

WHISTLEBLOWER PROTECTION ACT



U.S. ELECTION ASSISTANCE COMMISSION
OFFICE OF INSPECTOR GENERAL

Protected Whistle Blowing

- An employee, former employee, or applicants for employment
- Makes a disclosure which he/she reasonably believes evidences:
 - A violation of a law, rule, or regulation
 - Gross mismanagement
 - Gross waste of funds
 - Abuse of authority
 - Substantial and specific danger to public health or safety
- To a supervisor, high ranking agency official or the Inspector General
 - Fraud, waste, abuse and mismanagement must be reported to the Inspector General



Reprisal/Retaliation



- Whistleblower Protection Act also prohibits acts of reprisal or retaliation for making a protected disclosure (see previous slide)
- Reprisal or retaliation can include but are not limited to imposing or unreasonably refusing the following:
 - Adverse action or disciplinary action
 - Detail or reassignment
 - Appointment
 - Promotion
 - Decisions concerning pay, benefits or awards
 - Performance evaluations (positive or negative)
- Act of retaliation should be reported to the OIG and/or EAC management
 - OIG can protect employees against retaliation and reprisal

Protected Disclosures

- **Violation of any law, rule or regulation**
 - Need not involve a specific type of waste, fraud or abuse
 - Can include violations of agency policy or procedure
 - Must be a substantive disclosure, not just a disagreement or difference of opinion
- **Gross mismanagement**
 - More than a difference of opinion
 - Not simple negligence or wrongdoing
 - Management action or inaction that creates a substantial risk of significant adverse impact to the agency's ability to fulfill its mission
 - Reasonable man standard

More on Protected Disclosures

- **Gross waste of funds**
 - More than a debatable expenditure that is significantly out of proportion to the benefit reasonable expected to accrue to the benefit of the government
- **Abuse of Authority**
 - An arbitrary and capricious use of power that benefits the abuser or others
 - For example, ordering a subordinate to retrieve cleaning from the laundry.

More on Protected Disclosures

- **Substantial and specific danger to public safety or health**
 - Must contain a specific statement of the dangerous activity
 - For example, disclosure by a medical employee of a computer problem that could impact patient health
- **“Reasonably believe”**
 - The whistleblower must reasonably believe that his/her disclosure reports a violation of law, rule or regulation; gross mismanagement; gross waste of funds; abuse of authority; or danger to public health or safety.
 - Cannot be based on rumor or gossip
 - Based on whistleblower’s knowledge of the facts at the time the complaint is made
 - Can be “reasonable” even if the substance of the complaint is later determined to be unfounded

Inspector General's Responsibilities to Whistleblowers

- A means to complain
 - Telephone hotline
 - Web based complaint on IG home page
- Confidentiality
 - Allow for anonymous complaints
 - Maintain the confidentiality of the whistle blower who gives his name unless:
 - Whistle blower consents to the disclosure of his identity
 - IG determines that disclosure is necessary to the investigation
- A reasonable consideration of the complaint and investigation of “protected disclosures.”
- Protection against reprisal/retaliation

OIG's Web-based Hotline

The screenshot shows a Microsoft Internet Explorer browser window displaying the U.S. Election Assistance Commission's website. The browser's address bar shows the URL http://www.eac.gov/eac_ig/report-to-ig/anonymous-report. The page features a header with the EAC logo and the text "UNITED STATES ELECTION ASSISTANCE COMMISSION". A breadcrumb trail indicates the user's location: "You are here: Home → Inspector General → Reporting to the IG".

The main content area is titled "Report fraud, waste and abuse involving the U.S. Election Assistance Commission or Help America Vote Act Funds". Below the title, it instructs users to "Submit your report in the form below." and provides two checkboxes for confidentiality and anonymity:

- Check this box if you want to remain confidential.
- Check this box if you want to remain anonymous. Your e-mail address will not be available to the Office of the Inspector General.

A large text input field labeled "Report" is provided for the user to enter their report. Below the field is a "Report" button. A left-hand navigation menu includes links such as "Home", "About the EAC", "Program Areas", "Election Official Center", "Voter Information Center", "News Center", "Inspector General", "Mission", "Auditing HAVA funds", "2009 Audits and Reports", "2008 Audits and Reports", "2007 Audits and Reports", "2006 Audits and Reports", "Reports to Congress", "Reporting to the IG" (highlighted), and "Testimony".

The browser's taskbar at the bottom shows the Start button, several application icons (including Internet Explorer, Word, and Outlook), and the system tray displaying the time as 3:42 PM on Monday.

OIG's Telephone Hotline



1-866-552-0004

Monitored by the
Inspector General

When making a complaint...

- Include the “who, what, when, where and why”
 - What wrongdoing is alleged (fraud, abuse, waste, mismanagement, violation of law, rule or regulation)?
 - When did the wrongdoing occur?
 - Where did the wrongdoing occur?
 - Who was involved?
 - What was the bad actor’s motivation?
 - What harm was done?
 - Was anything done to remedy the wrongdoing?
- Be truthful and forthcoming with the OIG employee taking the complaint
 - Cooperate with the OIG during the review of the complaint and any future investigation

When making a complaint...

- Consider whether OIG is the right place to complain
 - EAC OIG handles complaints of waste, fraud, abuse or mismanagement in EAC programs or by EAC funding recipients (contractors and grantees)
 - EAC OIG also handles certain violations of law, rule or regulation, e.g., EAC rules and regulations and federal laws with which EAC programs must comply
 - EAC OIG will refer any complaints regarding:
 - Campaign contributions or campaign finance (Federal Election Commission)
 - Irregularities in state or local elections (State or Local election officials)
 - Voting fraud and election related crimes (U.S. Attorney, Department of Justice, local law enforcement)

Disposition of Complaints

- Investigation
 - OIG can initiate a formal or informal investigation of the complaint
- Dismissal
 - OIG can decline to investigate a complaint particularly when the complaint does not identify wrongdoing
- Referral
 - Some complaints (not whistleblower complaints) are referred to the EAC for processing (e.g., grant issues)
 - OIG will refer matters that are not within its jurisdiction
 - Other federal and state agencies have authority to investigate complaints (see previous slide for other election-related allegations and following slide for employment-related complaints)

OTHER WHISTLEBLOWER RESOURCES

- Equal Employment Opportunity Complaints
 - EAC's EEO Officer
 - Stacie Fabre
 - sfabre@eac.gov, 202-566-3105
- Prohibited Personnel Practices & Whistleblower Complaints
 - Office of Special Counsel, www.osc.gov
- Merit System Violations (Adverse Actions)
 - Office of Special Counsel, www.osc.gov
 - Merit System Protection Board, www.mspb.gov