

# Calendar No. 421

114TH CONGRESS  
2D SESSION

# S. 2390

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

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## IN THE SENATE OF THE UNITED STATES

DECEMBER 10, 2015

Mr. GRASSLEY (for himself, Mr. LEAHY, Mrs. McCASKILL, Mr. WYDEN, Mr. JOHNSON, Mr. TILLIS, Mr. KIRK, Mr. HATCH, Mr. MARKEY, Ms. BALDWIN, and Mr. LEE) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

APRIL 14, 2016

Reported by Mr. GRASSLEY, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

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## 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”.

1 **SEC. 2. FBI WHISTLEBLOWER PROTECTIONS.**

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

4 **“§ 2303. Prohibited personnel practices in the Fed-  
5 eral Bureau of Investigation**

6 **“(a) DEFINITIONS.**—In this section—

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

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

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

19 “(4) the term ‘prohibited personnel practice’  
20 means a prohibited personnel practice described in  
21 subsection (b); and

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

26 “(A) made—

1           “(i) for an employee, to a supervisor  
2           in the direct chain of command of the em-  
3           ployee, up to and including the head of the  
4           employing agency;

5           “(ii) to the Inspector General;

6           “(iii) to the Office of Professional Re-  
7           sponsibility of the Department of Justice;

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

11          “(v) to the Inspection Division of the  
12          Federal Bureau of Investigation;

13          “(vi) to a Member of Congress;

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

15          or

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

20          “(B) which the employee or applicant rea-  
21          sonably believes evidences—

22               “(i) any violation of any law, rule, or  
23               regulation; or

24               “(ii) gross mismanagement, a gross  
25               waste of funds, an abuse of authority, or

1 a substantial and specific danger to public  
2 health or safety.

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

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

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

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

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

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

24 “(B) testifying for or otherwise lawfully as-  
25 sisting any individual in the exercise of any

1 right referred to in clause (i) or (ii) of subpara-  
2 graph (A);

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

7 ~~“(D) refusing to obey an order that would~~  
8 ~~require the individual to violate a law; or~~

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

13 ~~“(c) PROCEDURES.—~~

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

20 ~~“(2) INVESTIGATION.—~~

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

1           “(B) DETERMINATION.—The Inspector  
2           General—

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

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

16           “(3) FILING OF OBJECTIONS.—

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

22                   “(B) NO EFFECT ON STAY.—The filing of  
23                   objections under subparagraph (A) shall not af-  
24                   fect the stay of a personnel action under a pre-

1           liminary order issued under paragraph  
2           (2)(B)(ii).

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

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

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

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

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

24                    “(4) REVIEW BY ADMINISTRATIVE LAW  
25                    JUDGE.—

1           “(A) IN GENERAL.—If objections are filed  
2           under paragraph (3)(A), an administrative law  
3           judge shall review the decision by the Inspector  
4           General on the record after opportunity for  
5           agency hearing.

6           “(B) CORRECTIVE ACTION.—An adminis-  
7           trative law judge may issue an order providing  
8           for corrective action as described under section  
9           1221(g).

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

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

22          “(5) REVIEW BY ATTORNEY GENERAL.—

23                 “(A) TIMEFRAME.—

24                         “(i) IN GENERAL.—Upon an appeal  
25                         to, or review on motion of, the Attorney



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

12           “(ii) FAILURE TO MEET DEADLINE.—

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

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

25           “(6) PUBLICATION OF DETERMINATIONS.—

1           “(A) PUBLIC AVAILABILITY.—Except as  
2           provided in subparagraph (B), the Attorney  
3           General shall make written decisions issued by  
4           administrative law judges under paragraph  
5           (4)(C) and written decisions issued by the At-  
6           torney General under paragraph (5)(B) publicly  
7           available.

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

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

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

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

1           “(2) provide for the administration and enforce-  
2           ment of subsection (e) in a manner consistent with  
3           applicable provisions of sections 1214 and 1221 and  
4           in accordance with the procedures under subchapter  
5           H of chapter 5 and chapter 7.

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

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

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

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

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

24           “(5) the number of instances during the pre-  
25           vious year in which the Inspector General found a

1 reasonable basis that a prohibited personnel practice  
2 had occurred that were appealed by the Federal Bu-  
3 reau of Investigation; and

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

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

13 (b) GAO REPORT.—

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

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

1           (A) an evaluation of the timeliness of reso-  
2           lution of allegations of a prohibited personnel  
3           practice;

4           (B) an analysis of the corrective action  
5           provided in instances of a prohibited personnel  
6           practice;

7           (C) the number and type of disciplinary ac-  
8           tions taken in instances of a prohibited per-  
9           sonnel practice;

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

15          (E) an assessment of the mediation pro-  
16          cess of the Department of Justice; and

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

22 **SECTION 1. SHORT TITLE.**

23           *This Act may be cited as the “Federal Bureau of Inves-*  
24 *tigation Whistleblower Protection Enhancement Act of*  
25 *2016”.*

1 **SEC. 2. FBI WHISTLEBLOWER PROTECTIONS.**

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

4 **“§ 2303. Prohibited personnel practices in the Federal  
5 Bureau of Investigation**

6 “(a) *DEFINITIONS.*—In this section—

7 “(1) the term ‘administrative law judge’ means  
8 an administrative law judge appointed by the Attor-  
9 ney General under section 3105 or used by the Attor-  
10 ney General under section 3344;

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

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

19 “(4) the term ‘prohibited personnel practice’  
20 means a prohibited personnel practice described in  
21 subsection (b); and

22 “(5) the term ‘protected disclosure’ means any  
23 disclosure of information by an employee in, or appli-  
24 cant for, a position in the Federal Bureau of Inves-  
25 tigation—

26 “(A) made—

1           “(i) in the case of an employee, to a  
2           supervisor in the direct chain of command  
3           of the employee, up to and including the  
4           head of the employing agency;

5           “(ii) to the Inspector General;

6           “(iii) to the Office of Professional Re-  
7           sponsibility of the Department of Justice;

8           “(iv) to the Office of Professional Re-  
9           sponsibility of the Federal Bureau of Inves-  
10          tigation;

11          “(v) to the Inspection Division of the  
12          Federal Bureau of Investigation;

13          “(vi) as described in section 7211;

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

15          or

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

20          “(B) which the employee or applicant rea-  
21          sonably believes evidences—

22               “(i) any violation of any law, rule, or  
23               regulation; or

24               “(ii) gross mismanagement, a gross  
25               waste of funds, an abuse of authority, or a

1                    *substantial and specific danger to public*  
2                    *health or safety.*

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

8                    “(1) *take or fail to take, or threaten to take or*  
9 *fail to take, a personnel action with respect to an em-*  
10 *ployee in, or applicant for, a position in the Federal*  
11 *Bureau of Investigation because of a protected disclo-*  
12 *sure;*

13                    “(2) *take or fail to take, or threaten to take or*  
14 *fail to take, any personnel action against an employee*  
15 *in, or applicant for, a position in the Federal Bureau*  
16 *of Investigation because of—*

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

20                    “(i) *with regard to remedying a viola-*  
21 *tion of paragraph (1); or*

22                    “(ii) *other than with regard to rem-*  
23 *edying a violation of paragraph (1);*

24                    “(B) *testifying for or otherwise lawfully as-*  
25 *sisting any individual in the exercise of any*



1           *right referred to in clause (i) or (ii) of subpara-*  
2           *graph (A);*

3           *“(C) cooperating with or disclosing infor-*  
4           *mation to the Inspector General of an agency, or*  
5           *the Special Counsel, in accordance with applica-*  
6           *ble provisions of law; or*

7           *“(D) refusing to obey an order that would*  
8           *require the individual to violate a law; or*

9           *“(3) implement or enforce any nondisclosure pol-*  
10          *icy, form, or agreement, if such policy, form, or agree-*  
11          *ment does not contain the statement described in sec-*  
12          *tion 2302(b)(13).*

13          *“(c) PROCEDURES.—*

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

19           *“(2) INVESTIGATION.—*

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

1           “(B) *DETERMINATION.*—*The Inspector Gen-*  
2           *eral shall issue a decision containing the find-*  
3           *ings of the Inspector General supporting the de-*  
4           *termination of the Inspector General.*

5           “(C) *PRELIMINARY RELIEF.*—

6           “(i) *IN GENERAL.*—*If the Inspector*  
7           *General determines under subparagraph (B)*  
8           *that reasonable grounds exist to believe that*  
9           *a personnel action occurred, exists, or is to*  
10           *be taken, in violation of subsection (b)—*

11           *“(I) the Inspector General shall*  
12           *request from an administrative law*  
13           *judge a preliminary order providing*  
14           *relief from the personnel action; and*

15           *“(II) except as provided in clause*  
16           *(ii), the administrative law judge,*  
17           *without further proceedings, shall issue*  
18           *such an order.*

19           “(ii) *GOOD CAUSE.*—*Upon motion by*  
20           *the Government, after notice and an oppor-*  
21           *tunity to be heard, and if the administra-*  
22           *tive law judge determines that there is a*  
23           *particularized showing of good cause that*  
24           *an order should not be issued returning an*  
25           *employee to the position the employee would*

1           *have held had the personnel action not been*  
2           *taken, the administrative law judge shall*  
3           *issue an order directing that the employee*  
4           *be returned, as nearly as practicable and*  
5           *reasonable, to such position.*

6           “(3) *FILING OF OBJECTIONS.*—

7           “(A) *IN GENERAL.*—*Not later than 60 days*  
8           *after the Inspector General issues a decision*  
9           *under paragraph (2)(B), either party may file*  
10           *objections to the decision and request a hearing*  
11           *on the record.*

12           “(B) *NO EFFECT ON PRELIMINARY RE-*  
13           *LIEF.*—*The filing of objections under subpara-*  
14           *graph (A) shall not affect an order issued under*  
15           *clause (i) or (ii) of paragraph (2)(C).*

16           “(C) *NO OBJECTIONS FILED.*—*If no party*  
17           *has filed objections as of the date that is 61 days*  
18           *after the date the Inspector General issues a deci-*  
19           *sion—*

20           “(i) *the decision is final and not sub-*  
21           *ject to further review; and*

22           “(ii) *if the Inspector General had de-*  
23           *termined that reasonable grounds exist to*  
24           *believe that a personnel action occurred, ex-*

1                    *ists, or is to be taken, in violation of sub-*  
 2                    *section (b)—*

3                    *“(I) an administrative law judge,*  
 4                    *without further proceedings, shall issue*  
 5                    *an order providing permanent relief*  
 6                    *from the personnel action; and*

7                    *“(II) upon motion by the em-*  
 8                    *ployee or applicant, and after an op-*  
 9                    *portunity for a hearing, an adminis-*  
 10                    *trative law judge may issue an order*  
 11                    *that provides for corrective action as*  
 12                    *described under section 1221(g), which*  
 13                    *shall be accompanied by a written de-*  
 14                    *cision explaining the grounds for the*  
 15                    *order.*

16                    *“(4) REVIEW BY ADMINISTRATIVE LAW JUDGE.—*

17                    *“(A) IN GENERAL.—If objections are filed*  
 18                    *under paragraph (3)(A), an administrative law*  
 19                    *judge shall review the decision by the Inspector*  
 20                    *General on the record after opportunity for agen-*  
 21                    *cy hearing.*

22                    *“(B) CORRECTIVE ACTION.—An adminis-*  
 23                    *trative law judge may issue an order providing*  
 24                    *for corrective action as described under section*  
 25                    *1221(g).*

1           “(C) *DETERMINATION.*—*An administrative*  
2 *law judge shall issue a written decision explain-*  
3 *ing the grounds for the determination by the ad-*  
4 *ministrative law judge under this paragraph.*

5           “(D) *EFFECT OF DETERMINATION.*—*The de-*  
6 *termination by an administrative law judge*  
7 *under this paragraph shall become the decision*  
8 *of the Department of Justice without further pro-*  
9 *ceedings, unless there is an appeal to, or review*  
10 *on motion of, the Attorney General within such*  
11 *time as the Attorney General shall by rule estab-*  
12 *lish.*

13           “(5) *REVIEW BY ATTORNEY GENERAL.*—

14           “(A) *TIMEFRAME.*—

15           “(i) *IN GENERAL.*—*Upon an appeal to,*  
16 *or review on motion of, the Attorney Gen-*  
17 *eral under paragraph (4)(D), the Attorney*  
18 *General, through reference to such categories*  
19 *of cases, or other means, as the Attorney*  
20 *General determines appropriate, shall estab-*  
21 *lish and announce publicly the date by*  
22 *which the Attorney General intends to com-*  
23 *plete action on the matter, which shall en-*  
24 *sure expeditious consideration of the appeal*  
25 *or review, consistent with the interests of*

1           *fairness and other priorities of the Attorney*  
2           *General.*

3           “(ii) *FAILURE TO MEET DEADLINE.—If*  
4           *the Attorney General fails to complete ac-*  
5           *tion on an appeal or review by the an-*  
6           *nounced date, and the expected delay will*  
7           *exceed 30 days, the Attorney General shall*  
8           *publicly announce the new date by which*  
9           *the Attorney General intends to complete*  
10          *action on the appeal or review.*

11          “(B) *DETERMINATION.—The Attorney Gen-*  
12          *eral shall issue a written decision explaining the*  
13          *grounds for the determination by the Attorney*  
14          *General in an appeal or review under paragraph*  
15          *(4)(D).*

16          “(6) *PUBLICATION OF DETERMINATIONS.—*

17                 “(A) *PUBLIC AVAILABILITY.—Except as*  
18                 *provided in subparagraph (B), the Attorney*  
19                 *General shall make written decisions issued by*  
20                 *administrative law judges under paragraph*  
21                 *(3)(C) or (4)(C) and written decisions issued by*  
22                 *the Attorney General under paragraph (5)(B)*  
23                 *publicly available in a manner that is—*

24                         “(i) *to the maximum extent prac-*  
25                         *ticable, consistent with the manner in which*

1           *the Merit Systems Protection Board makes*  
2           *decisions of the Board available to the pub-*  
3           *lic; and*

4                     “(ii) *in accordance with section 552.*

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

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

17                    “(d) *REGULATIONS.—Not later than 18 months after*  
18           *the date of enactment of the Federal Bureau of Investigation*  
19           *Whistleblower Protection Enhancement Act of 2016, the At-*  
20           *torney General shall prescribe regulations to carry out sub-*  
21           *section (c) that—*

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

1           “(2) provide for the administration and enforce-  
2           ment of subsection (c) in a manner consistent with  
3           applicable provisions of sections 1214 and 1221 and  
4           in accordance with the procedures under subchapter  
5           II of chapter 5 and chapter 7;

6           “(3) ensure that employees of the Federal Bureau  
7           of Investigation are informed of the rights and rem-  
8           edies available to the employees under this section, in-  
9           cluding how to make a lawful disclosure of informa-  
10          tion that is specifically required by law or Executive  
11          Order to be kept classified in the interest of national  
12          defense or the conduct of foreign affairs; and

13          “(4) provide for the protection of classified infor-  
14          mation and intelligence sources and methods.

15          “(e) *REPORTING.*—Not later than March 1 of each  
16          year, the Attorney General shall make publicly available  
17          a report containing—

18                 “(1) the number and nature of allegations of a  
19                 prohibited personnel practice received during the pre-  
20                 vious year;

21                 “(2) the disposition of each allegation of a pro-  
22                 hibited personnel practice resolved during the pre-  
23                 vious year;

24                 “(3) the number of unresolved allegations of a  
25                 prohibited personnel practice pending as of the end of



1       *the previous year and, for each such unresolved alle-*  
2       *gation, how long the allegation had been pending as*  
3       *of the end of the previous year;*

4             “(4) *the number of disciplinary investigations*  
5       *and actions taken with respect to each allegation of*  
6       *a prohibited personnel practice during the previous*  
7       *year;*

8             “(5) *the number of instances during the previous*  
9       *year in which the Inspector General found reasonable*  
10       *grounds existed to believe that a prohibited personnel*  
11       *practice had occurred that were appealed by the Fed-*  
12       *eral Bureau of Investigation; and*

13             “(6) *the number of allegations of a prohibited*  
14       *personnel practice resolved through settlement, includ-*  
15       *ing the number that were resolved as a result of medi-*  
16       *ation.*

17       “(f) *RULES OF CONSTRUCTION.—Nothing in this sec-*  
18       *tion shall be construed to—*

19             “(1) *limit the jurisdiction of any office under*  
20       *any other provision of law to conduct an investiga-*  
21       *tion to determine whether a prohibited personnel*  
22       *practice has been or will be taken; or*

23             “(2) *alter or amend any law, regulation, or Ex-*  
24       *ecutive Order regarding the handling or disclosure of*  
25       *information, including classified information.”.*

1       **(b) GAO REPORT.**—

2               **(1) DEFINITION.**—*In this subsection, the term*  
3       *“prohibited personnel practice” means a prohibited*  
4       *personnel practice described in section 2303(b) of title*  
5       *5, United States Code, as amended by subsection (a).*

6               **(2) REPORT.**—*Not later than 4 years after the*  
7       *date of enactment of this Act, the Comptroller General*  
8       *of the United States shall submit to Congress a report*  
9       *on the protections for whistleblowers at the Federal*  
10       *Bureau of Investigation and the process of inves-*  
11       *tigating and adjudicating complaints of reprisal by*  
12       *whistleblowers under the amendments made by this*  
13       *Act, which shall include—*

14               **(A) the number and nature of complaints—**

15                       **(i) that were filed;**

16                       **(ii) that were investigated;**

17                       **(iii) that were adjudicated; and**

18                       **(iv) that were appealed to a court of**  
19       *appeals of the United States;*

20               **(B) the number of decisions made publicly**  
21       *available under 2303(c)(6) of title 5, United*  
22       *States Code, as amended by this Act, and the na-*  
23       *ture of any limitations on public disclosure of*  
24       *the decisions;*

1           (C) the nature of corrective action provided  
2 in instances of a prohibited personnel practice;

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

6           (E) an evaluation of the timeliness of reso-  
7 lution of allegations of a prohibited personnel  
8 practice;

9           (F) an assessment of the mediation process  
10 of the Department of Justice;

11           (G) a discussion of how the use of adminis-  
12 trative law judges and review under chapters 5  
13 and 7 of title 5, United States Code, affected the  
14 process of investigating and resolving allegations  
15 of a prohibited personnel practice; and

16           (H) a discussion of the perspectives of key  
17 stakeholders on the effects of the amendments  
18 made by this Act on the Federal Bureau of In-  
19 vestigation.

20       (c) *EFFECTIVE DATE; IMPLEMENTATION.*—

21           (1) *IN GENERAL.*—Except as provided in para-  
22 graph (2), this Act and the amendments made by this  
23 Act shall—

24           (A) take effect on the date of enactment of  
25 this Act; and

1           (B) apply to any matter pending on, or  
2           commenced on or after, the date of enactment of  
3           this Act.

4           (2) IMPLEMENTATION OF INVESTIGATION AND  
5           REVIEW PROCEDURES FOR PENDING COMPLAINTS AND  
6           COMPLAINTS MADE DURING TRANSITION PERIOD.—

7           (A) DEFINITION.—In this paragraph, the  
8           term “covered complaint” means a complaint al-  
9           leging a personnel action in violation of section  
10          2303 of title 5, United States Code—

11           (i) made—

12                   (I) before, on, or after the date of  
13                   enactment of this Act; and

14                   (II) before the effective date of the  
15                   regulations prescribed by the Attorney  
16                   General under section 2303(d) of title  
17                   5, United States Code, as amended by  
18                   this Act; and

19           (ii) for which an investigation or re-  
20           view is pending on or after the date of en-  
21           actment of this Act.

22           (B) APPLICATION OF EXISTING PROCE-  
23           DURES UNTIL RULES ISSUED.—Subject to sub-  
24           paragraph (C), for any covered complaint—

1           (i) the procedures under section  
2           2303(c) of title 5, United States Code, as  
3           amended by this Act, shall not apply; and

4           (ii) the covered complaint shall be in-  
5           vestigated and reviewed in accordance with  
6           the regulations and procedures prescribed  
7           under section 2303 of title 5, United States  
8           Code, as in effect on the day before the date  
9           of enactment of this Act.

10           (C) *APPLICATION OF NEW REVIEW PROCE-*  
11           *DURES TO PENDING INVESTIGATIONS.*—For any  
12           covered complaint for which the investigation is  
13           pending on the effective date of the regulations  
14           prescribed by the Attorney General under section  
15           2303(d) of title 5, United States Code, as amend-  
16           ed by this Act—

17           (i) the procedures under paragraphs  
18           (1), (2), and (3) of section 2303(c) of title  
19           5, United States Code, as amended by this  
20           Act, shall not apply; and

21           (ii) if either party files objections and  
22           requests a hearing on the record not later  
23           than 60 days after the date on which the in-  
24           vestigation is completed, the covered com-  
25           plaint shall be subject to review in accord-

1                   *ance with paragraphs (4), (5), (6), and (7)*  
2                   *of section 2303(c) of title 5, United States*  
3                   *Code, as amended by this Act.*



**Calendar No. 421**

114<sup>TH</sup> CONGRESS  
2<sup>D</sup> Session

**S. 2390**

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**A BILL**

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

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APRIL 14, 2016

Reported with an amendment