
INTRODUCED BY MEMBERS OF THE NO FEAR COALITION

May 17, 2007

**CONGRESSIONAL DISCLOSURES
PROTECTIONS ACT OF 2007**

AN ACT

To strengthen accountability features introduced by Congressional Disclosures Protections Act of 2007, to prescribe incentives to ensure that Federal agencies timely address violations of anti-discrimination and whistleblower protection laws which includes a requirement that the agency address the Act's implementation and progress in its Annual Strategic Plan; and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Congressional Disclosures Protections Act of 2007”.

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:
Sec. 1. Short title; table of contents.

TITLE I—GENERAL PROVISIONS

Sec. 101. Findings.

Sec. 102. Intent of Congress.

Sec. 103. Definitions.

Sec. 104. Effective date.

TITLE II — CONGRESSIONAL WHISTLEBLOWER PROTECTION PROVISIONS

Sec. 201. Remedies for retaliation against whistleblowers making congressional disclosures.

TITLE III—ALTERNATIVE INVESTIGATIVE REVIEW

Sec. 301. Alternative Investigative Review (OSC)

TITLE I—GENERAL PROVISIONS

SEC. 101. FINDINGS.

Congress finds that—

(1) Agencies that engage in discrimination, retaliation, harassment or violations of federal discrimination and / or whistleblower laws undermine the confidence of the American people in the Government, puts the public's safety and services at risk, and reduces the Federal Government's ability to timely and adequately address vital public needs;

(2) Federal agencies essentially abandon the task of governing and divert public resources towards clearly proscribed ends, upon engaging in unlawful, work-related discrimination, retaliation, and/or harassment;

(3) Rather than being ends, in and of themselves, such discrimination, retaliation, and/or harassment may be subterfuge, facilitating and masking other waste, abuse, and/or unlawfulness;

(4) Whatever the lurid objective(s) of unlawful discrimination, retaliation, and/or harassment, federal employees and contract workers sacrifice too much in eradicating it from federal agencies;

(5) Vindicating those agencies unduly focuses on defeating the corresponding claims of federal employees and contract workers when protracted legal proceedings result;

(6) Americans are best served by truth seeking processes that expeditiously substantiate or refute allegations of unlawful, work-related discrimination, retaliation, and/or harassment of federal employees and contract workers;

(7) Slow mechanisms unduly sanction adversarial relationships between America and its citizens;

(8) The inextricable toll equals direct and indirect costs spread between federal executive and judicial offices to defend against and otherwise resolve claims, obviously precipitated by at least a colorable prospect of unlawful, work-related discrimination, retaliation, and/or harassment;

(9) Those taxpayer dollars are better expended reconciling understandable if arguably flawed assessments by federal employees and contract workers that escalate to allegations of unlawful, work-related discrimination, retaliation, and/or harassment;

(10) While it may or may not be possible to vindicate those allegations, the reasonable efforts of federal employees and contract workers to vindicate them should not occasion any appreciable loss;

(11) Unlawful, work-related discrimination, retaliation, and/or harassment prompt lost opportunities, general unhealthiness, distinct physical illnesses, mental as well as emotional disturbances, and death among federal employees and contract workers;

(12) The process of proving those losses should not become an ordeal, attendant more to the recalcitrance of government attorneys than the perplexity of underlying disputes;

(13) Congress has heard testimony from individuals that point to chronic problems of discrimination and retaliation against Federal employees;

(a) In the case of Dr. Marsha Coleman-Adebayo, an Environmental Protection Agency (EPA), Environmental Specialist, a jury in August 2000 found that the Agency had discriminated against her based on race, color and a hostile work environment. EPA managers retaliated against the scientist after she reported that an American Company exposed its African miners and their families to vanadium – a deadly substance. EPA relieved Dr. Coleman-Adebayo of her duties after she reported the abuse. The agency has consistently retaliated against the employee since she prevailed in her jury verdict and delivered two Congressional testimonies. A federal jury awarded her \$600,000.

(b) In the case of Matthew Fogg vs. Janet Reno, John Aschroft, Alberto Gonzales, United States Attorney General, Department of Justice (DOJ). On April 28, 1998, a Federal jury awarded Supervisory deputy U.S. Marshal Matthew Fogg four million dollars (\$4,000,000) in compensatory damages and *found* the U.S. Marshal Service (USMS), a bureau under DOJ supervision, to be a “*Racial Hostile Environment*” for all African American U.S. Marshals nationwide. Nine years later Fogg has not received a final decision nor any Equitable Relief from a subsequent favorable Appellant (2001) and lower court decision (2005) against the USMS. The DOJ has paid Fogg’s attorney fees for \$300,000 but continues to-date exercising its’ right to appeal this matter.

(14) Federal agencies are to foster a workplace free of discrimination and timely resolve *prima facie* cases of discrimination and retaliation;

(a) In the case of Janet Howard, Tanya Ward Jordan, and Joyce E. Megginson vs. Carlos M. Gutierrez, Secretary-Department of Commerce - Ms. Howard, Export Specialist, initially filed a race-based discrimination class action lawsuit in 1995. In 2001, the Department used appropriated funds to establish a “Class Action Project Fund”, since renamed the Complex Litigation Unit. As of 2007, twelve(12) years later, the Department continues to exhaust millions of taxpayer dollars by further litigating rather than resolving class claims of civil rights violations;

(b) In the case of Michael McCray vs. Daniel Glickman – Secretary U.S. Department of Agriculture, Michael R. McCray, Esq. Community Development Specialist, was demoted, discharged and “blacklisted” from subsequent federal/non-profit employment after he reported over forty million dollars (\$40,000,000) in government fraud, waste and abuse by USDA and the Mid-Delta Empowerment Zone Alliance. Representing himself, Michael McCray established a *prima facie* case of discrimination and retaliation with admissible evidence, eyewitness testimony and legal admissions. However, after 4,380 days – Attorney McCray has never received a hearing or any due process resulting from baseless and dilatory litigation tactics and reported judicial misconduct amounting to coordinated judicial wrongdoing.

(15) Justice delayed is not only justice denied, but an undue distraction for all involved when federal agencies strain in its wake to be cleared of unlawful, work-related discrimination, retaliation, and/or harassment;

(16) Federal employees and contract workers accordingly lose faith and confidence in the ability or willingness of quasi-judicial agencies and federal courts to protect their civil and constitutional rights;

(17) Those providing leadership to enforce, strengthen, and expand the 2002 provisions of this Act, attest to seeming predisposition of quasi-judicial agencies and federal courts, favoring federal agencies, policy makers, and/or managers accused of unlawful, work-related discrimination, retaliation, and/or harassment;

(18) Federal employees and contract workers should be able to secure legal counsel and representation for related proceedings without a prospect of financial ruin, given reasonably prudent spending habits;

(19) Lawyers should be able to reasonably and effectively contend with inappropriate bias in the course of related proceedings, regardless of its source, without fear of professional retribution;

(20) Unlawful, work-related discrimination, retaliation, and/or harassment deprive Americans of honest services and the highest, best use of tax dollars when perpetrated by federal agents;

(21) It is appropriate for those so defrauding the American public to be personally liable for their conduct under applicable civil and/or criminal law, and subject to discipline;

(22) As America's federal government affects interstate or foreign commerce, and Congress regulates the use of federal resources through appropriation and various oversight powers, Congress hereby proscribes the use of federal intra-office and/or inter-agency mail and/or electronic communication system(s) to perpetrate and/or conceal work-related and unlawful discrimination, retaliation, and/or harassment in accord with Title 18, sections 1341 (relating to mail fraud) and 1343 (relating to wire fraud) of the United States Code.

SEC. 102. INTENT OF CONGRESS.

It is the intent of Congress that—

(1) Enforcement and accountability features set forth within the Act will be effective in strengthening the original congressional intent of the No FEAR law of 2002. Namely, such provisions shall;

(a) improve the confidence of the American people in the capability of the Federal Government, by systematically holding Federal agencies like Federal Emergency Management Agency (FEMA), Environmental Protection Agency (EPA), Health and Human Services (HHS) and other agencies accountable for implementing provisions of the Act;

(b) improve Federal program effectiveness and public accountability by promoting a workforce culture where the agency judiciously and expeditiously addresses violations in discrimination and whistleblower laws.

(c) increase employee awareness of rights/protections related to Federal discrimination / whistleblower protection laws and /or retaliation claims.

(d) provide more accountability and consequences for discrimination and retaliation against whistleblowers.

(e) provide more opportunities for civil society to provide citizens oversight of the implementation of the No FEAR provisions and to participate in No FEAR training.

(2) Federal agencies from various federal entities shall provide no less than ten Inter-Agency Personnel Actions to the Office of Special Counsel to create a No FEAR oversight office. This office shall be the official clearinghouse for the federal government and provide written information to Congress, the executive branch and the public on the enforcement of the No FEAR law. Acknowledging the retaliation that many federal employees who worked to ensure the passage of the first No FEAR law, the No FEAR oversight office will initially consist of Federal employees, with appropriate experience, who worked on this legislation. This office shall be established within 90 days of congressional passage of No FEAR II;

(6) Federal agencies must provide timely and definitive disciplinary provisions should deter federal managers from colluding and conspiring to violate civil rights and civil liberties protections of minorities and whistleblowers and curtail such activity that seriously undermines public faith and confidence in the judicial system. Left unchecked, such tacit collusions have the undesired coercive effect of spreading to other federal officials, influencing the defense tactics utilized by U.S. Attorneys, and improperly influencing federal judges.

(7) Judicial Reform provisions are enacted to protect the constitutional rights of minorities and whistleblowers for due to tacit conspiracies, many are psychologically or financially destroyed as they navigate the administrative procedures or Federal court while the federal conspirators are represented by U.S. Attorneys; many unrepresented complainants are denied fair hearings or due process simply because many federal judges are biased against pro se litigants;

(8) Criminal penalties for violations of the federal law shall make responsible parties accountable for intimidation and harassment in federal agencies towards whistleblowers and civil rights activists who have, in some cases, developed chronic illnesses, suffered posttraumatic stress disorder and loss of life;

(9) Federal agencies are hereby required to address No FEAR Act provisions in its Annual Strategic Plan should increase Federal agency compliance with the law and its accountability. For an unseverable connection exists between planning and budgeting, a connection through which an agency decides what to do and how to do it well. Failure to provide such accountability, continues to cost taxpayers. According to the General Accounting Office, the Judgment Fund paid \$656,000,000.00 for the period FY 2001 thru 2003 due to discrimination claims.

SEC. 103. DEFINITIONS.

For the purposes of this Act —

(1) the term “Disciplinary Action Against a Manager” means any federal manager found liable for discrimination or retaliation against whistleblowers is defined as “formal reprimands with financial penalties inflicted on an offender through judicial procedures.”

(2) The term “Employee” means any “federal worker covered by Title 5 CFR”.

(3) The term “Person” means an individual, currently or formerly employed or otherwise retained in or by a federal agency, whose conduct in the course of that employment or retirement as determined without consideration of vicarious liability, by or before a court of law and/or an administrative government agency, violates or violated any provision of law cited in section 201, subsection (c) of this Act or any other provision of law which prohibits any form of discrimination, as identified under rules issues under section 204; and who has exhausted, waived, and/or forfeited all direct rights to appeal or otherwise challenges that determination to no avail; and is accordingly subject to civil liability and/or criminal prosecution should the proscribed conduct amount to prohibited activity or activities under 18 U.S.C. section 1962 (RICO provisions); constitute a criminal conspiracy against rights within the meaning of 18 U.S.C. section 241 or conspiracy to defraud within the meaning of 18 U.S.C. sections 371 and/or 373; and/or accomplish a violation of rights and/or immunities under color of law within the meaning of 18 U.S.C. section 242;

(4) The term “Immediately” means less than ten (10) calendar days.

(5) The term “Independent” means the independent investigators cannot have any personal or business relationship to the manager or agency.

(6) The term “Principle Agency Witness” means all federal officials who have been alleged to discriminate retaliate or harasses other federal workers.

SEC. 104. EFFECTIVE DATE

The provisions set forth in this Act shall take effect six (6) months from the date of the enactment of this Act.

TITLE II— CONGRESSIONAL WHISTLEBLOWER PROTECTION PROVISIONS

SECTION 201. – REMEDIES FOR RETALIATION AGAINST WHISTLEBLOWERS MAKING CONGRESSIONAL DISCLOSURES

“Section 7211 of Title 5, United States Code, is amended --

- (1) by inserting "(a)" before "The right"; and
- (2) by adding at the end the following:

"(b) Any employee aggrieved by an employer's discrimination in violation of subsection (a) may file a complaint with the Office of Special Counsel, or the Merit Systems Protection Board for actions appealable under Sections 1221 or 7701 of Title 5, United States Code. If a final decision has not been issued on the complaint within 180 days of the filing of the complaint and there is no showing that such delay is due to the bad faith of the complainant, the complainant may bring a action at law or equity for de novo review in the appropriate district court of the United States, which shall have jurisdiction over such an action without regard to the amount in controversy, for lost wages and benefits, reinstatement, costs and attorney fees, compensatory damages and equitable, injunctive or any other relief that the court considers appropriate. Any such action shall, upon the request of the complainant, be tried by the court with a jury.

"(c) The same legal burdens of proof in proceedings under subsection (b) shall apply as under sections 1214(b)(4)(B) and 1221(c) in the case of an alleged prohibited personnel practice described in section 2302(b)(8).

"(d) For purposes of this section, the term 'employee' means an individual as defined by section 2105 and any other individual, including permanent, temporary, full or part time employees, independent contractors, medical or other staff, or organization performing services for an organization that in whole or in part is a contractor, grantee, or other recipient if the United States Government provides any portion of the money or property which is requested or demanded."

TITLE III— ALTERNATIVE INVESTIGATIVE REVIEW

SECTION 301. ALTERNATIVE INVESTIGATIVE REVIEW (OSC)

1. Any employee aggrieved by an employer's discrimination may file a complaint with the Office of Special Counsel (OSC), or the Merit Systems Protection Board (MSPB) for actions appealable under Section 7701 of Title 5, United States Code.
2. OSC will spend sixty (60%) of its budget providing direct legal counsel to non-supervisory federal employees who set forth a prima facie whistleblower or discrimination case.
3. OSC may represent federal employees in any judicial or administrative form, which has jurisdiction over the substantive whistleblower or discrimination case, including federal district court.
4. OSC shall publish annually, certify under oath and post on the internet: 1). justification / document that its budget complied under the laws; statistics (race and national origin) on the persons that they assisted.

5. Failure of OSC to provide data shall be considered a cause of action with \$10,000; Failure of OSC to comply with this requirement shall be grounds for removal.

6. EEOC/OPM shall convene town hall meetings throughout the country to discuss draft regulations before finalization. EEOC/OPM shall work collaboratively with civil society organizations, such as the NO FEAR Coalition when convening such town hall meetings.

7. Annual report to Speaker of the House, Appropriation Committees, and Attorney General shall contain among other information, the total dollar amount by fiscal years that the Agency owe the Judgment Fund.

8. Total costs associated with processing and litigating cases include salaries of all personnel involved, travel costs, and all other hidden administrative costs.