

Proposed Rule Would Extend OSC Whistleblower Protections to Government Contractors: Office of Special Counsel

Article By:

Heather L. Finstuen

On January 22, 2015, the **U.S. Office of Special Counsel (“OSC”)** published a proposed rule that, if adopted, would extend its existing whistleblower regulations beyond government employees to include certain employees of federal contractors, subcontractors, and grantees. This proposed rule change is *designed to provide a parallel mechanism for reporting types of government wrongdoing* covered by the **National Defense Authorization Act of 2013 (“NDAA”)**, which itself extended federal employee whistleblower protections to certain employees of federal contractors, subcontractors, and grantees.

In proposing the rule, the OSC recognized that the landscape of the federal workplace has changed significantly since Congress first provided whistleblower protections to federal employees in the *Civil Service Reform Act of 1978*. “In the modern workforce, employees of contractors, subcontractors, and grantees often work alongside Federal employees, having similar if not identical duties. Thus contractors are similarly situated to observe or experience the same type of wrongdoing as are Federal employees.”

Under the OSC’s existing regulations and proposed rule, the OSC provides an “independent and secure channel” for the reporting of a government agency’s wrongdoing, which is then assessed by the OSC and referred to the relevant agency for investigation if the OSC determines the allegation meets certain standards set out in the regulations.

Under the proposed rule, an employee of a contractor, subcontractor, or grantee may file a disclosure of government wrongdoing at the OSC if he or she alleges retaliation for making a disclosure protected under the NDAA, and he or she works or worked on behalf of a government agency over which the OSC has jurisdiction to accept disclosures. The proposed rule does not appear to expand upon the types of government wrongdoing that an employee may report directly to an agency Inspector General under existing law. Nor does it expand upon existing retaliation protections or remedies provided under the NDAA for employees making such reports. Rather, the extension of the OSC’s regulations provides a separate and independent avenue for these individuals to report government wrongdoing and, if the OSC refers the report to the relevant agency for investigation, provides for ongoing OSC oversight of the agency’s investigation. Written comments on the proposed rule are due on or before March 23, 2015.

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