)(A), nothing in this title shall be construed to diminish the rights, privileges, or remedies of any employee under any Federal or State law, or under any collective bargaining agreement.

SEC. 106. EFFECTIVE DATE AND RULES.

This title shall take effect on the date of enactment of this Act, and the procedures described in section 103 shall apply to complaints and actions filed under this title after such date of enactment. The Secretary shall establish interim final rules to implement this title within 120 days of such date of enactment. The time periods for processing complaints shall start once such interim rules are in effect.

TITLE II—WHISTLEBLOWER PROTECTION OFFICE

SEC. 201. ESTABLISHMENT.

(a) Establishment and Purpose.—
(1) IN GENERAL.—There is established in the Department of Labor the Whistleblower Protection Office (in this title referred to as “the Office”) to administer the duties of the Secretary under title I, the provisions of law listed in section 202 of this Act, section 11(c) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 660(c)), and the other provisions of law assigned to the Office by the Secretary, except that duties involving hearings and subsequent review and legal representation shall not be assigned to the Office, but may be assigned to other offices and agencies within the Department of Labor.

(2) CONSTRUCTION.—Nothing in this title shall in any way remove or transfer the authorities currently under the jurisdiction of the Mine Safety and Health Administration and the Federal Mine Safety and Health Review Commission.

(b) ADMINISTRATOR.—The Whistleblower Protection Office shall be under the direction of an Administrator of Whistleblower Protection, referred to in this title as “the Administrator”, who shall be appointed by the President with the advice and consent of the Senate. The Administrator’s compensation shall be set at level IV of the Executive Schedule.
(c) APPOINTMENT OF PERSONNEL.—

(1) APPOINTMENT AND COMPENSATION.—The Administrator may, subject to the civil service laws, appoint such employees as the Administrator considers necessary to carry out the functions and duties of the Office, and shall fix their compensation in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code.

(d) TRANSFER OF PERSONNEL; BUDGET.—

(1) BUDGETS AND PERSONNEL.—All unexpended balances of appropriations, personnel, property, records, obligations, and commitments which are used primarily with respect to any functions transferred under the provisions of paragraph (1) to the Administrator shall be transferred to the Office, as appropriate. The transfer of personnel pursuant to this paragraph shall be without reduction in classification or compensation for 1 year after such transfer, except that the Administrator shall have full authority to assign personnel during such 1-year period in order to efficiently carry out functions transferred to the Administrator under this title.

(2) CONTINUATION.—All orders, decisions, determinations, rules, and regulations, (A) which have
been issued, made, granted, or allowed to become effective in the exercise of functions which are transferred under this subsection; and (B) which are in effect at the time this section takes effect, shall continue in effect according to their terms until modified, terminated, superseded, set aside, revoked, or repealed by the Secretary, the Administrator, or other authorized officials, by any court of competent jurisdiction, or by operation of law. The provisions of this subsection shall not affect any proceedings pending at the time this title takes effect. The provisions of this section shall not affect suits commenced prior to the date this section takes effect and in all such suits proceedings shall be had, appeals taken, and judgments rendered, in the same manner and effect as if this section had not been enacted.

(e) COORDINATION.—The Office shall, where appropriate, take all the steps necessary, including entering into memorandum of understanding, to coordinate investigation and adjudication of retaliation claims under this Act with the Occupational Safety and Health Administration and other appropriate public bodies having jurisdiction over the enforcement of the underlying violations of applicable law.
(f) Principal Office.—The principal location of the Office shall be in the District of Columbia, but the Administrator or a duly authorized representative may exercise any or all of the Administrator’s powers in any place.

SEC. 202. OTHER PRIVATE SECTOR WHISTLEBLOWER PROTECTIONS.

(a) Provisions To Be Enforced in Accordance With This Act.—Notwithstanding any procedures set forth in the following provisions of law, such provisions shall, after the effective date of this Act, be administered in accordance with this Act by the Office established by this title:

(1) Sections 20109, 30171, 31105, 42121, and 60129 of title 49, United States Code.


(9) Section 322 of the Clean Air Act, amendments of 1977 (42 U.S.C. 7622).


(b) CLARIFICATION.—Any protections, rights, privileges, or remedies available to a covered employee under the provisions of law described in subsection (a), which are additional to and not inconsistent with those set forth in section 102, shall not be limited by subsection (a). To the extent that any such provisions are inconsistent with section 102, such provisions shall, at the request of a complainant, be given effect over any inconsistent provision in section 102.

SEC. 203. DUTIES, POWERS, AND FUNCTIONS.

(a) SUBPOENAS, EVIDENCE, AND TESTIMONY.—In carrying out its duties under title I of this Act or under any of the provisions of law referred to by section 202, the Administrator may issue subpoenas requiring the deposition of or the attendance and testimony of witnesses and the production of any evidence, including any books, papers, or documents, relating to any matter under investigation by the Commission, or required in connection with a hearing.

(b) MONITORING OF COMPLAINTS REMOVED TO FEDERAL DISTRICT COURT.—The Administrator shall re-
view the decision in each action removed to a district court of the United States under section 103(b)(11) to determine whether an employer violated an applicable law, and upon determining that an applicable law was so violated, notify the appropriate public body having jurisdiction over the violation of the applicable law regarding such violation.

(c) Rules.—The Secretary is authorized to prescribe such rules as are necessary for the orderly transaction of the proceedings of the Office and for the implementation of the programs of the Office.

(d) Effective Date.—The Administrator shall begin to carry out the duties and exercise the powers set forth in this title on the date that is 1 year after the date of enactment of this Act, or such earlier date as the Secretary may determine that the Office is sufficiently established, staffed, and funded.

(e) Annual Reports.—

(1) Administrator.—The Administrator shall annually—

(A) transmit a report to Congress detailing the activities of the Office during the previous year, including information relating to the number and nature of complaints filed, the number of merit and non-m merit cases, the number of such complaints disposed of without investiga-
tion, the number of complaints that have not received an adjudication within the time period required under this Act and the duration of the delay for such complaints, investigations conducted, orders issued, and statistics related to settlements; and

(B) make available the full text of all settlements approved by the Office, following the elimination from such text of all personal identifying information about the complainant, the employer, and any other party.

(2) APPROVED SETTLEMENTS.—No settlement approved by the Office may prohibit the disclosure described in paragraph (1)(B).

(f) STUDY ON TRANSITION TO WHISTLEBLOWER PROTECTION OFFICE.—

(1) ONE YEAR AFTER ENACTMENT.—Not later than 6 months after the date of enactment of this Act, the Comptroller General shall initiate a review of the Secretary’s progress in establishing the Whistleblower Protection Office as required under section 201, and not later than 1 year after such date of enactment, provide a report to the Congress on the effectiveness of the transition, including—
(A) whether existing funds, staff, information systems, and authorities have been properly transferred to the Office and make recommendations as necessary; and

(B) the status of cases currently before the Office, the progress made by the Office in eliminating the current backlog of whistleblower cases, and the plans of the Office for ensuring that the backlog is eliminated.

(2) TWO YEARS AFTER ENACTMENT.—Not later than 2 years after such date of enactment, the Comptroller General shall report to Congress on—

(A) whether the Office’s operational procedures have been established, whether necessary regulations have been promulgated, whether there are adequate internal controls, whether program outcomes are being effectively measured, whether previous recommendations regarding this program have been effectively implemented, whether investigative and supervisory staff have received necessary training and equipment, whether the Office is fulfilling its mission to fairly, efficiently, and effectively investigate whistleblower complaints, assure
timely enforcement, and to fully implement the
statutory authorities assigned to the Office; and
(B) the information described in paragraph
(1)(B).

TITLE III—CONFORMING
AMENDMENTS

SEC. 301. OCCUPATIONAL SAFETY AND HEALTH ACT OF
1970.

(a) EMPLOYEE ACTIONS.—Section 11(c)(1) of the
Occupational Safety and Health Act of 1970 (29 U.S.C.
660(c)(1)) is amended—
(1) by striking “discharge” and all that follows
through “because such” and inserting the following:
“discharge or cause to be discharged, or in any man-
ner discriminate against or cause to be discriminated
against, any employee because—
“(A) such”;
(2) by striking “this Act or has” and inserting
the following: “this Act;
“(B) such employee has”;
(3) by striking “in any such proceeding or be-
cause of the exercise” and inserting the following:
“before Congress or in any Federal or State pro-
ceeding related to safety or health;
“(C) such employee has refused to violate any provision of this Act; or
“(D) of the exercise”; and
(4) by inserting before the period at the end the following: “, including the reporting of any injury, illness, or unsafe condition to the employer, agent of the employer, safety and health committee involved, or employee safety and health representative involved”.

(b) PROHIBITION OF RETALIATION.—Section 11(c) of such Act (29 U.S.C. 660(c)) is amended by striking paragraph (2) and inserting the following:

“(2) PROHIBITION OF RETALIATION.—(A) No person shall discharge, or cause to be discharged, or in any manner discriminate against, or cause to be discriminated against, an employee for refusing to perform the employee’s duties if the employee has a reasonable apprehension that performing such duties would result in serious injury to, or serious impairment of the health of, the employee or other employees.

“(B) For purposes of subparagraph (A), the circumstances causing the employee’s good-faith belief that performing such duties would pose a safety or health hazard shall be of such a nature that a
reasonable person, under the circumstances confronting the employee, would conclude that there is such a hazard. In order to qualify for protection under this paragraph, the employee, when practicable, shall have communicated or attempted to communicate the safety or health concern to the employer and have not received from the employer a response reasonably calculated to allay such concern.”.

(e) Procedure.—Section 11(e) of such Act (29 U.S.C. 660(c)) is amended by striking paragraph (3) and inserting the following:

“(3) Complaint.—Any employee who believes that the employee has been discharged, disciplined, or otherwise discriminated against by any person in violation of paragraph (1) or (2) may seek relief for such violation by filing a complaint with the Secretary under paragraph (5).

“(4) Statute of Limitations.—

“(A) In general.—An employee may take the action permitted by paragraph (3)(A) not later than 180 days after the later of—

“(i) the date on which an alleged violation of paragraph (1) or (2) occurs; or
“(ii) the date on which the employee knows or should reasonably have known that such alleged violation occurred.

“(B) Repeat violation.—Except in cases when the employee has been discharged, a violation of paragraph (1) or (2) shall be considered to have occurred on the last date an alleged repeat violation occurred.

“(5) Investigation.—

“(A) In general.—An employee may, within the time period required under paragraph (4)(B), file a complaint with the Secretary alleging a violation of paragraph (1) or (2). If the complaint alleges a prima facie case, the Secretary shall conduct an investigation of the allegations in the complaint, which—

“(i) shall include—

“(I) interviewing the complainant;

“(II) providing the respondent an opportunity to—

“(aa) submit to the Secretary a written response to the complaint; and
“(bb) meet with the Secretary to present statements from witnesses or provide evidence; and

“(III) providing the complainant an opportunity to—

“(aa) receive any statements or evidence provided to the Secretary;

“(bb) meet with the Secretary; and

“(cc) rebut any statements or evidence; and

“(ii) may include issuing subpoenas for the purposes of such investigation.

“(B) DECISION.—Not later than 90 days after the filing of the complaint, the Secretary shall—

“(i) determine whether reasonable cause exists to believe that a violation of paragraph (1) or (2) has occurred; and

“(ii) issue a decision granting or denying relief.

“(6) PRELIMINARY ORDER FOLLOWING INVESTIGATION.—If, after completion of an investigation
under paragraph (5)(A), the Secretary finds reasonable cause to believe that a violation of paragraph (1) or (2) has occurred, the Secretary shall issue a preliminary order providing relief authorized under paragraph (14) at the same time the Secretary issues a decision under paragraph (5)(B). If a de novo hearing is not requested within the time period required under paragraph (7)(A)(i), such preliminary order shall be deemed a final order of the Secretary and is not subject to judicial review.

“(7) HEARING.—

“(A) REQUEST FOR HEARING.—

“(i) IN GENERAL.—A de novo hearing on the record before an administrative law judge may be requested—

“(I) by the complainant or respondent within 30 days after receiving notification of a decision granting or denying relief issued under paragraph (5)(B) or paragraph (6) respectively;

“(II) by the complainant within 30 days after the date the complaint is dismissed without investigation by
the Secretary under paragraph (5)(A);
or

“(III) by the complainant within
120 days after the date of filing the
complaint, if the Secretary has not
issued a decision under paragraph
(5)(B).

“(ii) Reinstatement order.—The
request for a hearing shall not operate to
stay any preliminary reinstatement order
issued under paragraph (6).

“(B) Procedures.—

“(i) In general.—A hearing re-
quested under this paragraph shall be con-
ducted expeditiously and in accordance
with rules established by the Secretary for
hearings conducted by administrative law
judges.

“(ii) Subpoenas; production of
evidence.—In conducting any such hear-
ing, the administrative law judge may issue
subpoenas. The respondent or complainant
may request the issuance of subpoenas
that require the deposition of, or the at-
tendance and testimony of, witnesses and
the production of any evidence (including any books, papers, documents, or recordings) relating to the matter under consideration.

“(iii) DECISION.—The administrative law judge shall issue a decision not later than 90 days after the date on which a hearing was requested under this paragraph and promptly notify, in writing, the parties and the Secretary of such decision, including the findings of fact and conclusions of law. If the administrative law judge finds that a violation of paragraph (1) or (2) has occurred, the judge shall issue an order for relief under paragraph (14). If review under paragraph (8) is not timely requested, such order shall be deemed a final order of the Secretary that is not subject to judicial review.

“(8) ADMINISTRATIVE APPEAL.—

“(A) IN GENERAL.—Not later than 30 days after the date of notification of a decision and order issued by an administrative law judge under paragraph (7), the complainant or respondent may file, with objections, an adminis-
trative appeal with an administrative review body designated by the Secretary under title IV of the Private Sector Whistleblower Protection Streamlining Act of 2012 (in this subsection referred to as the ‘review board’).

“(B) STANDARD OF REVIEW.—In reviewing the decision and order of the administrative law judge, the review board shall affirm the decision and order if it is determined that the factual findings set forth therein are supported by substantial evidence and the decision and order are made in accordance with applicable law.

“(C) DECISIONS.—If the review board grants an administrative appeal, the review board shall issue a final decision and order affirming or reversing, in whole or in part, the decision under review by not later than 90 days after receipt of the administrative appeal. If it is determined that a violation of paragraph (1) or (2) has occurred, the review board shall issue a final decision and order providing relief authorized under paragraph (14). Such decision and order shall constitute final agency action with respect to the matter appealed.
“(9) Settlement in the Administrative Process.—

“(A) In General.—At any time before issuance of a final order, an investigation or proceeding under this subsection may be terminated on the basis of a settlement agreement entered into by the parties.

“(B) Public Policy Considerations.—Neither the Secretary, an administrative law judge, nor the review board conducting a hearing under this subsection shall accept a settlement that contains conditions conflicting with the rights protected under this Act or that are contrary to public policy, including a restriction on a complainant’s right to future employment with employers other than the specific employers named in a complaint.

“(10) Inaction by the Review Board or Administrative Law Judge.—

“(A) In General.—The complainant may bring a de novo action described in subparagraph (B) if—

“(i) an administrative law judge has not issued a decision and order within the
90-day time period required under paragraph (7)(B)(iii); or

“(ii) the review board has not issued a decision and order within the 90-day time period required under paragraph (8)(C).

“(B) DE NOVO ACTION.—Such de novo action may be brought at law or equity in the United States district court for the district where a violation of paragraph (1) or (2) allegedly occurred or where the complainant resided on the date of such alleged violation. The court shall have jurisdiction over such action without regard to the amount in controversy and to order appropriate relief under paragraph (14). Such action shall, at the request of either party to such action, be tried by the court with a jury.

“(11) JUDICIAL REVIEW.—

“(A) TIMELY APPEAL TO THE COURT OF APPEALS.—Any party adversely affected or aggrieved by a final decision and order issued under this subsection may obtain review of such decision and order in the United States Court of Appeals for the circuit where the violation,
with respect to which such final decision and
order was issued, allegedly occurred or where
the complainant resided on the date of such al-
leged violation. To obtain such review, a party
shall file a petition for review not later than 60
days after the final decision and order was
issued. Such review shall conform to chapter 7
of title 5, United States Code. The commence-
ment of proceedings under this subparagraph
shall not, unless ordered by the court, operate
as a stay of the final decision and order.

“(B) LIMITATION ON COLLATERAL AT-
TACK.—An order and decision with respect to
which review may be obtained under subpara-
graph (A) shall not be subject to judicial review
in any criminal or other civil proceeding.

“(12) ENFORCEMENT OF ORDER.—If a re-
respondent fails to comply with an order issued under
this subsection, the Secretary or the complainant on
whose behalf the order was issued may file a civil ac-
tion for enforcement in the United States district
court for the district in which the violation was
found to occur to enforce such order. If both the
Secretary and the complainant file such action, the
action of the Secretary shall take precedence. The
district court shall have jurisdiction to grant all appropriate relief described in paragraph (14).

“(13) **Burdens of Proof.**—

“(A) **Criteria for Determination.**—In making a determination or adjudicating a complaint pursuant to this subsection, the Secretary, administrative law judge, review board, or a court may determine that a violation of paragraph (1) or (2) has occurred only if the complainant demonstrates that any conduct described in paragraph (1) or (2) with respect to the complainant was a contributing factor in the adverse action alleged in the complaint.

“(B) **Prohibition.**—Notwithstanding subparagraph (A), a decision or order that is favorable to the complainant shall not be issued in any administrative or judicial action pursuant to this subsection if the respondent demonstrates by clear and convincing evidence that the respondent would have taken the same adverse action in the absence of such conduct.

“(14) **Relief.**—

“(A) **Order for Relief.**—If the Secretary, administrative law judge, review board, or a court determines that a violation of para-
graph (1) or (2) has occurred, the Secretary or
court, respectively, shall have jurisdiction to
order all appropriate relief, including injunctive
relief and compensatory and exemplary dam-
ages, including—

“(i) affirmative action to abate the
violation;

“(ii) reinstatement without loss of po-
position or seniority, and restoration of the
terms, rights, conditions, and privileges as-
associated with the complainant’s employ-
ment, including opportunities for pro-
motions to positions with equivalent or bet-
ter compensation for which the complain-
ant is qualified;

“(iii) compensatory and consequential
damages sufficient to make the complain-
ant whole, (including back pay, prejudg-
ment interest, and other damages);

“(iv) expungement of all warnings,
reprimands, or derogatory references that
have been placed in paper or electronic
records or databases of any type relating
to the actions by the complainant that
gave rise to the unfavorable personnel ac-
tion, and, at the complainant’s direction, transmission of a copy of the decision on the complaint to any person whom the complainant reasonably believes may have received such unfavorable information; and

“(v) notwithstanding section 9, civil penalties not to exceed $100,000, which may be assessed by the Secretary as part of a preliminary order or by the administrative law judge following a request by the Secretary.

“(B) ATTORNEYS’ FEES AND COSTS.—If the Secretary or an administrative law judge, review board, or court grants an order for relief under subparagraph (A), the Secretary, administrative law judge, review board, or court, respectively, shall assess, at the request of the employee against the employer—

“(i) reasonable attorneys’ fees; and

“(ii) costs (including expert witness fees) reasonably incurred, as determined by the Secretary, administrative law judge, review board, or court, respectively, in connection with bringing the complaint upon which the order was issued.
“(15) PROCEDURAL RIGHTS.—The rights and remedies provided for in this subsection may not be waived by any agreement, policy, form, or condition of employment, including by any pre-dispute arbitration agreement or collective bargaining agreement.

“(16) SAVINGS.—Nothing in this subsection shall be construed to diminish the rights, privileges, or remedies of any employee who exercises rights under any Federal or State law or common law, or under any collective bargaining agreement.

“(17) ELECTION OF VENUE.—

“(A) IN GENERAL.—An employee of an employer who is located in a State that has a State plan approved under section 18 may file a complaint alleging a violation of paragraph (1) or (2) by such employer with—

“(i) the Secretary under paragraph (5); or

“(ii) a State plan administrator in such State.

“(B) REFERRALS.—If—

“(i) the Secretary receives a complaint pursuant to subparagraph (A)(i), the Secretary shall not refer such complaint to a State plan administrator for resolution; or
“(ii) a State plan administrator receives a complaint pursuant to subparagraph (A)(ii), the State plan administrator shall not refer such complaint to the Secretary for resolution.”.

(d) Relation to Enforcement.—Section 17(j) of such Act (29 U.S.C. 666) is amended by inserting before the period the following: “, including the history of violations under section 11(e)”.

(e) Effective Date.—

(1) General Rule.—Except as provided in paragraph (1), the amendments made by this section shall take effect not later than 90 days after the date of the enactment of this Act.

(2) Exception for States and Political Subdivisions.—Notwithstanding paragraph (1), a State that has a State plan approved under section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667) shall amend its State plan to conform with the requirements of the amendments made by this section not later than 12 months after the date of enactment of this Act, except that if the State’s legislature is not in session during the 12-month period beginning on the date of the enactment of this Act, the Secretary of Labor may extend
the period for the State to make such amendments
to its State plan by not more than 12 months. Such
amendments to the State plan shall take effect not
later than 90 days after the adoption of such
amendments by such State.

SEC. 302. FEDERAL MINE SAFETY AND HEALTH ACT.

Section 105(c) of the Federal Mine Safety and
Health Act of 1977 (30 U.S.C. 815(c)) is amended to read
as follows:

“(c) PROTECTION FROM RETALIATION.—

“(1) RETALIATION PROHIBITED.—

“(A) RETALIATION FOR COMPLAINT OR
TESTIMONY.—No person shall discharge or in
any manner discriminate against or cause to be
discharged or cause discrimination against or
otherwise interfere with the exercise of the stat-
utory rights of any miner or other employee of
an operator, representative of miners, or appli-
cant for employment (including the spouse, sib-
ling, child, or parent of such miner or employee,
if such individual is employed or is applying for
employment at a mine under the control of the
operator), because—
“(i) such miner or other employee, representative, or applicant for employment—

“(I) has filed or made a complaint, is about to file or make a complaint (or is perceived to have filed or be about to file such a complaint), including a complaint notifying the operator or the operator’s agent, or the representative of the miners at the coal or other mine of an alleged danger or safety or health violation in a coal or other mine;

“(II) instituted or caused to be instituted, or is about to institute or cause to be instituted (or is perceived to have instituted or be about to institute such a complaint), any proceeding under or related to this Act or has testified or is about to testify in any such proceeding or because of the exercise by such miner or other employee, representative, or applicant for employment on behalf of him or herself or others of any right afforded by
this Act, or has reported any injury or
ilness to an operator, or agent;

“(III) has testified or is about to
testify before Congress or any Federal
or State proceeding related to safety
or health in a coal or other mine; or

“(IV) refused to violate any pro-
vision of this Act, including any man-
datory health and safety standard or
regulation; or

“(ii) such miner is the subject of med-
ic evaluations and potential transfer
under a standard published pursuant to
section 101.

“(B) RETALIATION FOR REFUSAL TO PER-
FORM DUTIES.—

“(i) IN GENERAL.—No person shall
discharge or in any manner discriminate
against a miner or other employee of an
operator for refusing to perform the min-
er’s or other employee’s duties if the miner
or other employee has a good-faith and
reasonable belief that performing such du-
ties would pose a safety or health hazard
to the miner or other employee or to any
other miner or employee.

“(ii) STANDARD.—For purposes of
clause (i), the circumstances causing the
miner’s or other employee’s good-faith be-
lief that performing such duties would pose
a safety or health hazard shall be of such
a nature that a reasonable person, under
the circumstances confronting the miner or
other employee, would conclude that there
is such a hazard. In order to qualify for
protection under this paragraph, the miner
or other employee, when practicable, shall
have communicated or attempted to com-
municate the safety or health concern to
the operator and have not received from
the operator a response reasonably cal-
culated to allay such concern.

“(2) COMPLAINT.—Any miner or other em-
ployee or representative of miners or applicant for
employment who believes that he or she has been
discharged, disciplined, or otherwise discriminated
against by any person in violation of paragraph (1)
may file a complaint with the Secretary alleging
such discrimination not later than 180 days after
the later of—

“(A) the last date on which an alleged vio-
lation of paragraph (1) occurs; or

“(B) the date on which the miner or other
employee or representative knows or should rea-
sonably have known that such alleged violation
occurred, or in the case of a violation that is a
repeated violation, the last date on which the
whistleblower knows or should reasonably have
known that such violation occurred.

“(3) INVESTIGATION AND HEARING.—

“(A) COMMENCEMENT OF INVESTIGATION
AND INITIAL DETERMINATION.—Upon receipt
of such complaint, the Secretary shall forward
a copy of the complaint to the respondent, and
shall commence an investigation within 15 days
of the Secretary’s receipt of the complaint, and,
as soon as practicable after commencing such
investigation, make the determination required
under subparagraph (B) regarding the rein-
statement of the miner or other employee.

“(B) REINSTATEMENT.—If the Secretary
finds that such complaint was not frivolously
brought, the Commission, on an expedited basis
upon application of the Secretary, shall order the immediate reinstatement of the miner or other employee until there has been a final Commission order disposing of the underlying complaint of the miner or other employee. If either the Secretary or the miner or other employee pursues the underlying complaint, such reinstatement shall remain in effect until the Commission has disposed of such complaint on the merits, regardless of whether the Secretary pursues such complaint by filing a complaint under subparagraph (D) or the miner or other employee pursues such complaint by filing an action under paragraph (4). If neither the Secretary nor the miner or other employee pursues the underlying complaint within the periods specified in paragraph (4), such reinstatement shall remain in effect until such time as the Commission may, upon motion of the operator and after providing notice and an opportunity to be heard to the parties, vacate such complaint for failure to prosecute.

“(C) INVESTIGATION.—Such investigation shall include interviewing the complainant and—
“(i) providing the respondent an opportunity to submit to the Secretary a written response to the complaint and to present statements from witnesses or provide evidence; and

“(ii) providing the complainant an opportunity to receive any statements or evidence provided to the Secretary and to provide additional information or evidence, or rebut any statements or evidence.

“(D) ACTION BY THE SECRETARY.—If, upon such investigation, the Secretary determines that the provisions of this subsection have been violated, the Secretary shall immediately file a complaint with the Commission, with service upon the alleged violator and the miner or other employee, applicant for employment, and representative of miners alleging such discrimination or interference and propose an order granting appropriate relief.

“(E) ACTION OF THE COMMISSION.—The Commission shall afford an opportunity for a hearing on the record (in accordance with section 554 of title 5, United States Code, but without regard to subsection (a)(3) of such sec-
tion) and thereafter shall issue an order, based
upon findings of fact, affirming, modifying, or
vacating the Secretary’s proposed order, or di-
recting other appropriate relief. Such order
shall become final 30 days after its issuance.
The complaining miner or other employee, rep-
resentative, or applicant for employment may
present additional evidence on his or her own
behalf during any hearing held pursuant to this
paragraph.

“(F) RELIEF.—The Commission shall have
authority in such proceedings to require a per-
son committing a violation of this subsection to
take such affirmative action to abate the viola-
tion and prescribe a remedy as the Commission
considers appropriate, including—

“(i) the rehiring or reinstatement of
the miner or other employee with back pay
and interest and without loss of position or
seniority, and restoration of the terms,
rights, conditions, and privileges associated
with the complainant’s employment;

“(ii) any other compensatory and con-
sequential damages sufficient to make the
complainant whole, and exemplary damages where appropriate; and

“(iii) expungement of all warnings, reprimands, or derogatory references that have been placed in paper or electronic records or databases of any type relating to the actions by the complainant that gave rise to the unfavorable personnel action, and, at the complainant’s direction, transmission of a copy of the decision on the complaint to any person whom the complainant reasonably believes may have received such unfavorable information.

“(4) NOTICE TO AND ACTION OF COMPLAINANT.—

“(A) NOTICE TO COMPLAINANT.—Not later than 90 days of the receipt of a complaint filed under paragraph (2), the Secretary shall notify, in writing, the miner or other employee, applicant for employment, or representative of miners of his determination whether a violation has occurred.

“(B) ACTION OF COMPLAINANT.—If the Secretary, upon investigation, determines that the provisions of this subsection have not been
violated, the complainant shall have the right, within 30 days after receiving notice of the Secretary’s determination, to file an action in his or her own behalf before the Commission, charging discrimination or interference in violation of paragraph (1).

“(C) HEARING AND DECISION.—The Commission shall afford an opportunity for a hearing on the record (in accordance with section 554 of title 5, United States Code, but without regard to subsection (a)(3) of such section), and thereafter shall issue an order, based upon findings of fact, dismissing or sustaining the complainant’s charges and, if the charges are sustained, granting such relief as it deems appropriate as described in paragraph (3)(D). Such order shall become final 30 days after its issuance.

“(5) BURDEN OF PROOF.—In adjudicating a complaint pursuant to this subsection, the Commission may determine that a violation of paragraph (1) has occurred only if the complainant demonstrates that any conduct described in paragraph (1) with respect to the complainant was a contributing factor in the adverse action alleged in the complaint. A de-
cision or order that is favorable to the complainant shall not be issued pursuant to this subsection if the respondent demonstrates by clear and convincing evidence that the respondent would have taken the same adverse action in the absence of such conduct.

“(6) ATTORNEYS’ FEES.—Whenever an order is issued sustaining the complainant’s charges under this subsection, a sum equal to the aggregate amount of all costs and expenses, including attorney’s fees, as determined by the Commission to have been reasonably incurred by the complainant for, or in connection with, the institution and prosecution of such proceedings shall be assessed against the person committing such violation. The Commission shall determine whether such costs and expenses were reasonably incurred by the complainant without reference to whether the Secretary also participated in the proceeding.

“(7) EXPEDITED PROCEEDINGS; JUDICIAL REVIEW.—Proceedings under this subsection shall be expedited by the Secretary and the Commission. Any order issued by the Commission under this subsection shall be subject to judicial review in accordance with section 106. Violations by any person of
paragraph (1) shall be subject to the provisions of sections 108 and 110(a)(4).

“(8) PROCEDURAL RIGHTS.—The rights and remedies provided for in this subsection may not be waived by any agreement, policy, form, or condition of employment, including by any pre-dispute arbitration agreement or collective bargaining agreement.

“(9) SAVINGS.—Nothing in this subsection shall be construed to diminish the rights, privileges, or remedies of any employee who exercises rights under any Federal or State law or common law, or under any collective bargaining agreement.”.

SEC. 303. AMENDMENT TO TITLE 18 PROVISIONS RELATED TO THE SARBANES-OXLEY ACT OF 2002.

Section 1514A(a) of title 18, United States Code, is amended by inserting “, whether employed inside or outside the United States,” after “any other manner discriminate against an employee”.

SEC. 304. ENERGY REORGANIZATION ACT OF 1974.

Section 211(a)(2) of the Energy Reorganization Act of 1974 (42 U.S.C. 5851(a)(2)) is amended by redesignating subparagraphs (F) and (G) as subparagraphs (G) and (H), respectively, and inserting after subparagraph (E) the following:
“(F) a Federal agency to the extent such agency is a licensee or applicant for a license under subparagraph (A) or (B);”.

TITLE IV—ADMINISTRATIVE REVIEW BOARD

SEC. 401. ADMINISTRATIVE REVIEW BOARD.

(a) Establishment.—Not later than 90 days after the date of enactment of this Act, there is established an Administrative Review Board (in this section referred to as the “Board”) within the Department of Labor which shall be composed of 5 members appointed by the Secretary, not more than 3 of whom may be adherents of the same political party. No member of the Board may hold another office or position in the Government of the United States, except as otherwise provided by law or at the direction of the Secretary.

(b) Appointment.—The members of the Board shall be individuals who, by ability, background, training, or experience are especially qualified to carry out the functions of the Board. The Secretary shall appoint these members in consultation with the Chairs and Ranking Members of the House Committee on Education and the Workforce and the Senate Committee on Health, Education, Labor, and Pensions.
(c) **Quorum; Panels.**—For the purposes of carrying out its functions under this Act and any other area in which the Secretary delegates his or her authority, 3 members of the Board shall constitute a quorum and official actions can be taken only on the affirmative vote of 2 members. The Board may delegate its authority to panels comprised of three members of the Board. Any party aggrieved by a decision of a panel of the Board may, within 10 days after the date of entry of the decision, petition the full Board for review of the panel’s decision. Upon an affirmative vote of the majority of the Board, the petition for hearing by the full Board shall be granted.

(d) **Terms of Office; Filling Vacancies; Removal.**—

(1) **Terms.**—Each member shall be appointed to a single 5-year term, which shall be staggered so that no more than one vacancy is scheduled per year. The initial 5 members shall be appointed to terms of the following lengths: 1 year, 2 years, 3 years, 4 years, and 5 years.

(2) **Vacancies.**—A member appointed to fill a vacancy occurring before the end of a term of office for the member’s predecessor serves for the remainder of that term. Any appointment is subject to the terms of subsection (b). A member appointed ini-
tially to a 5-year term, may not be reappointed to
another 5-year term, but members appointed to fill
a vacancy may be appointed to their own full 5-year
term. Upon expiration of his or her term, the mem-
ber may continue to serve until a successor is ap-
pointed and has qualified, except that such member
may not continue to serve for more than one year
after the date on which his or her term expired.

(3) REMOVAL.—A member may be removed by
the Secretary only for inefficiency, neglect of duty,
or malfeasance in office.

(e) CHAIR AND VICE CHAIR.—The Secretary of
Labor shall from time to time appoint one of the members
of the Board as Chair of the Board. The Chair is the chief
executive and administrative officer of the Board, and
shall have the authority to exercise all administrative func-
tions necessary to operate the Board. The Secretary of
Labor shall from time to time designate one of the mem-
ers of the Board as Vice Chair of the Board, with such
duties and responsibilities as the Secretary shall prescribe.
During the absence or disability of the Chair, or when the
office of Chair is vacant, the Vice Chair shall perform the
functions vested in the Chair. During the absence or dis-
ability of both the Chair and Vice Chair, the Secretary
shall designate one of the remaining Board members to perform the functions vested in the Chair and Vice Chair.

(f) JURISDICTION AND AUTHORITY.—

(1) IN GENERAL.—The Board shall have jurisdiction and authority to decide appeals from administrative decisions and issue final agency decisions on behalf of the Secretary of Labor with respect to all matters delegated or prescribed by order of the Secretary of Labor or pursuant to any other law, rule, or regulation.

(2) SUPERSEDURE.—The Board shall supersede in function and authority the Administrative Review Board established by the Secretary of Labor pursuant to the Secretary’s order 1–2000 (67 Fed. Reg. 64272) effective 90 days after the date of the enactment of this Act.

(g) PAY.—The members of the Board shall receive compensation not to exceed level III of the Executive Schedule.