

# OSC Rule Seemingly Expands Federal Contractor Whistleblower Rights

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On January 22, the U.S. Office of Special Counsel (OSC), [an](#) independent investigative and prosecutorial agency that is responsible for protecting federal whistleblowers from illegal reprisal, proposed a new rule for whistleblower employees of civilian agency contractors, subcontractors, and grantees. The rule would arguably expand the disclosure rights of such whistleblowers by permitting them to bring certain allegations of federal agency wrongdoing to OSC.

Under existing law, employees of civilian agency contractors, subcontractors, and grantees [may](#) generally make protected disclosures to certain individuals and entities. [Protected disclosures](#) include disclosures of information that an employee “reasonably believes” evidences gross mismanagement of a contract or grant, gross waste of funds, abuse of authority regarding a contract or grant, or a violation of law or rule regarding a contract or grant. Employees of contractors, subcontractors, and grantees may generally make these protected disclosures [to](#), among others, Members of Congress, an Inspector General, the Government Accountability Office (GAO), and a court or grand jury. Unlike federal employees, however, they cannot make protected disclosures to OSC under existing law.

OSC’s proposed rule would change this by permitting employees of civilian agency contractors, subcontractors, or grantees to make disclosures that are already protected under existing law, as discussed above, to OSC. Under the proposed rule, OSC would then make an initial determination of whether there is a substantial likelihood that the disclosed information does, in fact, evidence gross mismanagement of a contract or grant, gross waste of funds, abuse of authority regarding a contract or grant, or a violation of law or rule regarding a contract or grant. If OSC finds such a substantial likelihood present, it would then have to refer the matter to the relevant agency head, who must then investigate the disclosure and report, in writing, any findings to OSC.

OSC’s proposed rule would arguably expand the whistleblower rights of civilian agency contractors, subcontractors, and grantees by providing them with a new avenue for bringing allegations of agency wrongdoing to light. That is, it would allow employees of such contractors, subcontractors, and grantees to make protected disclosures to OSC, where they cannot under existing law. Given OSC’s extensive role in enforcing whistleblower protections within the government and, consequently, large degree of experience in handling whistleblower complaints, this could potentially prove beneficial to contractor whistleblowers.

However, it is worth noting that the whistleblower protections available to defense contractors under existing law [mirror](#) those available to civilian contractors (i.e., defense contractors can similarly make protected disclosures to, among others, Members of Congress, an Inspector General, the GAO, or a court or grand jury). However, despite having the same whistleblower protections under existing law, OSC’s rule would seemingly only allow civilian agency contractors to make protected disclosures to OSC. Thus, if OSC’s rule became final, employees of defense contractors would seemingly have lesser whistleblower rights than contractors of civilian agencies.