

WHISTLEBLOWER DISCLOSURES:

REPORTING ALLEGATIONS OF AGENCY WRONGDOING TO THE OFFICE OF SPECIAL COUNSEL

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5 U.S.C. 1213

**THE OFFICE OF SPECIAL COUNSEL
PROVIDES A SAFE CHANNEL FOR
WHISTLEBLOWER DISCLOSURES BY
FEDERAL EMPLOYEES, FORMER
FEDERAL EMPLOYEES, AND
APPLICANTS FOR FEDERAL
EMPLOYMENT**

WHAT IS WHISTLEBLOWING?

- **DUTY TO REPORT**

- **Federal employees may satisfy their duty to disclose waste, fraud, abuse, and corruption to appropriate authorities under 5 CFR 2635.101(b)(11), by filing with OSC.**

WHAT CAN BE DISCLOSED?

- A VIOLATION OF ANY LAW, RULE, OR REGULATION
- GROSS MISMANAGEMENT
- GROSS WASTE OF FUNDS
- ABUSE OF AUTHORITY
- SUBSTANTIAL AND SPECIFIC DANGER TO PUBLIC HEALTH AND/OR SAFETY

JURISDICTION

1. COVERED AGENCY

2. COVERED POSITION

COVERED AGENCIES

- MOST EXECUTIVE BRANCH AGENCIES
- INCLUDING FEDERAL AVIATION ADMINISTRATION, TRANSPORTATION SECURITY ADMINISTRATION, AND CENTRAL INTELLIGENCE AGENCY

NON-COVERED AGENCIES

- U.S. POSTAL SERVICE AND POSTAL RATE COMMISSION
- MEMBERS OF THE ARMED FORCES OF THE U.S. (i.e. NON-CIVILIAN MILITARY EMPLOYEES)
- STATE EMPLOYEES OPERATING UNDER FEDERAL GRANTS
- EMPLOYEES OF FEDERAL CONTRACTORS

COVERED POSITION

DISCLOSURE MUST BE MADE:

- BY AN EMPLOYEE, FORMER EMPLOYEE, OR APPLICANT, IN THE AGENCY WHICH THE INFORMATION CONCERNS, OR
- BY AN EMPLOYEE WHO OBTAINED THE INFORMATION IN CONNECTION WITH THE PERFORMANCE OF THE EMPLOYEE'S DUTIES AND RESPONSIBILITIES

WHAT DOES OSC DO AFTER RECEIVING THE DISCLOSURE?

THE SPECIAL COUNSEL SHALL MAKE A DETERMINATION WITHIN 15 DAYS AFTER RECEIVING THE INFORMATION FROM THE WHISTLEBLOWER.

5 U.S.C. § 1213(b)

SUBSTANTIAL LIKELIHOOD DETERMINATION

SUBSTANTIAL LIKELIHOOD IS
DEFINED AS THE DETERMINATION
THAT THE AGENCY IS *MORE LIKELY*
THAN NOT TO FIND THE ALLEGATION
SUBSTANTIATED AT THE
CONCLUSION OF ITS INVESTIGATION

FACTORS REVIEWED IN MAKING SUBSTANTIAL LIKELIHOOD DETERMINATION

- **IS THE WHISTLEBLOWER RELIABLE?**
- **IS THE WHISTLEBLOWER IN A POSITION TO KNOW THE FACTS?**
- **IS THE DISCLOSURE PLAUSIBLE?**
- **DOES THE WHISTLEBLOWER HAVE FIRST HAND KNOWLEDGE OF FACTS ALLEGED?**
- **HAS THE WHISTLEBLOWER PROVIDED RELIABLE INFORMATION TO OSC IN THE PAST?**

SUBSTANTIAL LIKELIHOOD

**IN MAKING THE SUBSTANTIAL
LIKELIHOOD DETERMINATION, DU
FOLLOWS THE MERIT SYSTEMS
PROTECTION BOARD DEFINITIONS
OF A GROSS WASTE OF FUNDS,
GROSS MISMANAGEMENT, AND AN
ABUSE OF AUTHORITY**

REFERRALS FOR INVESTIGATION

5 U.S.C. § 1213(c)

- IF SUBSTANTIAL LIKELIHOOD DETERMINATION IS POSITIVE, THE SPECIAL COUNSEL REQUESTS THE AGENCY HEAD TO CONDUCT AN INVESTIGATION AND SUBMIT A REPORT

5 U.S.C. § 1213(c)(1)

WHO INVESTIGATES?

OSC DOES NOT HAVE INVESTIGATIVE
AUTHORITY

SPECIAL COUNSEL REQUIRES
AGENCY HEAD TO CONDUCT AN
INVESTIGATION

5 U.S.C. 1213(c)

HOW LONG DOES THE AGENCY HAVE TO INVESTIGATE AND REPORT?

- THE REPORT IS DUE IN 60 DAYS
 - EXTENSION REQUESTS
 - PENDING CRIMINAL MATTERS

WHAT DOES THE SPECIAL COUNSEL DO AFTER RECEIPT OF THE REPORT?

- THE SPECIAL COUNSEL REVIEWS THE AGENCY REPORT AND DETERMINES WHETHER IT CONTAINS THE INFORMATION REQUIRED BY STATUTE AND WHETHER THE FINDINGS APPEAR REASONABLE
- 5 U.S.C. § 1213(d) and (e)(2)

STATUTORY REQUIREMENTS

5 U.S.C. § 1213(d)

- AGENCY HEAD MUST SIGN OR DELEGATE AUTHORITY TO SIGN

- THE REPORT MUST INCLUDE:
 - SUMMARY
 - DESCRIPTION
 - EVIDENCE
 - LIST OF VIOLATIONS
 - ACTION TAKEN OR PLANNED

IS THE REPORT REASONABLE?

- THE SPECIAL COUNSEL DETERMINES WHETHER THE FINDINGS OF THE AGENCY HEAD APPEAR REASONABLE.
- 5 U.S.C. § 1213(e)(2)(a)

WHISTLEBLOWER'S COMMENTS

- WHISTLEBLOWER REVIEWS REPORT AND PROVIDES COMMENTS
- COMMENTS ARE SENT TO OSC
- COMMENTS ARE PLACED IN THE PUBLIC FILE WITH THE WHISTLEBLOWER'S CONSENT

5 U.S.C. § 1213(e)(1)

WHAT DOES OSC DO WITH THE REPORT?

THE REPORT AND COMMENTS ARE SENT TO THE PRESIDENT AND THE CONGRESSIONAL OVERSIGHT COMMITTEES WITH JURISDICTION OVER THE AGENCY THAT THE DISCLOSURE INVOLVES

5 U.S.C. § 1213(e)(3)

OSC'S PUBLIC FILE

A LIST OF NONCRIMINAL MATTERS REFERRED TO THE AGENCY HEADS, TOGETHER WITH REPORTS FROM AGENCY HEADS, SHALL BE MAINTAINED AND MADE AVAILABLE TO THE PUBLIC

5 U.S.C. § 1219

NO SUBSTANTIAL LIKELIHOOD. WHAT NOW?

**THE SPECIAL COUNSEL INFORMS THE
WHISTLEBLOWER:**

- **THE REASONS WHY THE DISCLOSURE MAY NOT BE FURTHER ACTED ON AND**
- **DIRECTS THE WHISTLEBLOWER TO OTHER OFFICES AVAILABLE FOR RECEIVING DISCLOSURES**

1213 U.S.C. §1213(g)(3)

REASONS FOR CLOSURE

- NO JURISDICTION
- NO FIRST HAND INFORMATION
- DE MINIMIS
- WITHDRAWAL OF DISCLOSURE
- DISCLOSURE ALREADY INVESTIGATED

OTHER OPTIONS FOR HANDLING DISCLOSURES

REFERRAL TO OFFICE OF INSPECTOR GENERAL

- IF NO POSITIVE SUBSTANTIAL LIKELIHOOD DETERMINATION, OSC MAY REFER MATTER TO THE OFFICE OF THE INSPECTOR GENERAL
- REQUEST THAT THE IG ASSIST OSC IN ITS DETERMINATION
- NO STATUTORY REQUIREMENT THAT IG COMPLY

HOW TO FILE A DISCLOSURE WITH OSC

VISIT WWW.OSC.GOV

FILE IN WRITING OR USE FORM OSC-12,
DISCLOSURE OF INFORMATION

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