



## U.S. OFFICE OF SPECIAL COUNSEL

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### **OSC POLICY PROPOSAL TO INCREASE GOVERNMENT TRANSPARENCY AND HASTEN ACCOUNTABILITY**

The Office of Special Counsel (OSC) proposes the following updates to how it handles:

- (i) delays in agency responses to whistleblower disclosures of agency wrongdoing;
- (ii) the statutory requirement that agency reports on alleged misconduct “shall be reviewed and signed by the head of the agency”;
- (iii) investigations of prohibited personnel practices; and
- (iv) OSC’s own procedures.

These proposed updates are intended to fulfill Congressional directives, hasten agency accountability and mistake-fixing, and provide greater transparency to whistleblowers, Congress, agencies and other stakeholders, and the public.

This proposal is issued pursuant to authorities and directives provided by Congress to OSC in 5 U.S.C §§1211-1219 and other relevant provisions in Title 5 of the United States Code.

*First*, OSC proposes posting publicly (at [www.osc.gov](http://www.osc.gov)) a summary of allegations in matters where:

- (i) the Special Counsel has made a “positive determination” pursuant to 5 U.S.C. §1213(b)-(c) that there is a “substantial likelihood that the information discloses a violation of any law, rule, or regulation, or gross mismanagement, gross waste of funds, abuse of authority, or substantial and specific danger to public health and safety” and has referred the matter to the relevant agency;
- (ii) 60 days have elapsed since OSC’S referral;
- (iii) the posting of the summary should not threaten the integrity of the agency’s review or otherwise not be in the public interest; and
- (iv) the whistleblower providing OSC with the allegation consents.

OSC will consider posting summaries in other appropriate matters including certain allegations referred pursuant to 5 U.S.C. §1213(g)(2) and allegations of censorship of research, analysis, or technical information prohibited from any effort to “distort, misrepresent, or suppress” by 5 U.S.C. §2302.

Publicly posting allegations evidencing a “substantial likelihood” of agency misconduct or mismanagement is intended to fulfill the Congressional directive of 5 U.S.C. §1213(c) wherein Congress mandates that OSC be provided a “written report setting forth the findings of the agency head within 60 days after the date on which the information is transmitted to the agency head”.

While Congress allows the Special Counsel to grant a time extension, the intent is clear: Congress wants agency responses quickly. Summaries of the allegation are a reasonable interim step when agencies do not meet the 60-day timetable.

*Second*, when an agency does submit its report setting forth the findings of its investigation and any proposed corrective action, OSC expects agencies to fulfill the Congressional mandate that the report “shall be reviewed and signed by the head of the agency”. See 5 U.S.C. §1213(d). At a minimum, OSC proposes requiring a statement that the signer affirms that the report represents the findings of the agency head.

*Third*, OSC proposes posting publicly a summary of allegations in matters where:

- (i) OSC has issued a report concluding that a prohibited personnel practice (PPP) has occurred or has advised an agency that OSC likely could establish the elements of a PPP;
- (ii) the agency does not take corrective action in a timely fashion;
- (iii) the posting of the summary would not threaten the integrity of OSC’s investigation or ensuing litigation and is otherwise in the public interest; and
- (iv) the person making the allegation that a PPP has occurred consents.

Publicly posting allegations after OSC has advised an agency that OSC likely could establish the elements of a PPP is intended to encourage efficient resolution, providing more timely relief to federal employees and reducing costs to taxpayers. It also provides transparency in instances of agency recalcitrance to providing necessary or reasonable relief.

To assist agencies in taking corrective action quickly after OSC obtains evidence of a PPP, OSC has a robust Alternative Dispute Resolution [program](#). If agencies do not agree to resolve matters (through ADR or other agreement) within 60 days of OSC alerting the agency that it

could likely establish the elements of a PPP, a summary of the allegations will be subject to public posting as explained above.

In addition, should OSC be required to make a request to the Merit Systems Protection Board seeking an order staying any personnel action (because the agency refuses to stay the action voluntarily), OSC proposes publicly posting the legal pleadings it files with MSPB, assuming conditions (iii) and (iv) above are met.

*Fourth*, OSC is undertaking an agency-wide effort to make public its policies, practices, and procedures when it comes to working with whistleblowers and seeking that agencies acknowledge and address misconduct.

One example of this transparency initiative is this proposal announcement. OSC will announce which aspects of this proposal will take official effect on or soon after the start of the new government fiscal year on October 1, 2024. And between now and the end of the calendar year, OSC will make additional aspects of its policies, practices, and procedures public (at [www.osc.gov](http://www.osc.gov)).

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