

To: U.S. Office of Special Counsel

From: Corey Lederman

Re: Comments on Proposed Rule on Allowing Federal Contractors, Subcontractors, and Grantees to File Whistleblower Disclosures

Date: March 9, 2015

I believe the proposed rule is an important step forward in workplace fairness and equality which seeks to implement long, overdue protections for contractors and sub-contractors (hereinafter referred to as “contractors”) working for the federal government.

Though OSC’s jurisdiction is limited to certain specified agencies, there are relatively simple ways it can more meaningfully protect contractors that do fall within its jurisdiction. 5 U.S.C. 1213(b), requires OSC to determine “whether there is a substantial likelihood that the information (it receives) 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.” However, the proposed rule purports to apply this to contractors by first determining to what degree that contractor’s position mirrors that of a federal employee. The greater the difference in their positions, the less credibility OSC will afford the complaints of the contractor – per se. “If a contractor's situation differs greatly from that of a Federal employee, it is less likely that OSC will be able to find that the contractor has credible information about government wrongdoing.”

This is an unnecessarily narrow and somewhat deceiving approach to implementing the “pilot program” identified in the National Defense Authorization Act of 2013 (NDAA), which sought to enhance contractor protection from reprisal for

disclosures of certain types of information. Based on the “substantial likelihood” test for credibility laid out in this proposed rule, there will only be an incremental shift in federal contractor protection. Moreover, the title of the proposed rule is misleading because it could conceivably give contractors the mistaken belief that they have protection in reporting instances of federal mismanagement, where in reality they do not.

OSC can, without exceeding its powers or jurisdiction, investigate all claims of mismanagement thoroughly, regardless of the source, and from there determine if a source and the information they provide is credible. This will give full equality and protection to contractors willing to speak out in order to improve the government agencies they work for.

Thank you for your consideration of expanding the proposed protections,

Corey Lederman