

DEPARTMENTAL REGULATION		Number: 1312-2
SUBJECT: Cooperation with the Office of the Special Counsel, Merit Systems Protection Board	DATE: July 17, 1986	
	OPI: Office of Personnel	

1 PURPOSE

This regulation establishes policy, assigns responsibilities, and prescribes procedures for assuring Departmental cooperation with the Office of the Special Counsel of the Merit Systems Protection Board in fulfilling the responsibilities of the Special Counsel to conduct investigations of alleged prohibited personnel practices and in the review of alleged violations of law rule or regulation, mismanagement, gross waste of funds, abuse of authority or a substantial and specific danger to the public health and safety. This regulation provides internal guidance to Department officials and does not establish an independent basis for any person or organization to assert a right, benefit or privilege.

2 ABBREVIATIONS

OSC - Office of the Special Counsel, MSPB

OGC - Office of the General Counsel

OP - Office of Personnel

OIG - Office of Inspector General

USC - United States Code

3 POLICY

It is Department policy that:

- a Personnel actions taken by management officials shall conform to laws and regulations implementing merit system principles and must be free from any prohibited personnel practices.
- b When prohibited personnel practices occur, corrective action, including disciplinary measures where appropriate, will be taken.
- c Managerial and non-managerial employees will cooperate with the OSC by:

(1) Investigating, cooperating with investigations and reporting on allegations of improper or illegal conduct forwarded to the Department by the OSC pursuant to 5 USC 1206(b)(2) and (3).

(2) Facilitating and cooperating with investigations by the OSC of alleged prohibited personnel practices and other matters assigned for investigation to the OSC by law.

(3) Furnishing to OSC investigators copies of documents requested in the course of ongoing OSC investigations.

d Close coordination between OP and OSC personnel during an OSC investigation is encouraged to avoid duplication of effort and to avoid unnecessary delay in initiating, when appropriate, corrective or disciplinary action.

e Nothing in this regulation shall be construed to limit in any way the authorities or responsibilities of the Inspector General.

4 REFERENCES

a Public Law 95-454, "Civil Service Reform Act of 1978" (Title 5, United States Code, Sections 1205, 1206, 1207, 2301 and 2302).

b Title 5, Code of Federal Regulations, Parts 1200 through 1261.

5 DEFINITIONS

a Personnel Action

(1) An appointment;

(2) A promotion;

(3) An adverse action under 5 USC 7501 et seq or other disciplinary or corrective action;

(4) A detail, transfer or reassignment;

(5) A reinstatement;

(6) A restoration;

(7) A reemployment;

(8) A performance evaluation under 5 USC 4301 et seq;

(9) A decision concerning pay, benefits, or awards or concerning education or training if the education or training may reasonably be expected to lead to an appointment, promotion, performance evaluation, or other personnel action; and

(10) Any other significant change in duties or responsibilities inconsistent with the employee's salary or grade level.

b Prohibited Personnel Practice. Any action taken by an employee who has authority to take, direct others to take, recommend, or approve any personnel action:

(1) That discriminates for or against any employee or applicant for employment on the basis of race, color, religion, sex, national origin, age, handicapping condition, marital status, or political affiliation, as prohibited by certain specified laws (see 5 U.S.C. 2302(b)(1));

(2) To solicit or consider any recommendation or statement, oral or written, with respect to any individual who requests, or is under consideration for, any personnel action, unless the recommendation or statement is based on the personal knowledge or records of the person furnishing it, and consists of an evaluation of the work performance, ability, aptitude, or general qualifications of the individual, or an evaluation of the character, loyalty, or suitability of such individual;

(3) To coerce the political activity of any person (including the providing of any political contribution or service), or take any action against any employee or applicant for employment as a reprisal for the refusal of any person to engage in such political activity;

(4) To deceive or willfully obstruct any person with respect to such person's right to compete for employment;

(5) To influence any person to withdraw from competition for any position for the purpose of improving or injuring the prospects of any other person for employment;

(6) To grant any preference or advantage not authorized by law, rule, or regulation to any employee or applicant for employment (including defining the scope or manner of competition or the requirements for any position) for the purpose of improving or injuring the prospects of any particular person for employment;

(7) To appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement, in or to a civilian position any individual who is a relative (as defined in 5 U.S.C. 3110 of the employee if the position is in the Agency in which the employee is serving as a public official or over which the employee exercises jurisdiction or control as an official;

(8) To take or fail to take a personnel action with respect to any employee or applicant for employment as a reprisal for being a whistleblower, as defined in section 5c, below;

(9) To take or fail to take a personnel action against an employee or applicant for employment as a reprisal for the exercise of any appeal right granted by law, rule, or regulation;

(10) To discriminate for or against any employee or applicant for employment on the basis of conduct that does not adversely affect the performance of the employee or applicant or the performance of others; or

(11) To take or fail to take any other personnel action if the taking of, or failure to take, such action violates any law, rule, or regulation implementing, or directly concerning, the merit system principles contained in 5 U.S.C. 2301.

c Whistleblower

(1) A present or former Federal employee or applicant for Federal employment who discloses information he or she reasonably believes evidences:

(a) A violation of any law, rule, or regulation;

(b) Mismanagement, a gross waste of funds, or an abuse of authority; or

(c) A substantial or specific danger to public health or safety.

(2) Such disclosure qualifies if it is not specifically prohibited by statute and if 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.

(3) Where the information disclosed affects only the personal situation of the complainant, it is generally to be regarded as an allegation of a prohibited personnel practice or violation of other civil service law, rule, or regulation, and the complainant will not be considered a whistleblower.

6 RESPONSIBILITIES

a The Department's Office of Personnel will:

(1) Serve a central coordinating role on behalf of the Secretary in all interaction with the OSC.

(2) Receive and coordinate with OIG the investigation of, or make other inquiry as appropriate into, allegations referred by OSC to the Secretary pursuant to 5 USC 1206(b)(2), (b)(3), and (c)(3).

(3) Prepare and obtain appropriate clearances of reports to the OSC as required of the Secretary under 5 USC 1206(b)(3)(A)(ii), (b)(7) and (c)(3).

(4) Coordinate on behalf of the Secretary, the implementation of any corrective action necessary as a result of inquiry or investigation into a complaint filed with the OSC .

(5) Ensure that consideration is given to disciplinary action when warranted by findings on complaints.

(6) Request extensions of time where necessary.

b The Office of the General Counsel will:

Provide overall legal guidance on all matters contained in this regulation.

c The Office of Inspector General will:

Work cooperatively with OGC and OP to ensure that the Secretary's responsibilities are fulfilled. To that end, OIG will:

(1) Investigate or cause to be investigated as appropriate, complaints referred to the Secretary by OSC under 5 USC 1206(b)(3)(A).

(2) Investigate or cause to be investigated, as appropriate, complaints referred to the Secretary by OSC under 5 USC 1206(b)(2), b(7) and c(3) which do not lend themselves to inquiry by a means other than formal investigation.

(3) Promptly submit the results of any investigation conducted under (1) or (2) above to OP for appropriate action.

(4) Provide necessary liaison and coordination with the Department of Justice with respect to all matters involving criminal law violations.

7 PROCEDURES

a Allegations of improper or illegal conduct received from OSC under 5 USC 1206(b)(2),(3) or (c)(3).

(1) Allegations referred by OSC shall be forwarded to OP.

(2) Upon receipt of such a referral, OP shall ensure compliance with 5 USC 1206 through an investigation coordinated with OIG or other inquiry as appropriate to the allegations, shall ensure timely action in compliance with reporting requirements set forth in 5 USC 1206, and shall also ensure preparation of a report to OSC for the personal review of and issuance by the Secretary when required.

(3) When warranted by the results of the investigation or other inquiry, OP will work with the Agency involved looking toward implementation of appropriate corrective action.

(4) OP will, where appropriate, make referrals for consideration of disciplinary action and where appropriate, take action against individuals believed to have engaged in inappropriate activities as revealed by the results of the investigation or other inquiry.

(5) Copies of investigation or inquiry results and reports sent to OSC will be sent to the concerned Agency for information and action where appropriate.

(6) OP will promptly provide OIG with copies of final reports to the OSC and with correspondence showing final disposition of each OSC referral. OP will retain work papers and related correspondence and will furnish them for review upon request by OIG.

b OSC Investigations of Prohibited Personnel Practices OP is designated as the Department's point of contact. In this capacity, OP will:

(1) Provide any necessary coordination with and assistance to the OSC in conducting investigations of alleged prohibited activities;

(2) Ensure that appropriate Agency personnel are apprised of the nature and basis for an OSC investigation as well as the rights and duties of Agency personnel in regard to such investigations;

(3) Refer legal questions raised by Agencies or Agency personnel as to employee rights to representation to OGC;

(4) Determine to the extent practicable by checks with OIG and the Agency involved, whether an investigation is being or has been conducted that replicates in whole or in part the proposed or ongoing investigation by the OSC and convey that information to OSC whenever this may avoid redundant investigative effort;

(5) Ensure that any corrective action considered appropriate because of the facts disclosed in such an investigation is accomplished; and

(6) When deemed appropriate, seek OSC approval of authority to propose disciplinary action against employees for an alleged prohibited personnel practice or illegal or improper act under investigation by the OSC when it is determined that such disciplinary action by the Department may be warranted.