



U.S. OFFICE OF SPECIAL COUNSEL

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Washington, D.C. 20036-4505

The Special Counsel

September 27, 2013

The President
The White House
Washington, D.C. 20500

Re: OSC File No. DI-13-2004

Dear Mr. President:

Pursuant to 5 U.S.C. § 1213(e)(3), enclosed please find an agency report and a supplemental report based on a disclosure made by an anonymous whistleblower. The whistleblower alleged that officials at the Department of the Treasury, Office of the Comptroller of the Currency (OCC), Law Department, Washington, D.C., engaged in conduct that may constitute a violation of a law, rule, or regulation.

The agency reports substantiated the whistleblower's allegation. According to the agency reports, OCC failed to provide required notices to certain employees that they were subject to post-employment restrictions. The agency has changed its processes to respond to this deficiency and covered employees are now receiving timely notices. Based upon my review of the original disclosure, the agency reports, and the whistleblower's comments, I have determined that the agency reports contain all of the information required by statute and that the findings appear to be reasonable.

The whistleblower's allegations were referred on April 18, 2013, to Secretary of the Treasury Jacob J. Lew, to conduct an investigation.¹ On June 21, 2013, Neal Wolin, Deputy Secretary of the Treasury, submitted the agency's report to this office. The Treasury Office of Inspector General (OIG) investigated the matter. On September 5, 2013, the agency provided a supplemental report on the agency's planned or taken corrective actions. On September 20, 2013, pursuant to 5 U.S.C. § 1213(e)(1), the whistleblower submitted comments on the agency's findings. As required by 5 U.S.C. § 1213(e)(3), I am now transmitting the agency reports and the whistleblower's comments to you.

The whistleblower disclosed that since 2009, OCC ethics officials have failed to provide notices to senior employees under 5 C.F.R. § 730.104 that they are subject to a one-year restriction

¹ The Office of Special Counsel (OSC) is authorized by law to receive disclosures of information from federal employees alleging violations of law, rule, or regulation, gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health and safety. 5 U.S.C. § 1213(a) and (b). OSC does not have the authority to investigate a whistleblower's disclosure; rather, if the Special Counsel determines that there is a substantial likelihood that one of the aforementioned conditions exists, she is required to advise the appropriate agency head of her determination, and the agency head is required to conduct an investigation of the allegations and submit a written report. 5 U.S.C. § 1213(c).

Upon receipt, the Special Counsel reviews the agency's report to determine whether it contains all of the information required by statute and that the findings of the head of the agency appear to be reasonable. 5 U.S.C. § 1213(e)(2). The Special Counsel will determine that the agency's investigative findings and conclusions appear reasonable if they are credible, consistent, and complete based upon the facts in the disclosure, the agency's report, and the comments offered by the whistleblower under 5 U.S.C. § 1213(e)(1).

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on contact with their former employing agency upon departure from federal employment. This restriction, which is contained in 18 U.S.C. § 207(c)(1), applies to senior personnel of the executive branch and independent agencies whose basic rate of pay is equal to or exceeds \$155,440. The notice must be provided before, or as a part of, any personnel action that affects an employee's coverage under § 207(c), such as an increase in pay. The whistleblower alleged that at least 100 OCC employees are covered by the restriction.

The agency's original report substantiated the whistleblower's allegation. The investigation determined that OCC failed to promptly provide the required notices at the time of the personnel actions that caused senior employees to be covered by § 207(c). However, the agency did advise employees of their restrictions at the time of their separation from federal service. The report acknowledged that approximately 400 OCC employees are covered by § 207(c). The failure to provide the required notices occurred after the retirement of an ethics counsel and the death of his successor. The issue concerning the lack of § 207(c) notices was raised in 2011 by an ethics official but compliance was not a priority at the time because of the merger of OCC with the Office of Thrift Supervision.

The agency submitted a supplemental report to address the follow-up actions that have been taken. On June 7, 2013, an OCC ethics official notified all covered § 207(c) employees via e-mail to alert them to their post-employment restrictions. Additionally, the agency developed written procedures to ensure that timely notifications are made in the future. The agency also determined that it was not appropriate to take personnel actions against any employees in this matter.

The whistleblower provided comments on the agency reports. The whistleblower believed the allegations were diligently investigated and the findings were factually accurate. Nonetheless, the whistleblower expressed displeasure that the officials who failed to provide the notifications were not disciplined because of the willful nature of the violation.

I have reviewed the original disclosure, the agency reports, and the whistleblower's comments. Based on that review, I have determined that the agency's reports contain all of the information required by statute, and the findings appear to be reasonable.

As required by 5 U.S.C. § 1213(e)(3), I have sent copies of the agency's reports and whistleblower's comments to the Chairs and Ranking Members of the Senate Banking, Housing, and Urban Affairs Committee and the House Committee on Financial Services. I have also filed copies of the agency's reports and the whistleblower's comments in our public file, which is now available online at www.osc.gov. This matter is now closed.

Respectfully,



Carolyn N. Lerner

Enclosures