

# DOWNLOAD PDF OVERSIGHT HEARING ON WHISTLEBLOWER PROTECTION AND THE OFFICE OF SPECIAL COUNSEL

## Chapter 1 : United States Office of Special Counsel - Wikipedia

*Full text of "Oversight hearing on whistleblower protection and the Office of Special Counsel: hearing before the Subcommittee on the Civil Service of the Committee on Post Office and Civil Service, House of Representatives, One Hundred Third Congress, first session, March 31, "*

Recent history[ edit ] Whistleblowers disclose acts of illegality, fraud , waste, and abuse This can prevent government failure in the future. Whistleblowing can tell us where money is leaking from the system. Even before the current economic crisis, the Pentagon leadership was discussing whether the federal debt was now a national security threat, and not just an economic issue. In , the Office of the Inspector General, U. Department of Defense targeted the Whistleblower Protection Program as a top priority. Through informational articles, posters, and briefings, the DoD IG significantly increased public awareness of whistleblower programs. It also provided information to Members of Congress regarding legislation able to strengthen whistleblower protections. Amendments to the statutes have broadened their application and expanded the protections for whistleblowers. Although multiple laws cover employees in different categories, there is a common thread running through each federal whistleblower statute enforced by the Inspector General. Congress entrusted the DoD IG with either conducting or overseeing inquiries and investigations into whistleblower reprisal allegations. This offers a deterrent to potential reprisors by ensuring prompt and thorough investigation into alleged violations. It also provides a remedy to those who have been reprisal against. Timeliness of investigations is a continuing challenge because of the complexity of reprisal situations, but the DoD IG states it is determined to become the benchmark for timely, high-quality investigations while fostering an environment within the DoD where employees are encouraged to come forward to "blow the whistle" on fraud, waste, and abuse. During the first half of FY , DoD IG closed cases involving whistleblower reprisal and senior official misconduct. The case substantiation rate for full investigations of reprisal allegations was 20 percent and 15 percent for investigations of senior official misconduct. Highlights include the following: During , DCIS reviewed qui tam referrals that resulted in 56 investigations. On February 25, , the inspector general released its most recent report of investigation involving defense intelligence community employees. The report was the ninth case in a series of oversight actions beginning in This line of investigations was a cooperative effort with the inspectors general of the National Security Agency and the Defense Intelligence Agency to provide whistleblower protection to members of the intelligence and counterintelligence communities. DoD IG currently has five cases of alleged reprisal against civilian employees of the intelligence community engaged in national intelligence work and ten cases of alleged reprisal against civilians engaged in military intelligence work. Stories concerning overpriced spare parts and underperforming weapon systems dominated media headlines. Members of Congress concerned about those issues championed the cause of whistleblowers alleging they were reprisal against for exposing procurement-related wrongdoing. In the years following, Congress has enacted, and amended, a series of laws aimed at protecting civilian appropriated-fund employees, military members, appropriated and nonappropriated fund employees, and Defense contractor employees from reprisal for engaging in whistleblowing activities. As early as December , the Secretary of Defense mandated that "no adverse action [be] taken against any employee because the employee reports" questionable activities within the intelligence community. Seven years prior to the passage of the Whistleblower Protection Act of , the Department of Defense was already working through the lessons learned by other branches of the federal government over the previous decade. A year later in , Congress passed a law prohibiting reprisals against non-appropriated fund employees for blowing the whistle on wrongdoing at military base facilities. In , the first statute aimed at Defense contractor employee whistleblower protection was enacted. At this time, members of the Congressional Military Reform Caucus also became concerned about military service members who chose to "blow the whistle" on DoD waste, fraud, and abuse. He openly challenged whether the operational testing of the vehicle was realistic enough. This angered Army officials to

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the extent that they threatened him with an unfavorable reassignment in reprisal. His reassignment was cancelled after congressional intervention. This whistleblower event became the subject of a movie called *The Pentagon Wars*. In , a congressional committee held hearings on whistleblower protections for military service members. Responding to the testimony from, and press reports about, service members who claimed they were punished for reporting wrongdoing to members of Congress and Inspectors General, Congress passed the Military Whistleblower Protection Act , title 10, United States Code, Section . In the early s, Congress enhanced protections for military members after learning about reports that service members who "blew the whistle" were being sent for involuntary mental health evaluations in reprisal. Congress added that a referral for an involuntary mental health evaluation was an unfavorable personnel action under Title 10 U. In , the National Security Agency proactively issued the first whistleblower protection directive authored by a Defense intelligence agency. The same year, the U. Office of Special Counsel suggested that executive branch agencies establish an ombuds system to assist appropriated fund whistleblowers within the federal government. DoD Whistleblower Program Today[ edit ] Aviation maintenance and its impact on warrior safety has also been a concern of Defense whistleblowers. To realize this vision, the IG is continually reassessing its programs, evaluating the need for legislative changes, and expanding the awareness of the protections available to whistleblowers in all categories. Some of the more significant issues for the future include: Office of Special Counsel Section c Certification effort throughout the Department, and improving the protections for appropriated fund employees within the intelligence community. Only through effective enforcement and robust education can DoD IG create an environment where DoD employees feel comfortable coming forward to raise concerns about waste, fraud, and abuse without the fear of reprisal. The Deputy Inspector General for Administrative Investigations is assigned the mission of ensuring that allegations of whistleblower reprisal are resolved in an objective and timely manner. The consolidation of these directorates enabled DoD IG to increase efficiency and consistency in investigative procedures. Formerly, The Deputy supervised: Office of Special Counsel , reviews and investigates allegations of reprisal filed by DoD appropriated fund civilian employees. The Military Reprisal Investigations MRI directorate [10] has the statutory responsibility to investigate allegations of whistleblower reprisal filed by military members, DoD non-appropriated fund employees, and DoD contractor employees. Reprisal investigations[ edit ] WRI is responsible for conducting and reviewing investigations conducted by the military service and defense agency IGs into allegations of whistleblower reprisal made by DoD military service members, non-appropriated fund employees and DoD contractor employees under Title 10 of the United States Code and American Reinvestment and Recovery Act. WRI additionally investigates allegations that military members were restricted from communicating with a member of Congress or an IG. WRI also investigates, on a discretionary basis, allegations of reprisal filed by DoD appropriated fund civilian employees and in particular, civilian employees of the defense intelligence community. Finally, WRI is responsible for investigating and reviewing investigations of alleged procedural violations of DoD Directive . In response to recent internal and external reviews, DoD IG recently hired more than a dozen additional investigators to address the ever-increasing number of whistleblower reprisal complaints filed with DoD IG and the military services. Example[ edit ] Semi-Annual Report to Congress, April 1, to September 30, [ edit ] During FY , the Department received a total of 1, complaints involving reprisal, restriction from communicating with a member of Congress or IG and procedurally improper mental health evaluation referrals and closed a total of complaints. Two Marine Corps civilian officials influenced an initial below-average performance report of a subordinate in reprisal after the subordinate reported safety deficiencies and improper training of Marines to his commanding officer and the Headquarters Marine Corps Sports Division. The member had alleged to an equal opportunity officer that another unit member made inappropriate racial comments during an annual training tour. Corrective action is pending. Additionally, the commander made comments to the soldier during a counseling session restricting the soldier from communicating with an IG. The subordinate had alleged that the squadron commander committed fraud by allowing a pilot to work one week per month and not requiring the pilot to document his remaining time. The

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senior master sergeant retired before corrective action could be taken. Corrective Action Taken on Whistleblower Cases Closed in Previous Reporting Periods An Army colonel was removed from command, received an unfavorable evaluation report and a general officer reprimand for denying a subordinate soldier an in-place consecutive over-seas tour and issuing the subordinate a referred evaluation report for filing an IG complaint. In the same case, an Army lieutenant colonel received a downgraded evaluation report for attempting to restrict a subordinate officer from filing an IG complaint. An Army captain received verbal counseling and training for not following the procedural requirements in referring a service member for an emergency mental health evaluation. An Air Force Reserve colonel received a general officer reprimand for denying a subordinate a retraining request for filing an equal opportunity complaint against the colonel. In the same case, an Air Force Reserve master sergeant received a letter of admonishment for not recommending an airman for promotion because the airman filed an equal opportunity complaint against the master sergeant. The Air Force Board for Correction of Military Records recently granted relief to a retired lieutenant colonel after they reviewed a July substantiated reprisal investigation involving unfavorable actions taken against the officer by a management official. Semi-Annual Report to Congress, October 1, to March 31, [ edit ] During the first half of FY , DoD IG implemented several improvements to investigative and oversight functions to include streamlining the complaint intake process, providing more robust training, revising written policies and procedures and strengthening whistleblower reprisal oversight functions. The chief master sergeant received written admonishment in response to the substantiated reprisal allegation. The member had alleged that a unit member drove a government vehicle while under the influence of alcohol and that his unit improperly used its government purchase card. In addition, the unit commander and medical officer failed to follow the required procedures for a mental health evaluation. Finally, the unit deputy commander restricted the member from communicating with a member of Congress. The complaint alleged both reprisal and restriction; the latter was not included in the statistics as a separate investigation of restriction. The commander retired before corrective action could be taken; however, the staff sergeant was advised of the right to petition the Board for Correction of Military Records for relief. The lieutenant colonel retired from the Army before corrective action could be taken. Two Army noncommissioned officers received general officer reprimands for threatening nonjudicial punishment if the subordinates complained to an IG about a hostile work environment. An Army staff sergeant informed an IG that the command was hampering retirement training. The sergeant received an unfavorable evaluation report in reprisal for the complaint. The rating officials received general officer reprimands. Section 4a of the Inspector General Act requires the inspector general to "review existing and proposed legislation and regulations relating to the programs and operations of the Department of Defense" and to make recommendations "concerning the impact of such legislation or regulations on the economy and efficiency in the administration of programs and operations administered or financed by the Department or the prevention and detection of fraud and abuse in such programs and operations" DoD IG is given the opportunity to provide information to Congress by participating in congressional hearings and briefings. Way Forward As part of the DoD IG outreach initiative to improve the reporting of fraud, waste, abuse, and mismanagement, we recently deployed a website on the Joint Worldwide Intelligence Communication System. DoD IG is committed to providing an effective means for individuals to make disclosures involving classified information. The website incorporates best practices as identified by the Council of Inspectors General on Integrity and Efficiency, and provides detailed information to assist and direct individuals making disclosures. DoD IG established a working group focused on distribution of hotline communication materials. The working group will concentrate on improving current distribution methods and will consider social media options to expand global research. DoD IG has changed processes for handling reprisal related complaints to improve the efficiency and timeliness of referrals. Prior to FY , the Inspector General maintained separate offices for military and civilian reprisal investigations. Two DoD employee categories were of specific concern: CRI uses "title 5" standards for its investigations. The Department of the Interior , through Inspector General Earl Devaney , was the first office to establish an ombuds program

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assisting appropriated-fund civilian employees with whistleblowing issues. That office limited its focus to outreach, rather than investigations. CRI uses a similar model, but added an investigations component to the promotion of whistleblowing. In , the Internal Revenue Service created an ombudsman office. As its former director, Dan Meyer said in a May interview, the idea behind the office was to "coordinate a general. The Inspector General then makes a finding. The Departments of Commerce, Education and Homeland Security also established offices to conduct outreach and investigate allegations of whistleblower reprisal against appropriated fund civilian employees. During these investigations, CRI developed the first protocol for reviewing security clearance decision-making process based on Title 5, United States Code. CRI was established in to provide an alternate means by which DoD civilian appropriated fund employees could seek protection from reprisal.

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## Chapter 2 : Office of Special Counsel | Whistleblower Support Blog

*House to Hold Oversight Hearing on US Office of Special Counsel Tomorrow July 11, - The Government Accountability Project (GAP) applauds the Government Oversight and Reform Subcommittee on the Federal Workforce for holding an oversight hearing on the U.S. Office of Special Counsel (OSC).*

Jurisdiction[ edit ] Pursuant to 5 U. Office of Special Counsel has jurisdiction over most prohibited personnel practice PPP complaints brought by executive branch employees, former employees, and applicants for employment hereinafter simply "employee" or "employees". When a PPP complaint is submitted, the agency examines the allegations. If OSC finds sufficient evidence to prove a violation, it may seek corrective action, disciplinary action, or both. By statute, federal employees may not be retaliated against when they disclose information that they reasonably believe evidences the following types of wrongdoing: The statute made OSC an independent agency within the executive branch of the federal government, with continued responsibility for the functions described above. Congress enacted legislation in that significantly amended Hatch Act provisions applicable to federal and District of Columbia D. Provisions of the Act regarding certain state and local government employees were unaffected by the amendments. It defined employment-related rights of persons in connection with military service, prohibited discrimination against them because of that service, and gave OSC new authority to pursue remedies for violations by federal agencies. It provided, for example, that within days after receiving a prohibited personnel practice complaint, OSC should determine whether there are reasonable grounds to believe that such a violation occurred, exists, or will be taken. The act extended the protections of certain legal provisions enforced by OSC to approximately 60, employees of what is now the Department of Veterans Affairs DVA , and to employees of certain government corporations. It also broadened the scope of personnel actions covered under those provisions. Finally, the act made federal agencies responsible for informing their employees of available rights and remedies under the WPA, and directed agencies to consult with OSC in that process. The WPEA strengthens protections for federal whistleblowers by removing loopholes that deterred federal employees from disclosing waste, fraud, abuse, and mismanagement. It also removes restrictions that narrowed the scope of what constituted a "protected disclosure" under the Whistleblower Protection Act. Finally, it expands whistleblower reprisal protection to employees of the TSA. This update to the Hatch Act of allows most state and local government employees to run for partisan political office, many of whom were prohibited from running for partisan office under the original Hatch Act. Under the new law, state and local government employees are no longer prohibited from running for partisan office unless their salary is paid for completely by federal loans or grants. As a result of the Hatch Act Modernization Act, many state and local government employees will be able to participate more actively in governance of their communities. The Watergate investigation of the s revealed a Nixon administration operation to replace the non-partisan civil service system with a politically loyal workforce dedicated to partisan election goals. Every agency had a shadow "political hiring czar" whose operation trumped normal civil service authority of personnel offices. Then-White House Personnel Office chief Fred Malek teamed up with Alan May to prepare the "Malek Manual," a guide to exploiting loopholes in civil service laws to drive politically undesirable career employees out of government and replace them with applicants selected through a political rating system of 1â€”4, based on factors such as campaign contributions and future campaign value. Though not as productive as it could have been, as a young agency in , the Office of Special Counsel filed two requests for corrective action with the Merit Systems Protection Board. In Frazier, four deputy U. Marshals were threatened with geographic reassignment for blowing the whistle and exercising their appeal rights. In Tariela and Meiselman, two high-level Department of Veterans Affairs employees were threatened with reassignment for disclosing violations of laws, rules, and regulations. In its first year, the Office of Special Counsel also requested legislation regarding many concerns, among them whether the Special Counsel has litigation authority in court, and it asked for administrative independence

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from the Merit Systems Protection Board, of which it was a part. He used its techniques to purge the professional civil service experts on his own staff, and replace them with employees who viewed whistleblowers as crazy troublemakers disloyal to the President. He taught courses to federal managers on how to fire whistleblowers without getting caught by OSC investigators, using the OSC Investigations Manual as a handout. He tutored Interior Secretary James Watt on how to remove a whistleblowing coal mine inspector from the Department of Interior. The OSC became what one Senate staffer called "a legalized plumbers unit. Johnson Space Center JSC "created and were perpetrating a serious risk to public safety, such as the in-flight failure of a space shuttle, by ignoring their own specifications and safety margins for the effects of electromagnetic interference between and among systems within a given space shuttle. The certification program offered guidance and enumerated five steps required for meeting the statutory obligation. According to an Office of Special Counsel press release, air traffic controllers alleged that there was "a management cover-up of air traffic control operational errors" in the "safe separation between aircraft under their control. Post Office in Mobile, Alabama. Rather than looking for an alternate position for him, though, the postmaster sent Harris a letter saying that there was no work available for him," in violation of USERRA. Senior Bush political adviser Karl Rove was reported to be a subject of the investigation. In certain cases, EEOC may also have jurisdiction over claims of sexual orientation discrimination, such as a claim of sexual stereotyping, i. In fiscal year , the number of successful mediations increased from 50 percent to 77 percent, and nearly 3. Marine Corps and Paul T. Hardy, a member of the U. These changes were largely accepted by Congress in the form of the Hatch Act Modernization Act, which became law on January 28, It modified penalties under the Hatch Act to allow for disciplinary actions in addition to removal for federal employees and clarified the applicability to the District of Columbia of provisions that cover state and local governments. Additionally, it limited the prohibition on state and local employees running for elective office to employees whose salary is paid completely by federal loans or grants. Port Mortuary whistleblowers and the subsequent statutorily-required investigation by their agency, the U. Subsequently, OSC reported to the U. Air Force that three mortuary supervisors had retaliated against the whistleblowers and should be disciplined. According to an OSC press release in , the agency has received disclosures from FAA whistleblowers since , with most regarding aviation safety. Department of Labor to enforce the Uniformed Services Employment and Reemployment Rights Act USERRA , which, according to the Office of Special Counsel, "prohibits employment discrimination against veterans and members of the National Guard and Reserve and entitles them to reinstatement in their civilian jobs upon their return from military duty. Throughout this process, the Department of Veterans Affairs VA has consistently failed to take responsibility for identified problems. Even in cases of substantiated misconduct, including acknowledged violations of state and federal law, the VA routinely suggests that the problems do not affect patient care. Whistleblowers have also alleged that "a radiologist failed to read thousands of images or misread them, leading to missed diagnoses. Medical records were falsified to cover up these errors. Management knew of these problems and did not notify patients or require a full review of the images in question. He was also told that any following breaches would be seen as done on purpose and punished more harshly. Bush nominated Scott J. Senate on December 9, On January 5, , he was sworn in to serve a five-year term. He was removed as Special Counsel on October 23, He was subsequently found to have obstructed the investigation by removing material from his computer. During the Bloch era, the OSC was criticized for 1 very rarely recognizing legitimate whistleblowers, typically only when the whistleblower had already prevailed elsewhere; 2 taking too long to investigate meritorious cases; 3 using a conservative litmus test in hiring; 4 discouraging federal whistleblowers from using their legal protections, and 5 generally siding with the federal administration instead of with the whistleblowers it was supposed to protect. Akaka stated, "organizations that help whistleblowers claim that OSC has gone from being their first option for relief to their last choice since OSC no longer works with agencies to achieve informal relief and the percentage of corrective actions and stays has been cut in half since He graduated from Harvard Law School and spent 18 years working as a career prosecutor in California. In , he joined the staff of the House

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Committee on Oversight and Government Reform, the chief investigative committee of the United States House of Representatives. Under Chairman Darrell Issa, and later, Chairman Jason Chaffetz, he led investigations of the federal bureaucracy and fought on behalf of whistleblowers to protect American taxpayers. Kerner was also the staff director under Ranking Member Sen. He left the Hill in early and joined Cause of Action Institute as vice president for investigations. Cause of Action is a nonpartisan oversight group committed to exposing waste, fraud and abuse in the federal government. It has worked with whistleblower and good government groups throughout the country. Lerner April – October She previously served as the federal court appointed monitor of the consent decree in Neal v. Department of Corrections, a sexual harassment and retaliation class action. Office of Human Rights. Lerner earned her undergraduate degree from the honors program at the University of Michigan with high distinction and was selected to be a Truman Scholar. Reukauf, Acting November – April Reukauf joined the legal staff of the U. In he became the head of an Investigation and Prosecution division. Reukauf was, for several years, in private practice in Washington, DC. His practice was focused on general civil litigation and criminal defense. Reukauf received his undergraduate degree from Hamilton College in and his law degree from Georgetown University Law Center in Bloch December – November On June 26, , President George W. The Senate unanimously confirmed Bloch on December 9, Bloch brought 17 years of experience to the Office of Special Counsel, including litigation of employment, lawyer ethics, and complex cases before state courts, federal courts and administrative tribunals. He briefed and argued cases before state and federal appellate courts. Department of Justice, where he worked on First Amendment cases, regulations, intergovernmental outreach, and programmatic initiatives. Bloch tried jury trials before state and federal courts, representing employees and employers in cases involving whistleblower and other retaliation claims, as well as civil rights claims. Bloch served as chair of his county Bar Ethics and Grievance Committee, investigating cases of alleged breaches by attorneys of ethics rules, and making recommendations to the state Supreme Court on disciplinary action. He also served on the state board of discipline, hearing testimony and legal arguments, and making findings on appropriate discipline of attorneys. He lives with his wife, Catherine, and their seven children in Alexandria, Virginia. Kaplan April – June Kaplan came to OSC with extensive experience litigating employment-related issues before federal courts and administrative tribunals. Prior to her appointment as Special Counsel by President Bill Clinton , Kaplan served as Deputy General Counsel of the National Treasury Employees Union NTEU , where she represented the interests of , employees in the areas of civil liberties, administrative law, racial and sexual discrimination, and labor law. During her 13 years at NTEU, Kaplan briefed and argued dozens of cases at all levels of the federal courts on behalf of the union and the federal employees it represented. Many of the cases in which Kaplan participated resulted in important precedent-setting decisions including, among others, National Treasury Employees Union v. Von Raab, U. United States, S. Kaplan began her legal career in at the U. Department of Labor, Office of the Solicitor, where she worked as a staff attorney in the Division of Employee Benefits.

### Chapter 3 : Department of Defense Whistleblower Program - Wikipedia

*Oversight hearing on whistleblower protection and the Office of Special Counsel: hearing before the Subcommittee on the Civil Service of the Committee on Post Office and Civil Service, House of Representatives, One Hundred Third Congress, first session, March 31,*

### Chapter 4 : Hearing Focuses Whistleblower Protections, Feb 1 | Video | [www.nxgvision.com](http://www.nxgvision.com)

*The United States Office of Special Counsel (OSC) is a permanent independent federal investigative and prosecutorial agency whose basic legislative authority comes from four federal statutes: the Civil Service Reform Act, the Whistleblower Protection Act, the Hatch Act, and the Uniformed Services Employment and Reemployment Rights Act*

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