H. R. _____

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

IN THE HOUSE OF REPRESENTATIVES

Ms. Speier introduced the following bill; which was 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;

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

(v) division M or N of the Consolidated Appropriations Act, 2021 (Public Law 116–260), or an amendment made by that division;

(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 indi-
rectly 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, agency, 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 discriminating against in any way (including in the hiring process and including by the threat of any such action 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 Common-
wealth of Puerto Rico, Guam, American Samoa,
the Virgin Islands, the Commonwealth of the
Northern Mariana Islands, or any other territ-
ory or possession of the United States; or

(B) the government of any political sub-
division 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 dis-
criminated against in any way (including in the hir-
ing process and including by the threat of any such
action or inaction) for—

(A) disclosing, being perceived as dis-
closing, or preparing to disclose (including as-
sisting in disclosing, being perceived as assist-
ing in disclosing, or preparing to assist in dis-
closing 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 undermines any statute, rule, or regulation with respect to any Coronavirus pandemic-related program, 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 subcontract), grant, or subgrant, awarded or issued relating to covered funds; or
(B) refusing to obey an order that the protected individual reasonably believes would require 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 protected 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 para-
(A) PROTECTION AGAINST DISCLOSURE OF PRIVILEGED INFORMATION

(1) graph (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 directive 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 subjected to a reprisal prohibited under subsection (a) may, within 3 years after learning of the alleged 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 subparagraph (A), the applicable non-Federal employer (or the applicable agency head in the case of a Federal personal services contract involving covered funds) shall submit an answer to the complaint to the Secretary of Labor.

(2) REMEDY AND ENFORCEMENT AUTHORITY.—

(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 maximum extent practicable, by the rules and procedures for administrative and judicial enforcement, 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 case of a Federal personal services contract involving covered funds), if applicable, shall have access to the investigative file of the Secretary of Labor in accordance with 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 information is disclosed once such disclosure would no longer impede such investigation, 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 individual.

(2) **Relationship to State Laws.**—Nothing in this section may be construed to preempt, preclude, 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 Accountability 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 complaints shall be transmitted to the Secretary of Labor for enforcement in accordance with this section.

(f) Authorization of Appropriations.—There is authorized to be appropriated to the Secretary of Labor to carry out this Act $20,000,000 for fiscal year 2021, to remain available until expended.