

116TH CONGRESS
2D SESSION

H. R. 7935

To amend title 5, United States Code, to modify and enhance protections for Federal Government whistleblowers, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

AUGUST 4, 2020

Mrs. CAROLYN B. MALONEY of New York (for herself, Mr. CONNOLLY, and Ms. SPEIER) introduced the following bill; which was referred to the Committee on Oversight and Reform

A BILL

To amend title 5, United States Code, to modify and enhance protections for Federal Government whistleblowers, 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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Whistleblower Protec-
5 tion Improvement Act of 2020”.

6 **SEC. 2. ADDITIONAL WHISTLEBLOWER PROTECTIONS.**

7 (a) INVESTIGATIONS AS PERSONNEL ACTIONS.—

8 (1) IN GENERAL.—Section 2302(a)(2)(A) of
9 title 5, United States Code, is amended—

1 (A) in clause (xi), by striking “and” at the
2 end;

3 (B) by redesignating clause (xii) as clause
4 (xiii); and

5 (C) by adding after the clause (xi) the fol-
6 lowing:

7 “(xii) the opening of any investigation
8 as a result of a disclosure protected by
9 subsection (b)(8) (but not including any
10 investigation that is ministerial or nondis-
11 cretionary); and”.

12 (2) APPLICATION.—The amendment made by
13 paragraph (1) shall apply to any investigation
14 opened (as described under section
15 2302(a)(2)(A)(xii) of title 5, United States Code, as
16 added by such paragraph) on or after the date of en-
17 actment of this Act.

18 (b) RIGHT TO PETITION CONGRESS.—

19 (1) IN GENERAL.—Section 2302(b)(9) of title
20 5, United States Code, is amended—

21 (A) in subparagraph (C), by striking “or”
22 at the end;

23 (B) in subparagraph (D), by adding “or”
24 at the end after the semicolon; and

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

1 “(E) the exercise of any right protected
2 under section 7211;”.

3 (2) APPLICATION.—The amendment made by
4 paragraph (1) shall apply to the exercise of any
5 right described in section 2302(b)(9)(E) of title 5,
6 United States Code, as added by paragraph (1), oc-
7 curring on or after the date of enactment of this
8 Act.

9 (c) PROHIBITION ON DISCLOSURE OF WHISTLE-
10 BLOWER IDENTITY.—

11 (1) IN GENERAL.—Section 2302 of title 5,
12 United States Code, is amended by adding at the
13 end the following:

14 “(g)(1) No employee of an agency may willfully com-
15 municate or transmit to any individual who is not an offi-
16 cer or employee of the Government the identity of, or per-
17 sonally identifiable information about, any other employee
18 who has made, or is suspected to have made, a disclosure
19 protected by subsection (b)(8), unless—

20 “(A) the other employee provides express
21 written consent prior to the communication or
22 transmission;

23 “(B) the communication or transmission is
24 made in accordance with the provisions of sec-
25 tion 552a;

1 “(C) the communication or transmission is
2 made to a lawyer for the sole purpose of pro-
3 viding legal advice to an employee accused of
4 whistleblower retaliation; or

5 “(D) the communication or transmission is
6 required or permitted by any other provision of
7 law.

8 “(2) In this subsection, the term ‘officer or employee
9 of the Government’ means—

10 “(A) the President;

11 “(B) a Member of Congress;

12 “(C) a member of the uniformed services;

13 “(D) an employee as that term is defined in
14 section 2105, including an employee of the United
15 States Postal Service, the Postal Regulatory Com-
16 mission, or the Department of Veterans Affairs (in-
17 cluding any employee appointed pursuant to chapter
18 73 or 74 of title 38); and

19 “(E) any other officer or employee in any
20 branch of the Government of the United States.”.

21 (2) APPLICATION.—The amendment made by
22 paragraph (1) shall apply to any transmission or
23 communication described in subsection (g) of section
24 2302 of title 5, United States Code, as added by

1 paragraph (1), made on or after the date of enact-
2 ment of this Act.

3 (d) RIGHT TO PETITION CONGRESS.—

4 (1) IN GENERAL.—Section 7211 of title 5,
5 United States Code, is amended to read as follows:

6 **“§ 7211. Employees’ right to petition or furnish infor-**
7 **mation or respond to Congress**

8 “(a) IN GENERAL.—Each officer or employee of the
9 Federal Government, individually or collectively, has a
10 right to—

11 “(1) petition Congress or a Member of Con-
12 gress;

13 “(2) furnish information, documents, or testi-
14 mony to either House of Congress, any Member of
15 Congress, or any committee or subcommittee of the
16 Congress; or

17 “(3) respond to any request for information,
18 documents, or testimony from either House of Con-
19 gress or any Committee or subcommittee of Con-
20 gress.

21 “(b) PROHIBITED ACTIONS.—No officer or employee
22 of the Federal Government may interfere with or deny the
23 right set forth in subsection (a), including by—

24 “(1) prohibiting or preventing, or attempting or
25 threatening to prohibit or prevent, any other officer

1 or employee of the Federal Government from engag-
2 ing in activity protected in subsection (a); or

3 “(2) removing, suspending from duty without
4 pay, demoting, reducing in rank, seniority, status,
5 pay, or performance or efficiency rating, denying
6 promotion to, relocating, reassigning, transferring,
7 disciplining, or discriminating in regard to any em-
8 ployment right, entitlement, or benefit, or any term
9 or condition of employment of, any other officer or
10 employee of the Federal Government or attempting
11 or threatening to commit any of the foregoing ac-
12 tions protected in subsection (a).

13 “(c) APPLICATION.—This section shall not be con-
14 strued to authorize disclosure of any information that is—

15 “(1) specifically prohibited from disclosure by
16 any other provision of Federal law; or

17 “(2) specifically required by Executive order to
18 be kept secret in the interest of national defense or
19 the conduct of foreign affairs, unless disclosure is
20 otherwise authorized by law.

21 “(d) DEFINITION OF OFFICER OR EMPLOYEE OF
22 THE FEDERAL GOVERNMENT.—For purposes of this sec-
23 tion, the term ‘officer or employee of the Federal Govern-
24 ment’ includes—

25 “(1) the President;

1 “(2) a Member of Congress;

2 “(3) a member of the uniformed services;

3 “(4) an employee (as that term is defined in
4 section 2105);

5 “(5) an employee of the United States Postal
6 Service or the Postal Regulatory Commission; and

7 “(6) an employee appointed under chapter 73
8 or 74 of title 38.”.

9 (2) CLERICAL AMENDMENT.—The table of sec-
10 tions for subchapter II of chapter 72 of title 5,
11 United States Code, is amended by striking the item
12 related to section 7211 and inserting the following:

“7211. Employees’ right to petition or furnish information or respond to Con-
gress.”.

13 **SEC. 3. ENHANCEMENT OF WHISTLEBLOWER PROTEC-**
14 **TIONS.**

15 (a) DISCLOSURES RELATING TO OFFICERS OR EM-
16 PLOYEES OF AN OFFICE OF INSPECTOR GENERAL.—Sec-
17 tion 1213(c) of title 5, United States Code, is amended
18 by adding at the end the following:

19 “(3) If the information transmitted under this
20 subsection disclosed a violation of law, rule, or regu-
21 lation, or gross waste, gross mismanagement, abuse
22 of authority, or a substantial and specific danger to
23 public health or safety, by any officer or employee
24 of an Office of Inspector General, the Special Coun-

1 sel may refer the matter to the Committee of Inspec-
2 tors General for Integrity and Efficiency, which shall
3 comply with the standards and procedures applicable
4 to investigations and reports under subsection (c).”.

5 (b) INDIVIDUAL RIGHT OF ACTION.—

6 (1) NONDISCLOSURE AGREEMENTS; DISCLO-
7 SURE OF IDENTITY.—Section 1221 of title 5, United
8 States Code, is amended by striking “section
9 2302(b)(8) or section 2302(b)(9)(A)(i), (B), (C), or
10 (D),” in each instance and inserting “section
11 2302(b)(8), section 2302(b)(9)(A)(i), (B), (C), (D),
12 or (E), section 2302(b)(13), or section 2302(g),”.

13 (2) STAYS.—Section 1221(c)(2) of title 5,
14 United States Code, is amended to read as follows:

15 “(2) Any stay requested under paragraph (1)
16 shall be granted within 10 calendar days (excluding
17 Saturdays, Sundays, and legal holidays) after the
18 date the request is made, if the Board determines
19 that such a stay would be appropriate. If the stay
20 request is denied, the employee, former employee, or
21 applicant may, within 7 days after receiving notice
22 of the denial, file an appeal for expedited review by
23 the Board. The agency shall have 7 days thereafter
24 to respond. The Board shall provide a decision not
25 later than 21 days after receiving the appeal. During

1 the period of appeal, both parties may supplement
2 the record with information unavailable to them at
3 the time the stay was first requested.”.

4 (3) ACCESS TO DISTRICT COURT; JURY
5 TRIALS.—Section 1221(i) of title 5, United States
6 Code, is amended—

7 (A) by striking “(i) Subsections” and in-
8 serting “(i)(1) Subsections”; and

9 (B) by adding at the end the following:

10 “(2)(A) If, in the case of an employee, former em-
11 ployee, or applicant for employment who seeks corrective
12 action from the Merit Systems Protection Board based on
13 an alleged prohibited personnel practice described in sec-
14 tion 2302(b)(8), section 2302(b)(9)(A)(i), (B), (C), (D),
15 or (E), section 2302(b)(13), or section 2302(g), no final
16 order or decision is issued by the Board within 180 days
17 after the date on which a request for such corrective action
18 has been duly submitted to the Board, such employee,
19 former employee, or applicant may, after providing written
20 notice to the Special Counsel and the Board and only with-
21 in 20 days after providing such notice, bring an action
22 for review de novo before the appropriate United States
23 district court, and such action shall, at the request of ei-
24 ther party to such action, be tried before a jury. Upon
25 filing of an action with the appropriate United States dis-

1 strict court, any proceedings before the Board shall cease
2 and the employee, former employee, or applicant for em-
3 ployment waives any right to refile with the Board.

4 “(B) If the Board certifies (in writing) to the parties
5 of a case that the complexity of such case requires a longer
6 period of review, subparagraph (A) shall be applied by
7 substituting ‘240 days’ for ‘180 days’.

8 “(C) In any such action brought before a United
9 States district court under subparagraph (A), the court—
10 “(i) shall apply the standards set forth in sub-
11 section (e); and

12 “(ii) may award any relief which the court con-
13 siders appropriate, including any relief described in
14 subsection (g).”.

15 (c) RECIPIENTS OF WHISTLEBLOWER DISCLO-
16 SURES.—Section 2302(b)(8)(B) of title 5, United States
17 Code, is amended by striking “or to the Inspector General
18 of an agency or another employee designated by the head
19 of the agency to receive such disclosures” and inserting
20 “the Inspector General of an agency, a supervisor in the
21 employee’s direct chain of command up to and including
22 the head of the employing agency, or to an employee des-
23 ignated by any of the aforementioned individuals for the
24 purpose of receiving such disclosures”.

1 (d) ATTORNEY FEES.—Section 7703(a) of title 5,
2 United States Code, is amended by adding at the end the
3 following:

4 “(3) If an employee, former employee, or appli-
5 cant for employment is the prevailing party under
6 an appeal under this section, the employee, former
7 employee, or applicant for employment shall be enti-
8 tled to attorney fees for all representation carried
9 out pursuant to this section. In such an action for
10 attorney fees, the agency responsible for taking the
11 personnel action shall be the respondent and shall be
12 responsible for paying the fees.”.

13 (e) EXTENDING WHISTLEBLOWER PROTECTION ACT
14 TO CERTAIN EMPLOYEES.—Section 2302(a)(2)(A) of title
15 5, United States Code, is amended in the matter following
16 clause (xiii)—

17 (1) by inserting “subsection (b)(9)(A)(i), (B),
18 (C), (D), or (E), subsection (b)(13), or subsection
19 (g),” after “subsection (b)(8),”; and

20 (2) by inserting after “title 31” the following:
21 “, a commissioned officer or applicant for employ-
22 ment in the Public Health Service, and a noncareer
23 appointee in the Senior Executive Service”.

24 (f) RELIEF.—Section 7701(b)(2)(A) of title 5,
25 United States Code, is amended by striking “upon the

1 making of the decision” and inserting “upon making of
2 the decision, necessary to make the employee whole as if
3 there had been no prohibited personnel practice, including
4 training, seniority and promotions consistent with the em-
5 ployee’s prior record,”.

6 **SEC. 4. CLASSIFYING CERTAIN FURLOUGHS AS ADVERSE**
7 **PERSONNEL ACTIONS.**

8 (a) IN GENERAL.—Section 7512 of title 5, United
9 States Code, is amended—

10 (1) in paragraph (4), by striking “and” at the
11 end; and

12 (2) by striking paragraph (5) and inserting the
13 following:

14 “(5) a furlough of more than 14 days but less
15 than 30 days; and

16 “(6) a furlough of 13 days or less that is not
17 due to a lapse in appropriations;”.

18 (b) APPLICATION.—The amendment made by sub-
19 section (a) shall apply to any furlough covered by such
20 section 7512(5) or (6) (as amended by such subsection)
21 occurring on or after the date of enactment of this Act.

1 **SEC. 5. CODIFICATION OF PROTECTIONS FOR DISCLO-**
2 **SURES OF CENSORSHIP RELATED TO RE-**
3 **SEARCH, ANALYSIS, OR TECHNICAL INFOR-**
4 **MATION.**

5 (a) IN GENERAL.—Section 2302 of title 5, United
6 States Code, as amended by section 2(c)(1), is further
7 amended by adding at the end the following:

8 “(h)(1) In this subsection—

9 “(A) the term ‘applicant’ means an applicant
10 for a covered position;

11 “(B) the term ‘censorship related to research,
12 analysis, or technical information’ means any effort
13 to distort, misrepresent, or suppress research, anal-
14 ysis, or technical information; and

15 “(C) the term ‘employee’ means an employee in
16 a covered position in an agency.

17 “(2)(A) Any disclosure of information by an employee
18 or applicant for employment that the employee or appli-
19 cant reasonably believes is evidence of censorship related
20 to research, analysis, or technical information—

21 “(i) shall come within the protections of sub-
22 section (b)(8)(A) if—

23 “(I) the employee or applicant reasonably
24 believes that the censorship related to research,
25 analysis, or technical information is or will
26 cause—

1 “(aa) any violation of law, rule, or
2 regulation; or

3 “(bb) gross mismanagement, a gross
4 waste of funds, an abuse of authority, or
5 a substantial and specific danger to public
6 health or safety; and

7 “(II) such disclosure is not specifically pro-
8 hibited by law or such information is not spe-
9 cifically required by Executive order to be kept
10 classified in the interest of national defense or
11 the conduct of foreign affairs; and

12 “(ii) shall come within the protections of sub-
13 section (b)(8)(B) if—

14 “(I) the employee or applicant reasonably
15 believes that the censorship related to research,
16 analysis, or technical information is or will
17 cause—

18 “(aa) any violation of law, rule, or
19 regulation; or

20 “(bb) gross mismanagement, a gross
21 waste of funds, an abuse of authority, or
22 a substantial and specific danger to public
23 health or safety; and

24 “(II) the disclosure is made to the Special
25 Counsel, or to the Inspector General of an

1 agency or another person designated by the
2 head of the agency to receive such disclosures,
3 consistent with the protection of sources and
4 methods.

5 “(3) A disclosure shall not be excluded from para-
6 graph (2) for any reason described under subsection (f)(1)
7 or (2).

8 “(4) Nothing in this subsection shall be construed to
9 imply any limitation on the protections of employees and
10 applicants afforded by any other provision of law, includ-
11 ing protections with respect to any disclosure of informa-
12 tion believed to be evidence of censorship related to re-
13 search, analysis, or technical information.”.

14 (b) REPEAL.—

15 (1) IN GENERAL.—Section 110 of the Whistle-
16 blower Protection Enhancement Act of 2012 (Public
17 Law 112–199) is hereby repealed.

18 (2) RULE OF CONSTRUCTION.—Nothing in this
19 section shall be construed to limit or otherwise affect
20 any action under such section 110 commenced be-
21 fore the date of enactment of this Act or any protec-
22 tions afforded by such section with respect to such
23 action.

24 **SEC. 6. TECHNICAL AND CONFORMING AMENDMENTS.**

25 Title 5, United States Code, is amended—

1 (1) in section 1212(h), by striking “or (9)” in
2 each instance and inserting “, (b)(9), (b)(13), or
3 (g)”;

4 (2) in section 1214(a)—

5 (A) by striking “section 2302(b)(8) or sec-
6 tion 2302(b)(9)(A)(i), (B), (C), or (D)” in each
7 instance and inserting “section 2302(b)(8), sec-
8 tion 2302(b)(9)(A)(i), (B), (C), (D), or (E),
9 section 2302(b)(13), or section 2302(g)”;

10 (B) in subsection (i), by striking “section
11 2302(b)(8) or subparagraph (A)(i), (B), (C), or
12 (D) of section 2302(b)(9)” and inserting “sec-
13 tion 2302(b)(8), subparagraph (A)(i), (B), (C),
14 (D), or (E) of section 2302(b)(9), section
15 2302(b)(13), or section 2302(g)”;

16 (3) in section 1215, by striking “section
17 2302(b)(8), or 2302(b)(9)(A)(i), (B), (C), or (D)” in
18 each instance and inserting “section 2302(b)(8), sec-
19 tion 2302(b)(9)(A)(i), (B), (C), (D), or (E), section
20 2302(b)(13), or section 2302(g)”;

21 (4) in section 2302—

22 (A) in subsection (a)—

23 (i) in paragraph (1), by inserting “or
24 (g)” after “subsection (b)”;

1 (ii) in paragraph (2)(C)(i), by striking
2 “subsection (b)(8) or section
3 2302(b)(9)(A)(i), (B), (C), or (D)” and in-
4 serting “section 2302(b)(8), section
5 2302(b)(9)(A)(i), (B), (C), (D), or (E),
6 section 2302(b)(13), or section 2302(g)”;
7 and

8 (B) in subsection (c)(1)(B), by striking
9 “paragraph (8) or subparagraph (A)(i), (B),
10 (C), or (D) of paragraph (9) of subsection (b)”
11 and inserting “paragraph (8), subparagraph
12 (A)(i), (B), (C), or (D) of paragraph (9), or
13 paragraph (13) of subsection (b) or subsection
14 (g)”;

15 (5) in section 7515(a)(2), by striking “para-
16 graph (8), (9), or (14) of section 2302(b)” and in-
17 serting “paragraph (8), (9), (13), or (14) of section
18 2302(b) or section 2302(g)”;

19 (6) in section 7701(c)(2)(B), by inserting “or
20 section 2302(g)” after “section 2302(b)”;

21 (7) in section 7703(b)(1)(B), by striking “sec-
22 tion 2302(b)(8), or 2302(b)(9)(A)(i), (B), (C), or
23 (D)” in each instance and inserting “section

1 2302(b)(8), section 2302(b)(9)(A)(i), (B), (C), (D),
2 or (E), section 2302(b)(13), or section 2302(g)”.

○