

114TH CONGRESS
1ST SESSION

S. 2390

To provide adequate protections for whistleblowers at the Federal Bureau
of Investigation.

IN THE SENATE OF THE UNITED STATES

DECEMBER 10, 2015

Mr. GRASSLEY (for himself and Mr. LEAHY) introduced the following bill;
which was read twice and referred to the Committee on the Judiciary

A BILL

To provide adequate protections for whistleblowers at the
Federal Bureau of Investigation.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Federal Bureau of In-
5 vestigation Whistleblower Protection Enhancement Act of
6 2015”.

7 **SEC. 2. FBI WHISTLEBLOWER PROTECTIONS.**

8 (a) IN GENERAL.—Section 2303 of title 5, United
9 States Code, is amended to read as follows:

1 **“§ 2303. Prohibited personnel practices in the Fed-**
2 **eral Bureau of Investigation**

3 “(a) DEFINITIONS.—In this section—

4 “(1) the term ‘administrative law judge’ means
5 an administrative law judge appointed by the Attor-
6 ney General under section 3105 or used by the At-
7 torney General under section 3344;

8 “(2) the term ‘Inspector General’ means the In-
9 spector General of the Department of Justice;

10 “(3) the term ‘personnel action’ means any ac-
11 tion described in section 2302(a)(2)(A) with respect
12 to an employee in, or applicant for, a position in the
13 Federal Bureau of Investigation (other than a posi-
14 tion of a confidential, policy-determining, policy-
15 making, or policy-advocating character);

16 “(4) the term ‘prohibited personnel practice’
17 means a prohibited personnel practice described in
18 subsection (b); and

19 “(5) the term ‘protected disclosure’ means any
20 disclosure of information by an employee in, or ap-
21 plicant for, a position in the Federal Bureau of In-
22 vestigation—

23 “(A) made—

24 “(i) for an employee, to a supervisor
25 in the direct chain of command of the em-

1 employee, up to and including the head of the
2 employing agency;

3 “(ii) to the Inspector General;

4 “(iii) to the Office of Professional Re-
5 sponsibility of the Department of Justice;

6 “(iv) to the Office of Professional Re-
7 sponsibility of the Federal Bureau of In-
8 vestigation;

9 “(v) to the Inspection Division of the
10 Federal Bureau of Investigation;

11 “(vi) to a Member of Congress;

12 “(vii) to the Office of Special Counsel;

13 or

14 “(viii) to an employee designated by
15 any officer, employee, office, or division de-
16 scribed in clauses (i) through (vii) for the
17 purpose of receiving such disclosures; and

18 “(B) which the employee or applicant rea-
19 sonably believes evidences—

20 “(i) any violation of any law, rule, or
21 regulation; or

22 “(ii) gross mismanagement, a gross
23 waste of funds, an abuse of authority, or
24 a substantial and specific danger to public
25 health or safety.

1 “(b) PROHIBITED PRACTICES.—Any employee of the
2 Federal Bureau of Investigation or another component of
3 the Department of Justice who has authority to take, di-
4 rect others to take, recommend, or approve any personnel
5 action, shall not, with respect to such authority—

6 “(1) take or fail to take, or threaten to take or
7 fail to take, a personnel action with respect to an
8 employee in, or applicant for, a position in the Fed-
9 eral Bureau of Investigation because of a protected
10 disclosure;

11 “(2) take or fail to take, or threaten to take or
12 fail to take, any personnel action against an em-
13 ployee in, or applicant for, a position in the Federal
14 Bureau of Investigation because of—

15 “(A) the exercise of any appeal, complaint,
16 or grievance right granted by any law, rule, or
17 regulation—

18 “(i) with regard to remedying a viola-
19 tion of paragraph (1); or

20 “(ii) other than with regard to rem-
21 edying a violation of paragraph (1);

22 “(B) testifying for or otherwise lawfully as-
23 sisting any individual in the exercise of any
24 right referred to in clause (i) or (ii) of subpara-
25 graph (A);

1 “(C) cooperating with or disclosing infor-
2 mation to the Inspector General of an agency,
3 or the Special Counsel, in accordance with ap-
4 plicable provisions of law; or

5 “(D) refusing to obey an order that would
6 require the individual to violate a law; or

7 “(3) implement or enforce any nondisclosure
8 policy, form, or agreement, if such policy, form, or
9 agreement does not contain the statement described
10 in section 2302(b)(13).

11 “(c) PROCEDURES.—

12 “(1) FILING OF A COMPLAINT.—An employee
13 in, or applicant for, a position in the Federal Bureau
14 of Investigation may seek review of a personnel ac-
15 tion alleged to be in violation of subsection (b) by fil-
16 ing a complaint with the Office of the Inspector
17 General.

18 “(2) INVESTIGATION.—

19 “(A) IN GENERAL.—The Inspector General
20 shall investigate any complaint alleging a per-
21 sonnel action in violation of subsection (b), con-
22 sistent with the procedures and requirements
23 described in section 1214.

24 “(B) DETERMINATION.—The Inspector
25 General—

1 “(i) shall issue a decision containing
2 the findings of the Inspector General sup-
3 porting the determination of the Inspector
4 General; and

5 “(ii) if the Inspector General deter-
6 mines that reasonable grounds exist to be-
7 lieve that a personnel action occurred, ex-
8 ists, or is to be taken, in violation of sub-
9 section (b), the Inspector General shall re-
10 quest from an administrative law judge,
11 and the administrative law judge, without
12 further proceedings, shall issue, a prelimi-
13 nary order staying the personnel action.

14 “(3) FILING OF OBJECTIONS.—

15 “(A) IN GENERAL.—Not later than 60
16 days after the Inspector General issues a deci-
17 sion under paragraph (2)(B)(i), either party
18 may file objections to the decision and request
19 a hearing on the record.

20 “(B) NO EFFECT ON STAY.—The filing of
21 objections under subparagraph (A) shall not af-
22 fect the stay of a personnel action under a pre-
23 liminary order issued under paragraph
24 (2)(B)(ii).

1 “(C) NO OBJECTIONS FILED.—If no party
 2 has filed objections as of the date that is 61
 3 days after the date the Inspector General issues
 4 a decision—

5 “(i) the decision is final and not sub-
 6 ject to further review; and

7 “(ii) if the Inspector General had de-
 8 termined that reasonable grounds exist to
 9 believe that a personnel action occurred,
 10 exists, or is to be taken, in violation of
 11 subsection (b)—

12 “(I) an administrative law judge,
 13 without further proceedings, shall
 14 issue an order permanently staying
 15 the personnel action; and

16 “(II) upon motion by the em-
 17 ployee, and after an opportunity for a
 18 hearing, an administrative law judge
 19 may issue an order that provides for
 20 corrective action as described under
 21 section 1221(g).

22 “(4) REVIEW BY ADMINISTRATIVE LAW
 23 JUDGE.—

24 “(A) IN GENERAL.—If objections are filed
 25 under paragraph (3)(A), an administrative law

1 judge shall review the decision by the Inspector
2 General on the record after opportunity for
3 agency hearing.

4 “(B) CORRECTIVE ACTION.—An adminis-
5 trative law judge may issue an order providing
6 for corrective action as described under section
7 1221(g).

8 “(C) DETERMINATION.—An administrative
9 law judge shall issue a written decision explain-
10 ing the grounds for the determination by the
11 administrative law judge under this paragraph.

12 “(D) EFFECT OF DETERMINATION.—The
13 determination by an administrative law judge
14 under this paragraph shall become the decision
15 of the Department of Justice without further
16 proceedings, unless there is an appeal to, or re-
17 view on motion of, the Attorney General within
18 such time as the Attorney General shall by rule
19 establish.

20 “(5) REVIEW BY ATTORNEY GENERAL.—

21 “(A) TIMEFRAME.—

22 “(i) IN GENERAL.—Upon an appeal
23 to, or review on motion of, the Attorney
24 General under paragraph (4)(D), the At-
25 torney General, through reference to such

1 categories of cases, or other means, as the
2 Attorney General determines appropriate,
3 shall establish and announce publicly the
4 date by which the Attorney General in-
5 tends to complete action on the matter,
6 which shall ensure expeditious consider-
7 ation of the appeal or review, consistent
8 with the interests of fairness and other pri-
9 orities of the Attorney General.

10 “(ii) FAILURE TO MEET DEADLINE.—

11 If the Attorney General fails to complete
12 action on an appeal or review by the an-
13 nounced date, and the expected delay will
14 exceed 30 days, the Attorney General shall
15 publicly announce the new date by which
16 the Attorney General intends to complete
17 action on the appeal or review.

18 “(B) DETERMINATION.—The Attorney
19 General shall issue a written decision explaining
20 the grounds for the determination by the Attor-
21 ney General in an appeal or review under para-
22 graph (4)(D).

23 “(6) PUBLICATION OF DETERMINATIONS.—

24 “(A) PUBLIC AVAILABILITY.—Except as
25 provided in subparagraph (B), the Attorney

1 General shall make written decisions issued by
2 administrative law judges under paragraph
3 (4)(C) and written decisions issued by the At-
4 torney General under paragraph (5)(B) publicly
5 available.

6 “(B) RULE OF CONSTRUCTION.—Nothing
7 in subparagraph (A) shall be construed to limit
8 the authority of an administrative law judge or
9 the Attorney General to limit the public disclo-
10 sure of information under law or regulations.

11 “(7) JUDICIAL REVIEW.—Any determination by
12 an administrative law judge or the Attorney General
13 under this subsection shall be subject to judicial re-
14 view under chapter 7. A petition for judicial review
15 of such a determination shall be filed in the United
16 States Court of Appeals for the Federal Circuit or
17 any court of appeals of competent jurisdiction.

18 “(d) REGULATIONS.—The Attorney General shall
19 prescribe regulations to carry out subsection (c) that—

20 “(1) ensure that prohibited personnel practices
21 shall not be taken against an employee in, or appli-
22 cant for, a position in the Federal Bureau of Inves-
23 tigation; and

24 “(2) provide for the administration and enforce-
25 ment of subsection (c) in a manner consistent with

1 applicable provisions of sections 1214 and 1221 and
2 in accordance with the procedures under subchapter
3 II of chapter 5 and chapter 7.

4 “(e) REPORTING.—Not later than March 1 of each
5 year, the Attorney General shall make publically available
6 a report containing—

7 “(1) the number and nature of allegations of a
8 prohibited personnel practice received during the
9 previous year;

10 “(2) the disposition of each allegation of a pro-
11 hibited personnel practice resolved during the pre-
12 vious year;

13 “(3) the number of unresolved allegations of a
14 prohibited personnel practice pending as of the end
15 of the previous year and, for each such unresolved
16 allegation, how long the allegation had been pending
17 as of the end of the previous year;

18 “(4) the number of disciplinary investigations
19 and actions taken with respect to each allegation of
20 a prohibited personnel practice during the previous
21 year;

22 “(5) the number of instances during the pre-
23 vious year in which the Inspector General found a
24 reasonable basis that a prohibited personnel practice

1 had occurred that were appealed by the Federal Bu-
2 reau of Investigation; and

3 “(6) the number of allegations of a prohibited
4 personnel practice resolved through settlement, in-
5 cluding the number that were resolved as a result of
6 mediation.

7 “(f) RULE OF CONSTRUCTION.—Nothing in this sec-
8 tion shall be construed to limit the jurisdiction of any of-
9 fice under any other provision of law to conduct an inves-
10 tigation to determine whether a prohibited personnel prac-
11 tice has been or will be taken.”.

12 (b) GAO REPORT.—

13 (1) DEFINITION.—In this subsection, the term
14 “prohibited personnel practice” means a prohibited
15 personnel practice described in section 2303(b) of
16 title 5, United States Code, as added by subsection
17 (a).

18 (2) REPORT.—Not later than 4 years after the
19 date of enactment of this Act, the Comptroller Gen-
20 eral of the United States shall submit to Congress
21 a report on the effects of the amendment made by
22 subsection (a), which shall include—

23 (A) an evaluation of the timeliness of reso-
24 lution of allegations of a prohibited personnel
25 practice;

1 (B) an analysis of the corrective action
2 provided in instances of a prohibited personnel
3 practice;

4 (C) the number and type of disciplinary ac-
5 tions taken in instances of a prohibited per-
6 sonnel practice;

7 (D) an evaluation of the communication by
8 the Inspector General of the Department of
9 Justice with an individual alleging a prohibited
10 personnel practice regarding the investigation
11 and resolution of the allegation;

12 (E) an assessment of the mediation proc-
13 ess of the Department of Justice; and

14 (F) a discussion of how the use of adminis-
15 trative law judges and review under chapters 5
16 and 7 of title 5, United States Code, affected
17 the process of investigating and resolving alle-
18 gations of a prohibited personnel practice.

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