

116TH CONGRESS  
2D SESSION

# S. 4565

To amend title 49, United States Code, to rename the Aviation Safety Whistleblower Investigation Office and to establish an Office of Professional Responsibility and an Office of the Ombudsman in the Federal Aviation Administration, and for other purposes.

---

## IN THE SENATE OF THE UNITED STATES

SEPTEMBER 10, 2020

Mr. WICKER introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

---

## A BILL

To amend title 49, United States Code, to rename the Aviation Safety Whistleblower Investigation Office and to establish an Office of Professional Responsibility and an Office of the Ombudsman in the Federal Aviation Administration, 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 “Federal Aviation Ad-  
5 ministration Accountability Enhancement Act”.

1 **SEC. 2. ENHANCEMENT OF THE AVIATION SAFETY WHIS-**  
2 **TLBLOWER INVESTIGATION OFFICE IN THE**  
3 **FEDERAL AVIATION ADMINISTRATION.**

4 (a) RENAMING OF THE OFFICE.—Section 106(t)(1)  
5 of title 49, United States Code, is amended by striking  
6 “an Aviation Safety Whistleblower Investigation Office”  
7 and inserting “the Office of Accountability and Whistle-  
8 blower Protection”.

9 (b) DUTIES.—

10 (1) IN GENERAL.—Section 106(t)(3) of title 49,  
11 United States Code, is amended—

12 (A) in subparagraph (A)—

13 (i) in clause (i)—

14 (I) by inserting “and investigate  
15 in accordance with subsection (w)”  
16 after “receive”; and

17 (II) by striking “(if the certifi-  
18 cate holder does not have a similar in-  
19 house whistleblower or safety and reg-  
20 ulatory noncompliance reporting proc-  
21 ess)”;

22 (ii) in clause (ii), by striking “and” at  
23 the end;

24 (iii) in clause (iii), by striking the pe-  
25 riod at the end and inserting “; and”; and

1 (iv) by adding at the end the fol-  
2 lowing:

3 “(iv) investigate in accordance with  
4 subsection (w) any misconduct alleged or  
5 discovered as a result of an investigation  
6 conducted pursuant to clause (i);

7 “(v) receive and investigate in accord-  
8 ance with subsection (w) complaints and  
9 information concerning whistleblower retal-  
10 iation by employees of the Agency;

11 “(vi) assess the results of any inves-  
12 tigation under clause (i), (iv), or (v), and  
13 if there is a finding of whistleblower retal-  
14 iation or related misconduct, provide a rec-  
15 ommendation for a range of disciplinary  
16 actions to the Agency proposing official;

17 “(vii) if the Agency proposing official  
18 deviates from the recommended range of  
19 disciplinary action described in clause (vi),  
20 or if the Agency deciding official deviates  
21 from the range of disciplinary actions pro-  
22 posed by the Agency proposing official, no-  
23 tify Congress in writing not later than 10  
24 days after such deviation; and

1 “(viii) comply with all legal require-  
2 ments concerning disciplinary actions re-  
3 lated to whistleblower retaliation.”;

4 (B) in subparagraph (B), by striking “sub-  
5 paragraph (A)(i)” and inserting “clause (i),  
6 (iv), or (v) of subparagraph (A)”;

7 (C) in subparagraph (C), by striking “sub-  
8 paragraph (A)(i)” and inserting “clause (i),  
9 (iv), or (v) of subparagraph (A)”;

10 (D) in subparagraph (D)—

11 (i) by striking “assessment” and in-  
12 serting “investigation”;

13 (ii) by striking “subparagraph (A)(i)”  
14 and inserting “clause (i), (iv), or (v) of  
15 subparagraph (A)”;

16 (iii) by inserting “, misconduct, or  
17 whistleblower retaliation” after “aviation  
18 safety”.

19 (2) LIMITATION.—Section 106(t)(2) of title 49,  
20 United States Code, is amended by adding at the  
21 end the following:

22 “(E) LIMITATION OF DUTIES.—The Ad-  
23 ministrator may only assign to the Director re-  
24 sponsibilities relating to the duties of the Office  
25 described in paragraph (3).”.

1           (3) CONFORMING AMENDMENTS.—Section  
2 106(t) of title 49, United States Code, as amend-  
3 ed—

4           (A) in paragraph (5), by inserting “, mis-  
5 conduct, or whistleblower retaliation” after  
6 “aviation safety”;

7           (B) in paragraph (7)—

8           (i) in the matter preceding subpara-  
9 graph (A)—

10           (I) by striking “October 1” and  
11 inserting “November 15”; and

12           (II) by inserting “directly” after  
13 “the Director shall submit”; and

14           (ii) in subparagraph (A), by striking  
15 “paragraph (3)(A)(i) in the preceding 12-  
16 month period” and inserting “clause (i),  
17 (iv), or (v) of paragraph 3(A) in the pre-  
18 ceding fiscal year”; and

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

20           “(8) STAFF AND RESOURCES.—The Adminis-  
21 trator shall ensure that the Director has such staff,  
22 resources, and access to information as may be nec-  
23 essary to carry out the functions of the Office.”.

1 **SEC. 3. OFFICE OF THE WHISTLEBLOWER OMBUDSMAN IN**  
2 **THE FEDERAL AVIATION ADMINISTRATION.**

3 Section 106 of title 49, United States Code, is  
4 amended by adding at the end the following:

5 “(u) OFFICE OF THE WHISTLEBLOWER OMBUDS-  
6 MAN.—

7 “(1) ESTABLISHMENT.—The Administrator  
8 shall establish in the Federal Aviation Administra-  
9 tion (in this subsection referred to as the ‘Agency’)  
10 an Office of the Whistleblower Ombudsman (in this  
11 subsection referred to as the ‘Office’).

12 “(2) OMBUDSMAN.—The Office shall be headed  
13 by an Ombudsman, who shall be appointed by the  
14 Administrator.

15 “(3) DUTIES.—The Ombudsman shall carry out  
16 the following duties:

17 “(A) Educate Agency employees about pro-  
18 hibitions on retaliation and any specific rights  
19 or remedies with respect to any retaliatory  
20 practice.

21 “(B) Serve as an independent confidential  
22 resource for Agency employees to discuss any  
23 specific retaliation allegation and available  
24 rights or remedies based on the circumstances.

25 “(C) Coordinate with Human Resource  
26 Management, the Office of Accountability and

1 Whistleblower Protection, the Office of Profes-  
 2 sional Responsibility, and the Office of the  
 3 Chief Counsel, as necessary.

4 “(D) Coordinate with the Office of the In-  
 5 spector General of the Department of Transpor-  
 6 tation’s Whistleblower Protection Coordinator  
 7 and the Office of the Special Counsel, as nec-  
 8 essary.

9 “(E) Conduct outreach and training within  
 10 the Agency to mitigate retaliation and promote  
 11 timely and appropriate processing of any pro-  
 12 tected disclosure or allegation of retaliation.

13 “(4) STAFF AND RESOURCES.—The Adminis-  
 14 trator shall ensure that the Ombudsman has such  
 15 staff, resources, and access to information as may be  
 16 necessary to carry out the functions of the Office.”.

17 **SEC. 4. OFFICE OF PROFESSIONAL RESPONSIBILITY IN THE**  
 18 **FEDERAL AVIATION ADMINISTRATION.**

19 Section 106 of title 49, United States Code, as  
 20 amended by section 3, is amended by adding at the end  
 21 the following:

22 “(v) OFFICE OF PROFESSIONAL RESPONSIBILITY.—

23 “(1) ESTABLISHMENT.—The Administrator  
 24 shall establish in the Federal Aviation Administra-  
 25 tion (in this subsection referred to as the ‘Agency’)

1 an Office of Professional Responsibility (in this sub-  
2 section referred to as the ‘Office’).

3 “(2) DUTIES.—The Office shall carry out the  
4 following duties:

5 “(A) Receive any complaints and informa-  
6 tion concerning misconduct by managers within  
7 the Agency.

8 “(B) Assess any complaint and informa-  
9 tion concerning misconduct by managers re-  
10 ceived under this paragraph and determine  
11 whether sufficient information exists to initiate  
12 an investigation in accordance with subsection  
13 (w).

14 “(C) Except as provided in subparagraph  
15 (D), refer each misconduct case, based on the  
16 nature of the allegations, to—

17 “(i) the Office of the Inspector Gen-  
18 eral of the Department of Transportation  
19 for investigation and appropriate referral,  
20 as necessary; or

21 “(ii) the appropriate venue within the  
22 Agency for investigation in accordance  
23 with subsection (w) and adjudication in ac-  
24 cordance with subsection (x), unless the  
25 Office decides to retain such case.



1           “(D) Retain and independently investigate  
2           in accordance with subsection (w) any allega-  
3           tion, other than an allegation investigated by  
4           the Office of Accountability and Whistleblower  
5           Protection or referred outside of the Agency,  
6           that carries a possible penalty of suspension of  
7           pay for more than 14 days.

8           “(E) Record and track the disposition of  
9           each misconduct case received under this para-  
10          graph.

11          “(3) STAFF AND RESOURCES.—The Adminis-  
12          trator shall ensure that the Office has such staff, re-  
13          sources, and access to information as may be nec-  
14          essary to carry out the functions of the Office.

15          “(4) DEFINITION.—For purposes of this sub-  
16          section, the term ‘manager’ means an employee of  
17          the Agency who is a supervisor or management offi-  
18          cial, as defined in section 7103(a) of title 5, United  
19          States Code.”.

20 **SEC. 5. MISCONDUCT INVESTIGATIONS AND ADJUDICA-**  
21 **TIONS IN THE FEDERAL AVIATION ADMINIS-**  
22 **TRATION.**

23          Section 106 of title 49, United States Code, as  
24          amended by section 4, is amended by adding at the end  
25          the following:

1 “(w) MISCONDUCT INVESTIGATIONS.—

2 “(1) ESTABLISHMENT OF POLICY.—

3 “(A) IN GENERAL.—The Administrator  
4 shall establish an investigative policy that gov-  
5 erns any investigation of misconduct by a man-  
6 ager conducted by the Federal Aviation Admin-  
7 istration (in this subsection referred to as the  
8 ‘Agency’).

9 “(B) PRESERVATION OF COLLECTIVE BAR-  
10 GAINING AGREEMENTS.—The investigative pol-  
11 icy established under subparagraph (A) shall  
12 not apply to, or in the future, be extended by  
13 the Administrator to apply to, any employee  
14 covered by or eligible to be covered by a collec-  
15 tive bargaining agreement entered into by the  
16 Agency.

17 “(2) REQUIREMENTS.—The investigative policy  
18 established under paragraph (1) shall require the  
19 utilization of investigative best practices to ensure  
20 independent and objective investigation and accurate  
21 recording and reporting of such investigation, in-  
22 cluding—

23 “(A) managing case files to ensure the in-  
24 tegrity of the information contained in such  
25 case files;

1           “(B) conducting interviews in a manner  
2 that ensures truthful answers and accurate  
3 records of such interviews;

4           “(C) coordinating with the Office of the  
5 Inspector General of the Department of Trans-  
6 portation, the Office of the Special Counsel,  
7 and the Attorney General, as necessary; and

8           “(D) completing investigations in a timely  
9 manner.

10          “(3) DEFINITION.—For purposes of this sub-  
11 section, the term ‘manager’ has the meaning given  
12 such term in subsection (v)(4).

13          “(x) DISCIPLINE MANAGEMENT.—

14           “(1) ESTABLISHMENT OF POLICY.—

15           “(A) IN GENERAL.—The Administrator  
16 shall establish a discipline management policy  
17 that governs any adjudication of an investiga-  
18 tion of misconduct by a manager conducted by  
19 the Federal Aviation Administration (in this  
20 subsection referred to as the ‘Agency’).

21           “(B) PRESERVATION OF COLLECTIVE BAR-  
22 GAINING AGREEMENTS.—The discipline man-  
23 agement policy established under subparagraph  
24 (A) shall not apply to, or in the future, be ex-  
25 tended by the Administrator to apply to, any

1 employee covered by or eligible to be covered by  
2 a collective bargaining agreement entered into  
3 by the Agency.

4 “(2) REQUIREMENTS.—The discipline manage-  
5 ment policy established under paragraph (1) shall  
6 require—

7 “(A) except as provided in subsection  
8 (t)(3)(A) or in a case where the allegation in-  
9 volved carries a possible penalty of suspension  
10 of pay for 14 days or less, the Administrator to  
11 appoint an individual to serve as the Agency  
12 proposing official in any adjudication conducted  
13 by the Agency;

14 “(B) except in a case where the allegation  
15 involved carries a possible penalty of suspension  
16 of pay for 14 days or less, the Administrator to  
17 appoint an individual to serve as the Agency de-  
18 ciding official in any adjudication conducted by  
19 the Agency;

20 “(C) the Agency to conduct any adjudica-  
21 tion in accordance with best practices; and

22 “(D) the Agency to complete—

23 “(i) the discipline proposal process,  
24 including an opportunity for employee re-  
25 sponse, not later than 60 days after the re-

1                    ceipt of a completed misconduct investiga-  
2                    tion; and

3                    “(ii) the decision process, including  
4                    any employee appeal, not later than 60  
5                    days after the conclusion of the discipline  
6                    proposal process.

7                    “(3) DEFINITION.—For purposes of this sub-  
8                    section, the term ‘manager’ has the meaning given  
9                    such term in subsection (v)(4).”.

○