

103^D CONGRESS
2^D SESSION

H. R. 2970

IN THE SENATE OF THE UNITED STATES

OCTOBER 4 (legislative day, SEPTEMBER 12), 1994

Received

AN ACT

To reauthorize the Office of Special Counsel, and for other purposes.

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. REAUTHORIZATIONS.**

4 Section 8(a) of the Whistleblower Protection Act of
5 1989 (5 U.S.C. 5509 note) is amended by striking “fiscal
6 years” through “such sums” each place it appears and
7 inserting “fiscal years 1993–1997, such sums”.

1 **SEC. 2. OFFICE OF SPECIAL COUNSEL.**

2 (a) AUTHORITY TO CONTINUE SERVING PENDING
3 THE APPOINTMENT OF A SUCCESSOR.—Section 1211(b)
4 of title 5, United States Code, is amended by inserting
5 after the third sentence the following: “The Special Coun-
6 sel may continue to serve after the expiration of the Spe-
7 cial Counsel’s term until a successor has qualified, but for
8 not longer than 1 year.”.

9 (b) LIMITATIONS ON DISCLOSURES.—

10 (1) IN GENERAL.—Section 1212(g) of title 5,
11 United States Code, is amended to read as follows:

12 “(g)(1) The Special Counsel may not respond to any
13 inquiry or provide information concerning either any per-
14 son making an allegation under section 1214(a) or any
15 allegation so made, except in accordance with the provi-
16 sions of section 552a or as required by any other applica-
17 ble law.

18 “(2) If, or to the extent that, the allegation involves
19 a prohibited personnel practice described in paragraph (2),
20 (8), or (9) of section 2302(b), no disclosure described in
21 paragraph (1) may be made unless—

22 “(A) either of the exceptions permitting disclo-
23 sure under paragraph (1) is met; and

24 “(B)(i) the consent of the person who made
25 such allegation is obtained in advance; or

1 “(ii) the information is being sought by an
2 agency which requires such information in order to
3 make a determination concerning access, for the per-
4 son referred to in paragraph (1), to information the
5 unauthorized disclosure of which could be expected
6 to cause exceptionally grave damage to national se-
7 curity.”.

8 (2) CONFORMING AMENDMENTS.—Section
9 7121(a)(1) of title 5, United States Code, is amend-
10 ed—

11 (A) by inserting “administrative” after
12 “exclusive”; and

13 (B) by striking “(d) and (e)” and inserting
14 “(d), (e), and (g)”.

15 (c) STANDARD APPLICABLE WITH RESPECT TO CER-
16 TAIN AGENCY FINDINGS.—Section 1213(e)(2)(A) of title
17 5, United States Code, is amended to read as follows:

18 “(A) the findings of the agency head are sup-
19 ported by clear and convincing evidence; and”.

20 (d) TECHNICAL CLARIFICATION.—The first sentence
21 of section 1213(g)(1) of title 5, United States Code, is
22 amended to read as follows: “If the Special Counsel re-
23 ceives information from an individual other than an indi-
24 vidual described in subparagraph (A) or (B) of subsection
25 (c)(2) which, if such individual were an individual de-

1 scribed in either of such subparagraphs, would be consid-
2 ered information of a type described in subsection (a), the
3 Special Counsel may transmit the information to the head
4 of the agency which the information concerns.”.

5 (e) INVESTIGATIONS.—Section 1214(a)(1) of title 5,
6 United States Code, is amended—

7 (1) in subparagraph (B) by striking “practice
8 under paragraph (1),” and inserting “practice,”;
9 and

10 (2) by striking subparagraph (C) and inserting
11 the following:

12 “(C) Unless an investigation under this section is ter-
13 minated, the Special Counsel shall, within 60 days after
14 notice is provided under subparagraph (B) with respect
15 to a particular allegation, and at least every 60 days there-
16 after, notify the person who made such allegation as to
17 the status of the investigation and any action which has
18 been taken by the Office of Special Counsel since notice
19 was last given under this subsection.

20 “(D)(i) Except as provided in clause (ii), no later
21 than 120 days after the date of receiving an allegation
22 of a prohibited personnel practice, the Special Counsel
23 shall determine whether there are reasonable grounds to
24 believe that a prohibited personnel practice has occurred,
25 exists, or is to be taken.

1 “(ii) The deadline under clause (i) may be extended
2 by written agreement between the Special Counsel and the
3 person who made the allegation involved.

4 “(E) A determination by the Special Counsel under
5 this paragraph shall not be admissible in any judicial or
6 administrative proceeding except in the same cir-
7 cumstances as would apply under paragraph (2)(B) with
8 respect to a written statement under paragraph (2)(A).”.

9 (f) CLARIFICATION RELATING TO BURDEN OF
10 PROOF.—Sections 1214(b)(4)(B)(i) and 1221(e)(1) (as
11 amended by section 3(b)) are further amended by striking
12 the period at the end and inserting “, notwithstanding the
13 provisions of section 7701(c)(1).”.

14 (g) ADDITIONAL INFORMATION TO BE INCLUDED IN
15 ANNUAL REPORTS.—Section 1218 of title 5, United
16 States Code, is amended by inserting “the number of in-
17 stances in which it did not make a timely determination
18 under section 1214(a)(1),” after “investigations con-
19 ducted by it,”.

20 (h) EFFECTIVE DATE.—The amendments made by
21 subsection (e) shall apply with respect to any allegation
22 first received by the Office of Special Counsel on or after
23 the effective date of this Act.

1 **SEC. 3. INDIVIDUAL RIGHT OF ACTION RELATING TO THE**
2 **MERIT SYSTEMS PROTECTION BOARD.**

3 (a) SUBPOENAS.—Section 1221(d)(1) of title 5,
4 United States Code, is amended to read as follows:

5 “(d)(1) At the request of an employee, former em-
6 ployee, or applicant for employment seeking corrective ac-
7 tion under subsection (a), the Board shall issue a sub-
8 poena for the attendance and testimony of any person or
9 the production of documentary or other evidence from any
10 person if the Board finds that the matter requested—

11 “(A) is not unduly burdensome;

12 “(B) is not privileged or otherwise protected
13 from disclosure by law, rule, or regulation; and

14 “(C) is relevant to the subject matter involved
15 in the pending action or appears reasonably cal-
16 culated to lead to the discovery of admissible evi-
17 dence.”.

18 (b) BURDEN OF PROOF.—

19 (1) IN GENERAL.—Section 1221(e) of title 5,
20 United States Code, is amended to read as follows:

21 “(e)(1) Subject to paragraph (2), in any case involv-
22 ing an alleged prohibited personnel practice as described
23 in paragraph (8) or (9) of section 2302(b), the Board shall
24 order such corrective action as the Board considers appro-
25 priate if the employee, former employee, or applicant for
26 employment has demonstrated that protected conduct

1 under such paragraph (8) or (9) (as defined in paragraph
2 (3)(A) or (B), as applicable) was a contributing factor in
3 the personnel action which was taken or is to be taken
4 against such employee, former employee, or applicant.

5 “(2) Corrective action under paragraph (1) may not
6 be ordered if the agency demonstrates by clear and con-
7 vincing evidence that it would have taken the same person-
8 nel action in the absence of the protected conduct involved.

9 “(3) For the purpose of this subsection, the term
10 ‘protected conduct’ means—

11 “(A) with respect to paragraph (8) of section
12 2302(b), any disclosure described in subparagraph
13 (A) or (B) of such paragraph; and

14 “(B) with respect to paragraph (9) of section
15 2302(b), any conduct described in subparagraph
16 (A), (B), (C), or (D) of such paragraph.”.

17 (2) SAME STANDARD IF RELIEF IS SOUGHT
18 THROUGH OFFICE OF SPECIAL COUNSEL.—

19 (A) IN GENERAL.—Subparagraph (B) of
20 section 1214(b)(4) of title 5, United States
21 Code, is amended to read as follows:

22 “(B)(i) Subject to the provisions of clause (ii), in any
23 case involving an alleged prohibited personnel practice as
24 described in paragraph (8) or (9) of section 2302(b), the
25 Board shall order such corrective action as the Board con-

1 siders appropriate if the employee, former employee, or
 2 applicant for employment has demonstrated that protected
 3 conduct under such paragraph (8) or (9) (as defined in
 4 clause (iii)(I) or (II), as applicable) was a contributing fac-
 5 tor in the personnel action which was taken or is to be
 6 taken against such employee, former employee, or
 7 applicant.

8 “(ii) Corrective action under clause (i) may not be
 9 ordered if the agency demonstrates by clear and convinc-
 10 ing evidence that it would have taken the same personnel
 11 action in the absence of the protected conduct involved.

12 “(iii) For the purpose of this subparagraph, the term
 13 ‘protected conduct’ means—

14 “(I) with respect to paragraph (8) of section
 15 2302(b), any disclosure described in subparagraph
 16 (A) or (B) of such paragraph; and

17 “(II) with respect to paragraph (9) of section
 18 2302(b), any conduct described in subparagraph
 19 (A), (B), (C), or (D) of such paragraph.”.

20 (B) CONFORMING AMENDMENT.—Section
 21 1214(b)(4)(A) is amended by striking “section
 22 2302(b)(8),” and inserting “paragraph (8) or
 23 (9) of section 2302(b),”.

24 (3) SAME STANDARD IF RELIEF IS SOUGHT
 25 THROUGH BINDING ARBITRATION.—Section 7121(b)

1 of title 5, United States Code, as amended by sec-
2 tion 5(d), is further amended by adding at the end
3 the following:

4 “(3) The provisions of a negotiated grievance proce-
5 dure providing for binding arbitration in accordance with
6 paragraph (1)(C)(iii) shall, if or to the extent that an al-
7 leged prohibited personnel practice described in paragraph
8 (8) or (9) of section 2302(b) is involved, require that the
9 arbitrator apply the same standard as would apply under
10 section 1221(e).”.

11 (4) SAME STANDARD IF RELIEF IS SOUGHT BY
12 AN APPEAL UNDER SECTION 7701.—Section 7701(c)
13 of title 5, United States Code, is amended—

14 (A) in paragraph (1) by striking “Subject
15 to paragraph (2)” and inserting “Subject to
16 paragraphs (2) and (3)”; and

17 (B) by adding at the end the following:

18 “(3) To the extent that an appeal involves an alleged
19 prohibited personnel practice described in paragraph (8)
20 or (9) of section 2302(b), the standard under section
21 1221(e) shall be applied.”.

22 (c) REFERRALS FOR POSSIBLE DISCIPLINARY AC-
23 TION.—Section 1221(f) of title 5, United States Code, is
24 amended by adding after paragraph (2) the following:

1 “(3) If, based on evidence presented to it under this
2 section, the Merit Systems Protection Board determines
3 that there is reason to believe that a current employee may
4 have committed a prohibited personnel practice, the Board
5 shall refer the matter to the Special Counsel for investiga-
6 tion and appropriate action under section 1215.”.

7 **SEC. 4. PROHIBITED PERSONNEL PRACTICES.**

8 (a) **PERSONNEL ACTIONS.**—

9 (1) **IN GENERAL.**—Section 2302(a)(2)(A) of
10 title 5, United States Code, is amended—

11 (A) in clause (ix) by striking “and” after
12 the semicolon; and

13 (B) by redesignating clause (x) as clause
14 (xii) and inserting before such clause the
15 following:

16 “(x) a decision to require psychiatric test-
17 ing or examination;

18 “(xi) a denial, revocation, or other deter-
19 mination relating to a security clearance; and”.

20 (2) **CONFORMING AMENDMENT.**—Section
21 2303(a) of title 5, United States Code, is amended
22 by striking “clauses (i) through (x)” and inserting
23 “clauses (i) through (xii)”.

24 (b) **COVERED POSITIONS.**—Section 2302(a)(2)(B) of
25 title 5, United States Code, is amended to read as follows:

1 “(B) ‘covered position’, as used with respect to
2 an employee or applicant for employment, means
3 any position in the competitive service, a career ap-
4 pointee position in the Senior Executive Service, a
5 position in the excepted service, or a position covered
6 by chapter 74 of title 38, but does not include any
7 position which, as of the date on which the employee
8 began serving in the position or the applicant ap-
9 plied for such position (as the case may be), was—

10 “(i) excepted from the competitive service
11 because of its confidential, policy-determining,
12 policy-making, or policy-advocating character;
13 or

14 “(ii) excluded from the coverage of this
15 section by the President based on a determina-
16 tion by the President that it is necessary and
17 warranted by conditions of good administra-
18 tion.”.

19 (c) AGENCIES.—

20 (1) IN GENERAL.—Section 2302(a)(2)(C) of
21 title 5, United States Code, is amended—

22 (A) by striking clause (i); and

23 (B) by redesignating clauses (ii) and (iii)
24 as clauses (i) and (ii), respectively.

1 (2) COORDINATION WITH CERTAIN OTHER PRO-
2 VISIONS OF LAW.—Section 2305 of title 5, United
3 States Code, is amended—

4 (A) by striking “No” and inserting “(a)
5 No”; and

6 (B) by adding at the end the following:

7 “(b)(1) This subsection applies with respect to a pro-
8 hibited personnel practice described in section 2302(b)(8)
9 for which a remedy is also available under section 33 of
10 the Federal Deposit Insurance Act or section 21A(q) of
11 the Federal Home Loan Bank Act.

12 “(2) An employee or former employee affected by a
13 prohibited personnel practice described in paragraph (1)
14 may raise the matter under (A) section 33 of the Federal
15 Deposit Insurance Act or section 21A(q) of the Federal
16 Home Loan Bank Act, as the case may be, or (B) a proce-
17 dure available under this title, but not both.

18 “(3) A determination as to if or when an employee
19 or former employee has made a choice under this sub-
20 section shall be made in a manner similar to that set forth
21 in section 7121(g).”.

22 (d) INFORMATION.—Section 2302(c) of title 5,
23 United States Code, is amended in the first sentence by
24 striking “management.” and inserting “management, and
25 for ensuring (in consultation with the Office of Special

1 Counsel) that employees of such agency are informed of
 2 the rights and remedies available to them under this chap-
 3 ter and chapter 12.”.

4 **SEC. 5. ADDITIONAL AMENDMENTS RELATING TO PROCE-**
 5 **DURES UNDER WHICH INDIVIDUALS MAY**
 6 **SEEK RELIEF FROM PROHIBITED PERSON-**
 7 **NEL PRACTICES.**

8 (a) INDIVIDUAL RIGHT OF ACTION BEFORE MSPB
 9 AVAILABLE FOR PROHIBITED PERSONNEL PRACTICES
 10 GENERALLY.—

11 (1) IN GENERAL.—Section 1221(a) of title 5,
 12 United States Code, is amended by striking “prac-
 13 tice described in section 2302(b)(8),” and inserting
 14 “practice,”.

15 (2) EXCEPTION.—Subsection (b) of section
 16 1221 of title 5, United States Code, is amended by
 17 redesignating such subsection as subsection (b)(1),
 18 and by adding at the end the following:

19 “(2) Nothing in this subchapter shall be considered
 20 to create any right to seek corrective action with respect
 21 to a prohibited personnel practice described in section
 22 2302(b)(1).

23 “(3) For purposes of subsection (a), the term ‘per-
 24 sonnel action’, if taken or proposed to be taken as a result

1 of a prohibited personnel practice other than one described
2 in paragraph (1) or (8) of section 2302(b), means—

3 “(A) an action under subchapter II of chapter
4 75;

5 “(B) a detail, transfer, or reassignment; and

6 “(C) a reduction in grade or removal under sec-
7 tion 4303.”.

8 (3) TECHNICAL CORRECTION.—Section 1221(a)
9 is amended by striking “subsection 1214(a)(3)” and
10 inserting “section 1214(a)(3)”.

11 (b) AMENDMENTS RELATING TO THE “PASS-
12 THROUGH” REQUIREMENT.—Section 1214(a)(3) of title
13 5, United States Code, is amended—

14 (1) by adding at the end the following:

15 “This paragraph shall not apply with respect to a prohib-
16 ited personnel practice described in section 2302(b)(8).”;

17 (2) by redesignating subparagraphs (A) and
18 (B) as subparagraphs (B) and (C), respectively; and

19 (3) by striking the matter before subparagraph
20 (B) (as so redesignated by paragraph (2)) and in-
21 serting the following:

22 “(3) Except as provided in the last sentence of this
23 paragraph, an employee, former employee, or applicant for
24 employment may not seek corrective action from the
25 Board under section 1221 unless—

1 “(A) such employee, former employee, or appli-
 2 cant has sought corrective action from the Special
 3 Counsel under this subchapter;”.

4 (c) CHOICE OF REMEDIES PROVISION INVOLVING
 5 JUDICIAL REVIEW.—

6 (1) IN GENERAL.—Chapter 12 of title 5, United
 7 States Code, is amended by adding at the end the
 8 following:

9 “SUBCHAPTER IV—JUDICIAL REVIEW

10 **“§ 1231. Judicial review**

11 “(a) Subject to subsection (b) and section 1232, an
 12 employee, former employee, or applicant for employment
 13 may, with respect to a personnel action taken, or proposed
 14 to be taken, against such employee, former employee, or
 15 applicant for employment, as a result of a prohibited per-
 16 sonnel practice described in section 2302(b)(8), bring a
 17 civil action in the appropriate district court of the United
 18 States for relief. For purposes of the preceding sentence,
 19 the term ‘personnel action’ means—

20 “(1) an action under subchapter II of chapter
 21 75;

22 “(2) a detail, transfer, or reassignment; and

23 “(3) a reduction in grade or removal under sec-
 24 tion 4303.

25 “(b) An action under this section—

1 “(1) shall be brought in the district court of the
2 United States for the judicial district in which the
3 prohibited personnel practice is alleged to have been
4 committed, in which the employment records rel-
5 evant to such practice are maintained and adminis-
6 tered, or in which the aggrieved person works or
7 would have worked but for the alleged prohibited
8 personnel practice; and

9 “(2) shall be brought within 120 days after the
10 prohibited personnel practice is alleged to have oc-
11 curred.

12 “(c) STANDARD OF REVIEW.—In any action brought
13 under this section, the court—

14 “(1) shall review the matter de novo; and

15 “(2) shall apply the same standard as would
16 the Merit Systems Protection Board under section
17 1214(b)(4)(B) or 1221(e).

18 **“§ 1232. Choice of remedies**

19 “(a) An action under section 1231—

20 “(1) if brought, shall be in lieu of any remedy
21 described in subsection (b); but

22 “(2) may not be brought if the aggrieved person
23 has elected to raise the same matter under any of
24 the remedies described in subsection (b).

1 “(b) The remedies described in this subsection are
2 as follows:

3 “(1) An appeal to the Merit Systems Protection
4 Board under section 7701.

5 “(2) A negotiated grievance procedure under
6 section 7121.

7 “(3) Procedures for seeking corrective action
8 under subchapters II and III.

9 “(c) For the purpose of this section, a person shall
10 be considered to have elected—

11 “(1) the remedy described in subsection (b)(1)
12 if such person has timely filed a notice of appeal
13 under the applicable appellate procedures;

14 “(2) the remedy described in subsection (b)(2)
15 if such person has timely filed a grievance in writ-
16 ing, in accordance with the provisions of the parties’
17 negotiated procedure; or

18 “(3) the remedy described in subsection (b)(3)
19 if such person has sought corrective action from the
20 Office of Special Counsel by making an allegation
21 under section 1214(a)(1).

22 “(d) For purposes of subsection (a)(1), a person shall
23 be considered to have elected the remedy under section
24 1231 if such person has timely commenced an action in

1 an appropriate court, in accordance with applicable proce-
 2 dures.

3 **“§ 1233. Appeals**

4 “Any party aggrieved by a final decision under sec-
 5 tion 1231 may appeal such decision only to the United
 6 States Court of Appeals for the Federal Circuit.”.

7 (2) CHAPTER ANALYSIS.—The analysis for
 8 chapter 12 of title 5, United States Code, is amend-
 9 ed by striking “Sec.” each place it appears, by in-
 10 serting “Sec.” as a flush left item after the item re-
 11 lating to subchapter I, and by adding at the end the
 12 following:

“SUBCHAPTER IV—JUDICIAL REVIEW

“1231. Judicial review.

“1232. Choice of remedies.

“1233. Appeals.”.

13 (d) AUTHORITIES WHICH MAY BE EXTENDED TO
 14 ARBITRATORS.—Section 7121(b) of title 5, United States
 15 Code, is amended—

16 (1) by redesignating subparagraphs (A) through
 17 (C) of paragraph (3) as clauses (i) through (iii), re-
 18 spectively;

19 (2) by redesignating paragraphs (1) through
 20 (3) as subparagraphs (A) through (C), respectively;

21 (3) by striking “(b)” and inserting “(b)(1)”;
 22 and

23 (4) by adding at the end the following:

1 “(2)(A) The provisions of a negotiated grievance pro-
2 cedure providing for binding arbitration in accordance
3 with paragraph (1)(C)(iii) shall, if or to the extent that
4 an alleged prohibited personnel practice is involved, allow
5 the arbitrator to order—

6 “(i) a stay of any personnel action in a manner
7 similar to the manner described in section 1221(c)
8 with respect to the Merit Systems Protection Board;
9 and

10 “(ii) the taking, by an agency, of any discipli-
11 nary action identified under section 1215(a)(3) that
12 is otherwise within the authority of such agency to
13 take.

14 “(B) Any employee who is the subject of any discipli-
15 nary action ordered under subparagraph (A)(ii) may ap-
16 peal such action to the same extent and in the same man-
17 ner as if the agency had taken the disciplinary action ab-
18 sent arbitration.”.

19 (e) CHOICE OF REMEDIES PROVISION NOT INVOLV-
20 ING JUDICIAL REVIEW.—Section 7121 of title 5, United
21 States Code, is amended by adding at the end the follow-
22 ing:

23 “(g)(1) This subsection applies with respect to a pro-
24 hibited personnel practice other than a prohibited person-
25 nel practice to which subsection (d) applies.

1 “(2) An aggrieved employee affected by a prohibited
2 personnel practice described in paragraph (1) may elect
3 not more than one of the remedies described in paragraph
4 (3) with respect thereto. For purposes of the preceding
5 sentence, a determination as to whether a particular rem-
6 edy has been elected shall be made in the same way as
7 set forth in section 1232(c).

8 “(3) The remedies described in this paragraph are
9 as follows:

10 “(A) An appeal to the Merit Systems Protection
11 Board under section 7701.

12 “(B) A negotiated grievance procedure under
13 this section.

14 “(C) Procedures for seeking corrective action
15 under subchapters II and III of chapter 12.”.

16 **SEC. 6. PERFORMANCE APPRAISALS.**

17 Paragraph (5) of section 4313 of title 5, United
18 States Code, is amended to read as follows:

19 “(5) meeting affirmative action goals, achieve-
20 ment of equal employment opportunity requirements,
21 and compliance with the merit systems principles set
22 forth in section 2301.”.

23 **SEC. 7. IMPLEMENTATION.**

24 (a) **POLICY STATEMENT.**—No later than 6 months
25 after the date of the enactment of this Act, the Special

1 Counsel shall issue a policy statement regarding the imple-
2 mentation of the amendments made by the Whistleblower
3 Protection Act of 1989. Such policy statement shall be
4 made available to each person alleging a prohibited per-
5 sonnel practice described in section 2302(b) of title 5,
6 United States Code, and shall include detailed guidelines
7 identifying specific categories of information that may (or
8 may not) be communicated to agency officials for an inves-
9 tigative purpose, or for the purpose of obtaining corrective
10 action under section 1214 of title 5, United States Code,
11 or disciplinary action under section 1215 of such title, the
12 circumstances under which such information is likely to
13 be disclosed, and whether or not the consent of any person
14 is required in advance of any such communication.

15 (b) TERMINATION STATEMENT.—The Special Coun-
16 sel shall include in any written statement under section
17 1214(a)(2)(A) of title 5, United States Code, the name
18 and telephone number of an employee of the Office of Spe-
19 cial Counsel who shall be available to respond to reason-
20 able questions from the person regarding the investigation
21 involved, the relevant facts ascertained by the Special
22 Counsel, and the law applicable to the person’s allegations.

23 **SEC. 8. AMENDMENTS RELATING TO ATTORNEY’S FEES.**

24 (a) CHAPTER 12.—Section 1221(g) of title 5, United
25 States Code, is amended by striking “attorney’s fees” each

1 place it appears and inserting “fees for legal representa-
2 tion”.

3 (b) CHAPTER 77.—Section 7701(g) of title 5, United
4 States Code, is amended—

5 (1) by striking “attorney fees” each place it ap-
6 pears and inserting “fees for legal representation”;
7 and

8 (2) in paragraph (1)—

9 (A) by inserting “substantially” before
10 “prevailing”; and

11 (B) by striking “agency or any case in
12 which the agency’s action was clearly without
13 merit.” and inserting “agency, in which the
14 agency’s action was clearly without merit, or
15 which is settled or otherwise similarly re-
16 solved.”.

17 **SEC. 9. MSPB RETIREMENT APPEALS EXPENSE AUTHORIZA-**
18 **TION.**

19 (a) IN GENERAL.—Section 8348(a) of title 5, United
20 States Code, is amended by striking “and” at the end of
21 paragraph (1), by striking the period at the end of para-
22 graph (2) and inserting “; and”, and by adding at the
23 end the following:

24 “(3) is made available, subject to such annual
25 limitation as the Congress may prescribe, for any ex-

6 SEC. 10. EFFECTIVE DATE.

(b) SAVINGS PROVISION.—No provision of this Act shall affect any administrative proceeding pending at the time such provision takes effect. Orders shall be issued in such proceedings and appeals shall be taken therefrom as if this Act had not been enacted.

Attest: DONNALD K. ANDERSON,
Clerk.

•HR 2970 RDS