

PART 1800—FILING OF COMPLAINTS AND ALLEGATIONS

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AUTHORITY: 5 U.S.C. 301, 1212(e).

SOURCE: 87 FR 63405, Oct. 19, 2022, unless otherwise noted.

§ 1800.1 Scope and purpose.

The purpose of this part is to implement the U.S. Office of Special Counsel's (OSC) authorities at 5 U.S.C. 1212–1216 and should be read in concert with these statutory provisions. This part does not create new individual rights but instead is intended to inform individuals of filing options they may be entitled to under 5 U.S.C. 1212–1216, and 2302. Individuals are encouraged to go to OSC's website at <https://osc.gov> for more information about the OSC complaint form that should be used when filing with OSC.

§ 1800.2 Filing complaints of prohibited personnel practices or other prohibited activities.

(a) *Prohibited personnel practices.* Pursuant to 5 U.S.C. 1214 and 1215, OSC has investigative and prosecutorial jurisdiction over allegations that one or more of the prohibited personnel practices enumerated at 5 U.S.C. 2302 were committed against current or former Federal employees or applicants for Federal employment, including:

(1) Discrimination, including discrimination based on marital status or political affiliation (*see* §1810.1 of this chapter for information about OSC's deferral policy for discrimination complaints);

(2) Soliciting or considering improper recommendations or statements about any individual requesting, or under consideration for, a personnel action;

(3) Coercing political activity, or engaging in retaliation for refusal to engage in political activity;

(4) Deceiving or obstructing any individual with respect to competition for employment;

(5) Influencing any individual to withdraw from competition to improve or injure the employment prospects of another individual;

(6) Granting an unauthorized preference or advantage to any individual to improve or injure the employment prospects of another individual;

(7) Nepotism involving a covered relative as defined at 5 U.S.C. 3110(a)(3);

(8) Retaliation for whistleblowing (whistleblowing is generally defined as the disclosure of information by an individual who reasonably believes that the information evidences a violation of any law, rule, or regulation; gross mismanagement; a gross waste of funds; an abuse of authority; a substantial and specific danger to public health or safety; or censorship related to scientific research or the integrity of the scientific process if the censorship will cause one of the aforementioned categories of wrongdoing);

(9) Retaliation for:

(i) Exercising certain grievance, complaint, or appeal rights;

(ii) Providing testimony or other assistance to any individual exercising such grievance, complaint, or appeal rights;

(iii) Cooperating with the Special Counsel, an Inspector General, or any other agency component responsible for internal investigation or review; or

(iv) Refusing to obey an order that would require the violation of law, rule, or regulation;

(10) Discrimination based on conduct that would not adversely affect job performance;

(11) Violating a veterans' preference requirement;

(12) Taking or failing to take a personnel action in violation of any law, rule, or regulation implementing or directly concerning merit system principles at 5 U.S.C. 2301(b);

(13) Implementing or enforcing any nondisclosure policy, form, or agreement that fails to include the statement found at 5 U.S.C. 2302(b)(13) or fails to inform any individual that they retain their whistleblowing rights; and

(14) Accessing the medical record of any individual as part of, or otherwise

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in furtherance of, any other prohibited personnel practice.

(b) *Other prohibited activities.* Pursuant to 5 U.S.C. 1216, OSC also has investigative and prosecutorial jurisdiction over any allegation concerning the following:

(1) Prohibited political activity by Federal employees covered by the Hatch Act at title 5 of the U.S. Code, chapter 73, subchapter III;

(2) Prohibited political activity by State and local officers and employees covered by the Hatch Act at title 5 of the U.S. Code, chapter 15;

(3) Arbitrary and capricious withholding of information that should be released pursuant to the Freedom of Information Act at 5 U.S.C. 552 (except for certain foreign and counterintelligence information);

(4) Activities prohibited by any civil service law, rule, or regulation, including any activity relating to political intrusion in personnel decision-making;

(5) Involvement by any employee in any prohibited discrimination found by any court or appropriate administrative authority to have occurred in the course of any personnel action (unless OSC determines that the allegation may be resolved more appropriately under an administrative appeals procedure); and

(6) Pursuant to 38 U.S.C. 4324, violations of the Uniformed Services Employment and Reemployment Rights Act (USERRA), codified at 38 U.S.C. 4301, *et seq.*

(c) *Procedures for filing complaints alleging prohibited personnel practices or other prohibited activities (other than the Hatch Act).* (1) Anyone may file a complaint with OSC alleging one or more prohibited personnel practices, or other prohibited activities within OSC's investigative jurisdiction. The OSC complaint form must be used to file all such complaints.

(2) OSC will not process a complaint filed in any format other than the completed OSC complaint form designated in paragraph (c)(1) of this section. OSC will, however, accept material supplementing the contents of Form 14, as long as the filer also submits a signed form. If a filer does not use this form to submit a complaint, OSC will

provide the filer with information about the form and obtain a signature on the form. The OSC complaint form will be considered to be filed on the date on which OSC receives a completed form.

(3) The OSC complaint form requests that the filer provide basic information about the alleged prohibited personnel practices or other prohibited activities. A complaint may be amended to clarify or include additional allegations. A complaint is sufficient for investigation when OSC receives information identifying the parties, identifying any relevant personnel action(s), and describing generally the practices or activities at issue.

(4) The OSC complaint form is available:

(i) Online at: <https://osc.gov> (to print out and complete on paper, or to complete online);

(ii) By writing to OSC at: U.S. Office of Special Counsel, 1730 M Street NW, Suite 218, Washington, DC 20036-4505; or

(iii) By calling OSC at: (800) 872-9855 (toll-free), or (202) 804-7000 (in the Washington, DC area).

(5) A complainant can file a completed OSC complaint form:

(i) *Electronically at:* <https://osc.gov>;

(ii) *By email to:* info@osc.gov; or

(iii) *By mail to:* U.S. Office of Special Counsel, 1730 M Street NW, Suite 218, Washington, DC 20036-4505.

(d) *Alternate Dispute Resolution.* For selected cases, OSC may offer Alternative Dispute Resolution (ADR) pursuant to the voluntary Alternative Dispute Resolution Act of 1998, 5 U.S.C. 571-573. OSC provides information about its ADR program and process on its website at <https://osc.gov>.

§ 1800.3 Filing disclosures of information evidencing wrongdoing.

(a) *General.* Pursuant to 5 U.S.C. 1213, OSC is authorized to provide an independent and secure channel for use by current or former Federal employees and applicants for Federal employment to disclose information that they reasonably believe evidences wrongdoing by a Federal agency. Within 45 days of receipt of the disclosure, OSC must determine whether there is a substantial likelihood that the information discloses a violation of any law, rule, or

regulation; gross mismanagement; a gross waste of funds; an abuse of authority; a substantial and specific danger to public health or safety; or censorship related to scientific research or the integrity of the scientific process if the censorship will cause one of the aforementioned categories of wrongdoing. If it does, the law requires OSC to refer the information to the appropriate agency head for an investigation and a written report on the findings; and the agency head must submit the report to the Special Counsel. OSC may not disclose the identity of an individual who makes the disclosure unless the individual consents or the Special Counsel determines that the disclosure of the identity is necessary because of an imminent danger to public health or safety or imminent violation of any criminal law. The law does not authorize OSC to investigate any disclosure.

(1) *Deferral policy for certain disclosures.* When OSC determines that a disclosure is being or has been investigated by an Agency, OSC will usually defer to such investigation rather than make a substantial likelihood determination.

(2) [Reserved]

(b) *Procedures for filing disclosures.* Current or former Federal employees and applicants for Federal employment may file with OSC a disclosure of the type of information described in 5 U.S.C. 1213(a)(1). Such disclosures must be filed in writing.

(1) Filers are encouraged to use the OSC complaint form, which is available online, to file a disclosure of the type of information described in 5 U.S.C. 1213(a)(1). OSC's complaint form provides more information about OSC jurisdiction and procedures for processing whistleblower disclosures. The OSC complaint form is available:

(i) Online at: <https://osc.gov> (may be completed online or printed out and completed on paper);

(ii) *By writing to OSC at:* U.S. Office of Special Counsel, 1730 M Street NW, Suite 218, Washington, DC 20036-4505; or

(iii) *By calling OSC at:* (800) 572-2249 (toll-free), or (202) 804-7004 (in the Washington, DC area).

(2) Filers may use another written format to submit a disclosure to OSC, but the submission should include:

(i) The name, mailing address, and telephone number(s) of the individual(s) making the disclosure(s);

(ii) The department or agency, location, and organizational unit complained of; and

(iii) A statement as to whether the filer consents to disclosure of the filer's identity by OSC to the agency involved, in connection with any OSC referral to that agency.

§ 1800.4 Filing complaints of Hatch Act violations and requesting advisory opinions.

(a) Procedures for filing complaints alleging Hatch Act violations.

(1) Complainants are encouraged to use the OSC complaint form (Form 14) to file Hatch Act complaints. The OSC complaint form is available:

(i) Online at: <https://osc.gov> (to print out and complete on paper, or to complete online); or

(ii) *By writing to OSC at:* U.S. Office of Special Counsel, 1730 M Street NW, Suite 218, Washington, DC 20036-4505.

(2) Complaints alleging a violation of the Hatch Act not submitted on Form 14 may also be submitted in any written form, and should include:

(i) The complainant's name, mailing address, and telephone number (unless the matter is submitted anonymously);

(ii) The department or agency, location, and organizational unit complained of; and

(iii) A concise description of the actions complained about, names and positions of employees who took the actions, if known to the complainant, and dates of the actions, preferably in chronological order, together with any documentary evidence that the complainant can provide.

(3) Written Hatch Act complaints including the information in 1800.4(a)(2) above may be filed with OSC:

(i) *By email to:* hatchact@osc.gov; or

(ii) *By mail to:* U.S. Office of Special Counsel, 1730 M Street NW, Suite 218, Washington, DC 20036-4505.

(b) Procedures for requesting Hatch Act advisory opinions. Pursuant to 5 U.S.C. 1212(f), OSC is authorized to issue advisory opinions only about political activity of Federal officers and employees, and political activity of

certain State or local officers and employees. An individual can seek an advisory opinion from OSC:

- (1) *By email to:* hatchact@osc.gov;
- (2) *By mail to:* U.S. Office of Special Counsel, Hatch Act Unit, 1730 M Street NW, Suite 218, Washington, DC 20036–4505; or
- (3) *By phone at:* (800) 854–2824 (toll-free), or (202) 804–7002 (in the Washington, DC area).

PART 1810—INVESTIGATIVE AUTHORITY OF THE SPECIAL COUNSEL

Sec.

1810.1 Investigative policy in certain discrimination and retaliation complaints.

1810.2 Access to agency information in investigations.

1810.3 Termination of certain OSC investigations.

1810.4 Investigative policy regarding agency liaisons.

AUTHORITY: 5 U.S.C. 301 and 1212(e).

SOURCE: 87 FR 63407, Oct. 19, 2022, unless otherwise noted.

§ 1810.1 Investigative policy in certain discrimination and retaliation complaints.

OSC is authorized to investigate allegations of discrimination and retaliation prohibited by law, as defined in 5 U.S.C. 2302(b)(1) and (b)(9)(A)(ii). Because procedures for investigating discrimination and retaliation complaints have already been established in the agencies and the Equal Employment Opportunity Commission, OSC will usually avoid duplicating those procedures and will defer to those procedures rather than initiating an independent investigation.

§ 1810.2 Access to agency information in investigations.

(a) Pursuant to 5 U.S.C. 1212(b)(5), OSC is authorized to have timely access to all agency records, data, reports, audits, reviews, documents, papers, recommendations, information, or other material that relate to an OSC investigation, review, or inquiry.

(b) A claim of common law privilege, such as the attorney-client privilege, may not be used by any agency, or officer or employee of any agency, to with-

hold information from OSC. By providing such information to OSC, an agency will not be deemed to have waived the common law privilege against a non-Federal entity or against any individual in any other proceeding.

(c) In the event of contumacy or failure of an agency to comply with any request under this section, the Special Counsel shall submit a report to the committees of Congress with jurisdiction over OSC and the applicable agency.

§ 1810.3 Termination of certain OSC investigations.

(a) Pursuant to 5 U.S.C. 1214(a)(6), within 30 days of receiving a complaint alleging that a prohibited personnel practice occurred, OSC may terminate an investigation of the allegation without further inquiry if:

(1) The same allegation, based on the same set of facts and circumstances, had previously been:

(i) Made by the individual and investigated by OSC; or

(ii) Filed by the individual with the Merit Systems Protection Board;

(2) OSC does not have jurisdiction to investigate the allegation; or

(3) The individual knew or should have known of the alleged prohibited personnel practice more than 3 years before the allegation was received by OSC.

(b) Within 30 days of terminating an investigation described in paragraph (a), OSC shall notify the individual, in writing, of the basis for terminating the investigation.

§ 1810.4 Investigative policy regarding agency liaisons.

Agency liaisons facilitate their agency's cooperation with OSC's investigations by ensuring that agencies timely and accurately respond to OSC's requests for information and witness testimony, as well as by assisting with the resolution of complaints. To maintain the integrity of OSC's investigations and to avoid actual or perceived conflicts, agency liaisons should not have current or past involvement in the personnel actions at issue in the assigned case.