

FBI WHISTLEBLOWER PROTECTION ENHANCEMENT ACT OF 2016

SECTION BY SECTION

SECTION ONE: This Act is entitled “Federal Bureau of Investigation Whistleblower Protection Enhancement Act of 2016.”

SECTION TWO:

- Defines a “protected disclosure” as:
 - (1) A disclosure made to a supervisor or other manager within the chain-of-command, the Justice Department Inspector General, the Justice Department Office of Professional Responsibility, the FBI Office of Professional Responsibility, the FBI Inspection Division, a Member of Congress, the Office of Special Counsel, or any other employee designated to receive protected disclosures; and
 - (2) That an employee or applicant reasonably believes evidences any violation of any law, rule, or regulation, or gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety. This portion of the definition is taken from 5 U.S.C. § 2302, which applies to all other civil service employees.
- Defines a “prohibited practice” to incorporate the content of 5 U.S.C. § 2302(b)(8), (b)(9), and (b)(13). This would protect employees from reprisal for (1) reporting wrongdoing, (2) engaging in protected activity, (3) cooperating with an Inspector General or Special Counsel investigation, and (4) refusing to obey an order that requires a violation of law.
- Places investigative authority for FBI whistleblower complaints with the Department of Justice Office of Inspector General, and, consistent with current law and regulations, requires the Inspector General to conduct investigations consistent with the procedures applicable to the Office of Special Counsel in its investigations of whistleblower cases under 5 U.S.C. § 1214.
- Requires the Inspector General to issue a written decision containing investigative findings and supporting the Inspector General’s determination.
- Provides for interim relief where the Inspector General determines that reasonable grounds exist to believe a retaliatory personnel action occurred. In that case, an Administrative Law Judge will order preliminary relief from any retaliatory personnel action—such as a suspension or termination.
- Allows either party—the FBI or the whistleblower—to seek *de novo* review by an Administrative Law Judge. Any interim relief previously issued by the ALJ will generally remain in effect pending the outcome of the review.
- Permits the whistleblower to also seek additional relief and corrective action from the ALJ, such as attorneys’ fees, consistent with 5 U.S.C. § 1221(g).

- Provides for both parties to have the benefit of the protections and procedures afforded by the Administrative Procedure Act and judicial review under Chapter 7. Burdens of proof available to other federal employees under the Whistleblower Protection Act also will continue to apply.
- Subjects a final decision by an ALJ to review by the Attorney General and to appeal in a federal Court of Appeals.
- Requires ALJ decisions to be made publicly available, subject to appropriate protections for sensitive and classified information. This practice must align with that of the Merit Systems Protection Board, which handles appeals of most other federal employee whistleblower cases, and which generally posts opinions on its website.
- Requires the Attorney General to issue new regulations consistent with this bill, including to ensure that FBI employees are informed of their rights and remedies and that classified information is protected.
- Requires the Attorney General to issue public reports with detailed statistics on, among other things, the number, type, and disposition of FBI whistleblower reprisal cases.
- Requires the Government Accountability Office to issue a report to Congress evaluating the implementation of the improved FBI whistleblower protections and procedures.