

**GUIDANCE FOR SUBMISSION OF AGENCY REPORT
TO OFFICE OF SPECIAL COUNSEL (OSC) PURSUANT TO 5 USC § 1213(c)¹**

The Special Counsel has determined that there is a substantial likelihood that information received by OSC discloses a violation of law, rule, or regulation; gross mismanagement; a gross waste of funds; an abuse of authority; and/or a substantial and specific danger to public health or safety, and has referred the matter to the agency head. 5 USC § 1213(c). The agency head is required to **conduct an investigation with respect to the information and any related matters** transmitted by the Special Counsel, and **submit a written report** setting forth the findings of the agency head. 5 USC § 1213(c)(1)(A) and (B). By law, the report shall be reviewed and signed by the agency head (or their delegate) and shall include the information set out in 5 USC § 1213(d). The checklist below is intended to assist the agency in completing the report and to ensure against statutory deficiencies.

1. Did the agency submit the report within 60 days? 5 USC § 1213(c)(1)(B)
 - a) If not, did the agency receive a written extension of time? (Extensions of time, no longer than 60 days per request, will be considered where an agency concretely evidences that it is conducting a good faith investigation that will require more time to successfully complete. Specific reasons for the extension of time must be included.)
2. Did the agency head (or their delegate) review and sign the report? 5 USC § 1213(d)
3. Did the agency report include a summary of the information with respect to which the investigation was initiated? 5 USC § 1213(d)(1)
 - a) Did the report set forth *allegations* submitted by the Special Counsel for investigation?
 - b) Did the report summarize the *material evidence* relating to each of the allegations?
 - c) Did the report set forth any *related matters* transmitted by the Special Counsel?
 - d) Did the report summarize the *material evidence* relating to the related matters?

¹ DISCLAIMER: This guidance does not create, and shall not be construed as creating, any right or benefit, substantive or procedural, enforceable at law by any person against the United States, its agencies, its officers or employees, or any other person.

4. Did the agency report include a description of the conduct of the investigation? 5 USC § 1213 (d)(2)
 - a) Was the whistleblower interviewed at the outset of the investigation?
 - b) Did the report identify the personnel who investigated the whistleblower's charges?
 - c) Did the report disclose whether or not witnesses were offered confidentiality for their responses?
 - d) Did the report list witnesses interviewed, including the subjects of the investigation and witnesses suggested by the whistleblower?
 - e) Did the report reference those witnesses who requested and were granted anonymity?
 - f) Did the report disclose the methodology and scope of the investigation?
 - g) Did the report state whether notice was provided for on-site investigations?
 - h) Did the report reveal the areas of inquiry covered with each witness?
 - i) Did the agency rely on any other investigative report as a substitute for investigation in direct response to the referral under 5 USC § 1213(c)? If so, did the agency answer Question 4, (a) through (h) above in that report?

5. Did the report include a summary of any evidence obtained from the investigation? 5 USC § 1213(d)(3)
 - a) Did the report summarize all relevant and material evidence that the agency considered in making its conclusions on each of the allegations?

6. Did the agency report include a listing of any violation or apparent violation of any law, rule, or regulation? 5 USC § 1213(d)(4)
 - a) Did the report cite any law, rule, or regulation relevant to the whistleblower's allegations, whether or not the report concludes that the disclosure and evidence substantiates a violation?
 - b) Did the report state whether or not the investigation revealed a violation of law, rule, or regulation?
 - c) When conflicting evidence could lead to differing conclusions about a possible violation, did the report disclose which evidence was more credible and explain why?

- d) Did the report offer the full factual and legal basis for the conclusions on each element of each allegation?
7. Did the agency report include a description of any action taken or planned as a result of the investigation, such as:
- a) changes in agency rules, regulations, or practices;
 - b) the restoration of any aggrieved employee;
 - c) disciplinary action against any employee; and
 - d) referral to the Attorney General of any evidence of a criminal violation?
- 5 USC §1213(d)(5)(A) – (D)

Please note that upon receipt of the report, the Special Counsel shall review the report and determine whether the findings of the head of the agency appear reasonable, and whether the report of the agency contains the information required under 5 USC § 1213(d) as set forth above.

8. Where applicable, did the report include any dollar savings, or projected savings, and any management initiatives that may result from this review?
9. Does the agency report include any personally identifiable information (PII), such as social security numbers, home addresses and telephone numbers, personal e-mail addresses, dates and places of birth, personal financial information, and patient names? (In order to prevent public disclosure of PII, OSC requests that you ensure that the report does not include this type of information.)