

March 23, 2015

Lisa Terry  
General  
U.S. Office of Special Counsel  
1730 M Street, NW, #300  
Washington, DC 20036

Re: Comments on Proposed Rule To Allow Federal Contractors, Subcontractors,  
and Grantees To File Whistleblower Disclosures With the U.S. Office of Special Counsel

Dear Ms. Terry:

The Government Accountability Project (GAP) and the Project On Government Oversight submit these comments on the Office of Special Counsel's (OSC) [proposed rule](#) to allow current and former federal contractors performing federal functions to submit whistleblowing disclosures through 5 USC § 1213 to challenge illegality, gross waste, gross mismanagement, abuse of authority, or a substantial and specific danger to public health or safety. From discussions with OSC staff, the proposal would permit disclosures from contractor employees performing federal functions normally handled by Title 5 employees, as well as from contractors performing federal functions for agencies in the Intelligence Community.

This is an outstanding initiative. As a law enforcement agency the OSC already qualifies to receive disclosures under the provisions of the National Defense Authorization Act (NDAA) whistleblower provisions, 10 USC § 2409(a)(2)(E) and 41 USC § 4712(a)(2)(E). But no other law enforcement agency provides legitimacy through a "substantial likelihood" finding, controls on agency investigations and corrective action, whistleblower enfranchisement to comment on any ensuing report, an OSC evaluation of the report's adequacy, disclosure of results to all relevant government offices and full transparency in the public record. The OSC deserves appreciation from all good government organizations for publicizing and inviting these disclosures.

In addition to structural superiority, the OSC whistleblowing channel has more credibility than direct disclosures to agency heads and Inspectors General (IG). Unfortunately, IG's too often have a record of primarily investigating the whistleblowers instead of their evidence, or of breaching whistleblowers' confidentiality. Intelligence Community whistleblower Edward Snowden explained that he was too distrustful to work with the Pentagon IG due to a history of betraying whistleblowers' trust. While the OSC may disappoint some whistleblowers with its judgment calls, since 1994 its track record has been flawless in protecting confidentiality and not causing more harm to those who work through the section 1213 channel.

Two suggestions may further improve this initiative. First, the OSC also should consider disclosures for referral under 5 USC § 1213(g) based on a reasonable belief. The same public policy considerations for forwarding those "early warnings" to agency chiefs apply, whether the evidence comes from a contractor or government employee. Second, the OSC should accept

disclosures from current and former contractor whistleblowers about “any” illegality or other serious misconduct they discover related to a contract, not just government wrongdoing. “Any” illegality is the new standard in the Whistleblower Protection Enhancement Act for government employees, and this suggestion is consistent with the scope for protected disclosures under the NDAA.

Even without further changes, however, this proposed rule is an outstanding advance in government accountability that deserves the whistleblower community’s full support, and contractor whistleblowers’ full participation.

Respectfully submitted,

Thomas Devine, Legal Director  
Government Accountability Project

Scott Amey, General Counsel  
Project On Government Oversight