



**U.S. OFFICE OF SPECIAL COUNSEL**  
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**Washington, D.C. 20036-4505**

**The Special Counsel**

January 4, 2024

The Honorable Pete Buttigieg  
Secretary  
U.S. Department of Transportation  
1200 New Jersey Avenue, S.E.  
Washington, D.C. 20590

Re: OSC File No. DI-24-000224  
Request for Investigation—5 U.S.C. § 1213(c)

Dear Secretary Buttigieg:

I am referring to you for investigation a whistleblower disclosure concerning employees of the Department of Transportation, Federal Aviation Administration (FAA), Office of Aerospace Medicine (AAM), Washington, D.C. The whistleblower alleged that FAA leadership has engaged in activity that may constitute gross mismanagement and a substantial and specific danger to public safety. A report of your investigation on these allegations and any related matters is due to the Office of Special Counsel (OSC) by March 2, 2024.

[REDACTED] [REDACTED] who consented to the release of his name, disclosed that the understaffing of FAA Medical Officers in AAM has led to extraordinary backlogs in the review of medical certificates and clearances, which negatively impacts safety in the national air space. The allegations to be investigated include:

- AAM has failed to review medical certificate determinations in a timely manner, as prescribed by 14 C.F.R. § 67.407 and agency policy, resulting in approximately 1200 airmen holding FAA medical certificates who may not be medically qualified to fly;
- The agency's lengthy delay in processing medical applications deters airmen from disclosing illness, injury, and medications that may affect their eligibility for a medical certificate;
- AAM's backlog conducting Air Traffic Controller Specialist's medical clearance examinations may lead to a shortage of employees controlling the national air space;

- FAA leadership has failed to implement any recruitment or retention incentives to hire the needed staff despite consistent understaffing and inability to fill Medical Officer positions; and
- Any additional, related allegations of wrongdoing discovered during the investigation of the foregoing allegations.

According to [REDACTED], AAM is authorized to have 70 Medical Officers, but currently employs only 47 Medical Officers due to the agency's inability to fill vacant positions. [REDACTED] alleged that FAA management has failed to take adequate steps to address this understaffing. In addition, [REDACTED] alleged the understaffing creates a substantial and specific danger to public safety for numerous reasons. First, under 14 C.F.R. § 67.407, the FAA Administrator delegates the authority to issue, renew, or deny pilots' medical certificates to the Federal Air Surgeon and to aviation medical examiners. When an aviation medical examiner issues a medical certificate, AAM has 60 days to review the determination for errors or disqualifying medical conditions. After 60 days, the issued certificate is considered to be affirmed and should AAM's review reveal errors or disqualifying medical conditions, the agency must undertake a lengthy legal enforcement action, outlined in FAA Order 8500.1D, to suspend or revoke the medical certificate. [REDACTED] disclosed that as of December 31, 2023, AAM has 1200 pending enforcement actions, which means that there are 1200 pilots holding FAA medical certificates who may ultimately be disqualified from flying.

In addition, [REDACTED] alleged that AAM has failed to timely review medical certificates deferred by aviation medical examiners. [REDACTED] disclosed that it is AAM's policy to reach aeromedical decisions within 60 days, however, in fiscal year 2022, AAM only processed 5,313, or approximately 16%, of the deferred cases within 60 days. [REDACTED] alleged that AAM takes over 90 days to reach a decision in the vast majority of deferred medical certificate cases. According to [REDACTED], the delay in processing medical applications has been reported by aviation advocacy groups to deter pilots from reporting significant medical issues, injuries, and medications that are potentially incapacitating in flight.

Last, [REDACTED] alleged that the understaffing of Medical Officers may lead to a shortage in Air Traffic Control Specialists (ATCS) because AAM is responsible for the initial medical clearance to start training for all new ATCS. [REDACTED] disclosed that the FAA has selected more than 4,100 ATCS applicants this year who require medical clearance examinations. This is a nearly 250% increase over AAM's average workload over the past seven years. [REDACTED] alleged the timely examination of ATCS applicants is not achievable with current AAM staffing levels and ultimately, will result in a shortage of ATCS. [REDACTED] reported that currently the backlog is approaching 1,000 applicants.

Pursuant to my authority under 5 U.S.C. § 1213(c), I have concluded that there is a substantial likelihood that the information provided to OSC discloses gross mismanagement and a substantial and specific danger to public safety. Please note that specific allegations and

The Honorable Pete Buttigieg

January 4, 2024

Page 3 of 3

references to specific violations of law, rule or regulation are not intended to be exclusive. If, in the course of your investigation, you discover additional violations, please include your findings on these additional matters in the report to OSC. As previously noted, your agency must conduct an investigation of these matters and produce a report, which must be reviewed and signed by you. Per statutory requirements, 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.

Additional important requirements and guidance on the agency report are included in the attached Appendix, which can also be accessed at <https://osc.gov/Documents/PublicFiles/1213Appendix.pdf>. If your investigators have questions regarding the statutory process or the report required under section 1213, 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 black ink that reads "Karen Gorman". The signature is written in a cursive style with a long, sweeping underline.

Karen Gorman  
Acting Special Counsel

Enclosure

cc: The Honorable Eric J. Soskin, Inspector General

## **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.
- Should the agency head delegate the authority to review and sign the report, the delegation must be specifically stated and include the authority to take the actions necessary under 5 U.S.C. § 1213(d)(5).
- 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.
- 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. See 5 U.S.C. §§ 1213(f), 1219(a)(1).