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

IN THE SENATE OF THE UNITED STATES

Ms. HARRIS (for herself, Ms. WARREN, Mr. MARKEY, Ms. HIRONO, Mr. WYDEN, Ms. BALDWIN, Ms. KLOBUCHAR, Mr. SANDERS, Mr. BLUMENTHAL, and Mr. DURBIN) introduced the following bill; which was read twice and referred to the Committee on ________________

A BILL

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

This Act may be cited as the “COVID–19 Whistleblower Protection Act”.

SEC. 2. DEFINITIONS.

In this Act—
(1) the term “abuse of authority” means an arbitrary and capricious exercise of authority by a contracting officer or employee that adversely affects the rights of any individual, or that results in personal gain or advantage to the officer or employee or to preferred other individuals;

(2) the term “CARES Act” means the CARES Act (Public Law 116–136);

(3) the term “Coronavirus pandemic-related program, project, or activity”—

(A) means a program, project, or activity of the executive branch of the Federal Government 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 Act; and

(B) includes any program, project, or activity 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), or an amendment made by that Act;

(ii) the CARES Act, or an amendment made by that Act;

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

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

(4) 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; and

(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;

(5) 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 contract with such employer (including a contractor, subcontractor, 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, United States Code);

(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, agen-
cy, or other entity of the Federal Government;
(7) the term “protected individual” means—
(A) an employee of, former employee of, or
individual seeking employment with, any non-
Federal employer receiving covered funds; or
(B) a Federal personal services contractor
receiving covered funds, former such Federal
personal services contractor, or applicant for a
Federal personal services contract involving
such funds;
(8) the term “reprisal” means an action (or, as
applicable, inaction) that is discharging, demoting,
blacklisting, or acting or failing to take an action in
a manner prejudicial against, or otherwise discrimi-
nating against in any way (including in the hiring
process and including by the threat of any such ac-
tion or inaction) a protected individual as described
in section 3(a)(1) for a reason described in subpara-
graph (A) or (B) of such section; and
(9) 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).

SEC. 3. PROTECTING WHISTLEBLOWERS.

(a) Prohibition of Reprisals.—

(1) In general.—A protected individual may not be discharged, demoted, blacklisted, prejudiced by any action or lack of action, or otherwise discriminated against in any way (including in the hiring process and including by the threat of any such action or inaction) for—

(A) disclosing, being perceived as disclosing, or preparing to disclose (including assisting in disclosing, being perceived as assisting in disclosing, or preparing to assist in disclosing and including a disclosure made in the ordinary course of the duties of the protected individual) to an officer or entity described in paragraph (2) information that the protected
individual reasonably believes is evidence of misconduct that violates, obstructs, or under-
mines any statute, rule, or regulation with re-
spect to any Coronavirus pandemic-related pro-
gram, project, or activity, including—

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

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

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

(A) the Pandemic Response Accountability Committee;

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

(C) the Congressional Oversight Commission;

(D) the Comptroller General of the United States;

(E) a Member of Congress;

(F) a congressional committee;

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

(H)(i) an individual with supervisory authority over a protected individual; or

(ii) another individual who—

(I) has authority to investigate, discover, or terminate misconduct; and

(II) works for the non-Federal employer (in the case of a protected individual described in section 2(7)(A)), or the Federal Government (in the case of a pro-
tected individual described in section 2(7)(B));

(I) a court or grand jury;

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

(K) the head of a Federal agency or a designee of such a head.

(3) APPLICATION.—

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

(i) a protected individual who initiates or provides evidence of misconduct by a contractor, subcontractor, grantee, or subgrantee in any judicial or administrative proceeding relating to waste, fraud, or abuse in connection with a Federal contract or grant shall be deemed to have made a disclosure covered by such paragraph; and

(ii) any discharge, demotion, discrimination, or other reprisal described in paragraph (1) is prohibited even if it is undertaken at the request of an executive branch officer or employee, unless the request takes the form of a non-discretionary di-
rective and is within the authority of the executive branch official making the request.

(B) PROTECTION OF WHISTLEBLOWER IDENTITY.—

(i) IN GENERAL.—Except as required by law, an officer or entity described in paragraph (2) that receives information under paragraph (1) and any individual or entity to which the officer or entity discloses the information may not disclose the identity or identifying information of the protected individual providing the information without explicit written consent of the protected individual.

(ii) 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.

(b) INVESTIGATION OF COMPLAINTS.—

(1) COMPLAINTS.—

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

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

(2) REMEDY AND ENFORCEMENT AUTHOR-
ITY.—

(A) RULES AND PROCEDURES.—Except to
the extent provided otherwise in this section,
any action alleging a reprisal prohibited under
subsection (a) shall be governed, to the max-
imum extent practicable, by the rules and pro-
cedures for administrative and judicial enforce-
ment, including for investigations, civil actions,
appeals, and relief, set forth under section
7623(d) of the Internal Revenue Code of 1986.

(B) BURDEN OF PROOF.—The Secretary
of Labor, or the officer presiding in a judicial
or administrative proceeding, shall apply the legal burdens of proof specified in section 1221(e) of title 5, United States Code, in determining whether a reprisal prohibited under subsection (a) has occurred in accordance with the rules and procedures under subparagraph (A).

(C) **Access to Investigative File of the Secretary of Labor.**—

(i) **In General.**—A protected individual alleging a reprisal under this section shall have access to the investigation file of the Secretary of Labor in accordance with section 552a of title 5, United States Code (commonly referred to as the “Privacy Act”). The investigation of the Secretary of Labor shall be deemed closed for purposes of disclosure under such section when an individual files an appeal to an agency head or a court of competent jurisdiction.

(ii) **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 agency in the event of a Federal personal services con-
tract involving covered funds), if applicable, shall have access to the investiga-
tive file of the Secretary of Labor in accordance with the section 552a of title 5,
United States Code.

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

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

(II) any additional information the Secretary of Labor determines disclosure of which would impede a continuing investigation, if such infor-
mation is disclosed once such disclosure would no longer impede such inves-
tigation, unless the Secretary of Labor determines that disclosure of law enforcement techniques, proce-
dures, or information could reasonably be expected to risk circumvention of the law or disclose the identity of a confidential source.
(iv) Privacy of Information.—The Secretary of Labor investigating an alleged reprisal under this section may not respond to any inquiry or disclose any information from or about any protected individual alleging such reprisal, except in accordance with the provisions of section 552a of title 5, United States Code, or as required by any other applicable Federal law.

(c) 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 with respect to a disclosure by the individual if the individual would be protected from reprisal under subsection (a) for making the disclosure. The protected individual shall bear the burden of proving that the individual would be protected from reprisal under subsection (a) for making the disclosure.
(3) **Nonenforceability of Certain Provisions Waiving 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 post notice of
the rights and remedies provided under this section.
(d) Rules of Construction.—
(1) No implied authority to retaliate
for non-protected disclosures.—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 in-
dividual.
(2) Relationship to state laws.—Nothing
in this section may be construed to preempt, pre-
clude, or limit the protections provided for public or
private employees under State whistleblower laws.
(e) Complaint Portal.—The Special Inspector
General for Pandemic Relief, the Pandemic Relief Ac-
countability 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)
may submit a complaint regarding the reprisal. Such com-
plaints shall be transmitted to the Secretary of Labor for enforcement in accordance with this section.

(f) **FUNDING.**—There is appropriated to the Secretary of Labor for the fiscal year ending September 30, 2020, out of any money in the Treasury not otherwise appropriated, $20,000,000 to carry out this Act, to remain available until expended.