

Summary of Email Exchange Related to OSC's Proposed Rulemaking on Contractor Disclosures

On February 18, 2015, Mark S. Frankel, the director for scientific responsibility at the American Association for the Advancement of Science (AAAS), emailed OSC Principal Deputy Special Counsel Mark Cohen a comment letter on OSC's proposed rulemaking (note: the letter is attached and is dated March 3, 2015 even though it was sent earlier). On March 5, 2015, Mr. Frankel emailed Mr. Cohen and asked if he would receive any response to the questions raised in its letter before March 23, 2015 (the due date for comments). Mr. Cohen responded via email the same day.

The AAAS letter contains the following questions:

According to the proposed rulemaking, the proposed expansion will "remain in effect as long as the provisions of the NDAA's 'pilot program' are in force." What options is OSC considering, or anticipates considering, at the point when the pilot ends? The NDAA provides for an evaluation of the pilot by the Comptroller of the U.S. Is OSC planning an evaluation of its own? If so, what criteria are OSC likely to use for making a judgment about whether to continue or end the expansion, or perhaps even expand it to Federal units not covered during the pilot? It seems reasonable to expect some sort of plan for deciding whether to translate the pilot into a more sustained effort, but the proposal is silent on that matter. Can you tell us more about what might follow the pilot?

Mr. Cohen emailed that OSC's analysis is that the extension of its disclosure jurisdiction to government contractors and grantees is linked to their protection against retaliation under the National Defense Authorization Act (NDAA) pilot project, protection analogous to that enjoyed by federal employees under Title 5 who make disclosures. While Mr. Cohen is optimistic that the NDAA pilot project or something substantially equivalent will be made permanent by Congress, should that not happen, OSC's current view is that OSC would also be divested of disclosure jurisdiction for contractors. It would then fall to Congress to extend OSC's authorities in this regard. Thus, OSC is not currently engaged in planning based upon the possibility that the pilot project will not be extended.



March 3, 2014

The Honorable Carolyn Lerner
Special Counsel
U.S. Office of Special Counsel
1730 M St., NW, Suite 218
Washington, DC 20036

Dear Ms. Lerner,

I am writing to follow up on my letter of March 13, 2014, regarding OSC's interpretation of 5 U.S.C., Section 1213(g)(1). Recently, OSC issued a proposed rule to "Allow Federal Contractors, Subcontractors, and Grantees to File Whistleblower Disclosures" with your office (*Federal Register*, January 22, 2015), which responds to the issues raised in our letter.

We are very pleased that OSC proposes to "expand who may file a whistleblower disclosure" with your office to include the category of "employees of Federal contractors, subcontractors and grantees," which often involves scientists and engineers. But we have a few matters on which we would appreciate clarification. According to the proposed rulemaking, the proposed expansion will "remain in effect as long as the provisions of the NDAA's 'pilot program' are in force." What options is OSC considering, or anticipates considering, at the point when the pilot ends? The NDAA provides for an evaluation of the pilot by the Comptroller of the U.S. Is OSC planning an evaluation of its own? If so, what criteria are OSC likely to use for making a judgment about whether to continue or end the expansion, or perhaps even expand it to Federal units not covered during the pilot? It seems reasonable to expect some sort of plan for deciding whether to translate the pilot into a more sustained effort, but the proposal is silent on that matter. Can you tell us more about what might follow the pilot?

Your office, through Mr. Mark Cohen, has been very responsive to the concerns we first raised in our letter of last March, and I want to acknowledge his past efforts to keep us informed of OSC deliberations preceding the recent proposed rulemaking. We look forward to hearing back from your office on the matters raised in this letter, and respectfully request that a response be sent prior to the March 23 deadline for receiving public comments on the OSC proposal in order to inform a possible AAAS formal response to the rulemaking.

Sincerely,

Melissa Anderson, Ph.D.
Chair, AAAS Committee on Scientific Freedom
and Responsibility

Directorate for Science and Policy Programs

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