AMENDMENT TO RULES COMMITTEE PRINT 117-13

OFFERED BY MS. SPEIER OF CALIFORNIA

Add at the end of subtitle A of title VIII the following new section:

SEC. 8. PROTECTIONS FOR WHISTLEBLOWERS SEEKING TO ENSURE ACCOUNTABILITY AND OVERSIGHT OF COVID–19 PANDEMIC RESPONSE.

(a) DEFENSE CONTRACTS.—Section 2409 of title 10, United States Code, is amended—

(1) in subsection (a)—

(A) by amending paragraph (1) to read as follows:

“(1) A protected individual may not be discharged, demoted, harassed, blacklisted, prejudiced by any action or lack of action, or otherwise discriminated against for disclosing, being perceived as disclosing, or preparing to disclose (including assisting in disclosing, being perceived as assisting in disclosing, and including a disclosure made in the ordinary course of job duties) to a person or body described in paragraph (2) information that the protected individual reasonably believes is evidence of the following—
“(A)(i) gross mismanagement of a Department of Defense contract, subcontract, grant, or subgrant relating to covered funds;

“(ii) a gross waste of Department funds or covered funds;

“(iii) an abuse of authority related to a Department contract or grant or the distribution, implementation, or use of covered funds, including conflict of interest or partiality;

“(iv) any violation of any statute, rule, or regulation related to a Department of Defense contract, subcontract (including the competition for or negotiation of a contract or subcontract), grant, or subgrant, awarded or issued relating to covered funds; and

“(v) conduct that violates, obstructs or undermines any law, rule, or regulation related to any Federal contract (including the competition for or negotiation of a contract) or grant, including any statute, rule, or regulation with respect to any Coronavirus pandemic-related program, project, or activity;

“(B) refusing to obey an order that the protected individual reasonably believes would require that individual to violate a statute, rule, or regula-
tion with respect to any covered funds, including any Coronavirus pandemic-related program, project, or activity;

“(C) gross mismanagement of a National Aeronautics and Space Administration contract, grant, subcontract, or subgrant, a gross waste of Administration funds, an abuse of authority relating to an Administration contract or grant, or a violation of law, rule, or regulation related to an Administration contract (including the competition for or negotiation of a contract), grant, subcontract, or subgrant;

or

“(D) a substantial and specific danger to worker or public health or safety.”; and

(B) in paragraph (2)—

(i) in subparagraph (A), by striking “or a representative of a committee of Congress” and inserting “, a representative of a committee of Congress, or commission of Congress”;

(ii) in subparagraph (B), by inserting “, including the Special Inspector General for Pandemic Relief and any other Office of Inspector General established by law” after “Inspector General”;

...
(iii) in subparagraph (G), by striking “who has the responsibility to investigate” and inserting “authorized to investigate”; and

(iv) by adding after subparagraph (G) the following new subparagraphs:

“(H) The Pandemic Response Accountability Committee.

“(I) An officer or representative of a labor organization.

“(J) The head of an executive agency or a designee of such agency head.”;

(2) in subsection (b)—

(A) in paragraph (1)—

(i) by striking “A person who believes that the person” and inserting “A protected individual who believes that the protected individual”;

(ii) by striking “Space Administration.” and inserting “Space Administration, who shall review the complaint for investigation, and shall investigate the alleged misconduct if there previously has not been such an investigation or if the appropriate Inspector General determines
that the original investigation was biased
or otherwise inadequate.”; and

(iii) by striking “previously been ad-
dressed” and inserting “been filed”;

(B) by amending paragraph (3) to read as
follows:

“(3)(A) A person or body described in subsection
(a)(2) that receives information under paragraph (1) and
any other person or body to which such information is dis-
closed may not respond to any inquiry or disclose the iden-
tity or identifying information of the protected individual
providing the information without prior explicit written
consent of the protected individual.

“(B) If disclosure of the identity or identifying infor-
mation of a protected individual providing information
under paragraph (1) is required by law, the recipient shall
provide timely notice of the disclosure to the protected in-
dividual.

“(C) The Inspector General investigating alleged dis-
crimination under this section may not respond to any in-
quiry or disclose any information from or about any pro-
tected individual alleging such discrimination, provisions
of section 552a of title 5 (commonly referred to as the
‘Privacy Act’), or as required by any other applicable Fed-
eral law.”; and
(C) by adding at the end the following new paragraph:

“(5) Upon completion of an investigation under this subsection into alleged misconduct disclosed by the protected individual, the Inspector General shall submit a report of the findings of the investigation to—

“(A) the person against whom the misconduct is alleged;

“(B) the protected individual concerned;

“(C) the Secretary of Defense or the Administrator of the National Aeronautics and Space Administration, as applicable; and

“(D) the congressional committees of jurisdiction.”;

(3) in subsection (c)—

(A) in paragraph (1)(B), by striking “compensatory damages (including back pay)” and inserting “compensatory and exemplary damages (including double back pay)”;

(B) by striking paragraph (7);

(C) by redesignating paragraphs (2) through (6) as paragraphs (3) through (7), respectively;

(D) by inserting after paragraph (1) the following new paragraph:
“(2)(A) A protected individual alleging a reprisal under this section shall have access to the investigative file of the Office of Inspector General in accordance with section 552a of title 5. The investigation by the Office of Inspector General shall be deemed closed for purposes of disclosure under such section when an individual files an appeal to the head of an executive agency or a court of competent jurisdiction.

“(B) In the event a protected individual alleging a reprisal under this section brings a civil action under this subsection, the protected individual and the non-Federal employer (or the Secretary of Defense or the Administrator of the National Aeronautics and Space Administration, as applicable, in the case of a Federal personal services contract involving covered funds), if applicable, shall have access to the investigative file of the Office of Inspector General in accordance with section 552a of title 5.

“(C) The Inspector General may exclude from disclosure—

“(i) information protected from disclosure by a provision of law; and

“(ii) any additional information the Inspector General determines disclosure of which would impede a continuing investigation, if such information is disclosed once such disclosure would no longer im-
pede such investigation, unless the Inspector General
determines that disclosure of law enforcement tech-
niques, procedures, or information could reasonably
be expected to risk circumvention of the law or dis-
close the identity of a confidential source.”;

(E) in paragraph (3), as redesignated by
subparagraph (C), by striking “may bring a de
novo action at law or equity against the con-
tactor to seek compensatory damages” and in-
serting “may bring a de novo action at law or
equity against any entity that violates sub-
section (a) to seek compensatory and exemplary
damages”; and

(F) in paragraph (4), as so redesignated,
by striking “paragraph (2)” and inserting
“paragraph (3)”;

(4) by striking subsection (d);

(5) by redesignating subsections (e) and (f) as
subsections (d) and (e), respectively;

(6) in subsection (e), as so redesignated, by
striking paragraph (1) and inserting the following
new paragraphs:

“(1) Nothing in this section may be construed to—

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

“(B) modify or derogate from a right or remedy
otherwise available to the protected individual.

“(2) State and local employees may be deemed to be
protected individuals and may file complaints for relief
under this section, and nothing in this section may be con-
strued to preempt, preclude, or limit the protections pro-
vided for public or private employees under State or local
whistleblower laws.”;

(7) by inserting after subsection (e), as so re-
designated, the following new subsection:

“(f)(1) RIGHTS RETAINED BY EMPLOYEE.—Nothing
in this section shall diminish the rights, privileges, or rem-
edies of any protected individual under any Federal or
State law or under any collective bargaining agreement.

“(2) Notwithstanding any other provision of law, a
protected individual shall be immune from civil and crimi-
nal liability for making the disclosure if the protected indi-
vidual would be protected from reprisal under subsection
(a). The protected individual shall bear the burden re-
quired under subsection (a) of proving that the individual
would be protected from reprisal under such subsection
for making the disclosure.
“(3)(A) Except as provided under subparagraph (C), the rights and remedies provided for in this section may not be waived by any public or private agreement, policy, form, or condition of employment, including by any predispute arbitration agreement.

“(B) Except as provided under subparagraph (C), no predispute arbitration agreement shall be valid or enforceable if it requires arbitration of a dispute arising under this section.

“(C) Notwithstanding subparagraphs (A) and (B), an arbitration provision in a collective bargaining agreement shall be enforceable as to disputes arising under the collective bargaining agreement.

“(4) Any non-Federal employer receiving covered funds (and the head of the applicable agency in the case of a Federal personal services contract involving covered funds) shall prominently post notice on its website and to each employee of the rights and remedies provided under this section in the predominant native languages of the workforce.”; and

(8) in subsection (g)—

(A) in paragraph (6), by adding at the end the following new subparagraph:
“(C) An arbitrary or capricious exercise of authority that adversely affects the rights of any individual, or that results in personal gain or advantage to an officer or employee of the Department of Defense or the National Aeronautics and Space Administration or to another individual.”; and

(B) by adding after paragraph (7) the following new paragraphs:

“(8) The term ‘Coronavirus pandemic-related program, project, or activity’—

“(A) means a program, project, or activity of the executive branch of the Department of Defense or the National Aeronautics and Space Administration, as applicable, authorized under or carried out using amounts made available under an Act to respond to or to provide aid or assistance to address, relief from, or funding to address the outbreak of COVID–19 that is enacted before, on, or after the date of enactment of this paragraph; and

“(B) includes any program, project, or activity of the executive branch of the Department of Defense or the National Aeronautics and Space Administration, as applicable, authorized
under or carried out using amounts made available under—

“(i) the Paycheck Protection Program and Health Care Enhancement Act (Public Law 116–139);

“(ii) the CARES Act (Public Law 116–136);

“(iii) the Families First Coronavirus Response Act (Public Law 116–127);

“(iv) the Coronavirus Preparedness and Response Supplemental Appropriations Act, 2020 (Public Law 116–123); or

“(v) division M or N of the Consolidated Appropriations Act, 2021 (Public Law 116–260).

“(9) The term ‘covered funds’ means any contract, subcontract, grant, subgrant, loan, loan guarantee, or other payment for which—

“(A) the Secretary of Defense or the Administrator of the National Aeronautics and Space Administration, as applicable, provides any portion of the funds or property that is provided, requested, or demanded; or

“(B) any portion of the funds are appropriated or otherwise made available under or to
carry out a Coronavirus pandemic-related program, project, or activity.

“(10) The term ‘employee’—

“(A) means an individual performing services on behalf of an employer, including any individual working for an employer under a contract with such employer (including a contractor, subcontractor, grantee, subgrantee, or agent of an employer); and

“(B) does not include—

“(i) a Federal employee; or

“(ii) a servicemember during a period of military service (as those terms are defined in section 101 of the Servicemembers Civil Relief Act (50 U.S.C. 3911)).

“(11) The term ‘non-Federal employer’—

“(A) means any employer—

“(i) with respect to covered funds—

“(I) the contractor, subcontractor, grantee, subgrantee, or recipient, as the case may be, if the contractor, subcontractor, grantee, subgrantee, or recipient is an employer; and
“(II) any professional membership organization, certification or other professional body, any agent or licensee of the Federal Government, or any person acting directly or indirectly in the interest of an employer receiving covered funds; or

“(ii) with respect to covered funds received by a State or local government, the State or local government receiving the funds and any contractor or subcontractor of the State or local government; and

“(B) does not mean any department, agency, or other entity of the Federal Government, except with respect to a personal services contractor.

“(12) The term ‘protected individual’ means—

“(A) a contractor, subcontractor, grantee, or subgrantee,

“(B) an employee, applicant or former employee of a contractor, subcontractor, grantee, or subgrantee, or

“(C) a personal services contractor who engages in activity for which any discrimination is prohibited under subsection (a).
“(13) The term ‘State or local government’ means—

“(A) the government of each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, or any other territory or possession of the United States; or

“(B) the government of any political subdivision of a government listed in subparagraph (A).”.

(b) CIVILIAN CONTRACTS.—Section 4712 of title 41, United States Code, is amended—

(1) in subsection (a)—

(A) by amending paragraph (1) to read as follows:

“(1) IN GENERAL.—A protected individual may not be discharged, demoted, harassed, blacklisted, prejudiced by any action or lack of action, or otherwise discriminated against for disclosing, being perceived as disclosing, or preparing to disclose (including assisting in disclosing, being perceived as assisting in disclosing, and including a disclosure made in the ordinary course of job duties) to a person or body described in paragraph (2) information that
the protected individual reasonably believes is evidence of misconduct that violates, obstructs, or undermines any law, rule, or regulation related to any Federal contract (including the competition for or negotiation of a contract) or grant, including any statute, rule, or regulation with respect to any Coronavirus pandemic-related program, project, or activity, and including—

"(A)(i) gross mismanagement of an agency contract, subcontract, grant, or subgrant relating to covered funds;

"(ii) a gross waste of covered funds;

"(iii) a substantial and specific danger to worker or public health or safety;

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

"(v) any violation of any statute, rule, or regulation related to an agency contract, subcontract (including the competition for or negotiation of a contract or subcontract), grant, or subgrant, awarded or issued relating to covered funds; or
“(B) refusing to obey an order that the protected individual reasonably believes would require that individual to violate a statute, rule, or regulation with respect to any covered funds, including any Coronavirus pandemic-related program, project, or activity.”; and

(B) in paragraph (2)—

(i) in subparagraph (A), by striking “or a representative of a committee of Congress” and inserting “, a representative of a committee of Congress, or a commission of Congress”;

(ii) in subparagraph (B), by inserting “, including the Special Inspector General for Pandemic Relief and any other Office of Inspector General established by law” after “Inspector General”;

(iii) in subparagraph (G), by striking “who has the responsibility to investigate” and inserting “authorized to investigate”; and

(iv) by adding after subparagraph (G) the following new subparagraphs:

“(H) The Pandemic Response Accountability Committee.
“(I) An officer or representative of a labor organization.

“(J) The head of an executive agency or a designee of such agency head.”;

(2) in subsection (b)—

(A) in paragraph (1)—

(i) by striking “A person who believes” and inserting “Any person described under subsection (a)(1) who believes”; and

(ii) by inserting after “to the Inspector General of the executive agency involved” the following: “, who shall review the complaint for investigation, and shall investigate the alleged misconduct disclosed by the whistleblower if there previously has not been such an investigation or if the Inspector General determines that the original investigation was biased or otherwise inadequate”;

(B) by amending paragraph (3) to read as follows:

“(3) PROTECTION OF WHISTLEBLOWER IDENTITY.—
“(A) IN GENERAL.—A person or body described in subsection (a)(2) that receives information under paragraph (1) and any person or body to which the officer or entity discloses the information may not exercise discretion to respond to any inquiry or disclose the identity or identifying information of the protected individual providing the information without prior explicit written consent of the protected individual.

“(B) NOTICE.—If disclosure of the identity or identifying information of a protected individual providing information under paragraph (1) is required by law, the recipient shall provide timely notice of the disclosure to the protected individual.

“(C) PRIVACY OF INFORMATION.—The Inspector General investigating alleged discrimination under this section may not respond to any inquiry or disclose any information from or about any protected individual alleging such discrimination, except in accordance with the provisions of section 552a of title 5 (commonly referred to as the ‘Privacy Act’), or as required by any other applicable Federal law.”; and
(C) by adding at the end the following new paragraph:

“(5) REPORT.—Upon completion of an investigation under this subsection into alleged misconduct disclosed by the whistleblower, the Inspector General shall submit a report of the findings of the investigation to—

“(A) the person;

“(B) the contractor, subcontractor, grantee, or subgrantee concerned;

“(C) the head of the agency; and

“(D) the congressional committees of jurisdiction.”;

(3) in subsection (e)—

(A) in paragraph (1)(B), by striking “compensatory damages (including back pay)” and inserting “compensatory and exemplary damages (including double back pay)”;

(B) by striking paragraph (7);

(C) by redesignating paragraphs (2) through (6) as paragraphs (3) through (7);

(D) by inserting after paragraph (1) the following new paragraph:

“(2) ACCESS TO INVESTIGATIVE FILE.—
“(A) IN GENERAL.—A protected individual alleging a reprisal under this section shall have access to the investigation file of the Office of Inspector General in accordance with section 552a of title 5. The investigation by the Office of Inspector General shall be deemed closed for purposes of disclosure under such section when an individual files an appeal to the head of an executive agency or a court of competent jurisdiction.

“(B) CIVIL ACTION.—In the event a protected individual alleging a reprisal under this section brings a civil action under this subsection, the protected individual and the non-Federal employer (or the head of the applicable executive agency in the case of a Federal personal services contract involving covered funds), if applicable, shall have access to the investigative file of the Office of Inspector General in accordance with section 552a of title 5.

“(C) EXCEPTION.—The Inspector General may exclude from disclosure—

“(i) information protected from disclosure by a provision of law; and
“(ii) any additional information the Inspector General determines disclosure of which would impede a continuing investigation, if such information is disclosed once such disclosure would no longer impede such investigation, unless the Inspector General determines that disclosure of law enforcement techniques, procedures, or information could reasonably be expected to risk circumvention of the law or disclose the identity of a confidential source.”;

(E) in paragraph (3), as so redesignated, by striking “may bring a de novo action at law or equity against the contractor, subcontractor, grantee, or subgrantee to seek compensatory damages” and inserting “may bring a de novo action at law or equity against any entity violating subsection (a) to seek compensatory and exemplary damages”; and

(F) in paragraph (4), as so redesignated, by striking “paragraph (2)” and inserting “paragraph (3)”;

(4) by striking subsection (d);

(5) by redesignating subsections (e) and (f) as subsections (d) and (e), respectively;
(6) by inserting after subsection (e), as so re-designated, the following new subsection:

“(f) General Provisions.—

“(1) Rights retained by employee.—Nothing in this section shall diminish the rights, privileges, or remedies of any protected individual under any Federal or State law, or under any collective bargaining agreement.

“(2) Liability.—Notwithstanding any other provision of law, a protected individual shall be immune from civil and criminal liability if the individual would be protected from reprisal under subsection (a). The protected individual shall bear the burden required under subsection (a) of proving that the individual would be protected from reprisal under subsection (a) for making the disclosure.

“(3) Nonenforceability of certain provisions waiving or overriding rights and remedies or requiring arbitration of disputes.—

“(A) Waiver of rights and remedies.—Except as provided under subparagraph (C), the rights and remedies provided for in this section may not be waived by any public or private agreement, policy, form, or condition
of employment, including by any predispute arbitration agreement.

“(B) PREDISPUTE ARBITRATION AGREEMENTS.—Except as provided under subparagraph (C), no predispute arbitration agreement shall be valid or enforceable if it requires arbitration of a dispute arising under this section.

“(C) EXCEPTION FOR COLLECTIVE BARGAINING AGREEMENTS.—Notwithstanding subparagraphs (A) and (B), an arbitration provision in a collective bargaining agreement shall be enforceable as to disputes arising under the collective bargaining agreement.

“(4) REQUIREMENT TO POST NOTICE OF RIGHTS AND REMEDIES.—Any non-Federal employer receiving covered funds (and the head of the applicable agency in the case of a Federal personal services contract involving covered funds) shall prominently post notice on its website and to each employee of the rights and remedies provided under this section, in the predominant native languages of the workforce.”;

(7) in subsection (g)—

(A) in paragraph (1), by striking “that is inconsistent” and all that follows through the
period at the end and inserting the following:

“by a contracting officer or employee that ad-
versely affects the rights of any individual, or
that results in personal gain or advantage to
the officer or employee or to preferred other in-
dividuals.”;

(B) by redesignating paragraph (2) as
paragraph (5);

(C) by inserting after paragraph (1) the
following new paragraphs:

“(2) The term ‘Coronavirus pandemic-related
program, project, or activity”—

“(A) means a program, project, or activity
of the executive branch of the Federal Govern-
ment authorized under or carried out using
amounts made available under an Act to re-
pond to or to provide aid or assistance to ad-
dress, relief from, or funding to address the
outbreak of COVID–19 that is enacted before,
on, or after the date of enactment of this para-
graph; and

“(B) includes any program, project, or ac-
tivity of the executive branch of the Federal
Government authorized under or carried out
using amounts made available under—
“(i) the Paycheck Protection Program and Health Care Enhancement Act (Public Law 116–139);

“(ii) the CARES Act (Public Law 116–136);

“(iii) the Families First Coronavirus Response Act (Public Law 116–127);

“(iv) the Coronavirus Preparedness and Response Supplemental Appropriations Act, 2020 (Public Law 116–123); or

“(v) division M or N of the Consolidated Appropriations Act, 2021 (Public Law 116–260).

“(3) The term ‘covered funds’ means any contract, subcontract, grant, subgrant, loan, loan guarantee, or other payment for which—

“(A) the Federal Government provides any portion of the funds or property that is provided, requested, or demanded; or

“(B) any portion of the funds are appropriated or otherwise made available under or to carry out a Coronavirus pandemic-related program, project, or activity.

“(4) The term ‘employee’—
“(A) except as provided under subparagraph (B), means an individual performing services on behalf of an employer, including any individual working for an employer under a grant or contract with such employer (including a contractor, subcontractor, grantee, subgrantee, or agent of an employer); and

“(B) does not include any Federal employee or member of the uniformed services (as that term is defined in section 101(a)(5) of title 10).”; and

(D) by inserting after paragraph (5), as so redesignated, the following new paragraphs:

“(6) The term ‘non-Federal employer’—

“(A) means any employer—

“(i) with respect to covered funds—

“(I) the contractor, subcontractor, grantee, subgrantee, or recipient, as the case may be, if the contractor, subcontractor, grantee, subgrantee, or recipient is an employer; and

“(II) any professional membership organization, certification, or other professional body, any agent or
licensee of the Federal Government,
or any person acting directly or indirectly in the interest of an employer receiving covered funds; or

“(ii) with respect to covered funds received by a State or local government, the State or local government receiving the funds and any contractor or subcontractor of the State or local government; and

“(B) does not mean any department, agency, or other entity of the Federal Government, except with respect to a personal services contractor.

“(7) The term ‘protected individual’ means—

“(A) a contractor, subcontractor, grantee, or subgrantee,

“(B) an employee, applicant or former employee of a contractor, subcontractor, grantee, or subgrantee, or

“(C) a personal services contractor who engages in activity for which any discrimination is prohibited under subsection (a).

“(8) The term ‘State or local government’ means—
“(A) the government of each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, or any other territory or possession of the United States; or

“(B) the government of any political subdivision of a government listed in subparagraph (A).”; and

(8) in subsection (h)—

(A) by inserting “(1)” before “Nothing”; and

(B) by adding at the end the following new paragraphs:

“(2) Nothing in this section may be construed to—

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

“(B) modify or derogate from a right or remedy otherwise available to the protected individual.

“(3) State and local employees may file complaints for relief under this section, and nothing in
this section may be construed to preempt, preclude, or limit the protections provided for public or private employees under State or local whistleblower laws.”.

(c) COMPLAINT PORTAL.—The Special Inspector General for Pandemic Relief, the Pandemic Relief Accountability Committee, and the Congressional Oversight Commission shall each establish a public website where any individual who believes that the individual has been subjected to a reprisal prohibited under subsection (a) of section 2904 of title 10, United States Code, or subsection (a) of section 4712 of title 41, United States Code, as amended by this section, may submit a complaint regarding the reprisal. Any complaint so submitted shall be transmitted to the relevant Office of Inspector General for enforcement in accordance with such sections, including notice to the complainant of the referral and relevant procedures.