



## AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 WHISTLEBLOWER PROTECTION

Section 1553 of the American Recovery and Reinvestment Act of 2009 (the Act), *aka* the McCaskill Amendment, extends “whistleblower protection” to employees who reasonably believe they are being retaliated against for reporting misuse of funds received by their non-federal employer as part of the stimulus package. Specifically, an employee of any non-federal employer, such as a private company or a state or local employing agency, who reports waste, fraud or abuse as described in the act, may not be discharged, demoted or “otherwise discriminated against” because of his or her disclosure. This Act provides protection from retaliation only to ***non-federal employees*** who report waste, fraud or abuse ***connected to the use of stimulus funds***. Protection for federal employees who disclose waste, fraud, or abuse - whether or not it regards the use of stimulus funds – is provided in accordance with Title 5 USC § 2302(b)(8) and § 2302(b)(9).

### KEY POINTS

The Act prohibits retaliation against a non-federal employee who discloses information that the employee reasonably believes constitutes evidence of:

- o Gross mismanagement of an agency contract or grant relating to stimulus funds;
- o Gross waste of stimulus funds;
- o Substantial and specific danger to public health or safety related to implementation of stimulus funds;
- o Abuse of authority related to implementation or use of stimulus funds; or
- o Violation of law, rule, or regulation related to an agency contract or grant relating to stimulus funds.

The allegation of waste, fraud, or abuse stemming from the use of stimulus funds that resulted in the alleged retaliation must have been reported to an Office of Inspector General (OIG), the Recovery Accountability and Transparency Board, the Comptroller General, a member of Congress, a State or Federal regulatory or law enforcement agency, a court or grand jury, a Federal agency head or his/her representatives, or a person with supervisory authority over the employee (or another employee of the employer who has the authority to investigate, discover, or terminate misconduct). Such disclosures *may* be made during the course of an employee’s duties.

Allegations of *reprisal* for reporting waste, fraud or abuse stemming from the use of stimulus funds may be reported to the “appropriate” Inspector General. (If multiple federal agencies are involved, please consult your Office of General Counsel (OGC) as to which IG office should handle the matter).

Within 180 Days of Receipt of a Whistleblower Complaint the OIG Must		
<p><b>I.</b> Investigate the complaint and issue a report of the findings to the complainant, the complainant’s employer, the head of the appropriate federal agency, and the Recovery Accountability and Transparency Board;</p>	<p><b>II.</b> Determine that the complaint is a) frivolous (and therefore does not merit investigation); b) does not relate to stimulus funds; or 3) that another federal or state judicial or administrative proceeding was invoked to resolve the complaint; <b>or</b></p>	<p><b>III.</b> Exercise its discretion not to conduct or continue an investigation. However, if exercising this discretion, a written explanation must be provided to the complainant and the employer. (Note, the 180 day limitation does not apply to this discretion, but presumably the decision would be made sooner)</p>

If the OIG is unable to complete the investigation within 180 days of receiving a complaint:

- The Inspector General and the complainant may agree to an extension; or
- The Inspector General may, without agreement from the complainant, extend the investigation up to an additional 180 days, but must provide written explanation to the complainant and the complainant's employer.

Federal agency response is required -- within 30 days of receipt of an OIG investigative report:

- The head of the federal agency must either 1) issue an order denying relief; or 2) order the employer to take affirmative steps to remedy the reprisal. If an employer fails to comply with an order issued by the head of the agency, the agency *must* file suit in federal court to enforce the relief order. If the head of the agency denies relief or fails to take action, or if the IG office decides not to investigate the allegation, the complainant may file suit against the employer.

**\*The complainant has the right to access the OIG investigation file** (subject to the Privacy Act)  
*The OIG may exclude information that is protected by attorney-client or other codified government privilege, and information where disclosure will impede a continuing investigation, disclose law enforcement techniques and procedures, or disclose the identity of a confidential source.*

	<b>PROHIBITED PERSONNEL PRACTICES 5 U.S.C. §2302 (b)(8) and/or (b)(9)</b>	<b>AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 §1553</b>	
<b>WHO IS COVERED:</b>	Federal employees, former employees or applicants for federal employment.	Non-federal employees of employers receiving stimulus funds. <i>(Does not cover federal employees).</i>	
<b>CATEGORIES OF DISCLOSURES:</b>	A violation of 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.	<b>Where use or implementation of stimulus funds:</b> A violation of law, rule, or regulation (including the competition for or negotiation of a contract) or grant, awarded or issued; gross mismanagement; gross waste; an abuse of authority; or a substantial and specific danger to public health or safety.	
<b>MUST REPORT TO:</b>	Any person  (other than wrongdoer)	<ul style="list-style-type: none"> <li>• Recovery Accountability and Transparency Board</li> <li>• Inspector General</li> <li>• Comptroller General</li> <li>• Member of Congress</li> <li>• State or Federal regulatory or law enforcement agency</li> <li>• Court or grand jury</li> </ul>	<ul style="list-style-type: none"> <li>• Head of a Federal agency or his/her representatives</li> <li>• Person with supervisory authority over the employee (or such other person working for the employer who has the authority to investigate, discover, or terminate misconduct).</li> </ul>
<b>COMPLAINANT MUST HAVE:</b>	A reasonable belief that wrongdoing occurred.	A reasonable belief that wrongdoing occurred.	

*\*For more information please visit:  
[www.oig.doc.gov](http://www.oig.doc.gov)*