



U.S. OFFICE OF SPECIAL COUNSEL

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What are "prohibited personnel practices?"

Twelve prohibited personnel practices, including reprisal for whistleblowing, are defined by law at [§ 2302\(b\) of title 5](#) of the United States Code (U.S.C.). A personnel action (such as an appointment, promotion, reassignment, or suspension) may need to be involved for a prohibited personnel practice to occur. Generally stated, § 2302(b) provides that a federal employee authorized to take, direct others to take, recommend or approve any personnel action may not:

- (1) discriminate against an employee or applicant based on race, color, religion, sex, national origin, age, handicapping condition, marital status, or political affiliation;
- (2) solicit or consider employment recommendations based on factors other than personal knowledge or records of job-related abilities or characteristics;
- (3) coerce the political activity of any person;
- (4) deceive or willfully obstruct anyone from competing for employment;
- (5) influence anyone to withdraw from competition for any position so as to improve or injure the employment prospects of any other person;
- (6) give an unauthorized preference or advantage to anyone so as to improve or injure the employment prospects of any particular employee or applicant;
- (7) engage in nepotism (*i.e.*, hire, promote, or advocate the hiring or promotion of relatives);
- (8) engage in reprisal for whistleblowing – *i.e.*, take, fail to take, or threaten to take or fail to take a personnel action with respect to any employee or applicant because of any disclosure of information by the employee or applicant that he or she reasonably believes evidences a violation of a law, rule or regulation; gross mismanagement; gross waste of funds; an abuse of authority; or a substantial and specific danger to public health or safety (if such disclosure is not barred by law and such information is not specifically required by Executive Order to be kept secret in the interest of national defense or the conduct of foreign affairs – if so restricted by law or Executive Order, the disclosure is only protected if made to the Special Counsel, the Inspector General, or comparable agency official);

(9) take, fail to take, or threaten to take or fail to take a personnel action against an employee or applicant for exercising an appeal, complaint, or grievance right; testifying for or assisting another in exercising such a right; cooperating with or disclosing information to the Special Counsel or to an Inspector General; or refusing to obey an order that would require the individual to violate a law;

(10) discriminate based on personal conduct which is not adverse to the on-the-job performance of an employee, applicant, or others; or

(11) take or fail to take, recommend, or approve a personnel action if taking or failing to take such an action would violate a veterans' preference requirement; and

(12) take or fail to take a personnel action, if taking or failing to take action would violate any law, rule or regulation implementing or directly concerning merit system principles at [5 U.S.C. § 2301](#).

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Who can be protected by the OSC from prohibited personnel practices?

General. OSC has jurisdiction over prohibited personnel practices committed against most employees or applicants for employment in Executive Branch agencies and the Government Printing Office.

Limited Jurisdiction; whistleblower protection. OSC has jurisdiction over allegations of whistleblower retaliation for employees of -

- the government corporations listed at [31 U.S.C. § 9101](#);
- the Transportation Security Administration (TSA). (please see below for further information regarding TSA).

Limited Jurisdiction; U.S. Postal Service (USPS) nepotism allegations. Under a Memorandum of Understanding (MOU) between OSC and USPS, OSC refers alleged violations of the anti-nepotism statute ([5 U.S.C. § 3110](#)) to USPS for investigation. Once USPS completes its investigation, it reports its findings and any proposed action to OSC.

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Can Transportation Security Administration employees (including security screeners), within the newly created Department of Homeland Security, file complaints with OSC?

Yes. TSA non-screener employees may file complaints alleging retaliation for protected whistleblowing under 5 U.S.C. § 2302(b)(8). OSC will process these complaints under its regular procedures, including filing petitions with the Merit Systems Protection Board, if warranted.

TSA security screeners may also file complaints alleging retaliation for protected whistleblowing under 5 U.S.C. § 2302(b)(8) pursuant to a Memorandum of Understanding (MOU) between OSC and TSA executed on May 28, 2002. The MOU and [TSA Directive HRM Letter No. 1800-01](#) provide OSC with authority to investigate whistleblower retaliation complaints and recommend that TSA take corrective and/or disciplinary action when warranted. Additional information on OSC procedures for reviewing security screener whistleblower complaints under the MOU is available at <http://www.osc.gov/tsa-info.htm>.

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Who is not protected by OSC from prohibited personnel practices?

OSC has no jurisdiction over prohibited personnel practices committed against employees of -

- the Central Intelligence Agency, Defense Intelligence Agency, National Security Agency, and certain other intelligence agencies excluded by the President;
- the General Accounting Office;
- the Federal Bureau of Investigation;
- the U.S. Postal Service (except for nepotism allegations; see above); and
- the Postal Rate Commission.

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How does the OSC handle prohibited personnel practice complaints?

Complaints Examining Unit (CEU). The CEU receives complaints filed with the OSC (see the [Forms](#) section of this site for complaint forms). The unit initially analyzes all allegations of prohibited personnel practices (as well as allegations of other activities prohibited by civil service law, rule or regulation).

When necessary, the CEU contacts the person requesting OSC action to ensure that CEU clearly understands the nature of and basis for each allegation. It conducts further inquiry to the extent necessary to determine whether the allegation warrants additional investigation.

Persons who have submitted allegations to the CEU will receive one or more of the following responses:

- a letter acknowledging receipt of their complaint and identifying the staff member assigned to handle it, with an information sheet ([Form OSC-53](#)) enclosed explaining how the complaint will be processed by the CEU;
- a status report after 90 days, and every 60 days thereafter while the matter is active;
- a letter advising that the matter has been referred to an OSC Investigation and Prosecution Division for further inquiry, with an information sheet ([Form OSC-54](#)) about the investigation and legal review process, (or, as noted below, a letter inviting the complainant to participate in mediation as an alternative to investigation);
- a preliminary determination letter, with a final opportunity for input when the CEU proposes to close a matter without remedial action or referral to an Investigation and Prosecution Division; or
- a letter advising that the OSC will take no further action because it lacks jurisdiction over the matter.

The OSC asks everyone who seeks an investigation of a possible prohibited personnel practice to select one of three consent statements ([Form OSC-49](#)) explaining necessary communications between OSC and the agency involved.

Investigation and Prosecution Division (IPD). After a thorough initial examination, the CEU refers matters indicating a potentially valid claim (under the laws enforced by the OSC) to one of four field offices in the IPD. The field offices are located in Washington, D.C., Dallas, Texas, the San Francisco Bay Area, and Detroit, Michigan. The IPD then conducts investigations to review pertinent records, and to interview complainants and witnesses with knowledge of the matters alleged. Matters not resolved during the investigative phase will undergo legal review and analysis to determine whether the IPD inquiry has established a violation of law, rule or regulation, and whether the matter warrants corrective action, disciplinary action, or both. Complainants will continue to receive 60-day status notices while matters are pending in the IPD

Alternative Dispute Resolution (ADR) Unit. After CEU has completed its examination, OSC offers mediation, as an alternative to investigation, in selected PPP cases. Participation in the OSC mediation program is completely voluntary for both the complainant and the employing agency. If both parties agree to mediate their dispute, the OSC assigns a neutral third party – a mediator – to facilitate a discussion between the parties to reach a mutually agreeable resolution to the complaint. For more information on mediation at the OSC, click on the Alternative Dispute Resolution link.

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Can the OSC delay a personnel action pending investigation of the matter?

An individual may request that the Special Counsel seek to delay, or "stay," an adverse personnel action pending an OSC investigation. If the Special Counsel has reasonable grounds to believe that the proposed action is the result of a prohibited personnel practice, the OSC may ask the agency involved to delay the personnel action. If the agency does not agree to a delay, the OSC may then ask the U.S. Merit Systems Protection Board (MSPB) to stay the action. (The OSC cannot stay a personnel action on its own authority.)

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How can the OSC remedy a prohibited personnel practice?

General. Current and former federal employees and applicants for federal employment may report suspected prohibited personnel practices to the OSC. The matter will be investigated, and if there is

sufficient evidence to prove a violation, the OSC can seek corrective action, disciplinary action, or both. Alternatively, parties in selected cases may agree to mediate their dispute in order to reach a mutually agreeable resolution of the PPP complaint.

Corrective action. The OSC may enter into discussions with an agency at any stage of a pending matter in pursuit of a resolution acceptable to all parties. The OSC follows a policy of early and firm negotiation to obtain appropriate corrective action (and/or disciplinary action) for apparent violations.

If an agency fails to remedy a prohibited personnel practice upon request by the OSC, corrective action may also be obtained through litigation before the MSPB. Such litigation begins with the filing of a petition by the OSC, alleging that there are reasonable grounds to believe that a prohibited personnel practice has occurred, exists, or is about to occur. Corrective actions that can be ordered by the MSPB include job restoration, reversal of suspensions and other adverse actions, reimbursement of attorney's fees, back pay, medical and other costs and damages.

Ref: [5 U.S.C. § 1214](#)

Note: Pursuant to [5 U.S.C. § 1221](#), current or former federal employees and applicants who allege that they were subjected to any personnel action because of whistleblowing may seek corrective action in an appeal to the MSPB. Such an appeal is known as an "individual right of action" (IRA). By law, the employee or applicant must seek corrective action from the OSC before filing an IRA. The IRA may be filed—

- after the OSC closes a matter in which reprisal for whistleblowing has been alleged; or
- if the OSC has not notified the complainant within 120 days of receiving an allegation of whistleblower reprisal that it will seek corrective action.

A federal employee or applicant for employment engages in whistleblowing when the individual discloses to the Special Counsel or an Inspector General or comparable agency official (or to others, except when disclosure is barred by law, or by Executive Order to avoid harm to the national defense or foreign affairs) information which the individual reasonably believes evidences the following types of wrongdoing:

- a violation of law, rule, or regulation; or
- gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

Procedures for filing an IRA are set forth in MSPB regulations at [5 C.F.R. Part 1209](#). (In considering an IRA, it should be noted that the MSPB may refuse to take jurisdiction over any matters not specifically raised before the OSC.)

Disciplinary action. The OSC may seek disciplinary action against any employee believed to be responsible for committing a prohibited personnel practice. The OSC begins a disciplinary action case by filing a complaint with the MSPB, charging an employee with the commission of a prohibited personnel practice, and seeking disciplinary action against that person. Rights of employees against whom the OSC seeks disciplinary action in these cases are set forth in MSPB regulations, at [5 C.F.R. Part 1201, Subpart D](#). Individuals found by the MSPB to have committed a prohibited personnel practice are subject to removal, reduction in grade, debarment from federal employment for up to five years, suspension, reprimand, or fine of up to \$1,000.

In the alternative, at any time during its investigation of a matter, the OSC may authorize the agency involved to take disciplinary action against an employee believed to be responsible for committing a prohibited personnel practice. Pursuant to [5 U.S.C. § 1214\(f\)](#), during any OSC investigation under title 5, an agency may not take disciplinary action against any employee for any alleged prohibited activity under investigation, or for any related activity, without approval from the OSC.

Ref: [5 U.S.C. § 1215](#)

Intervention. The Special Counsel may intervene as a matter of right, or otherwise participate in most proceedings before the MSPB. The Special Counsel may not intervene in certain proceedings (individual rights of action brought under [5 U.S.C. § 1221](#), or matters otherwise appealable to the MSPB under [5 U.S.C. § 7701](#)) without the consent of the person initiating the proceeding.

Ref: [5 U.S.C. § 1212\(c\)](#)

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How can a person file a complaint of prohibited personnel practices or other prohibited employment activity with the OSC?

Filers must use Form OSC-11 (Complaint of Possible Prohibited Personnel Practice or Other Prohibited Activity) to submit allegations of prohibited personnel practices or other prohibited employment activity to OSC. Form OSC-11 may be printed from this Web site (see [Forms](#)). The OSC will not process a complaint submitted in any format other than a completed Form OSC-11 (except for complaints alleging *only* a Hatch Act violation). If a person uses any other format to file a complaint, the material received will be returned to the filer with a blank Form OSC-11 to complete and return to the OSC. The complaint will be considered to be filed on the date on which the OSC receives the completed Form OSC-11.

Complaints of prohibited personnel practices or other prohibited employment activities within the investigative authority of the OSC should be sent to the U.S. Office of Special Counsel, Complaints Examining Unit, 1730 M Street, NW, Suite 201, Washington, DC 20036-4505.

Ref: [5 C.F.R. § 1800.1](#)

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Can employees seek relief from the OSC for a prohibited personnel practice if they are covered by a collective bargaining agreement?

Pursuant to [5 U.S.C. § 7121\(g\)](#), employees covered by a collective bargaining agreement must choose one of three avenues: an OSC complaint, an MSPB appeal, or a grievance under the collective bargaining agreement.

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What is the OSC's policy about allegations of discrimination?

[Race, color, religion, sex, national origin, age, handicapping condition](#). The OSC is statutorily authorized to investigate allegations of discrimination based on race, color, religion, sex, national origin, age, or handicapping condition (see (1), under "Prohibited Personnel Practices," above). However, procedures for investigating such complaints have already been established in federal agencies and the Equal Employment Opportunity Commission (EEOC). Therefore, to avoid duplicating those investigative processes, the OSC follows a general policy of deferring complaints involving discrimination to those agencies' procedures.

[Marital status, political affiliation](#). Allegations of discrimination based on marital status, and political affiliation are not within the jurisdiction of the EEOC. Such allegations, along with those arising under 5 U.S.C. § 2302(b)(10), may be prohibited personnel practices or other violations of law subject to investigation by the OSC.

Ref: [5 C.F.R. § 1810.1](#)

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What other violations does the OSC have jurisdiction to investigate?

The OSC is authorized by law to investigate and seek appropriate corrective and disciplinary action for—

- activities prohibited by any civil service law, rule, or regulation (including any activity relating to political intrusion in personnel decision making);
- arbitrary or capricious withholding of information under the Freedom of Information Act; and
- involvement by any employee in any prohibited discrimination found by a court or administrative authority to have occurred in the course of any personnel action.

Ref: [5 U.S.C. § 1216](#)

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What do I do if I believe my veterans preference rights were violated?

You should file a complaint with the U.S. Department of Labor, Veterans Employment and Training Service.

The Veterans Employment Opportunities Act of 1998 (VEOA), [5 U.S.C. § 3330](#) et seq., created a new avenue of administrative redress specifically for a preference eligible who alleges that a federal agency violated such individual's rights under any statute or regulation relating to a veteran's preference eligible.

Under the VEOA, in order to seek corrective action, a preference eligible is to file a written complaint with the U.S. Department of Labor, Veterans Employment and Training Service (VETS), within 60 days of the alleged violation. VEOA requires the Secretary of Labor, through VETS, to investigate the complaint and, upon determining that a violation occurred, to attempt to resolve the complaint by making reasonable efforts to ensure that the agency complies with the statute or regulation relating to veteran's' preference. If the Secretary is unable to resolve a complaint **within 60 days**, the Secretary is to provide notification of an unsuccessful effort to resolve the complaint to the complainant.

In light of the VEOA, OSC does not investigate allegations of violations of veterans' preference rights for corrective action purposes. (We still investigate such allegations for possible disciplinary action, however.) Thus, you should file a complaint alleging a violation of a veterans' preference right with VETS, not OSC.

Additional Information about VETS can be found at <http://www.dol.gov/vets>.

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Are federal employees required to cooperate with OSC investigations?

Title 5 of the U.S. Code authorizes the OSC to issue subpoenas for documents or the attendance and testimony of witnesses. During an investigation, the OSC may require employees and others to testify under oath, sign written statements, or respond formally to written questions.

Federal employees are also required to provide to the OSC any information, testimony, documents, and material, the disclosure of which is not otherwise prohibited by law or regulation, in investigations of matters under civil service law, rule, or regulation. The same rule requires federal agencies to make employees available to testify, on official time, and to provide pertinent records to the OSC.

Ref: [5 U.S.C. § 1212\(b\)](#); Civil Service Rule 5.4

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What legal responsibilities do federal agencies have to prevent prohibited personnel practices?

Section 2302(c) of title 5 requires federal agency heads, and officials with delegated authority for any aspect of personnel management, to:

- prevent prohibited personnel practices, including reprisal for whistleblowing;
- comply with and enforce civil service laws, rules and regulations; and
- ensure (in consultation with the OSC) that federal employees are informed of their rights and remedies.

The OSC has developed a training guide for use by agencies in carrying out the duty of informing employees of their rights and remedies under title 5. On request, the OSC may also make [speakers](#) available to assist in conducting such training.

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