

118TH CONGRESS
2D SESSION

H. R. 7750

To amend section 2303 of title 5, United States Code, to require the Inspector General of the Department of Justice to investigate allegations of prohibited against employees of the Federal Bureau of Investigation for whistleblowing, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 20, 2024

Mr. LANGWORTHY (for himself, Mr. JORDAN, Mr. ARMSTRONG, Mr. GOODEN of Texas, Mr. MOORE of Alabama, Ms. TENNEY, Mr. TIFFANY, and Mr. VAN DREW) introduced the following bill; which was referred to the Committee on Oversight and Accountability

A BILL

To amend section 2303 of title 5, United States Code, to require the Inspector General of the Department of Justice to investigate allegations of prohibited against employees of the Federal Bureau of Investigation for whistleblowing, 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 “Protecting Whistle-
5 blowers from Retribution Act”.

1 **SEC. 2. INSPECTOR GENERAL RESPONSIBLE FOR FBI WHIS-**
2 **TLBLOWER RETALIATION INVESTIGATIONS.**

3 (a) IN GENERAL.—Section 2303 of title 5, United
4 States Code, is amended—

5 (1) in subsection (a)—

6 (A) in paragraph (1), by redesignating
7 subparagraphs (A) through (H) as clauses (i)
8 through (viii), respectively;

9 (B) in paragraph (2), by redesignating
10 subparagraphs (A) and (B) as clauses (i) and
11 (ii), respectively;

12 (C) by redesignating paragraphs (1) and
13 (2) as subparagraphs (A) and (B), respectively;

14 (D) in the matter preceding subparagraph
15 (A), as so redesignated, by striking “reprisal
16 for” and all that follows and inserting the fol-
17 lowing: “reprisal for—

18 “(1) a disclosure described in section
19 2302(b)(8)(A), if such disclosure is not specifically
20 prohibited by law and if such information is not spe-
21 cifically required by Executive order to be kept se-
22 cret in the interest of national defense or the con-
23 duct of foreign affairs; or

24 “(2) a disclosure of information—”;

25 (E) by striking “clauses (i) through (x)”
26 and inserting “clauses (i) through (xii)”; and

1 (F) by inserting after “of this title with re-
2 spect to” the following: “, or the initiation or
3 extension of an investigation into or denial, sus-
4 pension, or revocation of the security clearance
5 of,”;

6 (2) in subsection (c)—

7 (A) by inserting “subsections (d), (g), and
8 (e) and the” before “applicable provisions”; and

9 (B) by striking “sections 1214 and” and
10 inserting “section”;

11 (3) by redesignating subsection (d) as sub-
12 section (g); and

13 (4) by inserting after subsection (c) the fol-
14 lowing new subsections:

15 “(d)(1) The Inspector General of the Department of
16 Justice shall, in accordance with subsection (e), receive
17 and investigate each allegation made by an employee or
18 former employee of, or applicant for a position in, the Fed-
19 eral Bureau of Investigation of a reprisal in violation of
20 subsection (a) and, where appropriate—

21 “(A) bring petitions for stays, and petitions for
22 corrective action, under subsection (e); and

23 “(B) file a complaint or make recommendations
24 for disciplinary action under subsection (f).

1 “(2) For the purposes of carrying out subsection (d),
2 the Inspector General of the Department of Justice shall
3 have the same authorities and responsibilities provided to,
4 and be subject to the same requirements as, the Special
5 Counsel under subsections (b) through (g) of section 1212
6 with respect to an investigation, review, or inquiry con-
7 ducted under section 1214 or 1215, except that the re-
8 quirement described in subsection (b)(6) of section 1212
9 shall not apply with respect to the Inspector General.

10 “(e)(1)(A)(i) The Inspector General of the Depart-
11 ment of Justice shall receive each allegation described in
12 subsection (d) and shall investigate the allegation to the
13 extent necessary to determine whether there are reason-
14 able grounds to believe that a reprisal in violation of sub-
15 section (a) has occurred, exists, or is going to be taken.

16 “(ii) Within 15 days after the date of re-
17 ceiving an allegation of a reprisal in violation of
18 subsection (a) under subparagraph (A), the In-
19 spector General of the Department of Justice
20 shall provide written notice to the person who
21 made the allegation that—

22 “(I) the allegation has been received
23 by the Inspector General; and

24 “(II) shall include the name of a per-
25 son at the Office of Inspector General of

1 the Department of Justice who shall serve
2 as a contact with the person making the
3 allegation.

4 “(iii) Unless an investigation is terminated
5 under subparagraph (B), the Inspector General
6 of the Department of Justice shall—

7 “(I) within 90 days after notice is
8 provided under clause (ii), notify the per-
9 son who made the allegation of the status
10 of the investigation and any action taken
11 by the Office of the Inspector General of
12 the Department of Justice since the filing
13 of the allegation;

14 “(II) notify such person of the status
15 of the investigation and any action taken
16 by such Office since the last notice, at
17 least every 60 days after notice is given
18 under subclause (I); and

19 “(III) notify such person of the status
20 of the investigation and any action taken
21 by the Inspector General at such time as
22 determined appropriate by the Inspector
23 General.

24 “(iv) No later than 10 days before the In-
25 spector General of the Department of Justice

1 terminates any investigation of a prohibited
2 personnel practice, the Inspector General shall
3 provide a written status report to the person
4 who made the allegation of the proposed find-
5 ings of fact and legal conclusions. The person
6 may submit written comments about the report
7 to the Inspector General. The Inspector General
8 shall not be required to provide a subsequent
9 written status report under this clause after the
10 submission of such written comments.

11 “(B)(i) Not later than 30 days after the Inspec-
12 tor General of the Department of Justice terminates
13 any investigation under subparagraph (A), the In-
14 spector General shall prepare and transmit to any
15 person on whose allegation the investigation was ini-
16 tiated a written statement notifying the person of—

17 “(I) the termination of the investiga-
18 tion;

19 “(II) a summary of relevant facts
20 ascertained by the Inspector General, in-
21 cluding the facts that support, and the
22 facts that do not support, the allegations
23 of such person;

24 “(III) the reasons for terminating the
25 investigation; and

1 “(IV) a response to any comments
2 submitted under subparagraph (A)(iv).

3 “(ii) A written statement under clause (i) may
4 not be admissible as evidence in any judicial or ad-
5 ministrative proceeding, without the consent of the
6 person who received such statement under such
7 clause.

8 “(C) In addition to any authority granted under
9 subparagraph (A), the Inspector General may, in the
10 absence of an allegation, conduct an investigation
11 for the purpose of determining whether there are
12 reasonable grounds to believe that a reprisal in viola-
13 tion of subsection (a) has occurred, exists, or is
14 going to be taken.

15 “(D)(i) Notwithstanding any other provision of
16 this subsection, not later than 30 days after the date
17 on which the Inspector General of the Department
18 of Justice receives an allegation of a reprisal in vio-
19 lation of subsection (a) under subparagraph (A), the
20 Inspector General may terminate an investigation of
21 the allegation without further inquiry if the Inspec-
22 tor General determines that—

23 “(I) the same allegation, based on the
24 same set of facts and circumstances, had
25 previously been—

1 “(aa)(AA) made by the indi-
2 vidual; and

3 “(BB) investigated by the
4 Inspector General; or

5 “(bb) filed by the individual with
6 the Merit Systems Protection Board;

7 “(II) the Inspector General does not
8 have jurisdiction to investigate the allega-
9 tion; or

10 “(III) the individual knew or should
11 have known of the alleged reprisal in viola-
12 tion of subsection (a) on or before the date
13 that is 3 years before the date on which
14 the Inspector General received the allega-
15 tion.

16 “(ii) Not later than 30 days after the date on
17 which the Inspector General of the Department of
18 Justice terminates an investigation under clause (i),
19 the Inspector General shall provide a written notifi-
20 cation to the individual who submitted the allegation
21 of a reprisal in violation of subsection (a) that states
22 the basis of the Inspector General for terminating
23 the investigation.

24 “(2)(A)(i)(I) The Inspector General of the Depart-
25 ment of Justice may request any member of the Merit Sys-

1 tems Protection Board to order a stay of any personnel
2 action (as defined in subsection (a)) for 45 days if the
3 Inspector General determines that there are reasonable
4 grounds to believe that the personnel action was taken,
5 or is going to be taken, as a result of a reprisal in violation
6 of subsection (a).

7 “(II) Any member of the Merit Systems
8 Protection Board requested by the Inspector
9 General of the Department of Justice to order
10 a stay under subclause (I) shall order such stay
11 unless the member determines that, under the
12 facts and circumstances involved, such a stay
13 would not be appropriate.

14 “(III) Unless denied under subclause (II),
15 any stay under this clause shall be granted
16 within 3 calendar days (excluding Saturdays,
17 Sundays, and legal holidays) after the date of
18 the request for the stay by the Inspector Gen-
19 eral of the Department of Justice.

20 “(ii)(I) The Merit Systems Protection Board
21 may extend the period of any stay granted under
22 clause (i) for any period which the Board considers
23 appropriate.

24 “(II) If the Merit Systems Protection
25 Board lacks the number of members appointed

1 under section 1201 required to constitute a
2 quorum, any remaining member of the Board
3 may, upon request by the Inspector General of
4 the Department of Justice, extend the period of
5 any stay granted under clause (i).

6 “(iii) A stay may be terminated by the Merit
7 Systems Protection Board at any time, except that
8 a stay may not be terminated by the Board—

9 “(I) on its own motion or on the motion of
10 an agency, unless notice and opportunity for
11 oral or written comments are first provided to
12 the Inspector General of the Department of
13 Justice and the individual on whose behalf the
14 stay was ordered; or

15 “(II) on motion of the Inspector General,
16 unless notice and opportunity for oral or writ-
17 ten comments are first provided to the indi-
18 vidual on whose behalf the stay was ordered.

19 “(iv) If the Merit Systems Protection Board
20 grants a stay under clause (i), the Attorney General
21 shall give priority to a request for a transfer sub-
22 mitted by the employee who is the subject of the ac-
23 tion.

24 “(B)(i)(I) Except as provided under subclause (II),
25 no later than 240 days after the date of receiving an alle-

1 gation of a reprisal in violation of subsection (a) under
2 subparagraph (A), the Inspector General of the Depart-
3 ment of Justice shall make a determination whether there
4 are reasonable grounds to believe that a reprisal in viola-
5 tion of subsection (a) has occurred, exists, or is going to
6 be taken.

7 “(II) If the Inspector General of the Depart-
8 ment of Justice is unable to make the required de-
9 termination within the 240-day period specified
10 under subclause (I) and the person submitting the
11 allegation of a reprisal in violation of subsection (a)
12 agrees to an extension of time, the determination
13 shall be made within such additional period of time
14 as shall be agreed upon between the Inspector Gen-
15 eral and the person submitting the allegation.

16 “(ii) If, in connection with any investigation, the In-
17 specter General of the Department of Justice determines
18 that there are reasonable grounds to believe that a reprisal
19 in violation of subsection (a) has occurred, exists, or is
20 going to be taken which requires corrective action, the In-
21 specter General shall report the determination together
22 with any findings or recommendations to the Merit Sys-
23 tems Protection Board, the Attorney General, and the Of-
24 fice of Personnel Management, and may report such deter-
25 mination, findings and recommendations to the President.

1 The Inspector General may include in the report rec-
2 ommendations for corrective action to be taken.

3 “(iii) If, after a reasonable period of time, but not
4 later than 30 days after the Inspector General of the De-
5 partment of Justice submits the report under clause (ii),
6 the Federal Bureau of Investigation does not act to cor-
7 rect the reprisal in violation of subsection (a), the Inspec-
8 tor General may petition the Merit Systems Protection
9 Board for corrective action.

10 “(iv) If the Inspector General of the Department of
11 Justice finds, in consultation with the individual subject
12 to the reprisal in violation of subsection (a), that the Fed-
13 eral Bureau of Investigation has acted to correct the re-
14 prisal in violation of subsection (a), the Inspector General
15 shall file such finding with the Merit Systems Protection
16 Board, together with any written comments which the in-
17 dividual may provide.

18 “(v) A determination by the Inspector General of the
19 Department of Justice under this subparagraph shall not
20 be cited or referred to in any proceeding under this sub-
21 paragraph or any other administrative or judicial pro-
22 ceeding for any purpose, without the consent of the person
23 submitting the allegation of a reprisal in violation of sub-
24 section (a).

1 “(C)(i) Whenever the Inspector General of the De-
2 partment of Justice petitions the Merit Systems Protec-
3 tion Board for corrective action under this section, the
4 Board shall provide an opportunity for—

5 “(I) oral or written comments by the In-
6 specter General, the Federal Bureau of Inves-
7 tigation, and the Office of Personnel Manage-
8 ment; and

9 “(II) written comments by any individual
10 who alleges to be the subject of the reprisal in
11 violation of subsection (a).

12 “(ii) The Merit Systems Protection Board shall
13 make available the oral and written comments de-
14 scribed in clause (i)(I) to any individual who alleges
15 to be the subject of a reprisal in violation of sub-
16 section (a) with respect to which such comments
17 were made.

18 “(D)(i) Subject to the provisions of clause (ii), the
19 Merit Systems Protection Board shall order such correc-
20 tive action as the Board considers appropriate if the In-
21 specter General of the Department of Justice has dem-
22 onstrated that a disclosure described in subsection (a) was
23 a contributing factor in the personnel action (as defined
24 in such subsection) which was taken or is going to be
25 taken against the individual.

1 “(ii) Corrective action under clause (i) may not be
2 ordered if, after a finding that a disclosure described in
3 subsection (a) was a contributing factor, the agency dem-
4 onstrates by clear and convincing evidence that it would
5 have taken the same personnel action in the absence of
6 such disclosure.

7 “(3)(A) Judicial review of any final order or decision
8 of the Merit Systems Protection Board under this sub-
9 section may be obtained by any employee, former em-
10 ployee, or applicant for employment adversely affected by
11 such order or decision.

12 “(B) A petition for review under this subsection shall
13 be filed with such court, and within such time, as provided
14 for under section 7703(b).

15 “(4) If, in connection with any investigation under
16 this section, the Inspector General of the Department of
17 Justice determines that there is reasonable cause to be-
18 lieve that a criminal violation has occurred, the Inspector
19 General of the Department of Justice shall report the de-
20 termination to the Attorney General, and shall submit a
21 copy of the report to the Director of the Office of Per-
22 sonnel Management and the Director of the Office of Man-
23 agement and Budget.

24 “(5) If, in connection with any investigation under
25 this section, the Inspector General of the Department of

1 Justice determines that there is reasonable cause to be-
2 lieve that any violation of any law, rule, or regulation has
3 occurred other than one referred to in paragraph (2) or
4 (4), the Inspector General shall report such violation to
5 the Attorney General. The Inspector General shall require,
6 within 30 days after the receipt of the report by the Attor-
7 ney General, a certification by the Attorney General which
8 states—

9 “(A) that the Attorney General has personally
10 reviewed the report; and

11 “(B) what action has been or is going to be
12 taken, and when the action will be completed.

13 “(6) During any investigation initiated under this
14 section, no disciplinary action shall be taken against any
15 employee for any alleged prohibited activity under inves-
16 tigation or for any related activity without the approval
17 of the Inspector General of the Department of Justice.

18 “(7) If the Merit Systems Protection Board orders
19 corrective action under this subsection, such corrective ac-
20 tion may include—

21 “(A) that the individual be placed, as nearly as
22 possible, in the position the individual would have
23 been in had the reprisal in violation of subsection (a)
24 not occurred, including with respect to the individ-
25 ual’s security clearance and access determination

1 and the expungement of any record of an adverse
2 determination as a result of such reprisal in the cur-
3 rent investigation file (as such term is defined in
4 section 3001(a)(5) of the Intelligence Reform and
5 Terrorism Prevention Act of 2004 (50 U.S.C.
6 3341(a)(5))) of the individual; and

7 “(B) reimbursement for attorney’s fees, back
8 pay and related benefits, medical costs incurred,
9 travel expenses, any other reasonable and foreseeable
10 consequential damages, and compensatory damages
11 (including interest, reasonable expert witness fees,
12 and costs).

13 “(8) Any corrective action ordered under this sub-
14 section to correct a reprisal in violation of subsection (a)
15 may include fees, costs, or damages reasonably incurred
16 due to an agency investigation of the employee, if such
17 investigation was commenced, expanded, or extended in
18 retaliation for the disclosure that formed the basis of the
19 corrective action.

20 “(9) The Inspector General of the Department of
21 Justice may petition the Merit Systems Protection Board
22 to order corrective action, including fees, costs, or dam-
23 ages reasonably incurred by an employee due to an inves-
24 tigation of the employee by an agency, if the investigation
25 by an agency was commenced, expanded, or extended in

1 retaliation for a disclosure described in subsection (a),
2 without regard to whether a personnel action (as defined
3 in such subsection), is taken.

4 “(f)(1) If the Inspector General of the Department
5 of Justice determines that disciplinary action should be
6 taken against any employee for having committed a re-
7 prisal in violation of subsection (a) or knowingly and will-
8 fully refused or failed to comply with an order of the Merit
9 Systems Protection Board with respect to such a violation,
10 the Inspector General shall prepare a written complaint
11 against the employee containing the determination of the
12 Inspector General, together with a statement of sup-
13 porting facts, and present the complaint and statement
14 to the employee and the Board, in accordance with this
15 subsection.

16 “(2) Any employee against whom the Inspector Gen-
17 eral of the Department of Justice presents a complaint
18 to the Merit Systems Protection Board under paragraph
19 (1) is entitled to—

20 “(A) a reasonable time to answer orally and in
21 writing, and to furnish affidavits and other docu-
22 mentary evidence in support of the answer;

23 “(B) be represented by an attorney or other
24 representative;

1 “(C) a hearing before the Board or an adminis-
2 trative law judge appointed under section 3105 and
3 designated by the Board;

4 “(D) have a transcript kept of any hearing
5 under subparagraph (C); and

6 “(E) a written decision and reasons therefor at
7 the earliest practicable date, including a copy of any
8 final order imposing disciplinary action.

9 “(3)(A) A final order of the Merit Systems Protection
10 Board pursuant a case brought under paragraph (1) may
11 impose—

12 “(i) disciplinary action consisting of re-
13 moval, reduction in grade, debarment from
14 Federal employment for a period not to exceed
15 5 years, suspension, or reprimand;

16 “(ii) an assessment of a civil penalty not to
17 exceed \$10,000; or

18 “(iii) any combination of disciplinary ac-
19 tions described under clause (i) and an assess-
20 ment described under clause (ii).

21 “(B) In any case brought under paragraph (1)
22 in which the Merit Systems Protection Board finds
23 that an employee has committed a reprisal in viola-
24 tion of subsection (a), the Board may impose dis-
25 ciplinary action if the Board finds that the dislo-

1 sure described in subsection (a) was a significant
2 motivating factor, even if other factors also moti-
3 vated the decision, for the decision of the employee
4 to take, fail to take, or threaten to take or fail to
5 take a personnel action (as defined in subsection
6 (a)), unless that employee demonstrates, by a pre-
7 ponderance of the evidence, that the employee would
8 have taken, failed to take, or threatened to take or
9 fail to take the same personnel action, in the ab-
10 sence of such protected activity.

11 “(4) There may be no administrative appeal from an
12 order of the Merit Systems Protection Board. An employee
13 subject to a final order imposing disciplinary action under
14 this subsection may obtain judicial review of the order by
15 filing a petition therefor with such court, and within such
16 time, as provided for under section 7703(b).

17 “(g)(1) Not later than one year after the date of the
18 enactment of this subsection, and annually thereafter, the
19 Inspector General of the Department of Justice shall sub-
20 mit to the Committees on the Judiciary of the House of
21 Representatives and the Senate, the Committee on Over-
22 sight and Reform of the House of Representatives, and
23 the Committee on Homeland Security and Governmental
24 Affairs of the Senate a report on the investigations con-

1 ducted by the Inspector General under this section during
2 the one-year period preceding such report.

3 “(2) Each report required by paragraph (1) shall in-
4 clude, for the period covered by such report—

5 “(A) the number of completed investigations
6 conducted by the Inspector General of the Depart-
7 ment of Justice under this section;

8 “(B) the duration of each such investigation;

9 “(C) the number of reprisals in violation of sub-
10 section (a) found pursuant to such investigations;

11 “(D) the number of employees of the Federal
12 Bureau of Investigation who made such a reprisal;

13 “(E) the number of such reprisals with respect
14 to which the Inspector General, under this section,
15 petitioned to the Merit Systems Protection Board
16 for corrective action or presented a complaint to the
17 Board;

18 “(F) how long the Merit Systems Protection
19 Board took to make a final decision or issue a final
20 order with respect to each such petition or com-
21 plaint;

22 “(G) the disciplinary actions and penalties im-
23 posed on employees described in subparagraph (D)
24 by the Board under subsection (f); and

1 “(H) the number of allegations of reprisals in
2 violation of subsection (a) for which the Attorney
3 General did not correct the reprisal, as determined
4 by the Inspector General determined under sub-
5 section (e).”.

6 (b) REGULATIONS.—Not later than 90 days after the
7 date of the enactment of this Act, the Attorney General
8 shall revise such regulations as are necessary to implement
9 the amendments made by this Act.

10 (c) EFFECTIVE DATE.—The amendments made by
11 subsection (a) shall take effect on the date that is 90 days
12 after the date of the enactment of this Act.

○