

109TH CONGRESS
2^D SESSION

H. R. _____

To provide for reform in the operations of the executive branch.

IN THE HOUSE OF REPRESENTATIVES

Mr. TOM DAVIS of Virginia (for himself and Mr. WAXMAN) introduced the following bill; which was referred to the Committee on

A BILL

To provide for reform in the operations of the executive branch.

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 “Executive Branch Re-
5 form Act of 2006”.

6 **SEC. 2. REQUIREMENTS RELATING TO SIGNIFICANT CON-**
7 **TACTS.**

8 (a) IN GENERAL.—The Ethics in Government Act of
9 1978 (5 U.S.C. App. 4) is amended by adding at the end
10 the following new title:



1 **“TITLE VI—EXECUTIVE BRANCH**
2 **DISCLOSURE OF SIGNIFICANT**
3 **CONTACTS**

4 **“SEC. 601. RECORDING AND REPORTING BY CERTAIN EXEC-**
5 **UTIVE BRANCH OFFICIALS OF SIGNIFICANT**
6 **CONTACTS MADE TO THOSE OFFICIALS.**

7 “(a) IN GENERAL.—Not later than 30 days after the
8 end of a calendar quarter, each covered executive branch
9 official shall make a record of, and file with the Office
10 of Government Ethics a report on, any significant contacts
11 during the quarter between the covered executive branch
12 official and any private party relating to an official govern-
13 ment action. If no such contacts occurred, each such offi-
14 cial shall make a record of, and file with the Office a re-
15 port on, this fact, at the same time.

16 “(b) CONTENTS OF RECORD AND REPORT.—Each
17 record made, and each report filed, under subsection (a)
18 shall contain—

19 “(1) the name of the covered executive branch
20 official;

21 “(2) the name of each private party who had a
22 significant contact with that official; and

23 “(3) for each private party so named, a sum-
24 mary of the nature of the contact, including—

25 “(A) the date of the contact;



1 “(B) the subject matter of the contact and
2 the specific executive branch action to which the
3 contact relates; and

4 “(C) if the contact was made on behalf of
5 a client, the name of the client.

6 “(c) WITHHOLDING FOIA-EXEMPT INFORMATION.—
7 This section does not require the filing with the Office of
8 Government Ethics of information that is exempt from
9 public disclosure under section 552(b) of title 5, United
10 States Code (popularly referred to at the “Freedom of In-
11 formation Act”).

12 **“SEC. 602. AUTHORITIES AND RESPONSIBILITIES OF OF-
13 FICE OF GOVERNMENT ETHICS.**

14 “(a) IN GENERAL.—The Director of the Office of
15 Government Ethics shall—

16 “(1) promulgate regulations to implement this
17 title, provide guidance and assistance on the record-
18 ing and reporting requirements of this title, and de-
19 velop common standards, rules, and procedures for
20 compliance with this title;

21 “(2) review, and, where necessary, verify the ac-
22 curacy, completeness, and timeliness of reports;

23 “(3) develop filing, coding, and cross-indexing
24 systems to carry out the purpose of this title,
25 including—



1 “(A) a publicly available list of all private
2 parties who made a significant contact; and

3 “(B) computerized systems designed to
4 minimize the burden of filing and maximize
5 public access to reports filed under this title;

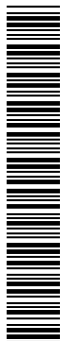
6 “(4) make available for public inspection and
7 copying at reasonable times the reports filed under
8 this title;

9 “(5) retain reports for a period of at least 6
10 years after they are filed;

11 “(6) compile and summarize, with respect to
12 each reporting period, the information contained in
13 reports filed with respect to such period in a clear
14 and complete manner;

15 “(7) notify any covered executive branch official
16 in writing that may be in noncompliance with this
17 title; and

18 “(8) notify the United States Attorney for the
19 District of Columbia that a covered executive branch
20 official may be in noncompliance with this title, if
21 the covered executive branch official has been noti-
22 fied in writing and has failed to provide an appro-
23 priate response within 60 days after notice was
24 given under paragraph (7).



1 **“SEC. 603. PENALTIES.**

2 “Whoever knowingly fails to—

3 “(1) remedy a defective filing within 60 days
4 after notice was given under paragraph (7); or

5 “(2) comply with any other provision of this
6 title;

7 shall, upon proof of such knowing violation by a prepon-
8 derance of the evidence, be subject to a civil fine of not
9 more than \$50,000, depending on the extent and gravity
10 of the violation.

11 **“SEC. 604. DEFINITIONS.**

12 “In this title:

13 “(1) COVERED EXECUTIVE BRANCH OFFI-
14 CIAL.—The term ‘covered executive branch official’
15 means—

16 “(A) any officer or employee serving in a
17 position in level I, II, III, IV, or V of the Exec-
18 utive Schedule, as designated by statute or Ex-
19 ecutive order;

20 “(B) any member of the uniformed serv-
21 ices whose pay grade is at or above O-7 under
22 section 201 of title 37, United States Code;

23 “(C) any officer or employee serving in a
24 position of a confidential, policy-determining,
25 policy-making, or policy-advocating character



1 described in section 7511(b)(2)(B) of title 5,
2 United States Code; and

3 “(D) any officer or employee serving in a
4 position of a confidential, policy-determining,
5 policy-making, or policy advocating character,
6 or any other individual functioning in the ca-
7 pacity of such an officer or employee, in the Ex-
8 ecutive Office of the President or the Office of
9 the Vice President, but does not include the
10 President or Vice President or the chief of staff
11 of the President or Vice President.

12 “(2) SIGNIFICANT CONTACT.—The term ‘sig-
13 nificant contact’ means oral or written communica-
14 tion (including electronic communication) that is
15 made by a private party to a covered executive
16 branch official in which such private party seeks to
17 influence, or obtain nonpublic information about, of-
18 ficial action by any officer or employee of the execu-
19 tive branch of the United States.

20 “(3) PRIVATE PARTY.—The term ‘private party’
21 means any person or entity, but does not include a
22 Federal, State, or local government official or a per-
23 son representing such an official.”.

24 (b) EFFECTIVE DATE.—



1 (1) IN GENERAL.—Title VI of the Ethics in
2 Government Act of 1978, as added by this section,
3 takes effect 1 year after the date of the enactment
4 of this Act, except as provided in paragraph (2).

5 (2) INITIAL REGULATIONS.—The initial regula-
6 tions required by section 602 of that Act shall be
7 promulgated—

8 (A) in draft form, not later than 270 days
9 after the date of the enactment of this Act; and

10 (B) in final form, not later than 1 year
11 after the date of the enactment of this Act.

12 **SEC. 3. REQUIREMENTS RELATING TO STOPPING THE RE-**
13 **VOLVING DOOR.**

14 The Ethics in Government Act of 1978 (5 U.S.C.
15 App. 4) is amended by adding at the end the following
16 new title:

17 **“TITLE VII—STOPPING THE**
18 **REVOLVING DOOR**

19 **“SEC. 701. TWO-YEAR COOLING-OFF PERIOD FOR PERSONS**
20 **LEAVING GOVERNMENT SERVICE.**

21 “(a) IN GENERAL.—A covered executive branch offi-
22 cial shall not, for a period of two years after the termi-
23 nation of his employment, engage in any conduct that
24 would be prohibited under subsections (c) or (d) of section



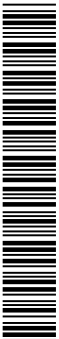
1 207 of title 18, United States Code, if it occurred within
2 one year after the termination of his employment.

3 “(b) NO EFFECT ON SECTION 207.—This section
4 does not expand, contract, or otherwise affect the applica-
5 tion of any waiver or criminal penalties under section 207
6 of title 18, United States Code.

7 **“SEC. 702. PROHIBITION ON NEGOTIATION OF FUTURE EM-**
8 **PLOYMENT.**

9 “(a) PROHIBITION.—A covered executive branch offi-
10 cial shall not participate in any official matter in which,
11 to the official’s knowledge, a person or organization with
12 whom the official is negotiating or has any arrangement
13 concerning prospective employment has a financial inter-
14 est, unless a waiver has been granted under subsection (b).

15 “(b) WAIVERS ONLY WHEN EXCEPTIONAL CIR-
16 CUMSTANCES EXIST.—A waiver to subsection (a) is not
17 available, and shall not be granted, to any individual ex-
18 cept in a case which the Government official responsible
19 for the individual’s appointment as a covered executive
20 branch official determines that exceptional circumstances
21 exist. Whenever such a determination is made, the Direc-
22 tor of the Office of Government Ethics shall independently
23 investigate and review the circumstances relating to the
24 determination, and the waiver shall not take effect until



1 the date on which the Director certifies in writing that
2 exceptional circumstances exist.

3 **“SEC. 703. COOLING-OFF PERIOD FOR CERTAIN PERSONS**
4 **ENTERING GOVERNMENT SERVICE.**

5 “(a) IN GENERAL.—A covered executive branch offi-
6 cial shall not engage in conduct relating to a covered entity
7 that would be prohibited under section 208 of title 18,
8 United States Code, if the official had a financial interest
9 in the covered entity, unless a waiver has been granted
10 under subsection (b).

11 “(b) WAIVER.—An agency’s designated ethics officer
12 may, if the Director of the Office of Government Ethics
13 approves, waive the prohibition in subsection (a) with re-
14 spect to a covered executive branch official of that agency
15 upon a determination that the relationship between the
16 covered executive branch official and the covered entity is
17 not so substantial as to be deemed likely to affect the in-
18 tegrity of the services that the Government may expect
19 from the official.

20 “(c) DEFINITION.—In this section, the term ‘covered
21 entity’ means an entity—

22 “(1) in which the official, within the previous 2
23 years, served as an officer, director, trustee, general
24 partner, or employee; or



1 “(2) for which the official, within the previous
2 2 years, worked as a lobbyist, lawyer, or other rep-
3 resentative.

4 “(d) NO EFFECT ON SECTION 208.—This section
5 does not expand, contract, or otherwise affect the applica-
6 tion of any criminal penalties under section 208 of title
7 18, United States Code.

8 **“SEC. 704. PENALTIES.**

9 “Whoever violates section 701, 702, or 703 of this
10 title shall, upon proof of such knowing violation by a pre-
11 ponderance of the evidence, be subject to a civil fine of
12 not more than \$100,000, depending on the extent and
13 gravity of the violation.

14 **“SEC. 705. DEFINITION.**

15 “In this title, the term ‘covered executive branch offi-
16 cial’ means—

17 “(1) any officer or employee serving in a posi-
18 tion in level I, II, III, IV, or V of the Executive
19 Schedule, as designated by statute or Executive
20 order;

21 “(2) any member of the uniformed services
22 whose pay grade is at or above O-7 under section
23 201 of title 37, United States Code;

24 “(3) any officer or employee serving in a posi-
25 tion of a confidential, policy-determining, policy-



1 making, or policy-advocating character described in
2 section 7511(b)(2)(B) of title 5, United States Code;
3 and

4 “(4) any officer or employee serving in a posi-
5 tion of a confidential, policy-determining, policy-
6 making, or policy advocating character, or any other
7 individual functioning in the capacity of such an of-
8 ficer or employee, in the Executive Office of the
9 President or the Office of the Vice President; and
10 “(5) the Vice President.”.

11 **SEC. 4. ADDITIONAL PROVISIONS RELATING TO PROCURE-**
12 **MENT OFFICIALS.**

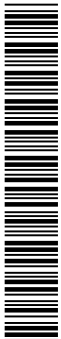
13 (a) **ELIMINATION OF LOOPHOLES THAT ALLOW**
14 **FORMER FEDERAL OFFICIALS TO ACCEPT COMPENSA-**
15 **TION FROM CONTRACTORS OR RELATED ENTITIES.—Sec-**
16 **tion 27(d) of the Office of Federal Procurement Policy**
17 **Act (41 U.S.C. 423(d)) is amended—**

18 (1) in paragraph (1)—

19 (A) by striking “or consultant” and insert-
20 ing “consultant, lawyer, or lobbyist”;

21 (B) by striking “one year” and inserting
22 “two years”; and

23 (C) in subparagraph (C), by striking “per-
24 sonally made for the Federal agency—” and in-



1 serting “participated personally and substan-
2 tially in—”; and

3 (2) by amending paragraph (2) to read as fol-
4 lows:

5 “(2) Paragraph (1) shall not prohibit a former
6 official of a Federal agency from accepting com-
7 pensation from any division or affiliate of a con-
8 tractor that does not produce the same or similar
9 products or services as the entity of the contractor
10 that is responsible for the contract referred to in
11 subparagraph (A), (B), or (C) of such paragraph if
12 the agency’s designated ethics officer determines
13 that—

14 “(A) the offer of compensation is not a re-
15 ward for any action described in paragraph (1);
16 and

17 “(B) acceptance of the compensation is ap-
18 propriate and will not affect the integrity of the
19 procurement process.”.

20 (b) REQUIREMENT FOR FEDERAL PROCUREMENT
21 OFFICERS TO DISCLOSE JOB OFFERS MADE TO REL-
22 ATIVES.—Section 27(c)(1) of such Act (41 U.S.C.
23 423(c)(1)) is amended by inserting after “that official”
24 the following: “or for a relative of that official (as defined
25 in section 3110 of title 5, United States Code),”.



1 (c) REQUIREMENT ON AWARD OF GOVERNMENT
2 CONTRACTS TO FORMER EMPLOYERS.—Section 27 of
3 such Act (41 U.S.C. 423) is amended by adding at the
4 end the following new subsection:

5 “(i) PROHIBITION ON INVOLVEMENT BY CERTAIN
6 FORMER CONTRACTOR EMPLOYEES IN PROCURE-
7 MENTS.—An employee of the Federal Government who is
8 a former employee of a contractor with the Federal Gov-
9 ernment shall not be personally and substantially involved
10 with any award of a contract to the employee’s former em-
11 ployer, or the administration of such a contract, for the
12 two-year period beginning on the date on which the em-
13 ployee leaves the employment of the contractor.”.

14 (d) REGULATIONS.—Section 27 of such Act (41
15 U.S.C. 423) is further amended by adding at the end of
16 the following new subsection:

17 “(j) REGULATIONS.—The Administrator, in consulta-
18 tion with the Director of the Office of Government Ethics,
19 shall—

20 “(1) promulgate regulations to carry out and
21 ensure the enforcement of this section; and

22 “(2) monitor and investigate individual and
23 agency compliance with this section.”.



1 **SEC. 5. PROHIBITION ON UNAUTHORIZED EXPENDITURE**
2 **OF FUNDS FOR PUBLICITY OR PROPAGANDA**
3 **PURPOSES.**

4 (a) PROHIBITION.—Chapter 13 of title 31, United
5 States Code, is amended by adding at the end the fol-
6 lowing new section:

7 **“§ 1355. Prohibition on unauthorized expenditure of**
8 **funds for publicity or propaganda pur-**
9 **poses**

10 “An officer or employee of the United States Govern-
11 ment may not make or authorize an expenditure or obliga-
12 tion of funds for publicity or propaganda purposes within
13 the United States unless authorized by law.”.

14 (b) CLERICAL AMENDMENT.—The table of sections
15 for chapter 13 of such title is amended by adding at the
16 end the following new item:

“1355. Prohibition on unauthorized expenditure of funds for propa-
ganda purposes”.

17 **SEC. 6. REQUIREMENT FOR DISCLOSURE OF FEDERAL**
18 **SPONSORSHIP OF ALL FEDERAL ADVER-**
19 **TISING OR OTHER COMMUNICATION MATE-**
20 **RIALS.**

21 (a) REQUIREMENT.—Each advertisement or other
22 communication paid for by an Executive agency, either di-
23 rectly or through a contract awarded by the Executive
24 agency, shall include a prominent notice informing the tar-



1 get audience that the advertisement or other communica-
2 tion is paid for by that Executive agency.

3 (b) ADVERTISEMENT OR OTHER COMMUNICATION.—

4 In this section, the term “advertisement or other commu-
5 nication” includes—

6 (1) an advertisement disseminated in any form,
7 including print or by any electronic means; and

8 (2) a communication by an individual in any
9 form, including speech, print, or by any electronic
10 means.

11 (c) EXECUTIVE AGENCY.—In this section, the term
12 “Executive agency” has the meaning provided in section
13 105 of title 5, United States Code.

14 **SEC. 7. ELIMINATION OF “PSEUDO” CLASSIFICATION.**

15 (a) REPORTS ON THE PROLIFERATING USE OF
16 “PSEUDO” CLASSIFICATION DESIGNATIONS.—

17 (1) REPORT BY FEDERAL AGENCIES.—Not later
18 than six months after the date of the enactment of
19 this Act, each federal agency shall submit to the Ar-
20 chivist of the United States and the congressional
21 committees described in subsection (d) a report de-
22 scribing the use of “pseudo” classification designa-
23 tions.

24 (2) MATTERS COVERED.—Each such agency
25 shall report on, at a minimum, the following:



1 (A) The number of “pseudo” classification
2 designation policies used by the agency.

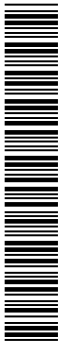
3 (B) Any existing guidance, instruction, di-
4 rective, or regulations regarding the agency’s
5 use of “pseudo” classification designations.

6 (C) The number and level of experience
7 and training of Federal agency, office, and con-
8 tractor personnel authorized to make “pseudo”
9 classification designations.

10 (D) The cost of placing and maintaining
11 information under each “pseudo” classification
12 designation.

13 (E) The extent to which information
14 placed under “pseudo” classification designa-
15 tions has subsequently been released under sec-
16 tion 552 of title 5, United States Code (popu-
17 larly known as the Freedom of Information
18 Act).

19 (F) The extent to which “pseudo” classi-
20 fication designations have been used to withhold
21 from the public information that is not author-
22 ized to be withheld by Federal statute, or by an
23 Executive order relating to the classification of
24 national security information.



1 (G) The statutory provisions described in
2 subsection (c).

3 (3) REPORT BY THE ARCHIVIST OF THE
4 UNITED STATES.—Not later than 9 months after the
5 date of the enactment of this Act, the Archivist of
6 the United States shall issue to the congressional
7 committees described in subsection (d) a report on
8 the use of “pseudo” classification designations
9 across the executive branch that is based on the in-
10 formation provided by agencies, as well as input
11 from the Director of National Intelligence, Federal
12 agencies, offices, and contractors. All federal agen-
13 cies, offices, and contractors shall cooperate fully
14 and promptly with all requests by the Archivist in
15 the fulfillment of this paragraph.

16 (4) NOTICE AND COMMENT.—The Archivist
17 shall provide notice and an opportunity for public
18 comment on the report.

19 (b) ELIMINATION OF “PSEUDO” CLASSIFICATION
20 DESIGNATIONS.—

21 (1) REGULATIONS.—Not later than 15 months
22 after the date of the enactment of this Act, the Ar-
23 chivist of the United States shall promulgate regula-
24 tions banning the use of “pseudo” classification des-
25 ignations.



1 (2) STANDARDS FOR INFORMATION CONTROL
2 DESIGNATIONS.—If the Archivist determines that
3 there is a need for some agencies to use information
4 control designations to safeguard information prior
5 to review for disclosure, beyond those designations
6 established by statute or by an Executive Order re-
7 lating to the classification of national security infor-
8 mation, the regulations under paragraph (1) shall
9 establish standards for the use of those designations
10 by agencies. Such standards shall address, at a min-
11 imum, the following issues:

12 (A) Standards for utilizing the information
13 control designations in a manner that is nar-
14 rowly tailored to maximize public access to in-
15 formation.

16 (B) Procedures for providing specified
17 Federal officials with authority to utilize the in-
18 formation control designations, including train-
19 ing and certification requirements.

20 (C) Categories of information that may be
21 assigned the information control designations.

22 (D) The duration of the information con-
23 trol designations and the process by which they
24 will be removed.



1 (E) Procedures for identifying, marking,
2 dating, and tracking information assigned the
3 information control designations, including the
4 identity of officials making the designations.

5 (F) Specific limitations and prohibitions
6 against using the information control designa-
7 tions.

8 (G) Procedures for members of the public
9 to challenge the use of the information control
10 designations.

11 (H) The manner in which the use of the
12 information control designations relates to the
13 procedures of each agency or office under sec-
14 tion 552 of title 5, United States Code.

15 (3) REGULATION TO CONSTITUTE SOLE AU-
16 THORITY.—A regulation promulgated pursuant to
17 this subsection shall constitute the sole authority by
18 which Federal agencies, offices, or contractors are
19 permitted to control information for the purposes of
20 safeguarding information prior to review for disclo-
21 sure, other than authority granted by Federal stat-
22 ute or by an Executive order relating to the classi-
23 fication of national security information.

24 (c) REVIEW OF STATUTORY BARRIERS TO PUBLIC
25 ACCESS INFORMATION.—



1 (1) REVIEW OF STATUTES.—As part of the re-
2 port required under subsection (a)(3), the Archivist
3 shall examine existing Federal statutes that allow
4 Federal agencies, offices, or contractors to control,
5 protect, or otherwise withhold information based on
6 security concerns.

7 (2) RECOMMENDATIONS.—The report shall
8 make recommendations on potential changes to the
9 Federal statutes examined under paragraph (1) that
10 would improve public access to information governed
11 by such statutes.

12 (d) DEFINITIONS.—In this section:

13 (1) The term “congressional committees”
14 means the Committees on Government Reform, Ju-
15 diary, Homeland Security, and Appropriations of
16 the House of Representatives and the Committees
17 on Homeland Security and Governmental Affairs,
18 Judiciary, and Appropriations of the Senate.

19 (2) The term “‘pseudo’ classification designa-
20 tions” means information control designations, in-
21 cluding “sensitive but unclassified” and “for official
22 use only”, that are not defined by Federal statute,
23 or by an Executive order relating to the classifica-
24 tion of national security information, but that are
25 used to manage, direct, or route Government infor-



1 mation, or control the accessibility of Government
2 information, regardless of its form or format.

3 **SEC. 8. NATIONAL SECURITY WHISTLEBLOWER RIGHTS.**

4 Chapter 23 of title 5, United States Code, is amended
5 by adding after section 2303 the following new section:

6 **“§ 2303a. National security whistleblower rights**

7 “(a) PROHIBITION OF REPRISALS.—In addition to
8 any rights provided in Title VII of Public Law 105–272,
9 section 2303 of title 5, United States Code, or any other
10 law, an employee or applicant for employment of a covered
11 agency may not be discharged, demoted, or otherwise dis-
12 criminated against, including denying, suspending, or re-
13 voking a security clearance or otherwise restricting access
14 to classified or sensitive information, as a reprisal for dis-
15 closing covered information to an authorized Member of
16 Congress or to an authorized official of an executive agen-
17 cy, the Department of Justice, or the Inspector General
18 of the employee’s employing covered agency.

19 “(b) INVESTIGATION OF COMPLAINTS.—An employee
20 or applicant for employment of a covered agency who be-
21 lieves he has been subjected to a reprisal prohibited by
22 subsection (a) may submit a complaint to the Inspector
23 General and head of the covered agency. The Inspector
24 General shall investigate the complaint and, unless the In-
25 spector General determines that the complaint is frivolous,



1 submit a report of the findings of the investigation within
2 180 days to the employee or applicant for employment and
3 the head of the covered agency.

4 “(c) REMEDY.—

5 “(1) Within 210 days of the filing of the com-
6 plaint, the head of the covered agency shall issue an
7 order accepting or rejecting the complaint, or por-
8 tions thereof, taking into consideration the report
9 issued by the Inspector General under subsection
10 (b), if any. If the head of the covered agency accepts
11 the complaint, he shall implement corrective action
12 to return the complainant, as nearly as possible, to
13 the position he would have held had the reprisal not
14 occurred, including voiding any directive or order de-
15 nying, suspending, or revoking a security clearance
16 or otherwise restricting access to classified or sen-
17 sitive information that constituted a reprisal, as well
18 as providing back pay and related benefits, medical
19 costs incurred, travel expenses, and any other rea-
20 sonable and foreseeable consequential damages in-
21 cluding attorney’s fees and costs. If the head of the
22 covered agency rejects the complaint, he shall issue
23 a report to the employee or applicant for employ-
24 ment detailing the reasons for the rejection.



1 “(2)(A) If the head of the covered agency, in
2 the process of implementing corrective action under
3 (c)(1), voids a directive or order denying, sus-
4 pending, or revoking a security clearance or other-
5 wise restricting access to classified or sensitive infor-
6 mation that constituted a reprisal, the head of the
7 covered agency may re-initiate procedures to issue a
8 directive or order denying, suspending, or revoking
9 a security clearance or otherwise restricting access
10 to classified or sensitive information only if those re-
11 initiated procedures are based exclusively on national
12 security concerns and are unrelated to the actions
13 constituting the original reprisal.

14 “(B) In any case in which the head of a covered
15 agency re-initiates procedures under (2)(A), the
16 head of the covered agency shall issue an unclassi-
17 fied report to its IG and authorized members of
18 Congress (with a classified annex if necessary), de-
19 tailing the circumstances of the agency’s re-initiated
20 procedures and describing the manner in which
21 those procedures are based exclusively on national
22 security concerns and are unrelated to the actions
23 constituting the original reprisal. The head of the
24 covered agency shall also provide periodic updates to
25 the IG and authorized members of Congress detail-



1 ing any significant actions taken as a result of those
2 procedures, and shall respond promptly to inquiries
3 from authorized Members of Congress regarding the
4 status of those procedures.

5 “(3) If the head of the covered agency has not
6 accepted or rejected the complaint within 210 days
7 of the filing of the complaint, and there is no show-
8 ing that such delay is due to the bad faith of the
9 complainant, the complainant shall be deemed to
10 have exhausted his or her administrative remedies
11 with respect to the complaint, and the complainant
12 may bring an action at law or equity for de novo re-
13 view to seek any relief described in (c)(1) in the ap-
14 propriate district court of the United States, which
15 shall have jurisdiction over such action without re-
16 gard to the amount in controversy. A petition to re-
17 view a final decision under this subsection shall be
18 filed in the United States Court of Appeals for the
19 Federal Circuit.

20 “(4) The complainant may obtain review of any
21 order issued under this section in the appropriate
22 district court of the United States or the United
23 States Court of Appeals for the Federal Circuit. No
24 petition seeking such review may be filed more than
25 60 days after issuance of the order by the head of



1 the agency. Review shall conform to chapter 7 of
2 title 5. A petition to review a final decision of a dis-
3 trict court under this subsection shall be filed in the
4 United States Court of Appeals for the Federal Cir-
5 cuit.

6 “(5)(A) If, in any action for damages or relief
7 under subsections (c)(3) or (c)(4), an executive
8 branch agency moves to withhold information from
9 discovery based on a claim that disclosure would be
10 inimical to national security by asserting the privi-
11 lege commonly referred to as the “state secrets privi-
12 lege,” and if the assertion of such privilege prevents
13 the plaintiff from establishing an element in support
14 of the plaintiff’s claim, the court shall resolve the
15 disputed issue of fact or law in favor of the plaintiff,
16 provided that an inspector general investigation
17 under subsection (b) has resulted in substantial con-
18 firmation of that element, or those elements, of the
19 plaintiff’s claim.

20 “(B) In any case in which an executive branch
21 agency asserts the privilege commonly referred to as
22 the “state secrets privilege,” whether or not an in-
23 spector general has conducted an investigation under
24 subsection (b), the head of that agency shall, at the
25 same time it asserts the privilege, issue a report to



1 authorized Members of Congress, accompanied by a
2 classified annex if necessary, describing the reasons
3 for the assertion, explaining why the court hearing
4 the matter does not have the ability to maintain the
5 protection of classified information related to the as-
6 sertion, detailing the steps the agency has taken to
7 arrive at a mutually agreeable settlement with the
8 employee or applicant for employment, setting forth
9 the date on which the classified information at issue
10 will be declassified, and providing all relevant infor-
11 mation about the underlying substantive matter.

12 “(d) CONSTRUCTION.—Nothing in this section may
13 be construed to authorize the discharge of, demotion of,
14 or discrimination against an employee for a disclosure
15 other than a disclosure protected by subsection (a) of this
16 section or to modify or derogate from a right or remedy
17 otherwise available to the employee or applicant for em-
18 ployment.

19 “(e) DEFINITIONS.—In this section:

20 “(1) The term “covered information,” including
21 classified information, is information that an em-
22 ployee reasonably believes to provide direct and spe-
23 cific evidence of—

24 “(A) a violation of any law, rule, or regula-
25 tion, or



1 “(B) gross mismanagement, a gross waste
2 of funds, an abuse of authority, or a substantial
3 and specific danger to public health or safety.

4 “(2) The term “covered agency” means one of
5 the following:

6 “(A) The Central Intelligence Agency.

7 “(B) The Defense Intelligence Agency.

8 “(C) The National Imagery and Mapping
9 Agency.

10 “(D) The National Security Agency.

11 “(E) The Federal Bureau of Investigation.

12 “(F) The National Reconnaissance Office.

13 “(G) Any other Executive agency, or ele-
14 ment or unit thereof, determined by the Presi-
15 dent under section 2302(a)(2)(C)(ii) of title 5,
16 United States Code, to have as its principal
17 function the conduct of foreign intelligence or
18 counterintelligence activities.

19 “(3) The term “authorized member of Con-
20 gress” means a member of the House Permanent
21 Select Committee on Intelligence, the Senate Select
22 Committee on Intelligence, the House Committee on
23 Government Reform, the Senate Committee on
24 Homeland Security and Governmental Affairs, and
25 the committees of the House of Representatives or



- 1 the Senate that have oversight over the program
- 2 about which the covered information is disclosed.”.

