

112TH CONGRESS
2D SESSION

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.

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 “Private Sector Whistleblower Protection Streamlining
6 Act of 2012”.

7 (b) **TABLE OF CONTENTS.**—The table of contents for
8 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.
- Sec. 304. Energy Reorganization Act of 1974.

TITLE IV—ADMINISTRATIVE REVIEW BOARD

- Sec. 401. Administrative Review Board.

1 **TITLE I—PRIVATE SECTOR EM-**
 2 **PLOYMENT WHISTLEBLOWER**
 3 **PROTECTIONS**

4 **SEC. 101. DEFINITIONS.**

5 As used in this title, the following definitions apply:

6 (1) APPLICABLE LAW.—

7 (A) IN GENERAL.—Subject to subpara-

8 graph (B), the term “applicable law” means

9 any Federal law, rule, regulation, or Executive

10 order, or a law, rule or regulation of a State or

11 political subdivision of a State implementing

1 any Federal law, rule or regulation, relating
2 to—

3 (i) health and health care;

4 (ii) environmental protection and re-
5 source management;

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

10 (iv) transportation (including mari-
11 time);

12 (v) working conditions and benefits
13 (including social insurance such as workers
14 compensation and unemployment insur-
15 ance);

16 (vi) building and construction-related
17 requirements, including safety require-
18 ments, structural and engineering stand-
19 ards, and building codes;

20 (vii) energy production, transpor-
21 tation, storage, security, safety, and use
22 (including operations on the outer Conti-
23 nental Shelf (as defined in section 2 of the
24 Outer Continental Shelf Lands Act (43
25 U.S.C. 1331)));

1 (viii) homeland security;

2 (ix) financial services (including bank-
3 ing, insurance, accounting, commodities,
4 and securities);

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

7 (xi) education;

8 (xii) antitrust, copyright, or patent;

9 (xiii) transactions involving the Fed-
10 eral Government or use of Federal funds
11 for grants, contracts, cooperative agree-
12 ments, or program payments (including
13 laws pertaining to fraud, waste, or abuse);

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

19 (xv) communications and tele-
20 communications.

21 (B) EXCEPTIONS AND EXCLUSIONS.—Not-
22 withstanding subparagraph (A), the following
23 Federal laws, rules, and regulations shall not be
24 considered applicable laws for purposes of this
25 Act:

1 (i) Civil rights laws administered by
2 the Equal Employment Opportunity Com-
3 mission that provide anti-retaliation pro-
4 tections for employees exercising their
5 rights under such laws.

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

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

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

14 (II) A right to investigation and
15 adjudication by an independent hear-
16 ing officer, and an appeal to either an
17 administrative or judicial body.

18 (III) A right to a decision within
19 365 days of filing a complaint.

20 (IV) A right to remove to Fed-
21 eral or State court any complaint that
22 has not received a decision after 210
23 days from the filing of such com-
24 plaint.

1 (V) A right to appropriate relief,
2 including injunctive relief, compen-
3 satory and exemplary damages, attor-
4 neys and experts fees, and costs.

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

7 (A) any person receiving compensation
8 from or whose employment is subject to the
9 control of an employer, being considered for
10 employment by the employer, or previously em-
11 ployed by an employer, including any person
12 working as an associate;

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

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

17 (D) a member of a professional member-
18 ship organization or other professional body (in-
19 cluding professional with institutional privileges
20 or appointments to an organization).

21 (3) EMPLOYER.—The term “employer” means
22 one or more individuals, partnerships, associations,
23 corporations, legal representatives, mutual compa-
24 nies, joint-stock companies, trusts, unincorporated
25 organizations, nongovernmental organizations, trust-

1 ees, professional membership organizations (includ-
2 ing a certification, disciplinary, or other professional
3 body), including the agents of the employer or a per-
4 son acting directly or indirectly in the interests of
5 the employer, engaged in for profit or nonprofit
6 business affecting commerce, including any subsidi-
7 aries, affiliates, and foreign operations of any busi-
8 ness that are subject to applicable law, any entity of
9 a State government or political subdivision of a
10 State, or any nongovernmental organization, and
11 any contractor or subcontractor of another employer.

12 (4) MANAGER.—The term “manager” means
13 any person who has direct, implied, apparent author-
14 ity over the work performance of an employee, or
15 other supervisory relationship, directly or indirectly
16 through subordinates, or a person who has the di-
17 rect, implied, or apparent authority to recommend or
18 to take corrective action regarding the activities or
19 policies of the employer or to remedy a violation of
20 an applicable law.

21 (5) MEDIA.—The term “media” includes a
22 member of the print, radio, television, or internet
23 media.

1 (6) PROTECTED INFORMATION.—The term
2 “protected information” means any information that
3 an employee reasonably believes evidences—

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

6 (B) a hazard or potential danger to the
7 health or safety of any employee or to the pub-
8 lic, including any injury or illness; or

9 (C) fraud on the part of the employer in
10 connection with the implementation of or com-
11 pliance with an applicable law or a standard of
12 practice established by a professional standards
13 setting body.

14 (7) PUBLIC BODY.—The term “public body”
15 means Congress, any State legislature or popularly
16 elected local government body, any Federal, State or
17 local regulatory, administrative, or public agency,
18 authority, or instrumentality or combination thereof,
19 any Federal, State, or local law enforcement agency,
20 prosecutorial office, or police or peace officer, any
21 Federal, State or local court or other adjudicative
22 body, or any division, board, bureau, office, com-
23 mittee, or commission of any such public bodies, or
24 any organization or credentialing body that estab-
25 lishes or enforces standards of professional conduct.

1 (8) REASONABLE CAUSE TO BELIEVE.—The
2 term “reasonable cause to believe”, when used with
3 respect to a temporary reinstatement of a complaint,
4 means that a claim in the complaint appears to have
5 merit.

6 (9) REASONABLY BELIEVES.—The term “rea-
7 sonably believes”, when used with respect to infor-
8 mation that may be protected information, means
9 that a disinterested observer with a similar level of
10 education, skill, and experience and with knowledge
11 of the essential facts known to or readily ascertained
12 by an employee could conclude that such information
13 is protected information.

14 (10) SECRETARY.—The term “Secretary”
15 means the Secretary of Labor.

16 (11) UNFAVORABLE PERSONNEL ACTION.—The
17 term “unfavorable personnel action” means any ac-
18 tion or inaction, whether taken, recommended, or
19 threatened, directly or indirectly unfavorable to an
20 employee, or the parent, sibling, spouse, or child of
21 an employee, by any employer, including the current
22 employer of the employee, including termination,
23 performance appraisal or action, discipline, reduction
24 in pay or benefits, transfer, reassignment, demotion,
25 withholding of training or other advancement oppor-

1 tunities, removal of resources, the denial, suspen-
2 sion, or revocation of a security clearance, investiga-
3 tion, peer review, law enforcement referral, or pros-
4 ecution, filing criminal or civil charges, change in se-
5 niority rights, denial of advancement, denial of con-
6 tract, revocation of security credentials, blacklisting,
7 listing on a practitioner databank, violence or other
8 physical action, any other discrimination or other ac-
9 tion that negatively affects the terms or conditions,
10 or privileges of employment of such employee, or any
11 other conduct that would dissuade a reasonable per-
12 son from engaging in activities protected by this
13 title.

14 **SEC. 102. PROTECTION AGAINST RETALIATION OR DIS-**
15 **CRIMINATION.**

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

21 (1) communicate or disclose, without restriction
22 as to place, form, motive, context, forum, or prior
23 disclosure, including disclosure in the ordinary
24 course of the employee’s duties, to an employer or
25 manager, public body, or the media, or to the public,

1 any protected information, where disclosure is not
2 specifically prohibited by law or because such infor-
3 mation is classified, in which case the information
4 may be disclosed to an official eligible by law to re-
5 ceive such information and designated by the em-
6 ployer, or to a relevant regulatory authority, law en-
7 forcement agency, or Inspector General;

8 (2) take action to initiate, testify, cooperate, or
9 otherwise assist or participate in an investigation or
10 proceeding by a public body, or any proceeding au-
11 thorized by applicable law, or take action indicating
12 that the employee is about to testify, cooperate, or
13 otherwise assist such an investigation or proceeding;

14 (3) object to or refuse to participate in any ac-
15 tivity, policy, practice, or assigned task which the
16 employee reasonably believes is or would be in viola-
17 tion of an applicable law or endangers the safety or
18 health of the employee or others;

19 (4) inform or discuss with co-workers of the
20 employee, experts or corroborating witnesses, a rep-
21 resentative of the employee, a safety and health or
22 similar workplace committee, or a family member of
23 the employee, any protected information, where dis-
24 closure is not prohibited by law or because it is clas-
25 sified; or

1 (5) otherwise avail the employee of the rights
2 set forth in this title or other applicable law, or as-
3 sist another employee in asserting the rights avail-
4 able under this title.

5 (b) BROAD CONSTRUCTION.—It is the sense of Con-
6 gress that the provisions of this section and section 101
7 should be construed broadly to maximize this Act’s reme-
8 dial objectives.

9 **SEC. 103. ENFORCEMENT.**

10 (a) COMPLAINT.—

11 (1) IN GENERAL.—Subject to paragraph (2), an
12 employee who believes that he or she has been sub-
13 jected to an unfavorable personnel action by his or
14 her employer in violation of section 102(a) may seek
15 the relief described in this section by filing a com-
16 plaint with the Secretary as described in subsection

17 (b) not later than 180 days after the later of—

18 (A) the date on which such violation oc-
19 curs, or in the case of a violation that is a re-
20 peated violation, the last date on which such
21 violation occurs; or

22 (B) the date on which the employee knows
23 or should reasonably have known that such vio-
24 lation occurred, or in the case of a violation
25 that is a repeated violation, the last date on

1 which the employee knows or should reasonably
2 have known that such violation occurred.

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

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

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

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

23 (B) if appropriate, coordinate with the ap-
24 propriate public body having jurisdiction re-
25 garding an enforcement inspection.

1 (2) ELECTION OF PROCEDURE; EXCLUSION.—

2 (A) INFORMATION TO COMPLAINANT.—

3 Upon receipt of a complaint under this section,
4 the Secretary shall inform the complainant (or
5 any legal counsel retained by complainant) of
6 any authority that the Secretary has that may
7 be applicable to the complainant's situation.

8 (B) EFFICIENCY OF PROCEEDINGS.—The
9 Secretary shall establish procedures to prevent
10 duplicative investigations actions brought under
11 this title and any provision of law listed in sec-
12 tion 202. Such procedures shall not limit a
13 complainant's ability to bring a complaint under
14 authorities covering conduct not protected
15 under this title, nor a complainant's right to
16 proceed under any authority providing greater
17 coverage, due process protections, statute of
18 limitations, or remedies.

19 (C) AMENDMENTS TO COMPLAINTS.—The
20 Secretary shall establish rules and procedures
21 to allow complainants to amend their com-
22 plaints, which shall extend the period of time
23 for the Secretary to issue a decision as nec-
24 essary.

1 (3) DECISION TO INVESTIGATE OR DISMISS
2 COMPLAINT.—The Secretary shall, based on the cri-
3 teria set forth in paragraph (d)(1), either—

4 (A) make a decision to investigate the com-
5 plaint under paragraph (5); or

6 (B) make a final decision to dismiss the
7 complaint and inform the complainant of his or
8 her right to request a hearing under subpara-
9 graph (7) and the process for filing such a re-
10 quest.

11 (4) TEMPORARY RELIEF DURING INVESTIGA-
12 TION.—The Secretary shall, upon request of a com-
13 plainant, determine, for the purposes of issuing a
14 temporary reinstatement order described in this
15 paragraph, whether there is reasonable cause to be-
16 lieve that the complainant’s complaint makes a
17 prima facie showing that any conduct described in
18 paragraphs (1) through (5) of section 102(a) was a
19 contributing factor in the unfavorable personnel ac-
20 tion alleged in the complaint. If the Secretary deter-
21 mines that there is reasonable cause to believe that
22 the complaint makes a prima facie showing, the Sec-
23 retary shall issue a temporary reinstatement order
24 for the complainant while the Secretary is con-
25 ducting an investigation pursuant to paragraph (5).

1 If a hearing is not requested as provided for in para-
2 graph (7), such order shall be deemed a final order
3 that is not subject to judicial review during the
4 pendency of the complainant's administrative or ju-
5 dicial investigation, hearing, or appeal. Upon a de-
6 termination by the Secretary that the respondent is
7 not liable for retaliation under this title, such rein-
8 statement shall end.

9 (5) INVESTIGATION.—The Secretary shall inves-
10 tigate any complaint not dismissed under paragraph
11 (3). Before dismissing such a complaint based on
12 the inadequacy of the complaint, the Secretary shall
13 make a good faith effort to interview the complain-
14 ant to determine whether he or she has a claim. The
15 Secretary shall afford the employer (in this sub-
16 section referred to as the “respondent”) named in
17 the complaint an opportunity to submit to the Sec-
18 retary a written response to the complaint and to
19 meet with a representative of the Secretary to
20 present statements from witnesses and other evi-
21 dence. The complainant shall be provided an oppor-
22 tunity to meet with a representative of the Secretary
23 and rebut any statements or evidence provided to
24 the Secretary by the respondent named in the com-
25 plaint. In conducting such investigation, the Sec-

1 retary may issue subpoenas requiring the deposition
2 of or the attendance and testimony of witnesses and
3 the production of any evidence, including any books,
4 papers, or documents, relating to the matter under
5 investigation. The Secretary shall complete the in-
6 vestigation and issue a decision in accordance with
7 the criteria set forth in subsection (d)(2) not later
8 than 90 days after the date of receipt of a com-
9 plaint. The Secretary shall notify, in writing, the
10 complainant and the respondent named in the com-
11 plaint of the Secretary's findings.

12 (6) PRELIMINARY ORDER FOLLOWING INVES-
13 TIGATION.—If the Secretary finds that a violation of
14 section 102(a) has occurred, the Secretary shall
15 issue a preliminary order providing the relief pre-
16 scribed by paragraph (10). If a hearing is not timely
17 requested as provided for in paragraph (7), such
18 preliminary order shall be deemed a final order of
19 the Secretary that is not subject to judicial review.

20 (7) HEARING.—

21 (A) REQUEST FOR HEARING.—The com-
22 plainant or respondent may request a hearing
23 on the record before an administrative law
24 judge—

1 (i) if the complainant or the respond-
2 ent objects to a temporary reinstatement
3 order or preliminary order for relief and
4 files such objections and request for a
5 hearing not later than 30 days after receiv-
6 ing notification of such preliminary order;

7 (ii) if the complainant requests a
8 hearing not later than 30 days after receiv-
9 ing notice of the Secretary's dismissal of
10 his or her complaint; or

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

14 The filing of objections under clause (i) shall
15 not operate to stay any reinstatement remedy
16 contained in a temporary reinstatement order
17 issued pursuant to paragraph (4) or a prelimi-
18 nary order issued pursuant to paragraph (6).

19 (B) PROCEDURES.—Such hearing request
20 shall be granted, and shall be conducted expedi-
21 tiously and in accordance with the section 554
22 of title 5, United States Code. In conducting
23 such proceeding, the Secretary may issue sub-
24 poenas requiring the deposition of or the at-
25 tendance and testimony of witnesses and the

1 production of any evidence, including any
2 books, papers, or documents, relating to the
3 matter under consideration. A decision issued in
4 accordance with the criteria set forth in sub-
5 section (d)(2), shall be issued not later than 90
6 days after the date on which a hearing was re-
7 quested under this paragraph. The parties and
8 the Secretary shall promptly be notified of the
9 decision. If the administrative law judge finds
10 that a violation of section 102(a) has occurred,
11 the judge shall issue a preliminary order pro-
12 viding the relief prescribed by paragraph (10).
13 If review under paragraph (8) is not timely re-
14 quested, such preliminary order shall be deemed
15 a final order of the Secretary that is not subject
16 to judicial review.

17 (8) FURTHER ADMINISTRATIVE REVIEW.—Not
18 later than 30 days after the date of notification of
19 a decision by an administrative law judge under
20 paragraph (7), the complainant or the respondent al-
21 leged to have committed a violation of section 102(a)
22 may file objections to specified portions thereof and
23 request a further review by an administrative review
24 board designated by the Secretary under title IV (in
25 this section referred to as the “review board”). The

1 review board's review shall be limited to determining
2 whether the decision of the administrative law judge
3 was based upon substantial evidence and in accord-
4 ance with all applicable law. The decision of the ad-
5 ministrative law judge shall be stayed pending the
6 completion of further review, except for any order of
7 reinstatement which shall be stayed only upon mo-
8 tion. If review is granted, the review board shall
9 issue a final decision and order affirming or revers-
10 ing, in whole or in part, the decision under review
11 by not later than 90 days after receipt of the admin-
12 istrative appeal. If it is determined that a violation
13 of section 102 has occurred, the review board shall
14 issue a final decision and order providing relief au-
15 thorized under paragraph (10). Such decision and
16 order shall constitute final agency action with re-
17 spect to the matter appealed. If judicial review
18 under paragraph (12) is not timely requested, such
19 preliminary order shall be deemed a final order of
20 the Secretary that is not subject to judicial review.

21 (9) SETTLEMENT.—At any time before issuance
22 of a final order, a proceeding under this subsection
23 may be terminated on the basis of a settlement
24 agreement approved by the Secretary, administrative
25 law judge, or review board conducting a hearing, the

1 complainant, and the employer alleged to have com-
2 mitted the violation. The Secretary, administrative
3 law judge, or review board conducting a hearing may
4 not accept any settlement that contains conditions
5 that are contrary to the public policy of this title, in-
6 cluding any restrictions on activity protected by this
7 Act, and the right to seek future employment with
8 an employer other than a specific employer named in
9 the underlying complaint without discrimination.

10 (10) REMEDY.—If, in response to a complaint
11 filed under subsection (a)(1), the Secretary, adminis-
12 trative law judge, or the review board determines
13 that a violation of section 102(a) has occurred, the
14 Secretary, administrative law judge, or review board
15 shall order the respondent who committed such vio-
16 lation to—

17 (A) take affirmative action to abate the
18 violation;

19 (B) reinstate the complainant to his or her
20 former position and with the same seniority sta-
21 tus together with the compensation (including
22 back pay and interest) and restore the terms,
23 rights, conditions, and privileges associated with
24 his or her employment, and provide preference
25 to the complainant to transfer to any available

1 position that provides equivalent or better com-
2 pensation, terms, conditions, and privileges of
3 employment for which the complainant is quali-
4 fied;

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

8 (D) expunge all warnings, reprimands, or
9 derogatory references that have been placed in
10 paper or electronic records or databases of any
11 type relating to the actions by the complainant
12 that gave rise to the unfavorable personnel ac-
13 tion, and, at the complainant's direction, send
14 a copy of the decision on the complaint to any
15 person whom the complainant reasonably be-
16 lieves may have received such unfavorable infor-
17 mation; and

18 (E) post appropriate public notice of the
19 violation.

20 If such an order is issued under this paragraph, the
21 Secretary, administrative law judge, or the review
22 board, at the request of the complainant, shall as-
23 sess against the respondent against whom the order
24 is issued a sum equal to the aggregate amount of all
25 costs and expenses (including attorneys' and expert

1 witness fees) reasonably incurred, as determined by
2 the Secretary, administrative law judge, or the re-
3 view board, by the complainant for, or in connection
4 with, the bringing the complaint upon which the
5 order was issued.

6 (11) ENFORCEMENT OF ORDER.—Whenever
7 any respondent has failed to comply with a final
8 order issued under this subsection, including a final
9 order for temporary relief, the Secretary or the com-
10 plainant on whose behalf the order was issued may
11 file a civil action in the United States district court
12 for the district in which the violation was found to
13 occur to enforce such order. If both the Secretary
14 and the person on whose behalf the order was issued
15 file such an action for enforcement, the action of the
16 Secretary shall take precedence. In actions brought
17 under this paragraph, the district courts shall have
18 jurisdiction to grant all appropriate relief including,
19 injunctive relief, compensatory damages, and reason-
20 able attorneys and expert witness fees. In addition
21 to enforcing the order, the court shall assess a pen-
22 alty of not greater than \$10,000 a month against
23 any person who fails to comply with a final order
24 issued under this subsection, which shall be awarded
25 to the party seeking enforcement.

1 (12) JUDICIAL REVIEW.—

2 (A) APPEAL TO COURT OF APPEALS.—Any
3 complainant or respondent adversely affected or
4 aggrieved by a final order issued under this
5 subsection for which review is available, may
6 obtain review of the order in the United States
7 Court of Appeals for the circuit in which the
8 violation, with respect to which the order was
9 issued, allegedly occurred or the circuit in which
10 the complainant resided on the date of such vio-
11 lation. The petition for review shall be filed not
12 later than 60 days after the date the final order
13 of the Secretary, administrative law judge, or
14 the review board was received. Review shall con-
15 form to chapter 7 of title 5, United States
16 Code. The commencement of proceedings under
17 this subparagraph shall not, unless ordered by
18 the court, operate as a stay of the order.

19 (B) LIMITATION ON COLLATERAL AT-
20 TACK.—An order of the Secretary with respect
21 to which review could have been obtained under
22 subparagraph (A) shall not be subject to judi-
23 cial review in any criminal or other civil pro-
24 ceeding.

1 (13) INACTION BY THE SECRETARY, ADMINIS-
2 TRATIVE LAW JUDGE, OR THE REVIEW BOARD.—If,
3 after a hearing is requested pursuant to paragraph
4 (7) or a review is requested under paragraph (8),
5 the administrative law judge or the review board, re-
6 spectively, has not issued a final decision within 90
7 days after such hearing or review is requested, the
8 complainant may bring an action at law or equity
9 for de novo review in the appropriate district court
10 of the United States, as described in subsection (c),
11 which shall have jurisdiction over such an action
12 without regard to the amount in controversy, and
13 which action shall, at the request of either party to
14 such action, be tried by the court with a jury.

15 (c) DISTRICT COURT PROCEDURE.—

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

21 (2) TEMPORARY RELIEF.—The court shall,
22 upon request of the complainant, determine whether
23 there is reasonable cause to believe that the com-
24 plainant makes the prima facie showing described in
25 subsection (b)(4), and if the court so determines,

1 issue an order providing for temporary reinstatement of the complainant.

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

9 (4) RELIEF.—The Court shall have jurisdiction
10 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.

18 (d) CRITERIA FOR DISMISSAL AND FOR DECISION.—

19 (1) DISMISSAL.—The Secretary shall dismiss a
20 complaint filed under this section unless that complainant alleges facts in the complaint, supplemented
21 as appropriate through interviews, affidavits, or
22 other relevant evidence, which could conceivably support a prima facie claim that conduct described in
23 paragraphs (1) through (5) of section 102(a) was a
24
25

1 contributing factor in the unfavorable personnel ac-
2 tion alleged in the complaint. The Secretary shall
3 not dismiss a complaint without interviewing a com-
4 plainant and providing him or her the opportunity to
5 provide additional evidence in support of his or her
6 prima facie claim. An administrative law judge or
7 the review board may refer to the Secretary for fur-
8 ther investigation any appeal from the Secretary's
9 dismissal in which the administrative law judge or
10 review board determines the complainant alleges
11 facts that could conceivably support such a prima
12 facie claim.

13 (2) DECISION.—The Secretary, administrative
14 law judge, administrative review board, or a court
15 may determine that a violation of section 102(a) has
16 occurred only if the complainant demonstrates that
17 any conduct described in paragraphs (1) through (5)
18 of section 102(a) was a contributing factor in the
19 unfavorable personnel action alleged in the com-
20 plaint. Relief may not be ordered if the respondent
21 demonstrates by clear and convincing evidence that
22 the respondent would have taken the same unfavor-
23 able personnel action in the absence of the conduct
24 described in paragraphs (1) through (5) of section
25 102(a).

1 **SEC. 104. RESTRICTIONS ON WHISTLEBLOWING PROHIB-**
2 **ITED; CONFIDENTIALITY OF WHISTLE-**
3 **BLOWER.**

4 (a) RESTRICTIONS ON REPORTING PROHIBITED; IN-
5 VALID CONTRACT CLAUSES.—No employer shall by con-
6 tract, policy, or procedure prohibit or restrict any person
7 from engaging in any action for which a protection against
8 discrimination or retaliation is provided under section 102.
9 Any clause or provision of any contract for employment
10 or contract with an independent contractor for the provi-
11 sion of services which purports to limit or restrain an indi-
12 vidual from engaging in any of the actions described in
13 paragraphs (1) through (5) of section 102(a) as a condi-
14 tion of employment or a condition of the contract, whether
15 in force before, on, or after the date of enactment of this
16 title, shall be invalid and void as violative of public policy
17 as established by this title.

18 (b) RESTRICTIONS ON RELIEF PROVIDED UNDER
19 THIS ACT PROHIBITED; INVALID ARBITRATION
20 CLAUSES.—Any clause of any agreement between an em-
21 ployer and an employee that requires arbitration of a
22 claim arising under this title, whether in force before, on,
23 or after the date of enactment of this Act, shall not be
24 enforceable. An employee may not submit to binding arbi-
25 tration of a claim arising under this title unless the em-
26 ployee's agreement is made after the employee becomes

1 aware of an unfavorable personnel action and such agree-
2 ment is made in direct contemplation of that specific unfa-
3 vorable personnel action. No agreement, settlement, or de-
4 cision reached in arbitration shall be enforced that violates
5 the public policies established under this Act, including
6 any restriction or activity protected by this Act.

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

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

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

18 (3) as otherwise required by law.

19 An employee of a public body shall provide reasonable ad-
20 vance notice to the affected employee if disclosure of that
21 person’s identity or identifying information is to occur. An
22 employee of a public body who is grossly negligent in dis-
23 closing the identity of a complainant in violation of this
24 subsection may be considered to be acting outside such
25 employee’s official duties.

1 **SEC. 105. NONPREEMPTION.**

2 (a) EFFECT ON OTHER LAWS.—Nothing in this title
3 shall be construed to preempt any law, rule, or regulation
4 of a State or political subdivision of a State and nothing
5 in this title shall be construed or interpreted to impair
6 or diminish in any way the authority of any State to enact
7 and enforce any law which provides equivalent or greater
8 protections for employees engaging in conduct protected
9 under this title.

10 (b) RIGHTS RETAINED BY WHISTLEBLOWERS.—Ex-
11 cept as provided in section 103(b)(2)(A), nothing in this
12 title shall be construed to diminish the rights, privileges,
13 or remedies of any employee under any Federal or State
14 law, or under any collective bargaining agreement.

15 **SEC. 106. EFFECTIVE DATE AND RULES.**

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

23 **TITLE II—WHISTLEBLOWER**
24 **PROTECTION OFFICE**

25 **SEC. 201. ESTABLISHMENT.**

26 (a) ESTABLISHMENT AND PURPOSE.—

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

14 (2) CONSTRUCTION.—Nothing in this title shall
15 in any way remove or transfer the authorities cur-
16 rently under the jurisdiction of the Mine Safety and
17 Health Administration and the Federal Mine Safety
18 and Health Review Commission.

19 (b) ADMINISTRATOR.—The Whistleblower Protection
20 Office shall be under the direction of an Administrator of
21 Whistleblower Protection, referred to in this title as “the
22 Administrator”, who shall be appointed by the President
23 with the advice and consent of the Senate. The Adminis-
24 trator’s compensation shall be set at level IV of the Execu-
25 tive Schedule.

1 (c) APPOINTMENT OF PERSONNEL.—

2 (1) APPOINTMENT AND COMPENSATION.—The
3 Administrator may, subject to the civil service laws,
4 appoint such employees as the Administrator con-
5 siders necessary to carry out the functions and du-
6 ties of the Office, and shall fix their compensation
7 in accordance with the provisions of chapter 51 and
8 subchapter III of chapter 53 of title 5, United
9 States Code.

10 (d) TRANSFER OF PERSONNEL; BUDGET.—

11 (1) BUDGETS AND PERSONNEL.—All unex-
12 pended balances of appropriations, personnel, prop-
13 erty, records, obligations, and commitments which
14 are used primarily with respect to any functions
15 transferred under the provisions of paragraph (1) to
16 the Administrator shall be transferred to the Office,
17 as appropriate. The transfer of personnel pursuant
18 to this paragraph shall be without reduction in clas-
19 sification or compensation for 1 year after such
20 transfer, except that the Administrator shall have
21 full authority to assign personnel during such 1-year
22 period in order to efficiently carry out functions
23 transferred to the Administrator under this title.

24 (2) CONTINUATION.—All orders, decisions, de-
25 terminations, rules, and regulations, (A) which have

1 been issued, made, granted, or allowed to become ef-
2 fective in the exercise of functions which are trans-
3 ferred under this subsection; and (B) which are in
4 effect at the time this section takes effect, shall con-
5 tinue in effect according to their terms until modi-
6 fied, terminated, superseded, set aside, revoked, or
7 repealed by the Secretary, the Administrator, or
8 other authorized officials, by any court of competent
9 jurisdiction, or by operation of law. The provisions
10 of this subsection shall not affect any proceedings
11 pending at the time this title takes effect. The provi-
12 sions of this section shall not affect suits commenced
13 prior to the date this section takes effect and in all
14 such suits proceedings shall be had, appeals taken,
15 and judgments rendered, in the same manner and
16 effect as if this section had not been enacted.

17 (e) COORDINATION.—The Office shall, where appro-
18 priate, take all the steps necessary, including entering into
19 memorandum of understanding, to coordinate investiga-
20 tion and adjudication of retaliation claims under this Act
21 with the Occupational Safety and Health Administration
22 and other appropriate public bodies having jurisdiction
23 over the enforcement of the underlying violations of appli-
24 cable law.

1 (f) PRINCIPAL OFFICE.—The principal location of
2 the Office shall be in the District of Columbia, but the
3 Administrator or a duly authorized representative may ex-
4 ercise any or all of the Administrator’s powers in any
5 place.

6 **SEC. 202. OTHER PRIVATE SECTOR WHISTLEBLOWER PRO-**
7 **TECTIONS.**

8 (a) PROVISIONS TO BE ENFORCED IN ACCORDANCE
9 WITH THIS ACT.—Notwithstanding any procedures set
10 forth in the following provisions of law, such provisions
11 shall, after the effective date of this Act, be administered
12 in accordance with this Act by the Office established by
13 this title:

14 (1) Sections 20109, 30171, 31105, 42121, and
15 60129 of title 49, United States Code.

16 (2) Section 211 of the Asbestos Hazard Emer-
17 gency Response Act of 1986 (15 U.S.C. 2651).

18 (3) Section 7 of the International Safe Con-
19 tainer Act (46 U.S.C. 1506).

20 (4) Section 1450 of the Safe Drinking Water
21 Act of 1974 (42 U.S.C. 300j–9i).

22 (5) Section 507 of the Federal Water Pollution
23 Control Act, Amendments of 1972 (33 U.S.C.
24 1367).

1 (6) Section 40 of the Consumer Product Safety
2 Act (15 U.S.C. 2087).

3 (7) Section 23(a)(1) through (3) of the Toxic
4 Substances Control Act (15 U.S.C. 2622).

5 (8) Section 7001 of the Solid Waste Disposal
6 Act of 1976 (42 U.S.C. 6971).

7 (9) Section 322 of the Clean Air Act, amend-
8 ments of 1977 (42 U.S.C. 7622).

9 (10) Section 10 of the Comprehensive Environ-
10 mental Response, Compensation, and Liability Act
11 of 1980 (42 U.S.C. 9610).

12 (11) Section 211 of the Energy Reorganization
13 Act of 1978 (42 U.S.C. 5851).

14 (12) Section 806 of the Sarbanes-Oxley Act of
15 2002 (18 U.S.C. 1514A).

16 (13) Section 1413 of the Implementing Rec-
17 ommendations of the 9/11 Commission Act of 2007
18 (6 U.S.C. 1142).

19 (14) Section 18C of the Fair Labor Standards
20 Act of 1938 (29 U.S.C. 218C).

21 (15) Section 21F of the Securities Exchange
22 Act of 1934 (15 U.S.C. 78u-6).

23 (16) Section 23 of the Commodity Exchange
24 Act (7 U.S.C. 26).

1 (17) The Seaman’s Protection Act (46 U.S.C.
2 2114).

3 (18) Section 1012 of the Federal Food, Drug,
4 and Cosmetic Act (21 U.S.C. 399d).

5 (b) CLARIFICATION.—Any protections, rights, privi-
6 leges, or remedies available to a covered employee under
7 the provisions of law described in subsection (a), which
8 are additional to and not inconsistent with those set forth
9 in section 102, shall not be limited by subsection (a). To
10 the extent that any such provisions are inconsistent with
11 section 102, such provisions shall, at the request of a com-
12 plainant, be given effect over any inconsistent provision
13 in section 102.

14 **SEC. 203. DUTIES, POWERS, AND FUNCTIONS.**

15 (a) SUBPOENAS, EVIDENCE, AND TESTIMONY.—In
16 carrying out its duties under title I of this Act or under
17 any of the provisions of law referred to by section 202,
18 the Administrator may issue subpoenas requiring the dep-
19 osition of or the attendance and testimony of witnesses
20 and the production of any evidence, including any books,
21 papers, or documents, relating to any matter under inves-
22 tigation by the Commission, or required in connection with
23 a hearing.

24 (b) MONITORING OF COMPLAINTS REMOVED TO
25 FEDERAL DISTRICT COURT.—The Administrator shall re-

1 view the decision in each action removed to a district court
2 of the United States under section 103(b)(11) to deter-
3 mine whether an employer violated an applicable law, and
4 upon determining that an applicable law was so violated,
5 notify the appropriate public body having jurisdiction over
6 the violation of the applicable law regarding such violation.

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

11 (d) EFFECTIVE DATE.—The Administrator shall
12 begin to carry out the duties and exercise the powers set
13 forth in this title on the date that is 1 year after the date
14 of enactment of this Act, or such earlier date as the Sec-
15 retary may determine that the Office is sufficiently estab-
16 lished, staffed, and funded.

17 (e) ANNUAL REPORTS.—

18 (1) ADMINISTRATOR.—The Administrator shall
19 annually—

20 (A) transmit a report to Congress detailing
21 the activities of the Office during the previous
22 year, including information relating to the num-
23 ber and nature of complaints filed, the number
24 of merit and non-merit cases, the number of
25 such complaints disposed of without investiga-

1 tion, the number of complaints that have not
2 received an adjudication within the time period
3 required under this Act and the duration of the
4 delay for such complaints, investigations con-
5 ducted, orders issued, and statistics related to
6 settlements; and

7 (B) make available the full text of all set-
8 tlements approved by the Office, following the
9 elimination from such text of all personal iden-
10 tifying information about the complainant, the
11 employer, and any other party.

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

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

17 (1) ONE YEAR AFTER ENACTMENT.—Not later
18 than 6 months after the date of enactment of this
19 Act, the Comptroller General shall initiate a review
20 of the Secretary’s progress in establishing the Whis-
21 tleblower Protection Office as required under section
22 201, and not later than 1 year after such date of en-
23 actment, provide a report to the Congress on the ef-
24 fectiveness of the transition, including—

1 (A) whether existing funds, staff, informa-
2 tion systems, and authorities have been prop-
3 erly transferred to the Office and make rec-
4 ommendations as necessary; and

5 (B) the status of cases currently before the
6 Office, the progress made by the Office in elimi-
7 nating the current backlog of whistleblower
8 cases, and the plans of the Office for ensuring
9 that the backlog is eliminated.

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

13 (A) whether the Office’s operational proce-
14 dures have been established, whether necessary
15 regulations have been promulgated, whether
16 there are adequate internal controls, whether
17 program outcomes are being effectively meas-
18 ured, whether previous recommendations re-
19 garding this program have been effectively im-
20 plemented, whether investigative and super-
21 visory staff have received necessary training
22 and equipment, whether the Office is fulfilling
23 its mission to fairly, efficiently, and effectively
24 investigate whistleblower complaints, assure

1 timely enforcement, and to fully implement the
2 statutory authorities assigned to the Office; and

3 (B) the information described in paragraph
4 (1)(B).

5 **TITLE III—CONFORMING** 6 **AMENDMENTS**

7 **SEC. 301. OCCUPATIONAL SAFETY AND HEALTH ACT OF**
8 **1970.**

9 (a) **EMPLOYEE ACTIONS.**—Section 11(c)(1) of the
10 Occupational Safety and Health Act of 1970 (29 U.S.C.
11 660(c)(1)) is amended—

12 (1) by striking “discharge” and all that follows
13 through “because such” and inserting the following:
14 “discharge or cause to be discharged, or in any man-
15 ner discriminate against or cause to be discriminated
16 against, any employee because—

17 “(A) such”;

18 (2) by striking “this Act or has” and inserting
19 the following: “this Act;

20 “(B) such employee has”;

21 (3) by striking “in any such proceeding or be-
22 cause of the exercise” and inserting the following:
23 “before Congress or in any Federal or State pro-
24 ceeding related to safety or health;

1 “(C) such employee has refused to violate any
2 provision of this Act; or

3 “(D) of the exercise”; and

4 (4) by inserting before the period at the end the
5 following: “, including the reporting of any injury,
6 illness, or unsafe condition to the employer, agent of
7 the employer, safety and health committee involved,
8 or employee safety and health representative in-
9 volved”.

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

13 “(2) PROHIBITION OF RETALIATION.—(A) No
14 person shall discharge, or cause to be discharged, or
15 in any manner discriminate against, or cause to be
16 discriminated against, an employee for refusing to
17 perform the employee’s duties if the employee has a
18 reasonable apprehension that performing such duties
19 would result in serious injury to, or serious impair-
20 ment of the health of, the employee or other employ-
21 ees.

22 “(B) For purposes of subparagraph (A), the
23 circumstances causing the employee’s good-faith be-
24 lief that performing such duties would pose a safety
25 or health hazard shall be of such a nature that a

1 reasonable person, under the circumstances con-
2 fronting the employee, would conclude that there is
3 such a hazard. In order to qualify for protection
4 under this paragraph, the employee, when prac-
5 ticable, shall have communicated or attempted to
6 communicate the safety or health concern to the em-
7 ployer and have not received from the employer a re-
8 sponse reasonably calculated to allay such concern.”.

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

12 “(3) COMPLAINT.—Any employee who believes
13 that the employee has been discharged, disciplined,
14 or otherwise discriminated against by any person in
15 violation of paragraph (1) or (2) may seek relief for
16 such violation by filing a complaint with the Sec-
17 retary under paragraph (5).

18 “(4) STATUTE OF LIMITATIONS.—

19 “(A) IN GENERAL.—An employee may take
20 the action permitted by paragraph (3)(A) not
21 later than 180 days after the later of—

22 “(i) the date on which an alleged vio-
23 lation of paragraph (1) or (2) occurs; or

1 “(ii) the date on which the employee
2 knows or should reasonably have known
3 that such alleged violation occurred.

4 “(B) REPEAT VIOLATION.—Except in
5 cases when the employee has been discharged,
6 a violation of paragraph (1) or (2) shall be con-
7 sidered to have occurred on the last date an al-
8 leged repeat violation occurred.

9 “(5) INVESTIGATION.—

10 “(A) IN GENERAL.—An employee may,
11 within the time period required under para-
12 graph (4)(B), file a complaint with the Sec-
13 retary alleging a violation of paragraph (1) or
14 (2). If the complaint alleges a prima facie case,
15 the Secretary shall conduct an investigation of
16 the allegations in the complaint, which—

17 “(i) shall include—

18 “(I) interviewing the complain-
19 ant;

20 “(II) providing the respondent an
21 opportunity to—

22 “(aa) submit to the Sec-
23 retary a written response to the
24 complaint; and

1 “(bb) meet with the Sec-
2 retary to present statements from
3 witnesses or provide evidence;
4 and

5 “(III) providing the complainant
6 an opportunity to—

7 “(aa) receive any statements
8 or evidence provided to the Sec-
9 retary;

10 “(bb) meet with the Sec-
11 retary; and

12 “(cc) rebut any statements
13 or evidence; and

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

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

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

22 “(ii) issue a decision granting or de-
23 nying relief.

24 “(6) PRELIMINARY ORDER FOLLOWING INVES-
25 TIGATION.—If, after completion of an investigation

1 under paragraph (5)(A), the Secretary finds reason-
2 able cause to believe that a violation of paragraph
3 (1) or (2) has occurred, the Secretary shall issue a
4 preliminary order providing relief authorized under
5 paragraph (14) at the same time the Secretary
6 issues a decision under paragraph (5)(B). If a de
7 novo hearing is not requested within the time period
8 required under paragraph (7)(A)(i), such prelimi-
9 nary order shall be deemed a final order of the Sec-
10 retary and is not subject to judicial review.

11 “(7) HEARING.—

12 “(A) REQUEST FOR HEARING.—

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

16 “(I) by the complainant or re-
17 spondent within 30 days after receiv-
18 ing notification of a decision granting
19 or denying relief issued under para-
20 graph (5)(B) or paragraph (6) respec-
21 tively;

22 “(II) by the complainant within
23 30 days after the date the complaint
24 is dismissed without investigation by

1 the Secretary under paragraph (5)(A);
2 or

3 “(III) by the complainant within
4 120 days after the date of filing the
5 complaint, if the Secretary has not
6 issued a decision under paragraph
7 (5)(B).

8 “(ii) REINSTATEMENT ORDER.—The
9 request for a hearing shall not operate to
10 stay any preliminary reinstatement order
11 issued under paragraph (6).

12 “(B) PROCEDURES.—

13 “(i) IN GENERAL.—A hearing re-
14 quested under this paragraph shall be con-
15 ducted expeditiously and in accordance
16 with rules established by the Secretary for
17 hearings conducted by administrative law
18 judges.

19 “(ii) SUBPOENAS; PRODUCTION OF
20 EVIDENCE.—In conducting any such hear-
21 ing, the administrative law judge may issue
22 subpoenas. The respondent or complainant
23 may request the issuance of subpoenas
24 that require the deposition of, or the at-
25 tendance and testimony of, witnesses and

1 the production of any evidence (including
2 any books, papers, documents, or record-
3 ings) relating to the matter under consid-
4 eration.

5 “(iii) DECISION.—The administrative
6 law judge shall issue a decision not later
7 than 90 days after the date on which a
8 hearing was requested under this para-
9 graph and promptly notify, in writing, the
10 parties and the Secretary of such decision,
11 including the findings of fact and conclu-
12 sions of law. If the administrative law
13 judge finds that a violation of paragraph
14 (1) or (2) has occurred, the judge shall
15 issue an order for relief under paragraph
16 (14). If review under paragraph (8) is not
17 timely requested, such order shall be
18 deemed a final order of the Secretary that
19 is not subject to judicial review.

20 “(8) ADMINISTRATIVE APPEAL.—

21 “(A) IN GENERAL.—Not later than 30
22 days after the date of notification of a decision
23 and order issued by an administrative law judge
24 under paragraph (7), the complainant or re-
25 spondent may file, with objections, an adminis-

1 trative appeal with an administrative review
2 body designated by the Secretary under title IV
3 of the Private Sector Whistleblower Protection
4 Streamlining Act of 2012 (in this subsection re-
5 ferred to as the ‘review board’).

6 “(B) STANDARD OF REVIEW.—In review-
7 ing the decision and order of the administrative
8 law judge, the review board shall affirm the de-
9 cision and order if it is determined that the fac-
10 tual findings set forth therein are supported by
11 substantial evidence and the decision and order
12 are made in accordance with applicable law.

13 “(C) DECISIONS.—If the review board
14 grants an administrative appeal, the review
15 board shall issue a final decision and order af-
16 firming or reversing, in whole or in part, the
17 decision under review by not later than 90 days
18 after receipt of the administrative appeal. If it
19 is determined that a violation of paragraph (1)
20 or (2) has occurred, the review board shall issue
21 a final decision and order providing relief au-
22 thorized under paragraph (14). Such decision
23 and order shall constitute final agency action
24 with respect to the matter appealed.

1 “(9) SETTLEMENT IN THE ADMINISTRATIVE
2 PROCESS.—

3 “(A) IN GENERAL.—At any time before
4 issuance of a final order, an investigation or
5 proceeding under this subsection may be termi-
6 nated on the basis of a settlement agreement
7 entered into by the parties.

8 “(B) PUBLIC POLICY CONSIDERATIONS.—
9 Neither the Secretary, an administrative law
10 judge, nor the review board conducting a hear-
11 ing under this subsection shall accept a settle-
12 ment that contains conditions conflicting with
13 the rights protected under this Act or that are
14 contrary to public policy, including a restriction
15 on a complainant’s right to future employment
16 with employers other than the specific employ-
17 ers named in a complaint.

18 “(10) INACTION BY THE REVIEW BOARD OR AD-
19 MINISTRATIVE LAW JUDGE.—

20 “(A) IN GENERAL.—The complainant may
21 bring a de novo action described in subpara-
22 graph (B) if—

23 “(i) an administrative law judge has
24 not issued a decision and order within the

1 90-day time period required under para-
2 graph (7)(B)(iii); or

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

7 “(B) DE NOVO ACTION.—Such de novo ac-
8 tion may be brought at law or equity in the
9 United States district court for the district
10 where a violation of paragraph (1) or (2) alleg-
11 edly occurred or where the complainant resided
12 on the date of such alleged violation. The court
13 shall have jurisdiction over such action without
14 regard to the amount in controversy and to
15 order appropriate relief under paragraph (14).
16 Such action shall, at the request of either party
17 to such action, be tried by the court with a
18 jury.

19 “(11) JUDICIAL REVIEW.—

20 “(A) TIMELY APPEAL TO THE COURT OF
21 APPEALS.—Any party adversely affected or ag-
22 grieved by a final decision and order issued
23 under this subsection may obtain review of such
24 decision and order in the United States Court
25 of Appeals for the circuit where the violation,

1 with respect to which such final decision and
2 order was issued, allegedly occurred or where
3 the complainant resided on the date of such al-
4 leged violation. To obtain such review, a party
5 shall file a petition for review not later than 60
6 days after the final decision and order was
7 issued. Such review shall conform to chapter 7
8 of title 5, United States Code. The commence-
9 ment of proceedings under this subparagraph
10 shall not, unless ordered by the court, operate
11 as a stay of the final decision and order.

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

17 “(12) ENFORCEMENT OF ORDER.—If a re-
18 spondent fails to comply with an order issued under
19 this subsection, the Secretary or the complainant on
20 whose behalf the order was issued may file a civil ac-
21 tion for enforcement in the United States district
22 court for the district in which the violation was
23 found to occur to enforce such order. If both the
24 Secretary and the complainant file such action, the
25 action of the Secretary shall take precedence. The

1 district court shall have jurisdiction to grant all ap-
2 propriate relief described in paragraph (14).

3 “(13) BURDENS OF PROOF.—

4 “(A) CRITERIA FOR DETERMINATION.—In
5 making a determination or adjudicating a com-
6 plaint pursuant to this subsection, the Sec-
7 retary, administrative law judge, review board,
8 or a court may determine that a violation of
9 paragraph (1) or (2) has occurred only if the
10 complainant demonstrates that any conduct de-
11 scribed in paragraph (1) or (2) with respect to
12 the complainant was a contributing factor in
13 the adverse action alleged in the complaint.

14 “(B) PROHIBITION.—Notwithstanding sub-
15 paragraph (A), a decision or order that is favor-
16 able to the complainant shall not be issued in
17 any administrative or judicial action pursuant
18 to this subsection if the respondent dem-
19 onstrates by clear and convincing evidence that
20 the respondent would have taken the same ad-
21 verse action in the absence of such conduct.

22 “(14) RELIEF.—

23 “(A) ORDER FOR RELIEF.—If the Sec-
24 retary, administrative law judge, review board,
25 or a court determines that a violation of para-

1 graph (1) or (2) has occurred, the Secretary or
2 court, respectively, shall have jurisdiction to
3 order all appropriate relief, including injunctive
4 relief and compensatory and exemplary dam-
5 ages, including—

6 “(i) affirmative action to abate the
7 violation;

8 “(ii) reinstatement without loss of po-
9 sition or seniority, and restoration of the
10 terms, rights, conditions, and privileges as-
11 sociated with the complainant’s employ-
12 ment, including opportunities for pro-
13 motions to positions with equivalent or bet-
14 ter compensation for which the complain-
15 ant is qualified;

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

20 “(iv) expungement of all warnings,
21 reprimands, or derogatory references that
22 have been placed in paper or electronic
23 records or databases of any type relating
24 to the actions by the complainant that
25 gave rise to the unfavorable personnel ac-

1 tion, and, at the complainant’s direction,
2 transmission of a copy of the decision on
3 the complaint to any person whom the
4 complainant reasonably believes may have
5 received such unfavorable information; and

6 “(v) notwithstanding section 9, civil
7 penalties not to exceed \$100,000, which
8 may be assessed by the Secretary as part
9 of a preliminary order or by the adminis-
10 trative law judge following a request by the
11 Secretary.

12 “(B) ATTORNEYS’ FEES AND COSTS.—If
13 the Secretary or an administrative law judge,
14 review board, or court grants an order for relief
15 under subparagraph (A), the Secretary, admin-
16 istrative law judge, review board, or court, re-
17 spectively, shall assess, at the request of the
18 employee against the employer—

19 “(i) reasonable attorneys’ fees; and

20 “(ii) costs (including expert witness
21 fees) reasonably incurred, as determined
22 by the Secretary, administrative law judge,
23 review board, or court, respectively, in con-
24 nection with bringing the complaint upon
25 which the order was issued.

1 “(15) PROCEDURAL RIGHTS.—The rights and
2 remedies provided for in this subsection may not be
3 waived by any agreement, policy, form, or condition
4 of employment, including by any pre-dispute arbitra-
5 tion agreement or collective bargaining agreement.

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

11 “(17) ELECTION OF VENUE.—

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

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

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

21 “(B) REFERRALS.—If—

22 “(i) the Secretary receives a complaint
23 pursuant to subparagraph (A)(i), the Sec-
24 retary shall not refer such complaint to a
25 State plan administrator for resolution; or

1 “(ii) a State plan administrator re-
2 ceives a complaint pursuant to subpara-
3 graph (A)(ii), the State plan administrator
4 shall not refer such complaint to the Sec-
5 retary for resolution.”.

6 (d) RELATION TO ENFORCEMENT.—Section 17(j) of
7 such Act (29 U.S.C. 666) is amended by inserting before
8 the period the following: “, including the history of viola-
9 tions under section 11(c)”.

10 (e) EFFECTIVE DATE.—

11 (1) GENERAL RULE.—Except as provided in
12 paragraph (1), the amendments made by this section
13 shall take effect not later than 90 days after the
14 date of the enactment of this Act.

15 (2) EXCEPTION FOR STATES AND POLITICAL
16 SUBDIVISIONS.—Notwithstanding paragraph (1), a
17 State that has a State plan approved under section
18 18 of the Occupational Safety and Health Act of
19 1970 (29 U.S.C. 667) shall amend its State plan to
20 conform with the requirements of the amendments
21 made by this section not later than 12 months after
22 the date of enactment of this Act, except that if the
23 State’s legislature is not in session during the 12-
24 month period beginning on the date of the enact-
25 ment of this Act, the Secretary of Labor may extend

1 the period for the State to make such amendments
2 to its State plan by not more than 12 months. Such
3 amendments to the State plan shall take effect not
4 later than 90 days after the adoption of such
5 amendments by such State.

6 **SEC. 302. FEDERAL MINE SAFETY AND HEALTH ACT.**

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

10 “(c) PROTECTION FROM RETALIATION.—

11 “(1) RETALIATION PROHIBITED.—

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

1 “(i) such miner or other employee,
2 representative, or applicant for employ-
3 ment—

4 “(I) has filed or made a com-
5 plaint, is about to file or make a com-
6 plaint (or is perceived to have filed or
7 be about to file such a complaint), in-
8 cluding a complaint notifying the op-
9 erator or the operator’s agent, or the
10 representative of the miners at the
11 coal or other mine of an alleged dan-
12 ger or safety or health violation in a
13 coal or other mine;

14 “(II) instituted or caused to be
15 instituted, or is about to institute or
16 cause to be instituted (or is perceived
17 to have instituted or be about to insti-
18 tute such a complaint), any pro-
19 ceeding under or related to this Act or
20 has testified or is about to testify in
21 any such proceeding or because of the
22 exercise by such miner or other em-
23 ployee, representative, or applicant for
24 employment on behalf of him or her-
25 self or others of any right afforded by

1 this Act, or has reported any injury or
2 illness to an operator, or agent;

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

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

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

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

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

1 to the miner or other employee or to any
2 other miner or employee.

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

19 “(2) COMPLAINT.—Any miner or other em-
20 ployee or representative of miners or applicant for
21 employment who believes that he or she has been
22 discharged, disciplined, or otherwise discriminated
23 against by any person in violation of paragraph (1)
24 may file a complaint with the Secretary alleging

1 such discrimination not later than 180 days after
2 the later of—

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

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

12 “(3) INVESTIGATION AND HEARING.—

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

23 “(B) REINSTATEMENT.—If the Secretary
24 finds that such complaint was not frivolously
25 brought, the Commission, on an expedited basis

1 upon application of the Secretary, shall order
2 the immediate reinstatement of the miner or
3 other employee until there has been a final
4 Commission order disposing of the underlying
5 complaint of the miner or other employee. If ei-
6 ther the Secretary or the miner or other em-
7 ployee pursues the underlying complaint, such
8 reinstatement shall remain in effect until the
9 Commission has disposed of such complaint on
10 the merits, regardless of whether the Secretary
11 pursues such complaint by filing a complaint
12 under subparagraph (D) or the miner or other
13 employee pursues such complaint by filing an
14 action under paragraph (4). If neither the Sec-
15 retary nor the miner or other employee pursues
16 the underlying complaint within the periods
17 specified in paragraph (4), such reinstatement
18 shall remain in effect until such time as the
19 Commission may, upon motion of the operator
20 and after providing notice and an opportunity
21 to be heard to the parties, vacate such com-
22 plaint for failure to prosecute.

23 “(C) INVESTIGATION.—Such investigation
24 shall include interviewing the complainant
25 and—

1 “(i) providing the respondent an op-
2 portunity to submit to the Secretary a
3 written response to the complaint and to
4 present statements from witnesses or pro-
5 vide evidence; and

6 “(ii) providing the complainant an op-
7 portunity to receive any statements or evi-
8 dence provided to the Secretary and to
9 provide additional information or evidence,
10 or rebut any statements or evidence.

11 “(D) ACTION BY THE SECRETARY.—If,
12 upon such investigation, the Secretary deter-
13 mines that the provisions of this subsection
14 have been violated, the Secretary shall imme-
15 diately file a complaint with the Commission,
16 with service upon the alleged violator and the
17 miner or other employee, applicant for employ-
18 ment, and representative of miners alleging
19 such discrimination or interference and propose
20 an order granting appropriate relief.

21 “(E) ACTION OF THE COMMISSION.—The
22 Commission shall afford an opportunity for a
23 hearing on the record (in accordance with sec-
24 tion 554 of title 5, United States Code, but
25 without regard to subsection (a)(3) of such sec-

1 tion) and thereafter shall issue an order, based
2 upon findings of fact, affirming, modifying, or
3 vacating the Secretary's proposed order, or di-
4 recting other appropriate relief. Such order
5 shall become final 30 days after its issuance.
6 The complaining miner or other employee, rep-
7 resentative, or applicant for employment may
8 present additional evidence on his or her own
9 behalf during any hearing held pursuant to this
10 paragraph.

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

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

23 “(ii) any other compensatory and con-
24 sequential damages sufficient to make the

1 complainant whole, and exemplary dam-
2 ages where appropriate; and

3 “(iii) expungement of all warnings,
4 reprimands, or derogatory references that
5 have been placed in paper or electronic
6 records or databases of any type relating
7 to the actions by the complainant that
8 gave rise to the unfavorable personnel ac-
9 tion, and, at the complainant’s direction,
10 transmission of a copy of the decision on
11 the complaint to any person whom the
12 complainant reasonably believes may have
13 received such unfavorable information.

14 “(4) NOTICE TO AND ACTION OF COMPLAIN-
15 ANT.—

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

23 “(B) ACTION OF COMPLAINANT.—If the
24 Secretary, upon investigation, determines that
25 the provisions of this subsection have not been

1 violated, the complainant shall have the right,
2 within 30 days after receiving notice of the Sec-
3 retary's determination, to file an action in his
4 or her own behalf before the Commission,
5 charging discrimination or interference in viola-
6 tion of paragraph (1).

7 “(C) HEARING AND DECISION.—The Com-
8 mission shall afford an opportunity for a hear-
9 ing on the record (in accordance with section
10 554 of title 5, United States Code, but without
11 regard to subsection (a)(3) of such section),
12 and thereafter shall issue an order, based upon
13 findings of fact, dismissing or sustaining the
14 complainant's charges and, if the charges are
15 sustained, granting such relief as it deems ap-
16 propriate as described in paragraph (3)(D).
17 Such order shall become final 30 days after its
18 issuance.

19 “(5) BURDEN OF PROOF.—In adjudicating a
20 complaint pursuant to this subsection, the Commis-
21 sion may determine that a violation of paragraph (1)
22 has occurred only if the complainant demonstrates
23 that any conduct described in paragraph (1) with re-
24 spect to the complainant was a contributing factor
25 in the adverse action alleged in the complaint. A de-

1 cision or order that is favorable to the complainant
2 shall not be issued pursuant to this subsection if the
3 respondent demonstrates by clear and convincing
4 evidence that the respondent would have taken the
5 same adverse action in the absence of such conduct.

6 “(6) ATTORNEYS’ FEES.—Whenever an order is
7 issued sustaining the complainant’s charges under
8 this subsection, a sum equal to the aggregate
9 amount of all costs and expenses, including attor-
10 ney’s fees, as determined by the Commission to have
11 been reasonably incurred by the complainant for, or
12 in connection with, the institution and prosecution of
13 such proceedings shall be assessed against the per-
14 son committing such violation. The Commission
15 shall determine whether such costs and expenses
16 were reasonably incurred by the complainant without
17 reference to whether the Secretary also participated
18 in the proceeding.

19 “(7) EXPEDITED PROCEEDINGS; JUDICIAL RE-
20 VIEW.—Proceedings under this subsection shall be
21 expedited by the Secretary and the Commission. Any
22 order issued by the Commission under this sub-
23 section shall be subject to judicial review in accord-
24 ance with section 106. Violations by any person of

1 paragraph (1) shall be subject to the provisions of
2 sections 108 and 110(a)(4).

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

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

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

15 Section 1514A(a) of title 18, United States Code, is
16 amended by inserting “, whether employed inside or out-
17 side the United States,” after “any other manner discrimi-
18 nate against an employee”.

19 **SEC. 304. ENERGY REORGANIZATION ACT OF 1974.**

20 Section 211(a)(2) of the Energy Reorganization Act
21 of 1974 (42 U.S.C. 5851(a)(2)) is amended by redesign-
22 ating subparagraphs (F) and (G) as subparagraphs (G)
23 and (H), respectively, and inserting after subparagraph
24 (E) the following:

1 “(F) a Federal agency to the extent such
2 agency is a licensee or applicant for a license
3 under subparagraph (A) or (B);”.

4 **TITLE IV—ADMINISTRATIVE**
5 **REVIEW BOARD**

6 **SEC. 401. ADMINISTRATIVE REVIEW BOARD.**

7 (a) ESTABLISHMENT.—Not later than 90 days after
8 the date of enactment of this Act, there is established an
9 Administrative Review Board (in this section referred to
10 as the “Board”) within the Department of Labor which
11 shall be composed of 5 members appointed by the Sec-
12 retary, not more than 3 of whom may be adherents of the
13 same political party. No member of the Board may hold
14 another office or position in the Government of the United
15 States, except as otherwise provided by law or at the direc-
16 tion of the Secretary.

17 (b) APPOINTMENT.—The members of the Board shall
18 be individuals who, by ability, background, training, or ex-
19 perience are especially qualified to carry out the functions
20 of the Board. The Secretary shall appoint these members
21 in consultation with the Chairs and Ranking Members of
22 the House Committee on Education and the Workforce
23 and the Senate Committee on Health, Education, Labor,
24 and Pensions.

1 (c) QUORUM; PANELS.—For the purposes of carrying
2 out its functions under this Act and any other area in
3 which the Secretary delegates his or her authority, 3 mem-
4 bers of the Board shall constitute a quorum and official
5 actions can be taken only on the affirmative vote of 2
6 members. The Board may delegate its authority to panels
7 comprised of three members of the Board. Any party ag-
8 grieved by a decision of a panel of the Board may, within
9 10 days after the date of entry of the decision, petition
10 the full Board for review of the panel’s decision. Upon an
11 affirmative vote of the majority of the Board, the petition
12 for hearing by the full Board shall be granted.

13 (d) TERMS OF OFFICE; FILLING VACANCIES; RE-
14 MOVAL.—

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

21 (2) VACANCIES.—A member appointed to fill a
22 vacancy occurring before the end of a term of office
23 for the member’s predecessor serves for the remain-
24 der of that term. Any appointment is subject to the
25 terms of subsection (b). A member appointed ini-

1 tially to a 5-year term, may not be reappointed to
2 another 5-year term, but members appointed to fill
3 a vacancy may be appointed to their own full 5-year
4 term. Upon expiration of his or her term, the mem-
5 ber may continue to serve until a successor is ap-
6 pointed and has qualified, except that such member
7 may not continue to serve for more than one year
8 after the date on which his or her term expired.

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

12 (e) CHAIR AND VICE CHAIR.—The Secretary of
13 Labor shall from time to time appoint one of the members
14 of the Board as Chair of the Board. The Chair is the chief
15 executive and administrative officer of the Board, and
16 shall have the authority to exercise all administrative func-
17 tions necessary to operate the Board. The Secretary of
18 Labor shall from time to time designate one of the mem-
19 bers of the Board as Vice Chair of the Board, with such
20 duties and responsibilities as the Secretary shall prescribe.
21 During the absence or disability of the Chair, or when the
22 office of Chair is vacant, the Vice Chair shall perform the
23 functions vested in the Chair. During the absence or dis-
24 ability of both the Chair and Vice Chair, the Secretary

1 shall designate one of the remaining Board members to
2 perform the functions vested in the Chair and Vice Chair.

3 (f) JURISDICTION AND AUTHORITY.—

4 (1) IN GENERAL.—The Board shall have juris-
5 diction and authority to decide appeals from admin-
6 istrative decisions and issue final agency decisions
7 on behalf of the Secretary of Labor with respect to
8 all matters delegated or prescribed by order of the
9 Secretary of Labor or pursuant to any other law,
10 rule, or regulation.

11 (2) SUPERSEDURE.—The Board shall supersede
12 in function and authority the Administrative Review
13 Board established by the Secretary of Labor pursu-
14 ant to the Secretary's order 1–2000 (67 Fed. Reg.
15 64272) effective 90 days after the date of the enact-
16 ment of this Act.

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

○