

117TH CONGRESS  
1ST SESSION

**S.** \_\_\_\_\_

To protect certain whistleblowers seeking to ensure accountability and oversight of the Nation’s COVID–19 pandemic response, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

Ms. WARREN (for herself, Mrs. FEINSTEIN, Mr. MARKEY, Ms. SMITH, Mr. BLUMENTHAL, Mr. BROWN, Ms. HIRONO, Mr. WYDEN, Ms. KLOBUCHAR, Mr. SANDERS, Mr. DURBIN, Ms. BALDWIN, Mr. MERKLEY, Mr. VAN HOLLEN, and Mr. WHITEHOUSE) introduced the following bill; which was read twice and referred to the Committee on \_\_\_\_\_

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**A BILL**

To protect certain whistleblowers seeking to ensure accountability and oversight of the Nation’s COVID–19 pandemic response, 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 “COVID–19 Whistle-  
5 blower Protection Act”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act—



1 Law 116–139), or an amendment made by  
2 that Act;

3 (ii) the CARES Act, or an amend-  
4 ment made by that Act;

5 (iii) the Families First Coronavirus  
6 Response Act (Public Law 116–127), or an  
7 amendment made by that Act;

8 (iv) the Coronavirus Preparedness and  
9 Response Supplemental Appropriations  
10 Act, 2020 (Public Law 116–123), or an  
11 amendment made by that Act; or

12 (v) division M or N of the Consoli-  
13 dated Appropriations Act, 2021(Public  
14 Law 116–260), or an amendment made by  
15 that division;

16 (4) the term “covered funds” means any con-  
17 tract, subcontract, grant, subgrant, loan, loan guar-  
18 antee, or other payment for which—

19 (A) the Federal Government provides any  
20 portion of the funds or property that is pro-  
21 vided, requested, or demanded; and

22 (B) any portion of the funds are appro-  
23 priated or otherwise made available under or to  
24 carry out a Coronavirus pandemic-related pro-  
25 gram, project, or activity;

1 (5) the term “employee”—

2 (A) except as provided under subparagraph  
3 (B), means an individual performing services on  
4 behalf of an employer, including any individual  
5 working for an employer under a contract with  
6 such employer (including a contractor, subcon-  
7 tractor, or agent of an employer); and

8 (B) does not include any Federal employee  
9 or member of the uniformed services (as that  
10 term is defined in section 101(a)(5) of title 10,  
11 United States Code);

12 (6) the term “non-Federal employer”—

13 (A) means any employer—

14 (i) with respect to covered funds—

15 (I) the contractor, subcontractor,  
16 grantee, subgrantee, or recipient, as  
17 the case may be, if the contractor,  
18 subcontractor, grantee, subgrantee, or  
19 recipient is an employer; and

20 (II) any professional membership  
21 organization, certification or other  
22 professional body, any agent or li-  
23 censee of the Federal Government, or  
24 any person acting directly or indi-

1                   rectly in the interest of an employer  
2                   receiving covered funds; or

3                   (ii) with respect to covered funds re-  
4                   ceived by a State or local government, the  
5                   State or local government receiving the  
6                   funds and any contractor or subcontractor  
7                   of the State or local government; and

8                   (B) does not mean any department, agen-  
9                   cy, or other entity of the Federal Government;

10                  (7) the term “protected individual” means—

11                   (A) an employee of, former employee of, or  
12                   individual seeking employment with, any non-  
13                   Federal employer receiving covered funds; or

14                   (B) a Federal personal services contractor  
15                   receiving covered funds, former such Federal  
16                   personal services contractor, or applicant for a  
17                   Federal personal services contract involving  
18                   such funds;

19                  (8) the term “reprisal” means an action (or, as  
20                  applicable, inaction) that is discharging, demoting,  
21                  blacklisting, or acting or failing to take an action in  
22                  a manner prejudicial against, or otherwise discrimi-  
23                  nating against in any way (including in the hiring  
24                  process and including by the threat of any such ac-  
25                  tion or inaction) a protected individual as described

1 in section 3(a)(1) for a reason described in subpara-  
2 graph (A) or (B) of such section; and

3 (9) the term “State or local government”  
4 means—

5 (A) the government of each of the several  
6 States, the District of Columbia, the Common-  
7 wealth of Puerto Rico, Guam, American Samoa,  
8 the Virgin Islands, the Commonwealth of the  
9 Northern Mariana Islands, or any other terri-  
10 tory or possession of the United States; or

11 (B) the government of any political sub-  
12 division of a government listed in subparagraph  
13 (A).

14 **SEC. 3. PROTECTING WHISTLEBLOWERS.**

15 (a) PROHIBITION OF REPRISALS.—

16 (1) IN GENERAL.—A protected individual may  
17 not be discharged, demoted, blacklisted, prejudiced  
18 by any action or lack of action, or otherwise dis-  
19 criminated against in any way (including in the hir-  
20 ing process and including by the threat of any such  
21 action or inaction) for—

22 (A) disclosing, being perceived as dis-  
23 closing, or preparing to disclose (including as-  
24 sisting in disclosing, being perceived as assist-  
25 ing in disclosing, or preparing to assist in dis-

1 closing and including a disclosure made in the  
2 ordinary course of the duties of the protected  
3 individual) to an officer or entity described in  
4 paragraph (2) information that the protected  
5 individual reasonably believes is evidence of  
6 misconduct that violates, obstructs, or under-  
7 mines any statute, rule, or regulation with re-  
8 spect to any Coronavirus pandemic-related pro-  
9 gram, project, or activity, including—

10 (i) gross mismanagement of an agency  
11 contract, subcontract, grant, or subgrant  
12 relating to covered funds;

13 (ii) a gross waste of covered funds;

14 (iii) a substantial and specific danger  
15 to public health or safety;

16 (iv) an abuse of authority related to  
17 the distribution, implementation, or use of  
18 covered funds, including conflict of interest  
19 or partiality; and

20 (v) a violation of any statute, rule, or  
21 regulation related to an agency contract,  
22 subcontract (including the competition for  
23 or negotiation of a contract or sub-  
24 contract), grant, or subgrant, awarded or  
25 issued relating to covered funds; or

1 (B) refusing to obey an order that the pro-  
2 tected individual reasonably believes would re-  
3 quire that individual to violate a statute, rule,  
4 or regulation with respect to any Coronavirus  
5 pandemic-related program, project, or activity.

6 (2) OFFICERS AND ENTITIES.—The officers and  
7 entities described in this paragraph are—

8 (A) the Pandemic Response Accountability  
9 Committee;

10 (B) an inspector general, including the  
11 Special Inspector General for Pandemic Relief;

12 (C) the Congressional Oversight Commis-  
13 sion;

14 (D) the Comptroller General of the United  
15 States;

16 (E) a Member of Congress;

17 (F) a congressional committee;

18 (G) a State or Federal regulatory or law  
19 enforcement agency;

20 (H)(i) an individual with supervisory au-  
21 thority over a protected individual; or

22 (ii) another individual who—

23 (I) has authority to investigate, dis-  
24 cover, or terminate misconduct; and

1 (II) works for the non-Federal em-  
2 ployer (in the case of a protected individual  
3 described in section 2(7)(A)), or the Fed-  
4 eral Government (in the case of a pro-  
5 tected individual described in section  
6 2(7)(B));

7 (I) a court or grand jury;

8 (J) an officer or representative of a labor  
9 organization; or

10 (K) the head of a Federal agency or a des-  
11 ignee of such a head.

12 (3) APPLICATION.—

13 (A) IN GENERAL.—For the purposes of  
14 paragraph (1)—

15 (i) a protected individual who initiates  
16 or provides evidence of misconduct by a  
17 contractor, subcontractor, grantee, or sub-  
18 grantee in any judicial or administrative  
19 proceeding relating to waste, fraud, or  
20 abuse in connection with a Federal con-  
21 tract or grant shall be deemed to have  
22 made a disclosure covered by such para-  
23 graph; and

24 (ii) any discharge, demotion, discrimi-  
25 nation, or other reprisal described in para-

1 graph (1) is prohibited even if it is under-  
2 taken at the request of an executive branch  
3 officer or employee, unless the request  
4 takes the form of a non-discretionary di-  
5 rective and is within the authority of the  
6 executive branch official making the re-  
7 quest.

8 (B) PROTECTION OF WHISTLEBLOWER  
9 IDENTITY.—

10 (i) IN GENERAL.—Except as required  
11 by law, an officer or entity described in  
12 paragraph (2) that receives information  
13 under paragraph (1) and any individual or  
14 entity to which the officer or entity dis-  
15 closes the information may not disclose the  
16 identity or identifying information of the  
17 protected individual providing the informa-  
18 tion without explicit written consent of the  
19 protected individual.

20 (ii) NOTICE.—If disclosure of the  
21 identity or identifying information of a  
22 protected individual providing information  
23 under paragraph (1) is required by law,  
24 the recipient shall provide timely notice of  
25 the disclosure to the protected individual.

1 (b) INVESTIGATION OF COMPLAINTS.—

2 (1) COMPLAINTS.—

3 (A) IN GENERAL.—A protected individual  
4 who believes that the individual has been sub-  
5 jected to a reprisal prohibited under subsection  
6 (a) may, within 3 years after learning of the al-  
7 leged reprisal, submit a complaint regarding the  
8 reprisal to the Secretary of Labor in accordance  
9 with paragraph (2).

10 (B) RESPONSE.—Not later than 60 days  
11 after the submission of a complaint under sub-  
12 paragraph (A), the applicable non-Federal em-  
13 ployer (or the applicable agency head in the  
14 case of a Federal personal services contract in-  
15 volving covered funds) shall submit an answer  
16 to the complaint to the Secretary of Labor.

17 (2) REMEDY AND ENFORCEMENT AUTHOR-  
18 ITY.—

19 (A) RULES AND PROCEDURES.—Except to  
20 the extent provided otherwise in this section,  
21 any action alleging a reprisal prohibited under  
22 subsection (a) shall be governed, to the max-  
23 imum extent practicable, by the rules and pro-  
24 cedures for administrative and judicial enforce-  
25 ment, including for investigations, civil actions,

1 appeals, and relief, set forth under section  
2 7623(d) of the Internal Revenue Code of 1986.

3 (B) BURDEN OF PROOF.—The Secretary  
4 of Labor, or the officer presiding in a judicial  
5 or administrative proceeding, shall apply the  
6 legal burdens of proof specified in section  
7 1221(e) of title 5, United States Code, in deter-  
8 mining whether a reprisal prohibited under sub-  
9 section (a) has occurred in accordance with the  
10 rules and procedures under subparagraph (A).

11 (C) ACCESS TO INVESTIGATIVE FILE OF  
12 THE SECRETARY OF LABOR.—

13 (i) IN GENERAL.—A protected indi-  
14 vidual alleging a reprisal under this section  
15 shall have access to the investigation file of  
16 the Secretary of Labor in accordance with  
17 section 552a of title 5, United States Code  
18 (commonly referred to as the “Privacy  
19 Act”). The investigation of the Secretary  
20 of Labor shall be deemed closed for pur-  
21 poses of disclosure under such section  
22 when an individual files an appeal to an  
23 agency head or a court of competent juris-  
24 diction.

1           (ii) CIVIL ACTION.—In the event a  
2           protected individual alleging a reprisal  
3           under this section brings a civil action  
4           under this subsection, the protected indi-  
5           vidual and the non-Federal employer (or  
6           the head of the applicable agency in the  
7           case of a Federal personal services con-  
8           tract involving covered funds), if applica-  
9           ble, shall have access to the investigative  
10          file of the Secretary of Labor in accord-  
11          ance with section 552a of title 5, United  
12          States Code.

13          (iii) EXCEPTION.—The Secretary of  
14          Labor may exclude from disclosure—

15               (I) information protected from  
16               disclosure by a provision of law; and

17               (II) any additional information  
18               the Secretary of Labor determines  
19               disclosure of which would impede a  
20               continuing investigation, if such infor-  
21               mation is disclosed once such dislo-  
22               sure would no longer impede such in-  
23               vestigation, unless the Secretary of  
24               Labor determines that disclosure of  
25               law enforcement techniques, proce-

1                   dures, or information could reasonably  
2                   be expected to risk circumvention of  
3                   the law or disclose the identity of a  
4                   confidential source.

5                   (iv) PRIVACY OF INFORMATION.—The  
6                   Secretary of Labor investigating an alleged  
7                   reprisal under this section may not re-  
8                   spond to any inquiry or disclose any infor-  
9                   mation from or about any protected indi-  
10                  vidual alleging such reprisal, except in ac-  
11                  cordance with the provisions of section  
12                  552a of title 5, United States Code, or as  
13                  required by any other applicable Federal  
14                  law.

15                  (c) GENERAL PROVISIONS.—

16                   (1) RIGHTS RETAINED BY EMPLOYEE.—Noth-  
17                   ing in this section shall diminish the rights, privi-  
18                   leges, or remedies of any protected individual under  
19                   any Federal or State law, or under any collective  
20                   bargaining agreement.

21                   (2) LIABILITY.—Notwithstanding any other  
22                   provision of law, a protected individual shall be im-  
23                   mune from civil and criminal liability with respect to  
24                   a disclosure by the individual if the individual would  
25                   be protected from reprisal under subsection (a) for

1 making the disclosure. The protected individual shall  
2 bear the burden of proving that the individual would  
3 be protected from reprisal under subsection (a) for  
4 making the disclosure.

5 (3) NONENFORCEABILITY OF CERTAIN PROVI-  
6 SIONS WAIVING RIGHTS AND REMEDIES OR REQUIR-  
7 ING ARBITRATION OF DISPUTES.—

8 (A) WAIVER OF RIGHTS AND REMEDIES.—

9 Except as provided under subparagraph (C),  
10 the rights and remedies provided for in this sec-  
11 tion may not be waived by any public or private  
12 agreement, policy, form, or condition of employ-  
13 ment, including by any predispute arbitration  
14 agreement.

15 (B) PREDISPUTE ARBITRATION AGREE-  
16 MENTS.—Except as provided under subpara-  
17 graph (C), no predispute arbitration agreement  
18 shall be valid or enforceable if it requires arbi-  
19 tration of a dispute arising under this section.

20 (C) EXCEPTION FOR COLLECTIVE BAR-  
21 GAINING AGREEMENTS.—Notwithstanding sub-  
22 paragraphs (A) and (B), an arbitration provi-  
23 sion in a collective bargaining agreement shall  
24 be enforceable as to disputes arising under the  
25 collective bargaining agreement.

1           (4) REQUIREMENT TO POST NOTICE OF RIGHTS  
2           AND REMEDIES.—Any non-Federal employer receiv-  
3           ing covered funds (and the head of the applicable  
4           agency in the case of a Federal personal services  
5           contract involving covered funds) shall post notice of  
6           the rights and remedies provided under this section.

7           (d) RULES OF CONSTRUCTION.—

8           (1) NO IMPLIED AUTHORITY TO RETALIATE  
9           FOR NON-PROTECTED DISCLOSURES.—Nothing in  
10          this section may be construed to—

11           (A) authorize the discharge of, demotion  
12           of, or discrimination or other reprisal against a  
13           protected individual for a disclosure other than  
14           a disclosure protected by subsection (a); or

15           (B) modify or derogate from a right or  
16           remedy otherwise available to the protected in-  
17           dividual.

18          (2) RELATIONSHIP TO STATE LAWS.—Nothing  
19          in this section may be construed to preempt, pre-  
20          clude, or limit the protections provided for public or  
21          private employees under State whistleblower laws.

22          (e) COMPLAINT PORTAL.—The Special Inspector  
23          General for Pandemic Relief, the Pandemic Relief Ac-  
24          countability Committee, and the Congressional Oversight  
25          Commission shall each establish a public website where

1 any individual who believes that the individual has been  
2 subjected to a reprisal prohibited under subsection (a)  
3 may submit a complaint regarding the reprisal. Such com-  
4 plaints shall be transmitted to the Secretary of Labor for  
5 enforcement in accordance with this section.

6 (f) AUTHORIZATION OF APPROPRIATIONS.—There is  
7 authorized to be appropriated to the Secretary of Labor  
8 to carry out this Act \$20,000,000 for fiscal year 2021,  
9 to remain available until expended.