



Billing Code 7405-01-S

OFFICE OF SPECIAL COUNSEL

5 CFR Part 1800

Filing of Complaints of Prohibited Personnel Practices or other Prohibited Activities and Filing Disclosures of Information

AGENCY: U.S. Office of Special Counsel.

ACTION: Final rule.

SUMMARY: This final rule revises the U.S. Office of Special Counsel's (OSC's) regulations regarding the filing of complaints and disclosures with OSC, and updates OSC's prohibited personnel practice provisions. In accordance with the Paperwork Reduction Act of 1995, and Office of Management and Budget (OMB) implementing regulations, OSC sought approval from OMB for a new, dynamic electronic form to be used for filing complaints and disclosures. This new form, Form OSC-14, will replace Forms OSC-11, OSC-12, and OSC-13, which were previously approved by OMB.

DATES: This rule is effective July 17, 2017.

FOR FURTHER INFORMATION CONTACT: Susan K. Ullman, General Counsel, U.S. Office of Special Counsel, by telephone at 202-254-3600, by facsimile at (202) 254-3711, or by email at sullman@osc.gov.

SUPPLEMENTARY INFORMATION:

Background

The final rule makes minor changes to the existing language in 5 CFR 1800.1(c)(1) through (5) and (d), and 1800.2(b)(1) and (2) by replacing references to, and information about, the legacy OSC forms with references to, and information about, the new form established by OSC. The final rule refers to forms established by OSC and covers the new form that OSC submitted to OMB for approval. The final rule will enable OSC to revise its forms in the future, while still providing for public notice and OMB review of future revisions. The final rule also updates the prohibited personnel practice provisions, at 5 CFR 1800.1(a)(13), based on the requirements of 5 U.S.C. 2302(b)(13) regarding nondisclosure forms, policies, or agreements. OSC received no comments from members of the public or other Agencies on the final rule or the new form.

The final rule also corrects minor typographical errors, including updating telephone and fax numbers and email contact information for Hatch Act complaints.

OSC is an independent agency responsible for, among other things: (1) investigation of allegations of prohibited personnel practices defined by law at 5 U.S.C. 2302(b); (2) processing of whistleblower disclosures under 5 U.S.C. 1213; and (3) the interpretation and enforcement of Hatch Act limitations on political activity in chapters 15 and 73 of title 5 of the U.S. Code.

Procedural Determinations

Administrative Procedure Act (APA): This action is taken under the Special Counsel's authority at 5 U.S.C. 1212(e) to publish regulations in the Federal Register.

Executive Order 12866 (Regulatory Planning and Review): This final rule is exempt from review under Executive Order 12866.

Congressional Review Act (CRA): This final rule is not a major rule under the Congressional Review Act, as it is unlikely to result in an annual effect on the economy of \$100 million or more; is unlikely to result in a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies or geographic regions; and is unlikely to have a significant adverse effect on competition, employment, investment, productivity, or innovation, or on the ability of U.S.-based enterprises to compete in domestic and export markets.

Regulatory Flexibility Act (RFA): A regulatory flexibility analysis was not required and none was prepared.

Unfunded Mandates Reform Act (UMRA): This final rule does not impose any federal mandates on state, local, or tribal governments, or on the private sector within the meaning of the UMRA.

National Environmental Policy Act (NEPA): This final rule will have no physical impact upon the environment and therefore will not require any further review under NEPA.

Paperwork Reduction Act (PRA): OSC submitted this final rule and collection to OMB for review pursuant to the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.* OSC did not receive any comments regarding the proposed rule, the new form, or the information collection.

Title of Collection: Form OSC-14: Electronic Submission of Allegations and Disclosures

The new electronic form will be available on publication of this rule on the OSC website at <http://www.osc.gov>

Type of Information Collection Request: Approval of new collection of information to replace a previously-approved collection of information.

Affected Public: Current and former Federal employees, applicants for Federal employment, state and local government employees, and their representatives, and the general public.

Respondent's Obligation: Voluntary.

Estimated Annual Number of Form OSC-14 Respondents: 6000 (estimated prohibited personnel practice filers = 4000; estimated disclosure filers = 1835; and estimated Hatch Act filers = 165). OSC based these estimates on a review of recent Annual Reports and an analysis of developing trends for this year.

Frequency of Use of Form OSC-14: Daily.

Estimated Average Amount of Time for a Person to Respond Using Form OSC-14: For prohibited personnel practice and other prohibited activities allegations, one hour and 15 minutes; for whistleblower disclosures, one hour; and for Hatch Act allegations, 30 minutes to complete the form. OSC based these estimates on testing completed by OSC employees during the development of the collection form.

Estimated Annual Burden for Filing Form OSC-14: 6917.5 hours.

Abstract: The electronic form must be used by current and former Federal employees and applicants for Federal employment to submit allegations of possible prohibited personnel practices or other prohibited activity for investigation and possible prosecution by OSC, and to file disclosures of covered wrongdoing for review and possible referral to heads of agencies. The form may also be used by individuals to file complaints under the Hatch Act.

Executive Order 13132 (Federalism): This final rule does not have new federalism implications under Executive Order 13132.

Executive Order 12988 (Civil Justice Reform): This final rule meets applicable standards of 3(a) and 3(b)(2) of Executive Order 12988.

List of Subjects in 5 CFR Part 1800

Administrative practice and procedure, Government employees, Investigations, Law enforcement, Political activities (Government employees), Reporting and recordkeeping requirements, Whistleblowing.

OSC amends 5 CFR part 1800 as follows:

PART 1800 – FILING OF COMPLAINTS AND ALLEGATIONS

1. The authority citation for 5 CFR part 1800 continues to read as follows:

Authority: 5 U.S.C. 1212(e).

2. Section 1800.1 is revised to read as follows:

§ 1800.1 Filing complaints of prohibited personnel practices or other prohibited activities.

(a) *Prohibited personnel practices.* The Office of Special Counsel (OSC) has investigative jurisdiction over the following prohibited personnel practices committed against current or former Federal employees and applicants for Federal employment:

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

(2) Soliciting or considering improper recommendations or statements about individuals requesting, or under consideration for, personnel actions;

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

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

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

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

(7) Nepotism;

(8) Reprisal for whistleblowing (whistleblowing is generally defined as the disclosure of information about a Federal agency by an employee or applicant who reasonably believes that the information shows a violation of any law, rule, or regulation; gross mismanagement; gross waste of funds; abuse of authority; or a substantial and specific danger to public health or safety);

(9) Reprisal for:

(i) Exercising certain appeal rights;

(ii) Providing testimony or other assistance to persons exercising appeal rights;

(iii) Cooperating with the Special Counsel or an Inspector General; or

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

(10) Discrimination based on personal conduct not adverse to job performance;

(11) Violation of 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); and

(13) Implementing or enforcing nondisclosure policies, forms, or agreements that do not contain the statement required by 5 U.S.C. 2302(b)(13).

(b) *Other prohibited activities.* OSC also has investigative jurisdiction over allegations of the following prohibited activities:

(1) Violation of the Federal Hatch Act at title 5 of the U.S. Code, chapter 73, subchapter III;

(2) Certain state and local violations of the Hatch Act at title 5 of the U.S. Code, chapter 15;

(3) Arbitrary and capricious withholding of information prohibited under 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 the Special Counsel determines that the allegation may be resolved more appropriately under an administrative appeals procedure); and

(6) Violation of uniformed services employment and reemployment rights under 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) Current or former Federal employees, and applicants for Federal employment, may file a complaint with OSC alleging one or more prohibited personnel practices, or other prohibited activities within OSC's investigative jurisdiction. The Form OSC-14 must be used to file all such

complaints (except those limited to an allegation or allegations of a Hatch Act violation - see paragraph (d) of this section for information on filing Hatch Act complaints).

(2) Forms filed in connection with allegations of reprisal for whistleblowing must identify:

(i) Each disclosure involved;

(ii) The date of each disclosure;

(iii) The person to whom each disclosure was made; and

(iv) The type and date of any personnel action that occurred because of each disclosure.

(3) OSC will not process a complaint filed in any format other than a completed OSC Form-14. If a filer does not use the OSC Form-14 to submit a complaint, OSC will provide the filer with information about the OSC Form-14. OSC will consider the complaint filed on the date on which OSC receives a completed OSC Form-14.

(4) OSC Form-14 is available:

(i) At: <http://www.osc.gov> (to complete online);

(ii) By calling OSC, at: (800) 872-9855 (toll-free); or

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

(5) A complainant can file a completed OSC Form-14 with OSC by any of the following methods:

(i) Electronically, at: <http://www.osc.gov>;

(ii) By fax, to: (202) 254-3711; or

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

(d) *Procedures for filing complaints alleging violation of the Hatch Act.* (1)

Complaints alleging a violation of the Hatch Act may be submitted in any written form, but use of OSC Form-14 is encouraged. Complaints should include:

(i) The complainant's name, mailing address, telephone number, and a time when OSC can contact that person about his or her complaint (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.

(2) OSC Form-14 for filing a complaint is available as described in paragraphs (c)(4)(i) through (iii) of this section.

(3) A written Hatch Act complaint may be filed with OSC:

(i) Electronically, at: <http://www.osc.gov>;

(ii) By fax, to: (202) 254-3700;

(iii) By email, to hatchact@osc.gov; or

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

3. Section 1800.2 is revised to read as follows:

§ 1800.2 Filing disclosures of information.

(a) *General.* OSC is authorized by law (at 5 U.S.C. 1213) to provide an independent and secure channel for use by current or former Federal employees and applicants for Federal employment in disclosing information that they reasonably believe shows wrongdoing by a Federal agency. OSC must determine whether there is a substantial likelihood that the information discloses a violation of any law, rule, or regulation; gross mismanagement; gross waste of funds; abuse of authority; or a substantial and specific danger to public health or safety. If it does, the law requires OSC to refer the information to the agency head involved for investigation and a written report on the findings to the Special Counsel. The law does not authorize OSC to investigate the subject of a disclosure.

(b) *Procedures for filing disclosures.* Current or former Federal employees, and applicants for Federal employment, may file a disclosure of the type of information described in paragraph (a) of this section with OSC. Such disclosures must be filed in writing (including electronically - see paragraph (b)(3)(i) of this section).

(1) Filers are encouraged to use OSC Form-14 to file a disclosure of the type of information described in paragraph (a) of this section with OSC. OSC Form-14 provides more information about OSC jurisdiction, and procedures for processing whistleblower disclosures. OSC Form-14 is available:

(i) Online, at: <http://www.osc.gov>;

(ii) By calling OSC, at: (800) 572-2249 (toll-free), or (202) 254-3640; or

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

(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 person(s) making the disclosure(s), and a time when OSC can contact that person about his or her disclosure;

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

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

(3) A disclosure may be filed in writing with OSC by any of the following methods:

(i) Electronically, at: <http://www.osc.gov> (for completion and filing electronically);

(ii) By fax, to: (202) 254-3711; or

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

Dated: June 2, 2017.

Bruce Gipe,

Chief Operating Officer.

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