

118TH CONGRESS  
2D SESSION

# H. R. 7835

To amend title 5, United States Code, to increase the accountability of the Office of Special Counsel in enforcing certain provisions of that title vigorously, consistently, and without regard to the political affiliation, career status, or personal characteristics of individuals subject to those provisions, and for other purposes.

---

## IN THE HOUSE OF REPRESENTATIVES

MARCH 29, 2024

Mr. ROBERT GARCIA of California introduced the following bill; which was referred to the Committee on Oversight and Accountability

---

## A BILL

To amend title 5, United States Code, to increase the accountability of the Office of Special Counsel in enforcing certain provisions of that title vigorously, consistently, and without regard to the political affiliation, career status, or personal characteristics of individuals subject to those provisions, 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. SHORT TITLE.**

4       This Act may be cited as the “Hatch Act Enforce-  
5       ment Transparency and Accountability Act”.

1 **SEC. 2. ADDITION OF DEFINITIONS.**

2 (a) IN GENERAL.—Subchapter II of chapter 12 of  
3 title 5, United States Code, is amended by adding at the  
4 end the following:

5 **“§ 1219a. Definitions**

6 “In this subchapter:

7 “(1) CAREER EMPLOYEE.—The term ‘career  
8 employee’ means an individual who is—

9 “(A) an employee, as that term is defined  
10 in section 7322; and

11 “(B) not a noncareer employee.

12 “(2) COVERED ALLEGATION.—The term ‘cov-  
13 ered allegation’ means an allegation concerning po-  
14 litical activity prohibited under subchapter III of  
15 chapter 73.

16 “(3) NONCAREER EMPLOYEE.—The term ‘non-  
17 career employee’ means an individual who is—

18 “(A) an employee, as defined in section  
19 2105, serving in a position in the executive  
20 branch; and

21 “(B)(i) serving in a position to which the  
22 President appointed the individual (without re-  
23 gard to whether the advice and consent of the  
24 Senate was required with respect to that ap-  
25 pointment), other than an individual who is—

1           “(I) a member of a uniformed service,  
2           as that term is defined in section 210(m)  
3           of the Social Security Act (42 U.S.C.  
4           410(m)); or

5           “(II) a member of the Foreign Service  
6           serving under a career appointment, as de-  
7           scribed in section 301 of the Foreign Serv-  
8           ice Act of 1980 (22 U.S.C. 3941);

9           “(ii) a noncareer appointee, as that term is  
10          defined in section 3132(a);

11          “(iii) serving in a position in a Federal ex-  
12          ecutive system that is comparable to the Senior  
13          Executive Service, the appointment to which is  
14          not made through merit-based procedures, such  
15          as a position in the Transportation Security  
16          Executive Service; or

17          “(iv) serving in a position with respect to  
18          which a determination has been made under  
19          section 7511(b)(2).”.

20          (b) CLERICAL AMENDMENT.—The table of sections  
21          for subchapter II of chapter 12 of title 5, United States  
22          Code, is amended by adding at the end the following:

“1219a. Definitions.”.

1 **SEC. 3. NOTIFYING CONGRESS IN THE EVENT OF A DECI-**  
2 **SION NOT TO INVESTIGATE A NONCAREER**  
3 **EMPLOYEE.**

4 Section 1217 of title 5, United States Code, is  
5 amended by adding at the end the following:

6 “(c) NOTIFICATION OF CONGRESS IN THE EVENT OF  
7 CERTAIN DECLINATIONS.—

8 “(1) IN GENERAL.—Not later than 180 days  
9 after the date of enactment of this subsection, and  
10 once every 180 days thereafter, the Special Counsel  
11 shall submit to the Chair and Ranking Member of  
12 each of the Committee on Homeland Security and  
13 Governmental Affairs of the Senate and the Com-  
14 mittee on Oversight and Accountability of the House  
15 of Representatives a written report that contains, for  
16 the period covered by the report, the number of com-  
17 plaints received by the Special Counsel that the Spe-  
18 cial Counsel referred for disciplinary action.

19 “(2) CONTENTS.—Each report required under  
20 paragraph (1) shall—

21 “(A) include—

22 “(i) a copy of the applicable com-  
23 plaint; and

24 “(ii) the name and position of the em-  
25 ployee who is the subject of the applicable  
26 complaint; and

1           “(B) be organized to indicate whether the  
2           employee who is the subject of each complaint  
3           contained in the report is a career employee or  
4           a noncareer employee.”.

5 **SEC. 4. REPORTING TO CONGRESS.**

6           (a) IN GENERAL.—Section 1218 of title 5, United  
7 States Code, is amended—

8           (1) in the section heading, by striking “**re-**  
9 **port**” and inserting “**reports**”;

10           (2) in the matter preceding paragraph (1), by  
11 striking “The Special” and inserting the following:

12           “(a) IN GENERAL.—The Special”; and

13           (3) by adding at the end the following:

14           “(b) REPORT REGARDING ALLEGATIONS AGAINST  
15 NONCAREER EMPLOYEES.—In addition to each report re-  
16 quired under subsection (a), the Special Counsel shall sub-  
17 mit to the Chair and Ranking Member of each committee  
18 of jurisdiction in Congress, on an annual basis, a report  
19 regarding the activities of the Special Counsel with respect  
20 to covered allegations against noncareer employees and  
21 former noncareer employees, which shall include—

22           “(1) for the year preceding the submission of  
23 the report, the number of such covered allegations  
24 received by the Special Counsel;

1           “(2) the number of such covered allegations  
2 that have resulted in an investigation conducted by  
3 the Special Counsel, whether the investigation was  
4 initiated during the year covered by the report or  
5 thereafter; and

6           “(3) in a confidential addendum submitted to  
7 the Chair and Ranking Member of each of the Com-  
8 mittee on Homeland Security and Governmental Af-  
9 fairs of the Senate and the Committee on Oversight  
10 and Accountability of the House of Representa-  
11 tives—

12                   “(A) with respect to each such covered al-  
13 legation not investigated, the name and position  
14 of the noncareer employee (or former noncareer  
15 employee) who was the subject of the covered  
16 allegation; and

17                   “(B) a description of each such covered al-  
18 legation for which processing of the covered al-  
19 legation ceased during the year covered by the  
20 report, without regard to whether the covered  
21 allegation was received during the year covered  
22 by the report or earlier, which shall include—

23                           “(i) a description of the outcome of  
24 the covered allegation; and

1 “(ii) in the case of a covered allega-  
2 tion against a noncareer employee who is  
3 not serving in a position with respect to  
4 which appointment by the President, by  
5 and with the advice and consent of the  
6 Senate, is required (or against a former  
7 noncareer employee who was not serving in  
8 such a position, as of the date on which  
9 the actions that are the subject of the cov-  
10 ered allegation occurred), a statement as  
11 to whether—

12 “(I) the Special Counsel, under  
13 section 1215(a), presented a com-  
14 plaint to the Merit Systems Protection  
15 Board against the noncareer employee  
16 (or former noncareer employee) con-  
17 cerning the actions that are the sub-  
18 ject of the covered allegation; and

19 “(II) any civil penalty assessed  
20 by the Merit Systems Protection  
21 Board under section 7326 with re-  
22 spect to the covered allegation has  
23 been collected in full.”.

24 (b) TECHNICAL AND CONFORMING AMENDMENT.—

25 The table of sections for subchapter II of chapter 12 of

1 title 5, United States Code, is amended by striking the  
2 item relating to section 1218 and inserting the following:

“1218. Annual reports.”.

3 **SEC. 5. PUBLIC TRANSPARENCY IN HATCH ACT ENFORCE-**  
4 **MENT.**

5 Section 1219 of title 5, United States Code, is  
6 amended—

7 (1) in subsection (a)—

8 (A) in paragraph (3), by striking “and” at  
9 the end;

10 (B) in paragraph (4), by striking the pe-  
11 riod at the end and inserting “; and”; and

12 (C) by adding at the end the following:

13 “(5) a detailed written explanation of the com-  
14 plete basis for each decision of the Special Counsel  
15 not to present, under section 1215(a), a complaint  
16 to the Merit Systems Protection Board against any  
17 noncareer employee determined by the Special Coun-  
18 sel to have violated subchapter III of chapter 73, ex-  
19 cept that this paragraph shall not apply with respect  
20 to a noncareer employee who is serving in a position  
21 for which nomination by the President, by and with  
22 the advice and consent of the Senate, is required  
23 (unless such a noncareer employee is serving in a  
24 position in the Foreign Service).”;



1           (2) by redesignating subsection (b) as sub-  
2           section (c); and

3           (3) by inserting after subsection (a) the fol-  
4           lowing:

5           “(b) PUBLICATION OF DEMOGRAPHIC STATISTICS  
6 REGARDING CERTAIN ENFORCEMENT.—

7           “(1) IN GENERAL.—The Special Counsel shall  
8           track, publish, and keep current on the official  
9           website of the Office of Special Counsel the following  
10          information, which shall remain on that website for  
11          a period of not less than 10 fiscal years, beginning  
12          with the fiscal year to which the information per-  
13          tains:

14                 “(A) On an ongoing basis, the following  
15                 anonymized information pertaining to covered  
16                 allegations against career employees, which  
17                 shall be organized by fiscal year:

18                         “(i) The number of career employees  
19                         who were the subject of covered allegations  
20                         received by the Special Counsel during the  
21                         applicable fiscal year.

22                         “(ii) With respect to the career em-  
23                         ployees identified under clause (i)—

24                                 “(I) the number of those career  
25                                 employees who the Special Counsel in-

1           vestigated, without regard to whether  
2           the investigation occurred during the  
3           fiscal year in which the Special Coun-  
4           sel received the initial covered allega-  
5           tion with respect to such a career em-  
6           ployee or during a subsequent fiscal  
7           year; and

8                     “(II) the number of those career  
9                     employees who were the subject of a  
10                    complaint presented to the Special  
11                    Counsel with the Merit Systems Pro-  
12                    tection Board with respect to the ap-  
13                    plicable covered allegation, without re-  
14                    gard to whether the Special Counsel  
15                    presented such a complaint during the  
16                    fiscal year in which the Special Coun-  
17                    sel received the initial covered allega-  
18                    tion with respect to such a career em-  
19                    ployee or during a subsequent fiscal  
20                    year.

21                    “(iii) For clauses (i) and (ii), demo-  
22                    graphic information pertaining to the race,  
23                    sex, ethnicity, national origin, and dis-  
24                    ability status of the applicable career em-  
25                    ployees.

1           “(B) On an ongoing basis, the following  
2 anonymized information pertaining to covered  
3 allegations against noncareer employees, which  
4 shall be organized by fiscal year:

5           “(i) The number of noncareer employ-  
6 ees who were the subject of covered allega-  
7 tions received by the Special Counsel dur-  
8 ing the applicable fiscal year.

9           “(ii) With respect to the noncareer  
10 employees identified under clause (i)—

11           “(I) the number of those non-  
12 career employees who the Special  
13 Counsel investigated, without regard  
14 to whether the investigation occurred  
15 during the fiscal year in which the  
16 Special Counsel received the initial  
17 covered allegation with respect to such  
18 a noncareer employee or during a sub-  
19 sequent fiscal year; and

20           “(II) the number of those non-  
21 career employees who were the subject  
22 of a complaint presented to the Spe-  
23 cial Counsel with the Merit Systems  
24 Protection Board with respect to the  
25 applicable covered allegation, without

1 regard to whether the Special Counsel  
2 presented such a complaint during the  
3 fiscal year in which the Special Coun-  
4 sel received the initial covered allega-  
5 tion with respect to such a noncareer  
6 employee or during a subsequent fis-  
7 cal year.

8 “(iii) For clauses (i) and (ii), demo-  
9 graphic information pertaining to the race,  
10 sex, ethnicity, national origin, and dis-  
11 ability status of the applicable noncareer  
12 employees.

13 “(2) DEMOGRAPHIC INFORMATION.—The Di-  
14 rector of the Office of Personnel Management, the  
15 head of the agency employing an individual who is  
16 the subject of a complaint filed with the Special  
17 Counsel, and, as applicable, the White House Presi-  
18 dential Personnel Office shall, upon request, provide  
19 the Special Counsel with information pertaining to  
20 the race, sex, ethnicity, national origin, disability  
21 status, and status as a career employee or noncareer  
22 employee of that individual, if that information has  
23 already been collected in connection with the Federal  
24 employment or former Federal employment of that  
25 individual.”.

1 **SEC. 6. SEVERABILITY.**

2       If any provision of this Act, or of any amendment  
3 made by this Act, or the application of any provision of  
4 this Act, or of any amendment made by this Act, to any  
5 person or circumstance is held to be unconstitutional, the  
6 remainder of this Act, and the amendments made by this  
7 Act, and the application of the provision this Act, or of  
8 the amendment made by this Act, to any other person or  
9 circumstance shall not be affected by the holding.

○