

WHISTLEBLOWER PROTECTION

Whistleblower retaliation is a Prohibited Personnel Practice, specifically defined and prohibited by the Whistleblower Protection Act (WPA), 5 U.S.C. 2302(b)(8)-(9), as well as by the Inspector General Act, 5 U.S.C. Appendix 3.

Under the WPA, all supervisors are prohibited from taking, directing, recommending, or approving, any personnel action¹ against an employee or applicant for employment for any lawful disclosure of information (including specifically to the OSC or the OIG) that the employee/applicant reasonably believes shows

a violation of any law, rule, or regulation,
gross mismanagement,
gross waste of funds,
abuse of authority, **or**
a substantial and specific danger to public health or safety,

Unless specifically **prohibited by law** and not specifically required by Executive order to be kept **secret**

This protection extends to

the exercise of any appeal, complaint, or grievance right granted by any law, rule, or regulation,

testifying for or otherwise lawfully assisting any individual exercising whistleblower rights,

cooperating with or disclosing information to the Inspector General or the Special Counsel, in accordance with applicable provisions of law; **or**

refusing to obey an order that would require the individual to violate a law

¹ Personnel action is:

appointment;
promotion;
action under chapter 75 of this title or other disciplinary or corrective action;
detail, transfer, or reassignment;
reinstatement;
restoration;
reemployment;
performance evaluation;
decision concerning pay, benefits, or awards, or concerning education or training if the education or training may reasonably be expected to lead to an appointment, promotion, performance evaluation, or other action described in this subparagraph;
decision to order psychiatric testing or examination;
implementation or enforcement of any nondisclosure policy, form, or agreement;
any other significant change in duties, responsibilities, or working conditions

The Whistleblower Protection Enhancement Act of 2012 (WPEA) expanded the definition of protected disclosures to include those:

made in the normal course of duties;

made to a supervisor or to a person who participated in an activity that the employee or applicant reasonably believed to be covered

that reveal information that had been previously disclosed;

made while the employee was off duty; **or**

made orally.

And the protection applies regardless of the employee's or applicant's motive for making the disclosure, and regardless of the amount of time which has passed since the occurrence of the events described in the disclosure.

Under the Inspector General Act, Section 7(c), any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority, take or threaten to take any action against any employee as a reprisal for making a complaint or disclosing information to an Inspector General, unless the complaint was made or the information disclosed with the knowledge that it was false or with willful disregard for its truth or falsity.

WHISTLEBLOWER PROTECTION FOR CONTRACTORS

As noted above, Government employees are protected from whistleblower retaliation by 5 U.S.C. 2302, and Section 7 of the Inspector General Act of 1978.

Employees of contractors have similar, but not identical, protections pursuant to 41 U.S.C. 4705, and Subpart 3.9 of the Federal Acquisition Regulations (FAR), 48 C.F.R. Part 3.

Per Section 4705(b), contractor employees may not be "discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a Member of Congress or an authorized official of an executive agency or the Department of Justice information relating to a substantial violation of law related to a contract (including the competition for or negotiation of a contract)."

The statute and FAR Subpart 3.9 allow persons who perceive such a reprisal to report it to the IG of the agency engaging the contractor. The IG is required to evaluate the complaint, and if the complaint is determined to have merit, investigate. The investigative report is to be provided to the contractor, the aggrieved contractor employee, and the head of the engaging agency. The agency head can order the

contractor to abate the reprisal, rehire the employee, and restore lost pay. If the contractor fails to comply with such an order, the agency head must seek judicial enforcement of the order in the Federal judicial district where the reprisal occurred.

WHISTLEBLOWER PROTECTION OMBUDSMAN

WPEA amended the Inspector General Act of 1978 by adding Section 3(d):

(1) Each Inspector General shall...

(C) designate a Whistleblower Protection **Ombudsman who shall educate agency employees—**

(i) about prohibitions on retaliation for protected disclosures; and

(ii) who have made or are contemplating making a protected disclosure about the rights and remedies against retaliation for protected disclosures.

(2) The Whistleblower Protection Ombudsman shall **not act as a legal representative, agent, or advocate** of the employee or former employee.

Treasury's Whistleblower Protection Ombudsman is Rich Delmar, Counsel to the Inspector General. Contact him on 202-927-3973 or OIGCounsel@oig.treas.gov.

TREASURY EMPLOYEE OBLIGATIONS AND PROTECTIONS

Inspector General Act of 1978, as amended – 5 U.S.C. App. 3

§ 6. Authority of Inspector General

(a) In addition to the authority otherwise provided by this Act, each Inspector General, in carrying out the provisions of this Act, is authorized--

(1) to have access to all records, reports, audits, reviews, documents, papers, recommendations, or other material available to the applicable establishment which relate to programs and operations with respect to which that Inspector General has responsibilities under this Act;

(2) to make such investigations and reports relating to the administration of the programs and operations of the applicable establishment as are, in the judgment of the Inspector General, necessary or desirable;

(b)(2) Whenever information or assistance requested under subsection (a)(1) or (a)(3) is, in the judgment of an Inspector General, unreasonably refused or not provided, the Inspector General shall report the circumstances to the head of the establishment involved without delay.

§ 7. Complaints by employees; disclosure of identity; reprisals

a) The Inspector General may receive and investigate complaints or information from an employee of the establishment concerning the possible existence of an activity constituting a violation of law, rules, or regulations, or mismanagement, gross waste of funds, abuse of authority or a substantial and specific danger to the public health and safety.

b) The Inspector General shall not, after receipt of a complaint or information from an employee, disclose the identity of the employee without the consent of the employee, unless the Inspector General determines such disclosure is unavoidable during the course of the investigation.

c) Any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority, take or threaten to take any action against any employee as a reprisal for making a complaint or disclosing information to an Inspector General, unless the complaint was made or the information disclosed with the knowledge that it was false or with willful disregard for its truth or falsity.

31 C.F.R. 0.207 Employee Rules of Conduct - Cooperation with official inquiries.

Employees shall respond to questions truthfully and under oath when required, whether orally or in writing, and must provide documents and other materials concerning matters of official interest when directed to do so by competent Treasury authority.

Treasury Directive 40-01 Responsibilities of and to the Inspector General

Subject only to the specific exceptions set out below, as a general rule all Department of the Treasury officials, officers and employees (hereafter Treasury employees) are required to report promptly to the OIG any information or allegation coming to their attention that indicates that any Treasury employee, former employee, contractor, subcontractor, or potential contractor, may have engaged in improper or illegal activity, including but not limited to:

- a) a criminal or other illegal act;
- b) a violation of the Standards of Conduct or other Federal regulation;
- c) a prohibited personnel practice or violation of merit systems principles; and
- d) any act which creates a specific danger to the public health and safety.

All Treasury employees must provide to the IG and to that official's duly authorized representatives full, free and unrestricted access to Treasury activities, property, data, correspondence, records, information technology systems, and any other information that the IG determines is necessary to an audit, investigation, or other official inquiry.

All Treasury employees shall cooperate fully with duly authorized representatives of the OIG by disclosing complete and accurate information pertaining to matters being investigated, audited or reviewed by the OIG. If the employee is the subject of an investigation, the employee will be afforded all required rights.

When the Secretary has provided the IG with written notification pursuant to Section 8D(a) of the Act, prohibiting the IG from carrying out or completing any audit or investigation or issuing any subpoena, to prevent the disclosure of sensitive information, a Treasury employee shall withhold that information from the IG.

Treasury employees who receive and review OIG audit reports or Reports of Investigation in the course of their official duties shall consult with the OIG prior to releasing or copying any report or portion thereof for the use of any other person, except for those persons with an official need to know.

Treasury employees shall maintain in confidence all communications with an authorized representative of the IG when requested to do so, unless required or permitted by law to disclose. Treasury employees shall not discuss any pending OIG investigation with the subject/subjects of the investigation or their representatives without approval of the OIG.

Any employee who has authority to take, direct others to take, recommend, or approve any personnel action shall not take or threaten to take any action against any employee as a reprisal for making a complaint or disclosing information to the OIG, unless the complaint was made or the information disclosed with the knowledge that it was false or with willful disregard for its truth or falsity.

Treasury employees and others may report suspected fraudulent or wasteful practices in Treasury programs and operations using a toll-free nationwide Treasury OIG Hotline number, 1-800-359-3898. The OIG will not disclose the identity of any employee without the employee's consent, unless the IG determines that such disclosure is unavoidable. The OIG will also make every effort to protect the identity of individuals who are not Treasury employees.