

# CONTRACTOR & GRANTEE WHISTLEBLOWING



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## OVERVIEW

Employees of entities that contract with, or receive grants from, the federal government (e.g., a defense contractor or a nonprofit organization) have rights when blowing the whistle to Congress or other protected audiences. These laws also cover employees of subcontractors, subgrantees, and personal services contractors.<sup>1</sup>

Rights are codified at 41 U.S.C. § 4712. For contracts or grants stemming from the Defense Department or NASA, the applicable statute is 10 U.S.C. § 4701. Additional processes are in the Federal Acquisition Regulation (FAR) — the rules that agencies follow when they acquire goods and services from the private sector.

Note that there are separate laws for contracts and grants stemming from **intelligence community** agencies, not covered in this document.

## SCOPE OF PROTECTIONS

To be protected from retaliation, covered employees must have a **reasonable belief** that the information they disclosed evidences:

- Gross mismanagement of a federal contract or grant
- A gross waste of federal funds
- An abuse of authority relating to a federal contract or grant
- A substantial and specific danger to public health or safety; or
- A violation of law, rule, or regulation related to a federal contract (including the competition for or negotiation of a contract) or grant

It is also unlawful for employers to prohibit employee whistleblowing through an internal confidentiality agreement or statement. Pursuant to federal law, federal funds cannot be used for a contract, grant, or agreement that requires employees to waive their whistleblower rights.<sup>2</sup>

## Protected Audiences

To be protected, disclosures can be made to any of the following audiences:

- A Member of Congress or a representative of a committee of Congress
- An Inspector General
- The Government Accountability Office
- A Federal employee responsible for contract or grant oversight or management at the relevant agency involved
- An authorized official of the Department of Justice or other law enforcement agency
- A court or grand jury
- A management official or other employee of the contractor or subcontractor who has the responsibility to investigate, discover, or address misconduct

Employees are also protected if their disclosure is part of a judicial or administrative proceeding regarding waste, fraud, or abuse of a federal contract or grant.

## ENFORCEMENT OF RIGHTS

If a whistleblower believes they are facing unlawful retaliation because of a protected disclosure, they may file a complaint with the office of inspector general (OIG) of the agency that awarded the contract or grant. That filing triggers a time-bound, administrative process involving an investigation and adjudication. Whistleblowers who do not have a favorable outcome through this administrative process, or who do not receive a timely decision, may seek relief in federal district court before a jury.

There is a **three-year statute of limitations** from the date of the alleged retaliation for whistleblowers to file their OIG complaint.

Those wishing to learn about the OIG process or how to file a retaliation complaint may consider contacting the

<sup>1</sup> Employing entities may include state or local governments. However, case law has limited court enforcement where sovereign immunity is not explicitly waived.

<sup>2</sup> Further Consolidated Appropriations Act, 2024, Pub. L. No. 118-47, div. B, tit. VII, sec. 742.

OIG's Whistleblower Protection Coordinator (WPC). For more on WPCs, see the [OIG Fact Sheet](#) in the [additional resources](#) section of this document.

### Burden of Proof

When adjudicating a whistleblower retaliation claim, laws mandate that the relevant OIG, agency head, or court, apply the same burden of proof that is used with executive branch employee whistleblowers under the [Whistleblower Protection Act](#).

### Office of Inspector General Investigation

Upon receipt of a complaint, the OIG must first determine if it is frivolous, fails to allege prohibited conduct, or was previously addressed. If none of these apply, the IG must complete an investigation and report within **180 days** of receiving the complaint. The OIG then sends the completed report to the whistleblower, the employer, and the head of the relevant agency for adjudication.

### OIG Confidentiality

An OIG is prohibited from responding to inquiries or otherwise disclosing information received from or about a whistleblower who is alleging retaliation, with several notable exceptions:

- The whistleblower gave their consent
- The disclosure is in accordance with the Privacy Act
- The disclosure is required under federal law
- The disclosure is necessary to conduct the investigation into the alleged retaliation

### Adjudication by the Agency Head

Upon receipt of the OIG's report, the agency head must decide within **30 days** to either grant or deny relief to the whistleblower.

If the agency denies relief or fails to decide in time, the whistleblower can take their claim to federal district court and may request a jury trial. There is a **two-year statute of limitations** for whistleblowers to exercise this court kick-out option.

### Agency Power Over Contractors/Grantees

If the agency head grants relief to the whistleblower, the agency must order the contractor or grantee involved to take action to address the wrongful retaliation. The agency head may also consider disciplinary or corrective action against agency employees.

If the contractor or grantee fails to follow the agency order, the agency must seek court enforcement of its order through the Justice Department. The whistleblower can join as a party to that case, or they can seek enforcement on their own. Separately, the employer has a **60-day window** to challenge the agency's order in federal appeals court.

### EDUCATION & COMPLIANCE

Agencies are required to ensure that contractors and grantees educate employees about their whistleblower rights. The FAR requires agencies to include an explicit provision in most federal contracts, expressly stating that employees of the contracting company have anti-retaliation rights.

*This document is for general informational purposes only. Its contents are not legal advice.*

## ADDITIONAL RESOURCES

Department of Defense Office of Inspector General: [How to File a Whistleblower Reprisal Complaint](#) (DoD contractors/grantees)

FAR 52.203-17: [Contractor Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights](#)

FAR Subpart 3.9: [Whistleblower Protections for Contractor Employees](#)

Office of the Whistleblower Ombuds: [Fact Sheet: Whistleblowers and Offices of Inspectors General](#)

Oversight.gov: [Where to Report Fraud, Waste, Abuse, or Retaliation](#)