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115TH CONGRESS
1ST SESSION

S. 582

[Report No. 115–74]

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

IN THE SENATE OF THE UNITED STATES

MARCH 8, 2017

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

MAY 18, 2017

Reported by Mr. JOHNSON, with amendments

[Omit the part struck through and insert the part printed in *italie*]

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”.

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

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

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

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

13 “(I) section 1213, 1214, 1215, or 1216 of
 14 this title; or

15 “(II) section 4324(a) of title 38;

16 “(ii) request from any agency the information
 17 or assistance that may be necessary for the Special
 18 Counsel to carry out the duties and responsibilities
 19 of the Special Counsel under this subchapter; and

20 “(iii) require, during an investigation, review, or
 21 inquiry of an agency, the agency to provide to the
 22 Special Counsel any record or other information that
 23 relates to an investigation, review, or inquiry con-
 24 ducted under—

25 “(I) section 1213, 1214, 1215, or 1216 of
 26 this title; or

1 “(II) section 4324(a) of title 38.

2 “(B)(i) The authorization of the Special Counsel
3 under subparagraph (A) shall not apply with respect to
4 any entity that is an element of the intelligence commu-
5 nity, as defined in section 3 of the National Security Act
6 of 1947 (50 U.S.C. 3003), unless the Special Counsel is
7 investigating, or otherwise carrying out activities relating
8 to the enforcement of, an action under subchapter III of
9 chapter 73.

10 “(ii) The Attorney General or an Inspector General
11 may withhold from the Special Counsel material described
12 in subparagraph (A) if—

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

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

21 “(aa) the material being withheld; and

22 “(bb) the reason that the material is being
23 withheld.

24 “(C)(i) A claim of common law privilege by an agen-
25 cy, or an officer or employee of an agency, shall not pre-

vent the Special Counsel from obtaining any material described in subparagraph (A)(i) with respect to the agency.

“(ii) The submission of material described in subparagraph (A)(i) by an agency to the Special Counsel may not be deemed to waive any assertion of privilege by the agency against a non-Federal entity or against an individual in any other proceeding.

“(iii) With respect to any record or other information made available to the Special Counsel by an agency under subparagraph (A), the Special Counsel may only disclose the record or information for a purpose that is in furtherance of any authority provided to the Special Counsel in this subchapter.

“(6) The Special Counsel shall submit to the Committee on Homeland Security and Governmental Affairs of the Senate, the Committee on Oversight and Government Reform of the House of Representatives, and each committee of Congress with jurisdiction over the applicable agency a report regarding any case of contumacy or failure to comply with a request submitted by the Special Counsel under paragraph (5)(A).”.

SEC. 3. INFORMATION ON WHISTLEBLOWER PROTECTIONS.

(a) AGENCY RESPONSIBILITIES.—Section 2302 of title 5, United States Code, is amended by striking subsection (c) and inserting the following:

1 “(c)(1) In this subsection—

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

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

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

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

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

17 “(A) preventing prohibited personnel practices;

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

21 “(C) ensuring, in consultation with the Special
22 Counsel and the Inspector General of the agency,
23 that employees of the agency are informed of the
24 rights and remedies available to the employees under
25 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 not~~ *without regard to*
 9 *whether a* personnel action, as defined in section
 10 2302(a)(2)(A), is taken ~~or not taken~~.”.

11 **SEC. 5. SUICIDE BY EMPLOYEES.**

12 (a) DEFINITIONS.—In this section—

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

18 (2) the term “personnel action” has the mean-
 19 ing given the term in section 2302(a)(2)(A) of title
 20 5, United States Code.

21 (b) REFERRAL.—

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

1 in which the head of the agency has information in-
2 dicating that an employee of the agency committed
3 suicide.

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

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

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

12 (ii) gross mismanagement;

13 (iii) a gross waste of funds;

14 (iv) an abuse of authority; or

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

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

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

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

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

7 **SEC. 6. PROTECTION OF WHISTLEBLOWERS AS CRITERIA**
 8 **IN PERFORMANCE APPRAISALS.**

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

11 (1) by redesignating subsections (b) and (c) as
 12 subsections (c) and (d), respectively; and

13 (2) by inserting after subsection (a) the fol-
 14 lowing:

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

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

21 “(B) promote the protection of whistleblowers.

22 “(2) The criteria required under paragraph (1) shall
 23 include—

1 “(A) principles for the protection of whistle-
2 blowers, such as the degree to which supervisory em-
3 ployees—

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

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

9 “(iii) foster an environment in which em-
10 ployees of the agency feel comfortable making
11 disclosures described in ~~subparagraph (A)~~
12 *clause (i)* to supervisory employees or other ap-
13 propriate authorities; and

14 “(B) for each supervisory employee—

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

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

24 “(3) In this subsection—

1 “(A) the term ‘agency’ means any entity the
2 employees of which are covered by paragraphs (8)
3 and (9) of section 2302(b), without regard to wheth-
4 er any other provision of this section is applicable to
5 the entity;

6 “(B) the term ‘prohibited personnel practice’
7 has the meaning given the term in section
8 2302(a)(1);

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

14 “(D) the term ‘whistleblower’ means an em-
15 ployee who makes a disclosure described in section
16 2302(b)(8).”.

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

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

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

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

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

1 (c) ANNUAL REPORT TO CONGRESS ON UNACCEPT-
2 ABLE PERFORMANCE IN WHISTLEBLOWER PROTEC-
3 TION.—

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

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

15 (A) the number of performance appraisals,
16 for the year covered by the report, that deter-
17 mined that an employee of the agency failed to
18 meet the standards for protecting whistle-
19 blowers that were established under section
20 4302(b) of title 5, United States Code, as
21 amended by subsection (a);

22 (B) the reasons for the determinations de-
23 scribed in subparagraph (A); and

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

4 (d) TECHNICAL AND CONFORMING AMENDMENT.—
 5 Section 4301 of title 5, United States Code, is amended,
 6 in the matter preceding paragraph (1), by striking “For
 7 the purpose of” and inserting “Except as otherwise ex-
 8 pressly provided, for the purpose of”.

9 **SEC. 7. DISCIPLINE OF SUPERVISORS BASED ON RETALIA-**
 10 **TION AGAINST WHISTLEBLOWERS.**

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

14 **“§ 7515. Discipline of supervisors based on retaliation**
 15 **against whistleblowers**

16 “(a) DEFINITIONS.—In this section—

17 “(1) the term ‘agency’—

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

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

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

5 “(3) the term ‘supervisor’ means an employee
6 who would be a supervisor, as defined in section
7 7103(a), if the entity employing the employee was
8 an agency.

9 “(b) PROPOSED DISCIPLINARY ACTIONS.—

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

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

22 “(i) shall propose suspending the su-
23 pervisor for a period that is not less than
24 3 days; and

1 “(ii) may propose an additional action
 2 determined appropriate by the head of the
 3 agency, including a reduction in grade or
 4 pay; and

5 “(B) for the second prohibited personnel
 6 action committed by the supervisor, shall pro-
 7 pose removing the supervisor.

8 “(2) PROCEDURES.—

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

12 “(i) states the specific reasons for the
 13 proposed action; and

14 “(ii) informs the supervisor about the
 15 right of the supervisor to review the mate-
 16 rial that constitutes the factual support on
 17 which the proposed action is based.

18 “(B) ANSWER AND EVIDENCE.—

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

24 “(ii) NO EVIDENCE FURNISHED; IN-
 25 SUFFICIENT EVIDENCE FURNISHED.—If,

1 after the end of the 14-day period de-
 2 scribed in clause (i), a supervisor does not
 3 furnish any evidence as described in that
 4 clause, or if the head of the agency in
 5 which the supervisor is employed deter-
 6 mines that the evidence furnished by the
 7 supervisor is insufficient, the head of the
 8 agency shall carry out the action proposed
 9 under subparagraph (A) or (B) of para-
 10 graph (1).

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

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

18 “(ii) shall not be subject to—

19 “(I) paragraphs (1) and (2) of
 20 section 7503(b);

21 “(II) paragraphs (1) and (2) of
 22 subsection (b) and subsection (c) of
 23 section 7513; and

1 “(III) paragraphs (1) and (2) of
 2 subsection (b) and subsection (c) of
 3 section 7543.

4 “(3) NON-DELEGATION.—If the head of an
 5 agency is responsible for determining whether a su-
 6 pervisor has committed a prohibited personnel action
 7 for purposes of paragraph (1), the head of the agen-
 8 cy may not delegate that responsibility.”.

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

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

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

15 Section 1214(a) of title 5, United States Code, is
 16 amended —

17 ~~(1) in paragraph (1)(D), in the first sentence,~~
 18 ~~by inserting “, other than a termination of an inves-~~
 19 ~~tigation described in paragraph (6)(A),” after “in-~~
 20 ~~vestigation of a prohibited personnel practice”; and~~
 21 ~~(2) by adding at the end the following:~~

22 “(6)(A) ~~Not later~~ *Notwithstanding any other provi-*
 23 *sion of this section, not later* than 30 days after receiving
 24 an allegation of a prohibited personnel practice under
 25 paragraph (1), the Special Counsel may terminate an in-

1 vestigation of the allegation without further inquiry ~~or an~~
 2 opportunity for the individual who submitted the allega-
 3 ~~tion to respond~~ if the Special Counsel determines that—

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

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

7 “(bb) investigated by the Special Counsel;

8 or

9 “(II) filed by the individual with the Merit
 10 Systems Protection Board;

11 “(ii) the Special Counsel does not have jurisdic-
 12 tion to investigate the allegation; or

13 “(iii) the individual knew or should have known
 14 of the alleged prohibited personnel practice on or be-
 15 fore the date that is 3 years before the date on
 16 which the Special Counsel received the allegation.

17 “(B) Not later than 30 days after the date on which
 18 the Special Counsel terminates an investigation under sub-
 19 paragraph (A), the Special Counsel shall provide a written
 20 notification to the individual who submitted the allegation
 21 of a prohibited personnel practice that states the basis of
 22 the Special Counsel for terminating the investigation.”.

1 **SEC. 9. ALLEGATIONS OF WRONGDOING WITHIN THE OF-**
2 **FICE OF SPECIAL COUNSEL.**

3 Section 1212 of title 5, United States Code, is
4 amended by adding at the end the following:

5 “(i) The Special Counsel shall enter into at least one
6 agreement with the Inspector General of an agency under
7 which—

8 “(1) the Inspector General shall—

9 “(A) receive, review, and investigate allega-
10 tions of prohibited personnel practices or
11 wrongdoing filed by employees of the Office of
12 Special Counsel; and

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

16 “(2) the Special Counsel—

17 “(A) may not require an employee of the
18 Office of Special Counsel to seek authorization
19 or approval before directly contacting the In-
20 spector General in accordance with the agree-
21 ment; and

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

24 **SEC. 10. REPORTING REQUIREMENTS.**

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

1 **“§ 1218. Annual report**

2 “The Special Counsel shall submit to Congress, on
3 an annual basis, a report on the activities of the Special
4 Counsel, which shall include, for the year preceding the
5 submission of the report—

6 “(1) the number, types, and disposition of alle-
7 gations of prohibited personnel practices filed with
8 the Special Counsel and the costs of resolving such
9 allegations;

10 “(2) the number of investigations conducted by
11 the Special Counsel;

12 “(3) the number of stays and disciplinary ac-
13 tions negotiated with agencies by the Special Coun-
14 sel;

15 “(4) the number of subpoenas issued by the
16 Special Counsel;

17 “(5) the number of instances in which the Spe-
18 cial Counsel reopened an investigation after the Spe-
19 cial Counsel had made an initial determination with
20 respect to the investigation;

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

23 “(7) the number of instances in which the Spe-
24 cial Counsel did not make a determination before
25 the end of the 240-day period described in section
26 1214(b)(2)(A)(i) regarding whether there were rea-

1 sonable grounds to believe that a prohibited per-
2 sonnel practice had occurred, existed, or was to be
3 taken;

4 “(8) a description of the recommendations and
5 reports made by the Special Counsel to other agen-
6 cies under this subchapter and the actions taken by
7 the agencies as a result of the recommendations or
8 reports;

9 “(9) the number of—

10 “(A) actions initiated before the Merit Sys-
11 tems Protection Board, including the number of
12 corrective action petitions and disciplinary ac-
13 tion complaints initiated; and

14 “(B) stays and extensions of stays ob-
15 tained from the Merit Systems Protection
16 Board;

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

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

23 “(B) all other complaints; and

24 “(11) the number of prohibited personnel prac-
25 tice complaints that were resolved by an agreement

1 between an agency and an individual, organized by
2 agency and agency components, in—

3 “(A) complaints dealing with reprisals
4 against whistleblowers; and

5 “(B) all other complaints;

6 “(12) the number of corrective actions that the
7 Special Counsel required an agency to take after a
8 finding by the Special Counsel of a prohibited per-
9 sonnel practice, as defined in section 2302(a)(1);
10 and

11 “(13) the results for the Office of Special Coun-
12 sel of any employee viewpoint survey conducted by
13 the Office of Personnel Management or any other
14 agency.”.

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

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

20 “(A) a copy of the information transmitted
21 to the head of the agency under section
22 1213(c)(1);

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

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

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

8 (c) NOTICE OF COMPLAINT SETTLEMENTS.—Section
 9 1217 of title 5, United States Code, is amended—

10 (1) by striking “The Special Counsel” and in-
 11 serting:

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

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

14 “(b) ADDITIONAL REPORT REQUIRED.—

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

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

24 “(A) the agency that entered into the
 25 agreement;

1 “(B) the position and employment location
2 of the employee who submitted the allegation
3 that formed the basis of the agreement;

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

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

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

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

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

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

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

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

10 **SEC. 12. REGULATIONS.**

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

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

20 (2) any functions of the Special Counsel that
21 are required because of the amendments made by
22 this Act.

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

1 **SEC. 13. AUTHORIZATION OF APPROPRIATIONS.**

2 (a) IN GENERAL.—Section 8(a)(2) of the Whistle-
3 blower Protection Act of 1989 (5 U.S.C. 5509 note) is
4 amended by striking “2003, 2004, 2005, 2006, and 2007”
5 and inserting “2017 through 2022”.

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

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[Report No. 115-74]

A BILL

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

MAY 18, 2017

Reported with amendments