

An Open Letter to the President and Members of Congress

The undersigned organizations, corporations, and individuals write to support the completion of the landmark, 13-year legislative effort to restore credible whistleblower rights for government employees that led to the unanimous passage of the Whistleblower Protection Enhancement Act (WPEA) of 2012. While the law was the fourth unanimous congressional mandate since 1978 for whistleblower rights in principle, the most serious work remains to be finished. That is because when Congress passed the WPEA they left the highest-stakes whistleblower protection issues, such as the right to jury trials, incomplete by substituting Government Accountability Office studies on the merits of those rights for action.

We seek your leadership now to expeditiously finish what Congress started when it passed the WPEA. That means further developing legal rights so they include the critical reforms listed below.

Whistleblower protection is a foundation for government accountability, and its scope is immense, from draining bureaucratic swamps to achieving changes in which the public can believe. It does not matter whether the issue is economic recovery, prescription drug safety, environmental protection, infrastructure spending, national health insurance, or foreign policy. We need conscientious public servants willing and able to call attention to waste, fraud, and abuse on behalf of the taxpayers.

Unfortunately, every month that passes has very tangible consequences for federal government whistleblowers because they do not have due process for a credible day in court to enforce their free speech rights. They are limited to administrative hearings at the US Merit Systems Protection Board (MSPB), which lacks judicial independence and since 2017 has not had enough confirmed members to issue final decisions. As of February 2020, the MSPB has a backlog of 2,600 cases and has no board members, which may deprive whistleblowers of administrative hearings. Even when there was quorum at the MSPB it was not an ideal venue for federal workers. For instance, since fiscal year 2014, the full board only ruled three times out of 37 final decisions that an employer violated an employee's Whistleblower Protection Act rights, including only one ruling for illegal whistleblower retaliation in the entire federal government in all of 2014 and 2015.

The bottom line is clear. The Whistleblower Protection Enhancement Act will continue to be a source of false hopes and cynicism until it has the following additional teeth to enforce its mandate:

- Grant employees the right to a jury trial in federal court;
- Give *whistleblowers* the right to challenge retaliatory investigations;
- Extend temporary relief to whistleblowers whenever they prove a *prima facie* case of retaliation; and
- Extend whistleblower rights beyond protection from workplace retaliation, and like the European Union and even Ukraine, give whistleblowers a legal defense against civil or criminal liability.

These reforms are necessary to ensure that those who defend the public have a fair chance to defend themselves.

Sincerely,