

115TH CONGRESS  
1ST SESSION

# S. 582

To reauthorize the Office of Special Counsel, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

MARCH 8, 2017

Mr. JOHNSON (for himself, Mrs. McCASKILL, and Mr. GRASSLEY) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

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## A BILL

To reauthorize 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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Office of Special Coun-  
5 sel Reauthorization Act of 2017”.

6 **SEC. 2. ADEQUATE ACCESS OF SPECIAL COUNSEL TO IN-**  
7 **FORMATION.**

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

1 “(5)(A) Except as provided in subparagraph (B), the  
 2 Special Counsel, in carrying out this subchapter, is au-  
 3 thorized to—

4 “(i) have timely access to all records, data, re-  
 5 ports, audits, reviews, documents, papers, rec-  
 6 ommendations, or other material available to the ap-  
 7 plicable agency that relate to an investigation, re-  
 8 view, or inquiry conducted under—

9 “(I) section 1213, 1214, 1215, or 1216 of  
 10 this title; or

11 “(II) section 4324(a) of title 38;

12 “(ii) request from any agency the information  
 13 or assistance that may be necessary for the Special  
 14 Counsel to carry out the duties and responsibilities  
 15 of the Special Counsel under this subchapter; and

16 “(iii) require, during an investigation, review, or  
 17 inquiry of an agency, the agency to provide to the  
 18 Special Counsel any record or other information that  
 19 relates to an investigation, review, or inquiry con-  
 20 ducted under—

21 “(I) section 1213, 1214, 1215, or 1216 of  
 22 this title; or

23 “(II) section 4324(a) of title 38.

24 “(B)(i) The authorization of the Special Counsel  
 25 under subparagraph (A) shall not apply with respect to

1 any entity that is an element of the intelligence commu-  
2 nity, as defined in section 3 of the National Security Act  
3 of 1947 (50 U.S.C. 3003), unless the Special Counsel is  
4 investigating, or otherwise carrying out activities relating  
5 to the enforcement of, an action under subchapter III of  
6 chapter 73.

7 “(ii) The Attorney General or an Inspector General  
8 may withhold from the Special Counsel material described  
9 in subparagraph (A) if—

10 “(I) disclosing the material could reasonably be  
11 expected to interfere with a criminal investigation or  
12 prosecution that is ongoing as of the date on which  
13 the Special Counsel submits a request for the mate-  
14 rial; and

15 “(II) the Attorney General or the Inspector  
16 General, as applicable, submits to the Special Coun-  
17 sel a written report that describes—

18 “(aa) the material being withheld; and

19 “(bb) the reason that the material is being  
20 withheld.

21 “(C)(i) A claim of common law privilege by an agen-  
22 cy, or an officer or employee of an agency, shall not pre-  
23 vent the Special Counsel from obtaining any material de-  
24 scribed in subparagraph (A)(i) with respect to the agency.

1       “(ii) The submission of material described in sub-  
 2 paragraph (A)(i) by an agency to the Special Counsel may  
 3 not be deemed to waive any assertion of privilege by the  
 4 agency against a non-Federal entity or against an indi-  
 5 vidual in any other proceeding.

6       “(iii) With respect to any record or other information  
 7 made available to the Special Counsel by an agency under  
 8 subparagraph (A), the Special Counsel may only disclose  
 9 the record or information for a purpose that is in further-  
 10 ance of any authority provided to the Special Counsel in  
 11 this subchapter.

12       “(6) The Special Counsel shall submit to the Com-  
 13 mittee on Homeland Security and Governmental Affairs  
 14 of the Senate, the Committee on Oversight and Govern-  
 15 ment Reform of the House of Representatives, and each  
 16 committee of Congress with jurisdiction over the applica-  
 17 ble agency a report regarding any case of contumacy or  
 18 failure to comply with a request submitted by the Special  
 19 Counsel under paragraph (5)(A).”.

20 **SEC. 3. INFORMATION ON WHISTLEBLOWER PROTECTIONS.**

21       (a) AGENCY RESPONSIBILITIES.—Section 2302 of  
 22 title 5, United States Code, is amended by striking sub-  
 23 section (c) and inserting the following:

24       “(c)(1) In this subsection—

1           “(A) the term ‘new employee’ means an indi-  
2       vidual—

3           “(i) appointed to a position as an employee  
4           on or after the date of enactment of the Office  
5           of Special Counsel Reauthorization Act of 2017;  
6           and

7           “(ii) who has not previously served as an  
8           employee; and

9           “(B) the term ‘whistleblower protections’ means  
10       the protections against and remedies for a prohibited  
11       personnel practice described in paragraph (8) or  
12       subparagraph (A)(i), (B), (C), or (D) of paragraph  
13       (9) of subsection (b).

14       “(2) The head of each agency shall be responsible  
15       for—

16           “(A) preventing prohibited personnel practices;

17           “(B) complying with and enforcing applicable  
18       civil service laws, rules, and regulations, and other  
19       aspects of personnel management; and

20           “(C) ensuring, in consultation with the Special  
21       Counsel and the Inspector General of the agency,  
22       that employees of the agency are informed of the  
23       rights and remedies available to the employees under  
24       this chapter and chapter 12, including—

1           “(i) information with respect to whistle-  
2           blower protections available to new employees  
3           during a probationary period;

4           “(ii) the role of the Office of Special Coun-  
5           sel and the Merit Systems Protection Board  
6           with respect to whistleblower protections; and

7           “(iii) the means by which, with respect to  
8           information that is otherwise required by law or  
9           Executive order to be kept classified in the in-  
10          terest of national defense or the conduct of for-  
11          eign affairs, an employee may make a lawful  
12          disclosure of the information to—

13                 “(I) the Special Counsel;

14                 “(II) the Inspector General of an  
15          agency;

16                 “(III) Congress; or

17                 “(IV) another employee of the agency  
18          who is designated to receive such a disclo-  
19          sure.

20          “(3) The head of each agency shall ensure that the  
21          information described in paragraph (2) is provided to each  
22          new employee of the agency not later than 180 days after  
23          the date on which the new employee is appointed.

24          “(4) The head of each agency shall make available  
25          information regarding whistleblower protections applicable

1 to employees of the agency on the public website of the  
 2 agency and on any online portal that is made available  
 3 only to employees of the agency, if such portal exists.

4 “(5) Any employee to whom the head of an agency  
 5 delegates authority for any aspect of personnel manage-  
 6 ment shall, within the limits of the scope of the delegation,  
 7 be responsible for the activities described in paragraph  
 8 (2).”.

9 (b) TRAINING FOR SUPERVISORS.—

10 (1) DEFINITIONS.—In this subsection—

11 (A) the term “agency” means any entity  
 12 the employees of which are covered by para-  
 13 graphs (8) and (9) of section 2302(b) of title 5,  
 14 United States Code, without regard to whether  
 15 any other provision of that title is applicable to  
 16 the entity; and

17 (B) the term “whistleblower protections”  
 18 has the meaning given the term in section  
 19 2302(c)(1)(B) of title 5, United States Code, as  
 20 amended by subsection (a).

21 (2) TRAINING REQUIRED.—The head of each  
 22 agency, in consultation with the Special Counsel and  
 23 the Inspector General of that agency (or, in the case  
 24 of an agency that does not have an Inspector Gen-

1        eral, the senior ethics official of that agency), shall  
 2        provide the training described in paragraph (3).

3            (3) TRAINING DESCRIBED.—The training de-  
 4        scribed in this paragraph shall—

5            (A) cover the manner in which the agency  
 6        shall respond to a complaint alleging a violation  
 7        of whistleblower protections that are available  
 8        to employees of the agency; and

9            (B) be provided—

10            (i) to each employee of the agency  
 11        who—

12            (I) is appointed to a supervisory  
 13        position in the agency; and

14            (II) before the appointment de-  
 15        scribed in subclause (I), had not  
 16        served in a supervisory position in the  
 17        agency; and

18            (ii) on an annual basis to all employ-  
 19        ees of the agency who serve in supervisory  
 20        positions in the agency.

21        (c) INFORMATION ON APPEAL RIGHTS.—

22            (1) IN GENERAL.—Any notice provided to an  
 23        employee under section 7503(b)(1), section  
 24        7513(b)(1), or section 7543(b)(1) of title 5, United



1 States Code, shall include detailed information with  
 2 respect to—

3 (A) the right of the employee to appeal an  
 4 action brought under the applicable section;

5 (B) the forums in which the employee may  
 6 file an appeal described in subparagraph (A);  
 7 and

8 (C) any limitations on the rights of the  
 9 employee that would apply because of the forum  
 10 in which the employee decides to file an appeal.

11 (2) DEVELOPMENT OF INFORMATION.—The in-  
 12 formation described in paragraph (1) shall be devel-  
 13 oped by the Director of the Office of Personnel Man-  
 14 agement, in consultation with the Special Counsel,  
 15 the Merit Systems Protection Board, and the Equal  
 16 Employment Opportunity Commission.

17 **SEC. 4. ADDITIONAL WHISTLEBLOWER PROVISIONS.**

18 (a) PROHIBITED PERSONNEL PRACTICES.—Section  
 19 2302 of title 5, United States Code, is amended—

20 (1) in subsection (b)—

21 (A) in paragraph (9)—

22 (i) in subparagraph (C), by inserting  
 23 “(or any other component responsible for  
 24 internal investigation or review)” after  
 25 “Inspector General”; and

1 (ii) in subparagraph (D), by inserting  
 2 “, rule, or regulation” after “law”;

3 (B) in paragraph (12), by striking “or” at  
 4 the end;

5 (C) in paragraph (13), by striking the pe-  
 6 riod at the end and inserting “; or”; and

7 (D) by inserting after paragraph (13) the  
 8 following:

9 “(14) access the medical record of another em-  
 10 ployee or an applicant for employment as a part of,  
 11 or otherwise in furtherance of, any conduct de-  
 12 scribed in paragraphs (1) through (13).”; and

13 (2) in subsection (f)—

14 (A) in paragraph (1)—

15 (i) in subparagraph (E), by striking  
 16 “or” at the end;

17 (ii) by redesignating subparagraph  
 18 (F) as subparagraph (G); and

19 (iii) by inserting after subparagraph  
 20 (E) the following:

21 “(F) the disclosure was made before the date  
 22 on which the individual was appointed or applied for  
 23 appointment to a position; or”; and

24 (B) by striking paragraph (2) and insert-  
 25 ing the following:

1       “(2) If a disclosure is made during the normal course  
 2 of duties of an employee, the principal job function of  
 3 whom is to regularly investigate and disclose wrongdoing  
 4 (in this paragraph referred to as the ‘disclosing em-  
 5 ployee’), the disclosure shall not be excluded from sub-  
 6 section (b)(8) if the disclosing employee demonstrates that  
 7 an employee who has the authority to take, direct other  
 8 individuals to take, recommend, or approve any personnel  
 9 action with respect to the disclosing employee took, failed  
 10 to take, or threatened to take or fail to take a personnel  
 11 action with respect to the disclosing employee in reprisal  
 12 for the disclosure made by the disclosing employee.”.

13       (b) EXPLANATIONS FOR FAILURE TO TAKE AC-  
 14 TION.—Section 1213 of title 5, United States Code, is  
 15 amended—

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

18           (2) in subsection (e)—

19               (A) in paragraph (1), by striking “Any  
 20       such report” and inserting “Any report re-  
 21       quired under subsection (c) or paragraph (5) of  
 22       this subsection”;

23               (B) by striking paragraph (2) and insert-  
 24       ing the following:

1       “(2) Upon receipt of any report that the head of an  
 2 agency is required to submit under subsection (c), the Spe-  
 3 cial Counsel shall review the report and determine wheth-  
 4 er—

5               “(A) the findings of the head of the agency ap-  
 6 pear reasonable; and

7               “(B) if the Special Counsel requires the head of  
 8 the agency to submit a supplemental report under  
 9 paragraph (5), the reports submitted by the head of  
 10 the agency collectively contain the information re-  
 11 quired under subsection (d).”;

12               (C) in paragraph (3), by striking “agency  
 13 report received pursuant to subsection (c) of  
 14 this section” and inserting “report submitted to  
 15 the Special Counsel by the head of an agency  
 16 under subsection (c) or paragraph (5) of this  
 17 subsection”; and

18               (D) by adding at the end the following:

19       “(5) If, after conducting a review of a report under  
 20 paragraph (2), the Special Counsel concludes that the  
 21 Special Counsel requires additional information or docu-  
 22 mentation to determine whether the report submitted by  
 23 the head of an agency is reasonable and sufficient, the  
 24 Special Counsel may request that the head of the agency  
 25 submit a supplemental report—

1           “(A) containing the additional information or  
2       documentation identified by the Special Counsel; and

3           “(B) that the head of the agency shall submit  
4       to the Special Counsel within a period of time speci-  
5       fied by the Special Counsel.”.

6       (c) TRANSFER REQUESTS DURING STAYS.—

7           (1) PRIORITY GRANTED.—Section 1214(b)(1) of  
8       title 5, United States Code, is amended by adding  
9       at the end the following:

10       “(E) If the Board grants a stay under subparagraph  
11    (A), the head of the agency employing the employee who  
12    is the subject of the action shall give priority to a request  
13    for a transfer submitted by the employee.”.

14           (2) PROBATIONARY EMPLOYEES.—Section 1221  
15       of title 5, United States Code, is amended by adding  
16       at the end the following:

17       “(k) If the Board grants a stay under subsection (c)  
18    and the employee who is the subject of the action is in  
19    probationary status, the head of the agency employing the  
20    employee shall give priority to a request for a transfer sub-  
21    mitted by the employee.”.

22       (d) RETALIATORY INVESTIGATIONS.—Section 1214  
23    of title 5, United States Code, is amended by adding at  
24    the end the following:

1       “(i) The Special Counsel may petition the Board to  
 2 order corrective action, including fees, costs, or damages  
 3 reasonably incurred by an employee due to an investiga-  
 4 tion of the employee by an agency, if the investigation by  
 5 an agency was commenced, expanded, or extended in retal-  
 6 iation for a disclosure or protected activity described in  
 7 section 2302(b)(8) or subparagraph (A)(i), (B), (C), or  
 8 (D) of section 2302(b)(9), even if no personnel action, as  
 9 defined in section 2302(a)(2)(A), is taken or not taken.”.

10 **SEC. 5. SUICIDE BY EMPLOYEES.**

11       (a) DEFINITIONS.—In this section—

12           (1) the term “agency” means any entity the  
 13 employees of which are covered by paragraphs (8)  
 14 and (9) of section 2302(b) of title 5, United States  
 15 Code, without regard to whether any other provision  
 16 of that title is applicable to the entity; and

17           (2) the term “personnel action” has the mean-  
 18 ing given the term in section 2302(a)(2)(A) of title  
 19 5, United States Code.

20       (b) REFERRAL.—

21           (1) IN GENERAL.—The head of an agency shall  
 22 refer to the Special Counsel, along with any informa-  
 23 tion known to the agency regarding the cir-  
 24 cumstances described in paragraph (2), any instance  
 25 in which the head of the agency has information in-

1       dicating that an employee of the agency committed  
2       suicide.

3           (2) INFORMATION.—The circumstances de-  
4       scribed in this paragraph are as follows:

5           (A) Before the death of an employee de-  
6       scribed in paragraph (1), the employee made a  
7       disclosure of information that reasonably evi-  
8       dences—

9                   (i) a violation of a law, rule, or regu-  
10       lation;

11                   (ii) gross mismanagement;

12                   (iii) a gross waste of funds;

13                   (iv) an abuse of authority; or

14                   (v) a substantial and specific danger  
15       to public health or safety.

16           (B) After a disclosure described in sub-  
17       paragraph (A), a personnel action was taken  
18       with respect to the employee who made the dis-  
19       closure.

20       (c) OFFICE OF SPECIAL COUNSEL REVIEW.—Upon  
21       receiving a referral under subsection (b)(1), the Special  
22       Counsel shall—

23           (1) examine whether a personnel action was  
24       taken with respect to an employee because of a dis-  
25       closure described in subsection (b)(2)(A); and

1           (2) take any action that the Special Counsel de-  
 2           termines is appropriate under subchapter II of chap-  
 3           ter 12 of title 5, United States Code.

4 **SEC. 6. PROTECTION OF WHISTLEBLOWERS AS CRITERIA**  
 5 **IN PERFORMANCE APPRAISALS.**

6           (a) ESTABLISHMENT OF SYSTEMS.—Section 4302 of  
 7 title 5, United States Code, is amended—

8           (1) by redesignating subsections (b) and (c) as  
 9           subsections (c) and (d), respectively; and

10          (2) by inserting after subsection (a) the fol-  
 11          lowing:

12          “(b)(1) The head of each agency, in consultation with  
 13 the Director of the Office of Personnel Management and  
 14 the Special Counsel, shall develop criteria that—

15               “(A) the head of the agency shall use as a crit-  
 16               ical element for establishing the job requirements of  
 17               a supervisory employee; and

18               “(B) promote the protection of whistleblowers.

19          “(2) The criteria required under paragraph (1) shall  
 20 include—

21               “(A) principles for the protection of whistle-  
 22               blowers, such as the degree to which supervisory em-  
 23               ployees—



1           “(i) respond constructively when employees  
 2           of the agency make disclosures described in  
 3           subparagraph (A) or (B) of section 2302(b)(8);

4           “(ii) take responsible actions to resolve the  
 5           disclosures described in clause (i); and

6           “(iii) foster an environment in which em-  
 7           ployees of the agency feel comfortable making  
 8           disclosures described in subparagraph (A) to  
 9           supervisory employees or other appropriate au-  
 10          thorities; and

11          “(B) for each supervisory employee—

12           “(i) whether the agency entered into an  
 13           agreement with an individual who alleged that  
 14           the supervisory employee committed a prohib-  
 15           ited personnel practice; and

16           “(ii) if the agency entered into an agree-  
 17           ment described in clause (i), the number of in-  
 18           stances in which the agency entered into such  
 19           an agreement with respect to the supervisory  
 20           employee.

21          “(3) In this subsection—

22           “(A) the term ‘agency’ means any entity the  
 23           employees of which are covered by paragraphs (8)  
 24           and (9) of section 2302(b), without regard to wheth-

1 er any other provision of this section is applicable to  
 2 the entity;

3 “(B) the term ‘prohibited personnel practice’  
 4 has the meaning given the term in section  
 5 2302(a)(1);

6 “(C) the term ‘supervisory employee’ means an  
 7 employee who would be a supervisor, as defined in  
 8 section 7103(a), if the agency employing the em-  
 9 ployee was an agency for purposes of chapter 71;  
 10 and

11 “(D) the term ‘whistleblower’ means an em-  
 12 ployee who makes a disclosure described in section  
 13 2302(b)(8).”.

14 (b) CRITERIA FOR PERFORMANCE APPRAISALS.—  
 15 Section 4313 of title 5, United States Code, is amended—

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

18 (2) in paragraph (5), by striking the period at  
 19 the end and inserting “; and”; and

20 (3) by adding at the end the following:

21 “(6) protecting whistleblowers, as described in  
 22 section 4302(b)(2).”.

23 (c) ANNUAL REPORT TO CONGRESS ON UNACCEPT-  
 24 ABLE PERFORMANCE IN WHISTLEBLOWER PROTEC-  
 25 TION.—

1           (1) DEFINITIONS.—In this subsection, the  
2       terms “agency” and “whistleblower” have the mean-  
3       ings given the terms in section 4302(b)(3) of title 5,  
4       United States Code, as amended by subsection (a).

5           (2) REPORT.—Each agency shall annually sub-  
6       mit to the Committee on Homeland Security and  
7       Governmental Affairs of the Senate, the Committee  
8       on Oversight and Government Reform of the House  
9       of Representatives, and each committee of Congress  
10      with jurisdiction over the agency a report that de-  
11      tails—

12           (A) the number of performance appraisals,  
13       for the year covered by the report, that deter-  
14       mined that an employee of the agency failed to  
15       meet the standards for protecting whistle-  
16       blowers that were established under section  
17       4302(b) of title 5, United States Code, as  
18       amended by subsection (a);

19           (B) the reasons for the determinations de-  
20       scribed in subparagraph (A); and

21           (C) each performance-based or corrective  
22       action taken by the agency in response to a de-  
23       termination under subparagraph (A).

24       (d) TECHNICAL AND CONFORMING AMENDMENT.—  
25      Section 4301 of title 5, United States Code, is amended,

1 in the matter preceding paragraph (1), by striking “For  
 2 the purpose of” and inserting “Except as otherwise ex-  
 3 pressly provided, for the purpose of”.

4 **SEC. 7. DISCIPLINE OF SUPERVISORS BASED ON RETALIA-**  
 5 **TION AGAINST WHISTLEBLOWERS.**

6 (a) IN GENERAL.—Subchapter II of chapter 75 of  
 7 title 5, United States Code, is amended by adding at the  
 8 end the following:

9 **“§ 7515. Discipline of supervisors based on retaliation**  
 10 **against whistleblowers**

11 “(a) DEFINITIONS.—In this section—

12 “(1) the term ‘agency’—

13 “(A) has the meaning given the term in  
 14 section 2302(a)(2)(C), without regard to wheth-  
 15 er any other provision of this chapter is applica-  
 16 ble to the entity; and

17 “(B) does not include any entity that is an  
 18 element of the intelligence community, as de-  
 19 fined in section 3 of the National Security Act  
 20 of 1947 (50 U.S.C. 3003);

21 “(2) the term ‘prohibited personnel action’  
 22 means taking or failing to take an action in violation  
 23 of paragraph (8) or (9) of section 2302(b) against  
 24 an employee of an agency; and

1           “(3) the term ‘supervisor’ means an employee  
2           who would be a supervisor, as defined in section  
3           7103(a), if the entity employing the employee was  
4           an agency.

5           “(b) PROPOSED DISCIPLINARY ACTIONS.—

6           “(1) IN GENERAL.—If the head of the agency  
7           in which a supervisor is employed, an administrative  
8           law judge, the Merit Systems Protection Board, the  
9           Special Counsel, a judge of the United States, or the  
10          Inspector General of the agency in which a super-  
11          visor is employed has determined that the supervisor  
12          committed a prohibited personnel action, the head of  
13          the agency in which the supervisor is employed, con-  
14          sistent with the procedures required under para-  
15          graph (2)—

16               “(A) for the first prohibited personnel ac-  
17               tion committed by the supervisor—

18                       “(i) shall propose suspending the su-  
19                       pervisor for a period that is not less than  
20                       3 days; and

21                       “(ii) may propose an additional action  
22                       determined appropriate by the head of the  
23                       agency, including a reduction in grade or  
24                       pay; and

1           “(B) for the second prohibited personnel  
2           action committed by the supervisor, shall pro-  
3           pose removing the supervisor.

4           “(2) PROCEDURES.—

5           “(A) NOTICE.—A supervisor against whom  
6           an action is proposed to be taken under para-  
7           graph (1) is entitled to written notice that—

8                   “(i) states the specific reasons for the  
9                   proposed action; and

10                   “(ii) informs the supervisor about the  
11                   right of the supervisor to review the mate-  
12                   rial that constitutes the factual support on  
13                   which the proposed action is based.

14           “(B) ANSWER AND EVIDENCE.—

15                   “(i) IN GENERAL.—A supervisor who  
16                   receives notice under subparagraph (A)  
17                   may, not later than 14 days after receiving  
18                   the notice, submit an answer and furnish  
19                   evidence in support of that answer.

20                   “(ii) NO EVIDENCE FURNISHED; IN-  
21                   SUFFICIENT EVIDENCE FURNISHED.—If,  
22                   after the end of the 14-day period de-  
23                   scribed in clause (i), a supervisor does not  
24                   furnish any evidence as described in that  
25                   clause, or if the head of the agency in

1           which the supervisor is employed deter-  
2           mines that the evidence furnished by the  
3           supervisor is insufficient, the head of the  
4           agency shall carry out the action proposed  
5           under subparagraph (A) or (B) of para-  
6           graph (1).

7           “(C) SCOPE OF PROCEDURES.—An action  
8           carried out under this section—

9                   “(i) except as provided in clause (ii),  
10                  shall be subject to the same requirements  
11                  and procedures, including those with re-  
12                  spect to an appeal, as an action under sec-  
13                  tion 7503, 7513, or 7543; and

14                   “(ii) shall not be subject to—

15                           “(I) paragraphs (1) and (2) of  
16                           section 7503(b);

17                           “(II) paragraphs (1) and (2) of  
18                           subsection (b) and subsection (c) of  
19                           section 7513; and

20                           “(III) paragraphs (1) and (2) of  
21                           subsection (b) and subsection (c) of  
22                           section 7543.

23           “(3) NON-DELEGATION.—If the head of an  
24           agency is responsible for determining whether a su-  
25           pervisor has committed a prohibited personnel action

1 for purposes of paragraph (1), the head of the agen-  
 2 cy may not delegate that responsibility.”.

3 (b) TECHNICAL AND CONFORMING AMENDMENT.—  
 4 The table of sections for subchapter II of chapter 75 of  
 5 title 5, United States Code, is amended by inserting after  
 6 the item relating to section 7514 the following:

“7515. Discipline of supervisors based on retaliation against whistleblowers.”.

7 **SEC. 8. TERMINATION OF CERTAIN INVESTIGATIONS BY**  
 8 **THE OFFICE OF SPECIAL COUNSEL.**

9 Section 1214(a) of title 5, United States Code, is  
 10 amended—

11 (1) in paragraph (1)(D), in the first sentence,  
 12 by inserting “, other than a termination of an inves-  
 13 tigation described in paragraph (6)(A),” after “in-  
 14 vestigation of a prohibited personnel practice”; and

15 (2) by adding at the end the following:

16 “(6)(A) Not later than 30 days after receiving an al-  
 17 legation of a prohibited personnel practice under para-  
 18 graph (1), the Special Counsel may terminate an inves-  
 19 tigation of the allegation without further inquiry or an op-  
 20 portunity for the individual who submitted the allegation  
 21 to respond if the Special Counsel determines that—

22 “(i) the same allegation, based on the same set  
 23 of facts and circumstances had previously been—

24 “(I)(aa) made by the individual; and



1 “(bb) investigated by the Special Counsel;

2 or

3 “(II) filed by the individual with the Merit

4 Systems Protection Board;

5 “(ii) the Special Counsel does not have jurisdic-

6 tion to investigate the allegation; or

7 “(iii) the individual knew or should have known

8 of the alleged prohibited personnel practice on or be-

9 fore the date that is 3 years before the date on

10 which the Special Counsel received the allegation.

11 “(B) Not later than 30 days after the date on which

12 the Special Counsel terminates an investigation under sub-

13 paragraph (A), the Special Counsel shall provide a written

14 notification to the individual who submitted the allegation

15 of a prohibited personnel practice that states the basis of

16 the Special Counsel for terminating the investigation.”.

17 **SEC. 9. ALLEGATIONS OF WRONGDOING WITHIN THE OF-**

18 **FICE OF SPECIAL COUNSEL.**

19 Section 1212 of title 5, United States Code, is

20 amended by adding at the end the following:

21 “(i) The Special Counsel shall enter into at least one

22 agreement with the Inspector General of an agency under

23 which—

24 “(1) the Inspector General shall—

1           “(A) receive, review, and investigate allega-  
 2           tions of prohibited personnel practices or  
 3           wrongdoing filed by employees of the Office of  
 4           Special Counsel; and

5           “(B) develop a method for an employee of  
 6           the Office of Special Counsel to directly com-  
 7           municate with the Inspector General; and

8           “(2) the Special Counsel—

9           “(A) may not require an employee of the  
 10          Office of Special Counsel to seek authorization  
 11          or approval before directly contacting the In-  
 12          spector General in accordance with the agree-  
 13          ment; and

14          “(B) may reimburse the Inspector General  
 15          for services provided under the agreement.”.

16 **SEC. 10. REPORTING REQUIREMENTS.**

17          (a) ANNUAL REPORT.—Section 1218 of title 5,  
 18          United States Code, is amended to read as follows:

19 **“§ 1218. Annual report**

20          “The Special Counsel shall submit to Congress, on  
 21          an annual basis, a report on the activities of the Special  
 22          Counsel, which shall include, for the year preceding the  
 23          submission of the report—

24          “(1) the number, types, and disposition of alle-  
 25          gations of prohibited personnel practices filed with

1 the Special Counsel and the costs of resolving such  
2 allegations;

3 “(2) the number of investigations conducted by  
4 the Special Counsel;

5 “(3) the number of stays and disciplinary ac-  
6 tions negotiated with agencies by the Special Coun-  
7 sel;

8 “(4) the number of subpoenas issued by the  
9 Special Counsel;

10 “(5) the number of instances in which the Spe-  
11 cial Counsel reopened an investigation after the Spe-  
12 cial Counsel had made an initial determination with  
13 respect to the investigation;

14 “(6) the actions that resulted from reopening  
15 investigations, as described in paragraph (5);

16 “(7) the number of instances in which the Spe-  
17 cial Counsel did not make a determination before  
18 the end of the 240-day period described in section  
19 1214(b)(2)(A)(i) regarding whether there were rea-  
20 sonable grounds to believe that a prohibited per-  
21 sonnel practice had occurred, existed, or was to be  
22 taken;

23 “(8) a description of the recommendations and  
24 reports made by the Special Counsel to other agen-  
25 cies under this subchapter and the actions taken by

1 the agencies as a result of the recommendations or  
2 reports;

3 “(9) the number of—

4 “(A) actions initiated before the Merit Sys-  
5 tems Protection Board, including the number of  
6 corrective action petitions and disciplinary ac-  
7 tion complaints initiated; and

8 “(B) stays and extensions of stays ob-  
9 tained from the Merit Systems Protection  
10 Board;

11 “(10) the number of prohibited personnel prac-  
12 tice complaints that resulted in a favorable action  
13 for the complainant, other than a stay or an exten-  
14 sion of a stay, organized by actions in—

15 “(A) complaints dealing with reprisals  
16 against whistleblowers; and

17 “(B) all other complaints; and

18 “(11) the number of prohibited personnel prac-  
19 tice complaints that were resolved by an agreement  
20 between an agency and an individual, organized by  
21 agency and agency components in—

22 “(A) complaints dealing with reprisals  
23 against whistleblowers; and

24 “(B) all other complaints;

1           “(12) the number of corrective actions that the  
 2       Special Counsel required an agency to take after a  
 3       finding by the Special Counsel of a prohibited per-  
 4       sonnel practice, as defined in section 2302(a)(1);  
 5       and

6           “(13) the results for the Office of Special Coun-  
 7       sel of any employee viewpoint survey conducted by  
 8       the Office of Personnel Management or any other  
 9       agency.”.

10       (b) PUBLIC INFORMATION.—Section 1219(a)(1) of  
 11   title 5, United States Code, is amended to read as follows:

12           “(1) a list of any noncriminal matters referred  
 13       to the head of an agency under section 1213(c), to-  
 14       gether with—

15           “(A) a copy of the information transmitted  
 16       to the head of the agency under section  
 17       1213(c)(1);

18           “(B) any report from the agency under  
 19       section 1213(c)(1)(B) relating to the matter;

20           “(C) if appropriate, not otherwise prohib-  
 21       ited by law, and consented to by the complain-  
 22       ant, any comments from the complainant under  
 23       section 1213(e)(1) relating to the matter; and

1           “(D) the comments or recommendations of  
 2           the Special Counsel under paragraph (3) or (4)  
 3           of section 1213(e);”.

4           (c) NOTICE OF COMPLAINT SETTLEMENTS.—Section  
 5 1217 of title 5, United States Code, is amended—

6           (1) by striking “The Special Counsel” and in-  
 7           serting:

8           “(a) IN GENERAL.—The Special Counsel”; and

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

10          “(b) ADDITIONAL REPORT REQUIRED.—

11           “(1) IN GENERAL.—If an allegation submitted  
 12           to the Special Counsel is resolved by an agreement  
 13           between an agency and an individual, the Special  
 14           Counsel shall submit to Congress and each congres-  
 15           sional committee with jurisdiction over the agency a  
 16           report regarding the agreement.

17           “(2) CONTENTS.—The report required under  
 18           paragraph (1) shall identify, with respect to an  
 19           agreement described in that paragraph—

20           “(A) the agency that entered into the  
 21           agreement;

22           “(B) the position and employment location  
 23           of the employee who submitted the allegation  
 24           that formed the basis of the agreement;

1           “(C) the position and employment location  
 2           of any employee alleged by an employee de-  
 3           scribed in subparagraph (B) to have committed  
 4           a prohibited personnel practice, as defined in  
 5           section 2302(a)(1);

6           “(D) a description of the allegation de-  
 7           scribed in subparagraph (B); and

8           “(E) whether the agency that entered into  
 9           the agreement has agreed to pursue any dis-  
 10          ciplinary action as a result of the allegation de-  
 11          scribed in subparagraph (B).”.

12 **SEC. 11. ESTABLISHMENT OF SURVEY PILOT PROGRAM.**

13       (a) IN GENERAL.—The Office of Special Counsel  
 14 shall design and establish a pilot program under which  
 15 the Office shall conduct, during the first full fiscal year  
 16 after the date of enactment of this Act, a survey of individ-  
 17 uals who have filed a complaint or disclosure with the Of-  
 18 fice.

19       (b) PURPOSE.—The survey under subsection (a) shall  
 20 be designed for the purpose of collecting information and  
 21 improving service at various stages of a review or inves-  
 22 tigation by the Office of Special Counsel.

23       (c) RESULTS.—The results of the survey under sub-  
 24 section (a) shall be published in the annual report of the  
 25 Office of Special Counsel.

1 (d) SUSPENSION OF OTHER SURVEYS.—During the  
 2 period beginning on October 1, 2017, and ending on Sep-  
 3 tember 30, 2018, section 13 of the Act entitled “An Act  
 4 to reauthorize the Office of Special Counsel, and for other  
 5 purposes”, approved October 29, 1994 (5 U.S.C. 1212  
 6 note), shall have no force or effect.

7 **SEC. 12. REGULATIONS.**

8 (a) IN GENERAL.—Not later than 2 years after the  
 9 date of enactment of this Act, the Special Counsel shall  
 10 prescribe such regulations as may be necessary to per-  
 11 form—

12 (1) the functions of the Special Counsel under  
 13 subchapter II of chapter 12 of title 5, United States  
 14 Code, including regulations that are necessary to  
 15 carry out sections 1213, 1214, and 1215 of that  
 16 title; and

17 (2) any functions of the Special Counsel that  
 18 are required because of the amendments made by  
 19 this Act.

20 (b) PUBLICATION.—Any regulations prescribed under  
 21 subsection (a) shall be published in the Federal Register.

22 **SEC. 13. AUTHORIZATION OF APPROPRIATIONS.**

23 (a) IN GENERAL.—Section 8(a)(2) of the Whistle-  
 24 blower Protection Act of 1989 (5 U.S.C. 5509 note) is



1 amended by striking “2003, 2004, 2005, 2006, and 2007”  
2 and inserting “2017 through 2022”.

3 (b) EFFECTIVE DATE.—The amendment made by  
4 subsection (a) shall take effect as though enacted on Sep-  
5 tember 30, 2015.

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