

115TH CONGRESS  
1ST SESSION

# H. R. 69

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IN THE SENATE OF THE UNITED STATES

JANUARY 5, 2017

Received; read twice and referred to the Committee on Homeland Security and  
Governmental Affairs

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## AN ACT

To reauthorize the Office of Special Counsel, to amend title 5, United States Code, to provide modifications to authorities relating to the Office of Special Counsel, and for other purposes.

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

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Thoroughly Inves-  
3 tigating Retaliation Against Whistleblowers Act”.

4 **SEC. 2. REAUTHORIZATION OF THE OFFICE OF SPECIAL**  
5 **COUNSEL.**

6 (a) **IN GENERAL.**—Section 8(a)(2) of the Whistle-  
7 blower Protection Act of 1989 (5 U.S.C. 5509 note) is  
8 amended to read as follows:

9 “(2) \$24,119,000 for fiscal year 2017 and  
10 \$25,735,000 for each of fiscal years 2018, 2019,  
11 2020, and 2021 to carry out subchapter II of chap-  
12 ter 12 of title 5, United States Code (as amended  
13 by this Act).”.

14 (b) **EFFECTIVE DATE.**—The amendment made by  
15 subsection (a) shall be deemed to apply beginning on Octo-  
16 ber 1, 2016.

17 **SEC. 3. ACCESS TO AGENCY INFORMATION.**

18 Section 1212(b) of title 5, United States Code, is  
19 amended by adding at the end the following:

20 “(5)(A) In carrying out this subchapter, the Special  
21 Counsel is authorized to—

22 “(i) have access to any record or other informa-  
23 tion (including a report, audit, review, document,  
24 recommendation, or other material) of any agency  
25 under the jurisdiction of the Office of Special Coun-

1 sel, consistent with the requirements of subpara-  
2 graph (C); and

3 “(ii) require any employee of such an agency to  
4 provide to the Office any record or other information  
5 during an investigation, review, or inquiry of any  
6 agency under the jurisdiction of the Office.

7 “(B) With respect to any record or other information  
8 made available by an agency under this subchapter, the  
9 Office shall apply a level of confidentiality to such record  
10 or information at the level of confidentiality applied to the  
11 record by the agency.

12 “(C) With respect to any record or other information  
13 described under subparagraph (A), the Attorney General  
14 or an Inspector General may withhold access to any such  
15 record or other information if the disclosure could reason-  
16 ably be expected to interfere with an ongoing criminal in-  
17 vestigation or prosecution, but only if the Attorney Gen-  
18 eral or applicable agency head submits a written report  
19 to the Office of Special Counsel describing the record or  
20 other information withheld and the reason for the with-  
21 holding.”.

22 **SEC. 4. WHISTLEBLOWER PROVISIONS.**

23 Section 1213 of title 5, United States Code, is  
24 amended—

1           (1) in subsection (b), by striking “15 days” and  
2 inserting “45 days”;

3           (2) in subsection (d)—

4                 (A) in paragraph (4), by striking “and” at  
5 the end;

6                 (B) in paragraph (5)—

7                     (i) in the matter before subparagraph  
8 (A), by striking “such as” and inserting  
9 “including”; and

10                    (ii) in subparagraph (D), by striking  
11 the period at the end and inserting “;  
12 and”; and

13                 (C) by adding at the end the following:

14                     “(6) if any disclosure referred to an agency  
15 head under subsection (c) is substantiated in whole  
16 or in part by the agency head, a detailed explanation  
17 of the failure to take any action described under  
18 paragraph (5).”; and

19           (3) in subsection (e), by adding at the end the  
20 following:

21                     “(5) If an agency head submits a report to the Spe-  
22 cial Counsel under subsection (d) that includes a descrip-  
23 tion of any agency action proposed to be taken as a result  
24 of the investigation, the agency head shall, not later than  
25 180 days after the date of such submission, submit a sup-

1 plemental report to the Special Counsel stating whether  
2 any proposed action has been taken, and if the action has  
3 not been taken, the reason why it has not been taken.”.

4 **SEC. 5. TERMINATION OF CERTAIN OSC INVESTIGATIONS.**

5 (a) IN GENERAL.—Section 1214(a) of title 5, United  
6 States Code, is amended by adding at the end the fol-  
7 lowing:

8 “(6)(A) Within 30 days of receiving an allegation  
9 from a person under paragraph (1), the Special Counsel  
10 may terminate an investigation under such paragraph  
11 with respect to the allegation, without further inquiry or  
12 an opportunity for the person to respond, if the Special  
13 Counsel determines that—

14 (i) the same allegation, based on the same set  
15 of facts and circumstances—

16 (I) had previously been made by the per-  
17 son and previously investigated by the Special  
18 Counsel; or

19 (II) had previously been filed by the per-  
20 son with the Merit Systems Protection Board;

21 (ii) the Office of Special Counsel does not have  
22 jurisdiction to investigate the allegation; or

23 (iii) the person knew or should have known of  
24 the alleged prohibited personnel practice earlier than

1 the date that is 3 years before the date Special  
2 Counsel received the allegation.

3 “(B) If the Special Counsel terminates an investiga-  
4 tion under subparagraph (A), not later than 30 days after  
5 the date of such termination the Special Counsel shall pro-  
6 vide a written notification stating the basis for the termi-  
7 nation to the person who made the allegation. Paragraph  
8 (1)(D) shall not apply to any termination under such sub-  
9 paragraph.”.

10 (b) CONFORMING AMENDMENTS.—Section 1214 of  
11 title 5, United States Code, is amended—

12 (1) in subsection (a)(1)(A), by striking “The  
13 Special Counsel” and inserting “Except as provided  
14 in paragraph (6), the Special Counsel”; and

15 (2) in subsection (a)(1)(C), in the matter before  
16 clause (i), by inserting “or paragraph (6)” after  
17 “paragraph (2)”.

18 **SEC. 6. REPORTING REQUIREMENTS.**

19 (a) OSC ANNUAL REPORT TO CONGRESS.—Section  
20 1218 of title 5, United States Code, is amended to read  
21 as follows:

22 **“§ 1218. Annual report**

23 “(a) The Special Counsel shall submit an annual re-  
24 port to Congress on the activities of the Special Counsel.

25 Any such report shall include—

1           “(1) the number, types, and disposition of alle-  
2           gations of prohibited personnel practices filed with  
3           the Special Counsel, and the cost of allegations so  
4           disposed of;

5           “(2) the number of investigations conducted by  
6           the Special Counsel;

7           “(3) the number of stays or disciplinary actions  
8           negotiated by the Special Counsel with agencies;

9           “(4) the number of cases in which the Special  
10          Counsel did not make a determination whether there  
11          are reasonable grounds to believe that a prohibited  
12          personnel practice has occurred, exists, or is to be  
13          taken within the 240-day period specified in section  
14          1214(b)(2)(A)(i);

15          “(5) a description of the recommendations and  
16          reports made by the Special Counsel to other agen-  
17          cies pursuant to this subchapter, and the actions  
18          taken by the agencies as a result of the reports or  
19          recommendations;

20          “(6) the number of—

21                 “(A) actions initiated before the Merit Sys-  
22                 tems Protection Board, including the number of  
23                 corrective action petitions and disciplinary ac-  
24                 tion complaints so initiated; and

1           “(B) stays and stay extensions obtained  
2           from the Board; and

3           “(7) the number of prohibited personnel prac-  
4           tice complaints that result in—

5           “(A) a favorable action for the complain-  
6           ant, categorized by actions with respect to whis-  
7           tleblower reprisal cases and all other cases; and

8           “(B) a favorable outcome for the complain-  
9           ant, categorized by outcomes with respect to  
10          whistleblower reprisal cases and all other cases.

11          “(b) The report required by subsection (a) shall in-  
12          clude whatever recommendations for legislation or other  
13          action by Congress the Special Counsel may consider ap-  
14          propriate.”.

15          (b) OSC PUBLIC INFORMATION.—Section 1219(a)(1)  
16          of title 5, United States Code, is amended to read as fol-  
17          lows:

18                 “(1) a list of any noncriminal matter referred  
19                 to an agency head under section 1213(c), together  
20                 with—

21                         “(A) the applicable transmittal of the mat-  
22                         ter to the agency head under section  
23                         1213(c)(1);

24                         “(B) any report from agency head under  
25                         section 1213(c)(1)(B) relating to such matter;



1           “(C) if appropriate, not otherwise prohib-  
2           ited by law, and with the consent of the com-  
3           plainant, any comments from the complainant  
4           under section 1213(e)(1) relating to the matter;  
5           and

6           “(D) the Special Counsel’s comments or  
7           recommendations under section 1213(e)(3) or  
8           (4) relating to the matter;”.

9   **SEC. 7. ESTABLISHMENT OF SURVEY PILOT PROGRAM.**

10       (a) IN GENERAL.—The Office of Special Counsel  
11       shall design and establish a survey pilot program under  
12       which the Office shall conduct, with respect to fiscal years  
13       2018 and 2019, a survey of individuals who have filed a  
14       complaint or disclosure with the Office. The survey shall  
15       be designed to gather responses from the individuals for  
16       the purpose of collecting information and improving cus-  
17       tomer service at various stages of the review or investiga-  
18       tive process. The results of the survey shall be published  
19       in the annual report of the Office.

20       (b) SUSPENSION OF OTHER SURVEYS.—During fiscal  
21       years 2018 and 2019, section 13 of Public Law 103–424  
22       shall have no force or effect.

23   **SEC. 8. PENALTIES UNDER THE HATCH ACT.**

24       (a) IN GENERAL.—Section 7326 of title 5, United  
25       States Code, is amended to read as follows:

1 **“§ 7326. Penalties**

2 “An employee or individual who violates section 7323  
3 or 7324 shall be subject to—

4 “(1) disciplinary action consisting of removal,  
5 reduction in grade, debarment from Federal employ-  
6 ment for a period not to exceed 5 years, suspension,  
7 or reprimand;

8 “(2) an assessment of a civil penalty not to ex-  
9 ceed \$1,000; or

10 “(3) any combination of the penalties described  
11 in paragraph (1) or (2).”.

12 (b) APPLICATION.—The amendment made by sub-  
13 section (a) shall apply to any violation of section 7323 or  
14 7324 of title 5, United States Code, occurring after the  
15 date of enactment of this Act.

16 **SEC. 9. REGULATIONS.**

17 Not later than 2 years after the date of enactment  
18 of this Act, the Special Counsel shall prescribe such regu-  
19 lations as may be necessary to perform the functions of  
20 the Special Counsel under subchapter II of chapter 12 of  
21 title 5, United States Code, including regulations nec-  
22 essary to carry out sections 1213, 1214, and 1215 of such  
23 title, and any functions required due to the amendments

1 made by this Act. Such regulations shall be published in  
2 the Federal Register.

Passed the House of Representatives January 4,  
2017.

Attest:

KAREN L. HAAS,

*Clerk.*