

115TH CONGRESS
1ST SESSION

S. 582

AN ACT

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,*

1 **SECTION 1. SHORT TITLE.**

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

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

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

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

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

16 “(I) section 1213, 1214, 1215, or 1216 of
17 this title; or

18 “(II) section 4324(a) of title 38;

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

23 “(iii) require, during an investigation, review, or
24 inquiry of an agency, the agency to provide to the
25 Special Counsel any record or other information that

1 relates to an investigation, review, or inquiry con-
2 ducted under—

3 “(I) section 1213, 1214, 1215, or 1216 of
4 this title; or

5 “(II) section 4324(a) of title 38.

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

14 “(ii) An Inspector General may withhold
15 from the Special Counsel material described in
16 subparagraph (A) if the Inspector General de-
17 termines that the material contains information
18 derived from, or pertaining to, intelligence ac-
19 tivities.

20 “(iii) The Attorney General or an Inspec-
21 tor General may withhold from the Special
22 Counsel material described in subparagraph (A)
23 if—

24 “(I)(aa) disclosing the material could
25 reasonably be expected to interfere with a

1 criminal investigation or prosecution that
2 is ongoing as of the date on which the Spe-
3 cial Counsel submits a request for the ma-
4 terial; or

5 “(bb) the material—

6 “(AA) may not be disclosed pur-
7 suant to a court order; or

8 “(BB) has been filed under seal
9 under section 3730 of title 31; and

10 “(II) the Attorney General or the In-
11 spector General, as applicable, submits to
12 the Special Counsel a written report that
13 describes—

14 “(aa) the material being with-
15 held; and

16 “(bb) the reason that the mate-
17 rial is being withheld.

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

22 “(ii) The submission of material described in sub-
23 paragraph (A)(i) by an agency to the Special Counsel may
24 not be deemed to waive any assertion of privilege by the

1 agency against a non-Federal entity or against an indi-
 2 vidual in any other proceeding.

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

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

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

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

21 “(c)(1) In this subsection—

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

24 “(i) appointed to a position as an employee
 25 on or after the date of enactment of the Office

1 of Special Counsel Reauthorization Act of 2017;
2 and

3 “(ii) who has not previously served as an
4 employee; and

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

10 “(2) The head of each agency shall be responsible
11 for—

12 “(A) preventing prohibited personnel practices;

13 “(B) complying with and enforcing applicable
14 civil service laws, rules, and regulations, and other
15 aspects of personnel management; and

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

21 “(i) information with respect to whistle-
22 blower protections available to new employees
23 during a probationary period;

1 “(ii) the role of the Office of Special Coun-
2 sel and the Merit Systems Protection Board
3 with respect to whistleblower protections; and

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

10 “(I) the Special Counsel;

11 “(II) the Inspector General of an
12 agency;

13 “(III) Congress; or

14 “(IV) another employee of the agency
15 who is designated to receive such a disclo-
16 sure.

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

21 “(4) The head of each agency shall make available
22 information regarding whistleblower protections applicable
23 to employees of the agency on the public website of the
24 agency and on any online portal that is made available
25 only to employees of the agency, if such portal exists.

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

6 (b) TRAINING FOR SUPERVISORS.—

7 (1) DEFINITIONS.—In this subsection—

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

14 (B) the term “whistleblower protections”
15 has the meaning given the term in section
16 2302(c)(1)(B) of title 5, United States Code, as
17 amended by subsection (a).

18 (2) TRAINING REQUIRED.—The head of each
19 agency, in consultation with the Special Counsel and
20 the Inspector General of that agency (or, in the case
21 of an agency that does not have an Inspector Gen-
22 eral, the senior ethics official of that agency), shall
23 provide the training described in paragraph (3).

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

1 (A) cover the manner in which the agency
2 shall respond to a complaint alleging a violation
3 of whistleblower protections that are available
4 to employees of the agency; and

5 (B) be provided—

6 (i) to each employee of the agency
7 who—

8 (I) is appointed to a supervisory
9 position in the agency; and

10 (II) before the appointment de-
11 scribed in subclause (I), had not
12 served in a supervisory position in the
13 agency; and

14 (ii) on an annual basis to all employ-
15 ees of the agency who serve in supervisory
16 positions in the agency.

17 (c) INFORMATION ON APPEAL RIGHTS.—

18 (1) IN GENERAL.—Any notice provided to an
19 employee under section 7503(b)(1), section
20 7513(b)(1), or section 7543(b)(1) of title 5, United
21 States Code, shall include detailed information with
22 respect to—

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

1 (B) the forums in which the employee may
 2 file an appeal described in subparagraph (A);
 3 and

4 (C) any limitations on the rights of the
 5 employee that would apply because of the forum
 6 in which the employee decides to file an appeal.

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

13 **SEC. 4. ADDITIONAL WHISTLEBLOWER PROVISIONS.**

14 (a) PROHIBITED PERSONNEL PRACTICES.—Section
 15 2302 of title 5, United States Code, is amended—

16 (1) in subsection (b)—

17 (A) in paragraph (9)—

18 (i) in subparagraph (C), by inserting
 19 “(or any other component responsible for
 20 internal investigation or review)” after
 21 “Inspector General”; and

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

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

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

3 (D) by inserting after paragraph (13) the
 4 following:

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

9 (2) in subsection (f)—

10 (A) in paragraph (1)—

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

13 (ii) by redesignating subparagraph
 14 (F) as subparagraph (G); and

15 (iii) by inserting after subparagraph
 16 (E) the following:

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

20 (B) by striking paragraph (2) and insert-
 21 ing the following:

22 “(2) If a disclosure is made during the normal course
 23 of duties of an employee, the principal job function of
 24 whom is to regularly investigate and disclose wrongdoing
 25 (in this paragraph referred to as the ‘disclosing em-

1 ployee’), the disclosure shall not be excluded from sub-
 2 section (b)(8) if the disclosing employee demonstrates that
 3 an employee who has the authority to take, direct other
 4 individuals to take, recommend, or approve any personnel
 5 action with respect to the disclosing employee took, failed
 6 to take, or threatened to take or fail to take a personnel
 7 action with respect to the disclosing employee in reprisal
 8 for the disclosure made by the disclosing employee.”.

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

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

14 (2) in subsection (e)—

15 (A) in paragraph (1), by striking “Any
 16 such report” and inserting “Any report re-
 17 quired under subsection (c) or paragraph (5) of
 18 this subsection”;

19 (B) by striking paragraph (2) and insert-
 20 ing the following:

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

1 “(A) the findings of the head of the agency ap-
2 pear reasonable; and

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

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

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

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

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

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

4 (c) TRANSFER REQUESTS DURING STAYS.—

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

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

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

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

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

23 “(i) The Special Counsel may petition the Board to
24 order corrective action, including fees, costs, or damages
25 reasonably incurred by an employee due to an investiga-

tion of the employee by an agency, if the investigation by an agency was commenced, expanded, or extended in retaliation for a disclosure or protected activity described in section 2302(b)(8) or subparagraph (A)(i), (B), (C), or (D) of section 2302(b)(9), without regard to whether a personnel action, as defined in section 2302(a)(2)(A), is taken.”.

SEC. 5. SUICIDE BY EMPLOYEES.

(a) DEFINITIONS.—In this section—

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

(2) the term “personnel action” has the meaning given the term in section 2302(a)(2)(A) of title 5, United States Code.

(b) REFERRAL.—

(1) IN GENERAL.—The head of an agency shall refer to the Special Counsel, along with any information known to the agency regarding the circumstances described in paragraph (2), any instance in which the head of the agency has information indicating that an employee of the agency committed suicide.

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

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

7 (i) a violation of a law, rule, or regu-
8 lation;

9 (ii) gross mismanagement;

10 (iii) a gross waste of funds;

11 (iv) an abuse of authority; or

12 (v) a substantial and specific danger
13 to public health or safety.

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

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

21 (1) examine whether a personnel action was
22 taken with respect to an employee because of a dis-
23 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 clause (i) to supervisory
9 employees or other appropriate authorities; and

10 “(B) for each supervisory employee—

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

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

20 “(3) In this subsection—

21 “(A) the term ‘agency’ means any entity the
22 employees of which are covered by paragraphs (8)
23 and (9) of section 2302(b), without regard to wheth-
24 er any other provision of this section is applicable to
25 the entity;

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

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

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

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

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

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

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

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

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

24 (1) DEFINITIONS.—In this subsection, the
25 terms “agency” and “whistleblower” have the mean-

1 ings given the terms in section 4302(b)(3) of title 5,
2 United States Code, as amended by subsection (a).

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

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

17 (B) the reasons for the determinations de-
18 scribed in subparagraph (A); and

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

22 (d) TECHNICAL AND CONFORMING AMENDMENT.—
23 Section 4301 of title 5, United States Code, is amended,
24 in the matter preceding paragraph (1), by striking “For

1 the purpose of” and inserting “Except as otherwise ex-
 2 pressly provided, for the purpose of”.

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

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

8 **“§ 7515. Discipline of supervisors based on retaliation**
 9 **against whistleblowers**

10 “(a) DEFINITIONS.—In this section—

11 “(1) the term ‘agency’—

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

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

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

24 “(3) the term ‘supervisor’ means an employee
 25 who would be a supervisor, as defined in section

1 7103(a), if the entity employing the employee was
2 an agency.

3 “(b) PROPOSED DISCIPLINARY ACTIONS.—

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

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

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

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

23 “(B) for the second prohibited personnel
24 action committed by the supervisor, shall pro-
25 pose removing the supervisor.

1 “(2) PROCEDURES.—

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

5 “(i) states the specific reasons for the
6 proposed action; and

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

11 “(B) ANSWER AND EVIDENCE.—

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

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

1 agency shall carry out the action proposed
2 under subparagraph (A) or (B) of para-
3 graph (1).

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

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

11 “(ii) shall not be subject to—

12 “(I) paragraphs (1) and (2) of
13 section 7503(b);

14 “(II) paragraphs (1) and (2) of
15 subsection (b) and subsection (c) of
16 section 7513; and

17 “(III) paragraphs (1) and (2) of
18 subsection (b) and subsection (c) of
19 section 7543.

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

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

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

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

7 Section 1214(a) of title 5, United States Code, is
 8 amended by adding at the end the following:

9 “(6)(A) Notwithstanding any other provision of this
 10 section, not later than 30 days after receiving an allega-
 11 tion of a prohibited personnel practice under paragraph
 12 (1), the Special Counsel may terminate an investigation
 13 of the allegation without further inquiry if the Special
 14 Counsel determines that—

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

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

18 “(bb) investigated by the Special Counsel;

19 or

20 “(II) filed by the individual with the Merit
 21 Systems Protection Board;

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

24 “(iii) the individual knew or should have known
 25 of the alleged prohibited personnel practice on or be-

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

3 “(B) Not later than 30 days after the date on which
 4 the Special Counsel terminates an investigation under sub-
 5 paragraph (A), the Special Counsel shall provide a written
 6 notification to the individual who submitted the allegation
 7 of a prohibited personnel practice that states the basis of
 8 the Special Counsel for terminating the investigation.”.

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

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

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

16 “(1) the Inspector General shall—

17 “(A) receive, review, and investigate allega-
 18 tions of prohibited personnel practices or
 19 wrongdoing filed by employees of the Office of
 20 Special Counsel; and

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

24 “(2) the Special Counsel—

1 “(A) may not require an employee of the
2 Office of Special Counsel to seek authorization
3 or approval before directly contacting the In-
4 specter General in accordance with the agree-
5 ment; and

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

8 **SEC. 10. REPORTING REQUIREMENTS.**

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

11 **“§ 1218. Annual report**

12 “The Special Counsel shall submit to Congress, on
13 an annual basis, a report on the activities of the Special
14 Counsel, which shall include, for the year preceding the
15 submission of the report—

16 “(1) the number, types, and disposition of alle-
17 gations of prohibited personnel practices filed with
18 the Special Counsel and the costs of resolving such
19 allegations;

20 “(2) the number of investigations conducted by
21 the Special Counsel;

22 “(3) the number of stays and disciplinary ac-
23 tions negotiated with agencies by the Special Coun-
24 sel;

1 “(4) the number of subpoenas issued by the
2 Special Counsel;

3 “(5) the number of instances in which the Spe-
4 cial Counsel reopened an investigation after the Spe-
5 cial Counsel had made an initial determination with
6 respect to the investigation;

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

9 “(7) the number of instances in which the Spe-
10 cial Counsel did not make a determination before
11 the end of the 240-day period described in section
12 1214(b)(2)(A)(i) regarding whether there were rea-
13 sonable grounds to believe that a prohibited per-
14 sonnel practice had occurred, existed, or was to be
15 taken;

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

21 “(9) the number of—

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

1 “(B) stays and extensions of stays ob-
2 tained from the Merit Systems Protection
3 Board;

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

8 “(A) complaints dealing with reprisals
9 against whistleblowers; and

10 “(B) all other complaints; and

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

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

17 “(B) all other complaints;

18 “(12) the number of corrective actions that the
19 Special Counsel required an agency to take after a
20 finding by the Special Counsel of a prohibited per-
21 sonnel practice, as defined in section 2302(a)(1);
22 and

23 “(13) the results for the Office of Special Coun-
24 sel of any employee viewpoint survey conducted by

1 the Office of Personnel Management or any other
2 agency.”.

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

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

8 “(A) a copy of the information transmitted
9 to the head of the agency under section
10 1213(c)(1);

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

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

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

20 (c) NOTICE OF COMPLAINT SETTLEMENTS.—Section
21 1217 of title 5, United States Code, is amended—

22 (1) by striking “The Special Counsel” and in-
23 serting:

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

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

1 “(b) ADDITIONAL REPORT REQUIRED.—

2 “(1) IN GENERAL.—If an allegation submitted
3 to the Special Counsel is resolved by an agreement
4 between an agency and an individual, the Special
5 Counsel shall submit to Congress and each congressional
6 committee with jurisdiction over the agency a
7 report regarding the agreement.

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

11 “(A) the agency that entered into the
12 agreement;

13 “(B) the position and employment location
14 of the employee who submitted the allegation
15 that formed the basis of the agreement;

16 “(C) the position and employment location
17 of any employee alleged by an employee described
18 in subparagraph (B) to have committed
19 a prohibited personnel practice, as defined in
20 section 2302(a)(1);

21 “(D) a description of the allegation described
22 in subparagraph (B); and

23 “(E) whether the agency that entered into
24 the agreement has agreed to pursue any dis-

1 ciplinary action as a result of the allegation de-
2 scribed in subparagraph (B).”.

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

4 (a) IN GENERAL.—The Office of Special Counsel
5 shall design and establish a pilot program under which
6 the Office shall conduct, during the first full fiscal year
7 after the date of enactment of this Act, a survey of individ-
8 uals who have filed a complaint or disclosure with the Of-
9 fice.

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

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

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

23 **SEC. 12. REGULATIONS.**

24 (a) IN GENERAL.—Not later than 2 years after the
25 date of enactment of this Act, the Special Counsel shall

1 prescribe such regulations as may be necessary to per-
 2 form—

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

8 (2) any functions of the Special Counsel that
 9 are required because of the amendments made by
 10 this Act.

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

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

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

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

21 **SEC. 14. TECHNICAL AMENDMENT.**

22 Section 1214(b)(1)(B)(ii) of title 5, United States
 23 Code, as amended by section 1 of the Act entitled “An
 24 Act to amend section 1214 of title 5, United States Code,
 25 to provide for stays during a period that the Merit Sys-

1 tems Protection Board lacks a quorum.” (S. 1083, 115th
2 Congress, 1st Session), is amended by striking “who was
3 appointed, by and with the advice and consent of the Sen-
4 ate,”.

Passed the Senate August 1, 2017.

Attest:

Secretary.

115TH CONGRESS
1ST SESSION

S. 582

AN ACT

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