

MEMORANDUM
(Delivered Electronically)

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SUBJECT: Comments Related to the Office of Special Council's Proposed Regulations to Accept Covered Disclosures of Wrongdoing from Employees Under a Contract or Grant with the Federal Government and the Need to Expand Protection to include Federal Awardee Whistleblowers.

We are submitting our comments in support of the Office of Special Counsel (OSC) revising its rules in order to accept whistleblowing disclosures from employees of Federally funded grantees and contractors (hereinafter Federal awardees). Federal awardees and their employees are in a unique position to recognize when a Federal agency has violated laws, especially when those agencies have violated laws pertaining to Federal awardee contracts and grants.

Unfortunately, the proposed rules appear to have limitations that leave Federal awardees and their employees vulnerable to retaliations by wrongdoing Federal agencies and their representatives. According to the proposed rules, Federal awardee employees can only be protected when they disclose the wrongdoing of their Federal awardee employer.

The rules being considered for adoption by the OSC do not take into consideration the subordinate status and vulnerability of a Federal awardee. Under the proposed rules, OSC can simply reject disclosures about a Federal agency's wrongdoing. In the event of Federal awardee whistleblowing, both the Federal awardee and the awardee's employees may become victims of Federal agency whistleblowing retaliation.

Federal agencies can circumvent the newly proposed OSC rules by attacking the Federally funded awardee. If a Federal awardee is forced out of business due to retaliation perpetrated by a Federal agency, the Federal awardee cannot appeal to the OSC for assistance and their employees may be put out of work. The OSC's proposed rules do not clearly address these issues.

The newly proposed rules insulate Federal agencies from whistleblowing by Federal awardees, leaving Federal awardees vulnerable to unjust Federal agency threats and actions to defund Federal awardees and debar future contracts with the Federal Government.

Currently, the OSC is returning whistleblowing complaints and closing whistleblowing cases brought by Federal awardees who allege Federal agency retaliation, stating that the OSC is not authorized to accept whistleblowing disclosures from Federal awardees. This invites harm to both the whistleblowing Federal awardee and the awardee's employees.

Furthermore, the number of Federal Agency retaliations against Federal awardees and their employees may increase because of the 2014 Executive Order signed by President Obama, which permits Federal Agencies to debar Federal awardees without whistleblowing protection for such "blacklisted" Federal awardees. In essence, the new Executive Order may be considered an official "hunting license" for Federal agencies intent on retaliating against Federal awardees and awardee employees who disclose a Federal agency's wrongdoing.

We have attached references related to current OSC limitations, including an inability to address Federal agency conspiracy to violate civil rights, potential blacklisting of Federal awardees that are not guilty of wrongdoing, and Supreme Court decision references to "bad faith" motives. The attached documents provide additional context and reasoning to support the ability of the OSC to accept Federal awardee whistleblower disclosures that reveal Federal agency wrongdoing.

We encourage the OSC to implement the new regulations, including protection for Federal awardee whistleblowers, as soon as possible since the mechanisms for reporting wrongdoing already exist in the OSC procedures for complaint processing.

Thank you for your consideration of our comments and supportive attachments.

Attachments:

1. OSC Letter File MA-15-2235
2. Latest Obama Executive Order Could Create Federal Blacklists
3. Violation of Civil Rights – Conspiracy and Color of Law
4. Bad Faith Motive in Federal Audits
5. OSC Supreme Court Summary re Whistleblowing