

INTELLIGENCE AUTHORIZATION ACT FOR FISCAL YEAR 1999
Public Law 105-272
105th Congress

An Act

To authorize appropriations for fiscal year 1999 for intelligence and intelligence-related activities of the United States Government, the Community Management Account, and the Central Intelligence Agency Retirement and Disability System, and for other purposes. <<NOTE: Oct. 20, 1998 - [H.R. 3694]>>

Be it enacted by the Senate and House of Representatives of the United States of America in Congress <<NOTE: Intelligence Authorization Act for Fiscal Year 1999.>> assembled,

TITLE: Intelligence Community Whistleblower Protection Act of 1998.

SECTION VII--WHISTLEBLOWER PROTECTION FOR INTELLIGENCE COMMUNITY EMPLOYEES REPORTING URGENT CONCERNS TO CONGRESS

SEC. 701. SHORT TITLE; FINDINGS.

(a) Short <<NOTE: 5 USC app. 1 note.>> Title.--This title may be cited as the ``Intelligence Community Whistleblower Protection Act of 1998''.

(b) Findings.--The <<NOTE: 5 USC app. 8H note.>> Congress finds that--

(1) national security is a shared responsibility, requiring joint efforts and mutual respect by Congress and the President;

(2) the principles of comity between the branches of Government apply to the handling of national security information;

(3) Congress, as a co-equal branch of Government, is empowered by the Constitution to serve as a check on the executive branch; in that capacity, it has a ``need to know'' of allegations of wrongdoing within the executive branch, including allegations of wrongdoing in the Intelligence Community;

(4) no basis in law exists for requiring prior authorization of disclosures to the intelligence committees of Congress by employees of the executive branch of classified information about wrongdoing within the Intelligence Community;

(5) the risk of reprisal perceived by employees and contractors of the Intelligence Community for reporting serious or flagrant problems to Congress may have impaired the flow of information needed by the intelligence committees to carry out oversight responsibilities; and

(6) to encourage such reporting, an additional procedure should be established that provides a means for such employees and contractors to report to Congress while safeguarding the classified information involved in such reporting.

SEC. 702. PROTECTION OF INTELLIGENCE COMMUNITY EMPLOYEES WHO REPORT URGENT CONCERNS TO CONGRESS.

(a) Inspector General of the Central Intelligence Agency.--

(1) In general.--Subsection (d) of section 17 of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403q) is amended by adding at the end the following new paragraph:

``(5)(A) An employee of the Agency, or of a contractor to the Agency, who intends to report to Congress a complaint or information with respect to an urgent concern may report such complaint or information to the Inspector General.

``(B) Not <<NOTE: Deadline.>> later than the end of the 14-calendar day period beginning on the date of receipt from an employee of a complaint or information under subparagraph (A), the Inspector General shall determine whether the complaint or information appears credible. If the Inspector General determines that the complaint or information appears credible, the Inspector General shall, before the end of such period, transmit the complaint or information to the Director.

``(C) Upon receipt of a transmittal from the Inspector General under subparagraph (B), the Director shall, within 7 calendar days of such receipt, forward such transmittal to the intelligence committees, together with any comments the Director considers appropriate.

``(D)(i) If the Inspector General does not transmit, or does not transmit in an accurate form, the complaint or information described in subparagraph (B), the employee (subject to clause (ii)) may submit the complaint or information to Congress by contacting either or both of the intelligence committees directly.

``(ii) The employee may contact the intelligence committees directly as described in clause (i) only if the employee--

``(I) before making such a contact, furnishes to the Director, through the Inspector General, a statement of the employee's complaint or information and notice of the employee's intent to contact the intelligence committees directly; and

``(II) obtains and follows from the Director, through the Inspector General, direction on how to contact the intelligence committees in accordance with appropriate security practices.

``(iii) A member or employee of one of the intelligence committees who receives a complaint or information under clause (i) does so in that member or employee's official capacity as a member or employee of that committee.

``(E) The <<NOTE: Notification.>> Inspector General shall notify an employee who reports a complaint or information to the Inspector General under this paragraph of each action taken under this paragraph with respect to the complaint or information. <<NOTE: Deadline.>> Such notice shall be provided not later than 3 days after any such action is taken.

``(F) An action taken by the Director or the Inspector General under this paragraph shall not be subject to judicial review.

``(G) In this paragraph:

``(i) The term 'urgent concern' means any of the following:

``(I) A serious or flagrant problem, abuse, violation of law or Executive order, or deficiency relating to the funding, administration, or operations of an intelligence activity involving classified information, but does not include differences of opinions concerning public policy matters.

``(II) A false statement to Congress, or a willful withholding from Congress, on an issue of material fact relating to the funding, administration, or operation of an intelligence activity.

``(III) An action, including a personnel action described in section 2302(a)(2)(A) of title 5, United States Code, constituting reprisal or threat of reprisal prohibited under subsection (e)(3)(B) in response to an employee's reporting an urgent concern in accordance with this paragraph.

``(ii) The term `intelligence committees' means the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate.''.

(2) Clerical amendment.--The heading to subsection (d) of such section <<NOTE: 50 USC 403q.>> is amended by inserting ``; Reports to Congress on Urgent Concerns'' before the period.

(b) Additional Provisions With Respect to Inspectors General of the Intelligence Community.--

(1) In general.--The Inspector General Act of 1978 (5 U.S.C. App.) is amended by redesignating section 8H as section 8I and by inserting after section 8G the following new section:

``Sec. 8H. (a)(1)(A) An employee of the Defense Intelligence Agency, the National Imagery and Mapping Agency, the National Reconnaissance Office, or the National Security Agency, or of a contractor of any of those Agencies, who intends to report to Congress a complaint or information with respect to an urgent concern may report the complaint or information to the Inspector General of the Department of Defense (or designee).

``(B) An employee of the Federal Bureau of Investigation, or of a contractor of the Bureau, who intends to report to Congress a complaint or information with respect to an urgent concern may report the complaint or information to the Inspector General of the Department of Justice (or designee).

``(C) Any other employee of, or contractor to, an executive agency, or element or unit thereof, determined by the President under section 2302(a)(2)(C)(ii) of title 5, United States Code, to have as its principal function the conduct of foreign intelligence or counterintelligence activities, who intends to report to Congress a complaint or information with respect to an urgent concern may report the complaint or information to the appropriate Inspector General (or designee) under this Act or section 17 of the Central Intelligence Agency Act of 1949.

``(2) If a designee of an Inspector General under this section receives a complaint or information of an employee with respect to an urgent concern, that designee shall report the complaint or information to the Inspector General within 7 calendar days of receipt.

``(b) <<NOTE: Deadline.>> Not later than the end of the 14-calendar day period beginning on the date of receipt of an employee complaint or information under subsection (a), the Inspector General shall determine whether the complaint or information appears credible. If the Inspector General determines that the complaint or information appears credible, the Inspector General shall, before the end of such period, transmit the complaint or information to the head of the establishment.

``(c) Upon receipt of a transmittal from the Inspector General under subsection (b), the head of the establishment shall, within 7 calendar days of such receipt, forward such transmittal to the intelligence committees, together with any comments the head of the establishment considers appropriate.

``(d)(1) If the Inspector General does not transmit, or does not transmit in an accurate form, the complaint or information described in subsection (b), the employee (subject to paragraph (2)) may submit the complaint or information to Congress by contacting either or both of the intelligence committees directly.

``(2) The employee may contact the intelligence committees directly as described in paragraph (1) only if the employee--

``(A) before making such a contact, furnishes to the head of the establishment, through the Inspector General, a statement of the employee's complaint or information and notice of the employee's intent to contact the intelligence committees directly; and

``(B) obtains and follows from the head of the establishment, through the Inspector General, direction on how to contact the intelligence committees in accordance with appropriate security practices.

``(3) A member or employee of one of the intelligence committees who receives a complaint or information under paragraph (1) does so in that member or employee's official capacity as a member or employee of that committee.

``(e) The <<NOTE: Notification.>> Inspector General shall notify an employee who reports a complaint or information under this section of each action taken under this section with respect to the complaint or information. Such notice shall be provided not later than 3 days after any such action is taken.

``(f) An action taken by the head of an establishment or an Inspector General under this section shall not be subject to judicial review.

``(g) In this section:

``(1) The term 'urgent concern' means any of the following:

``(A) A serious or flagrant problem, abuse, violation of law or Executive order, or deficiency relating to the funding, administration, or operations of an intelligence activity involving classified information, but does not include differences of opinions concerning public policy matters.

``(B) A false statement to Congress, or a willful withholding from Congress, on an issue of material fact relating to the funding, administration, or operation of an intelligence activity.

``(C) An action, including a personnel action described in section 2302(a)(2)(A) of title 5, United States Code, constituting reprisal or threat of reprisal prohibited under section 7(c) in response to an employee's reporting an urgent concern in accordance with this section.

``(2) The term 'intelligence committees' means the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the

Senate.''.

(2) Conforming Amendment.--Section 8I of such Act (as redesignated by paragraph (1)) <<NOTE: 5 USC app.>> is amended by striking out ``or 8E'' and inserting in lieu thereof ``8E, or 8H''.