



**U.S. OFFICE OF SPECIAL COUNSEL**  
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**The Special Counsel**

January 15, 2025

The Honorable Denis R. McDonough  
Secretary  
U.S. Department of Veterans Affairs  
810 Vermont Avenue, N.W.  
Washington, D.C. 20420

Re: OSC File No. DI-24-000819  
Referral for Investigation – 5 U.S.C. § 1213(c)

Dear Secretary McDonough:

On May 13, 2024, I referred for your review, pursuant to 5 U.S.C. § 1213(g)(2), a whistleblower disclosure that officials at the Department of Veterans Affairs (VA), Office of Finance, Revenue Operations, Washington, D.C., engaged in actions that may constitute a violation of law, rule, or regulation and gross mismanagement. Under Section 1213(g)(2), the agency head is required to inform the Special Counsel of what action the agency has taken, or is being taken, and when such action will be completed. The agency report provided on November 15, 2024, confirmed critical aspects of the whistleblower's allegations of agency wrongdoing and did not include all of the statutorily required information.<sup>1</sup>

Accordingly, I have now concluded that there is a substantial likelihood that the information provided to OSC discloses a violation of law, rule, or regulation and gross mismanagement, and refer this matter to you for investigation pursuant to 5 U.S.C. § 1213(c). A report of your investigation into these allegations and any related matters is due to the Office of Special Counsel (OSC) on March 17, 2025.

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<sup>1</sup> Department of Veterans Affairs, Report to the Office of Special Counsel, OSC File No. DI-24-000819 (November 15, 2024) (1213(g)(2) Report).

The whistleblower, Internal Audit Manager [REDACTED], who consented to the release of his name, alleged that the VA is not timely refunding veterans for canceled copayment charges. The allegation to be investigated is:

- VA Consolidated Patient Account Centers (CPACs) are failing to address a backlog of over \$110 million in potential refunds owed to more than 970,000 veterans for cancelled copayment charges paid between January 1, 2012 and December 31, 2020, in violation of 38 C.F.R. § 17.47(e)(1).

[REDACTED] explained that veterans' copayment charges are cancelled for multiple reasons, most commonly a change in a veteran's service-connected condition or a charge billed in error. [REDACTED] alleged, and the 1213(g)(2) Report confirmed, that since August 2020, the Director of CPAC Operations has been aware of an "enormous" backlog of cancelled copayment charges that have not been reviewed for potential refunds to veterans.<sup>2</sup> On February 1, 2024, the Director of CPAC Operations received a report from [REDACTED] Revenue Operations Internal Audit Team that identified over \$110 million in cancelled charges that needed to be reviewed for potential refunds to an estimated 970,000 veterans. Data provided to OSC in the 1213(g)(2) Report indicates that the backlog includes more than 5.6 million canceled charges.<sup>3</sup>

The 1213(g)(2) Report found that constraints on staffing have limited the regional CPACs' ability to address the backlog. As [REDACTED] alleged, and the 1213(g)(2) Report confirmed, the agency's strategy is for CPACs to stay current with more recent refund requests and address the backlog "as time allows."<sup>4</sup> The 1213(g)(2) Report acknowledges that a "national strategy is needed for resolving the remaining backlog of refunds owed to Veterans," but provides no information about a national strategy or when it will be implemented even though the backlog "has remained an issue for five years."<sup>5</sup> [REDACTED] believes that continued delay in addressing this matter risks further deterioration of financial data and jeopardizes the VA's ability to comply with its legal obligation to refund all incorrectly charged copayments in accordance with 38 C.F.R. § 17.47(e)(1).

Please note that specific allegations and references to specific violations of law, rule or regulation are not intended to be exclusive. As previously noted, your agency must conduct an investigation of these matters, and I will review the report for sufficiency and reasonableness before sending copies of the agency report, along with the whistleblower's comments and any comments or recommendations I may have, to the President and congressional oversight committees and making these documents publicly available.

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<sup>2</sup> See, VHA Office of Revenue Operations Issue Brief, *Uncancelled Integrated Billing First Party Charges* (August 14, 2020); 1213(g)(2) Report at p. 7.

<sup>3</sup> 1213(g)(2) Report at p. 8.

<sup>4</sup> 1213(g)(2) Report at p. 7.

<sup>5</sup> 1213(g)(2) Report at p. 9.

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Additional important requirements and guidance on the agency report are included in the attached Appendix, which can also be accessed at <https://osc.gov/Services/Pages/DU-Resources.aspx>. If your investigators have questions regarding the statutory process or the report required under 5 U.S.C. § 1213(c), please contact Catherine A. McMullen, Chief, Disclosure Unit, at (202) 804-7088 or [cmcmullen@osc.gov](mailto:cmcmullen@osc.gov) for assistance. I am also available for any questions you may have.

Sincerely,

A handwritten signature in cursive script that reads "Hampton Dellinger".

Hampton Dellinger  
*Special Counsel*

Enclosure

## **APPENDIX**

### **AGENCY REPORTS UNDER 5 U.S.C. § 1213**

#### GUIDANCE ON 1213 REPORT

- OSC requires that your investigators interview the whistleblower at the beginning of the agency investigation when the whistleblower consents to the disclosure of his or her name.
- OSC will consider extension requests in 60-day increments when an agency evidences that it is conducting a good faith investigation that will require more time to complete.
- The statute provides that the agency report shall be reviewed and signed by the agency head. 5 U.S.C. § 1213(d). Agencies should fulfill this Congressional mandate.
- Identify agency employees by position title in the report and attach a key identifying the employees by both name and position. The key identifying employees will be used by OSC in its review and evaluation of the report. OSC will place the report without the employee identification key in its public file.
- Do not include in the report personally identifiable information, such as social security numbers, home addresses and telephone numbers, personal e-mails, dates and places of birth, and personal financial information.
- Include information about actual or projected financial savings as a result of the investigation as well as any policy changes related to the financial savings.
- Reports previously provided to OSC may be reviewed through OSC's public file, which is available here: <https://osc.gov/Pages/Resources-PublicFiles.aspx>. Please refer to our file number in any correspondence on this matter.

#### RETALIATION AGAINST WHISTLEBLOWERS

In some cases, whistleblowers who have made disclosures to OSC that are referred for investigation pursuant to 5 U.S.C. § 1213 also allege retaliation for whistleblowing once the agency is on notice of their allegations. The Special Counsel strongly recommends the agency take all appropriate measures to protect individuals from retaliation and other prohibited personnel practices.

#### EXCEPTIONS TO PUBLIC FILE REQUIREMENT

OSC will place a copy of the agency report in its public file unless it is classified or prohibited from release by law or by Executive Order requiring that information be kept secret in the interest of national defense or the conduct of foreign affairs. 5 U.S.C. § 1219(a).

#### EVIDENCE OF CRIMINAL CONDUCT

If the agency discovers evidence of a criminal violation during the course of its investigation and refers the evidence to the Attorney General, the agency must notify the Office of Personnel Management and the Office of Management and Budget. 5 U.S.C. § 1213(f). In such cases, the agency must still submit its report to OSC, but OSC must not share the report with the whistleblower or make it publicly available. 5 U.S.C. §§ 1213(f), 1219(a)(1).