

Congress Expands Federal Whistleblower Protections

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On December 14, 2016, Congress enacted [Public Law 114-261](#), which made permanent a federal pilot program to enhance whistleblower protections for employees of federal contractors and grantees. This often-overlooked law, codified at [41 U.S.C. § 4712](#), has important ramifications for recipients of federal awards, such as Community Action Agencies, given its broad scope: its protections apply to employees of nearly all federal grantees and contractors. Below is a summary of the law's protections and requirements.

1. Who is covered by this law?

This whistleblower law protects employees of federal contractors, subcontractors, grantees, subgrantees, or personal services contractors. Although "subgrantee" is not defined in this law, presumably the definition is similar to Uniform Guidance's definition of "subrecipient," which includes local organizations receiving federal block grants such as the Community Services Block Grant (CSBG) or the Low-Income Home Energy Assistance Program (LIHEAP).

2. How does this law protect whistleblowers?

Employees may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to *certain persons or bodies* (see Question 3 below) information that the employee reasonably believes is evidence of:

- gross mismanagement of a federal contract or grant;
- gross waste of federal funds;
- an "abuse of authority" relating to a federal contract or grant, which is defined as "an arbitrary and capricious exercise of authority that is inconsistent with the mission of the executive agency concerned or the successful performance of a contract or grant of such agency";
- a substantial and specific danger to public health or safety; or
- a violation of law, rule, or regulation related to a federal contract (including the competition for or negotiation of a contract) or grant.



3. Who must the information be reported to in order to be protected under this law?

For whistleblower activity to be protected under this law, the alleged misconduct must be reported to one or more of the following:

- A member of Congress or a representative of a committee of Congress;
- An Inspector General, such as the [Office of Inspector General of the U.S. Department of Health and Human Services](#);
- The Government Accountability Office (GAO);
- A federal employee responsible for contract or grant oversight or management at the relevant agency;
- An authorized official of the Department of Justice or other law enforcement agency;
- A court or grand jury; or
- A management official or other employee of the contractor, subcontractor, or grantee who has the responsibility to investigate, discover, or address misconduct.

4. How are complaints of reprisal investigated?

A person who believes that he/she has been discharged, demoted, or otherwise discriminated against as a reprisal for disclosing behavior described above may submit a complaint to the Inspector General of the executive agency involved. Unless the Inspector General determines that the complaint is frivolous, fails to allege a violation of the law, or has previously been addressed in another federal or state judicial or administrative proceeding, the Inspector General must investigate the complaint and, upon completion of the investigation, submit a report of the findings of the investigation to the person, contractor, or grantee concerned, as well as to the head of the federal agency involved.

The law contains detailed procedures and standards regarding what happens once the initial investigation and reporting have been completed. For more detail, see 41 U.S.C. § 4172(c).

5. What should employers do now?

Employers covered by this law should ensure they are complying with the law's notification requirements, which tasks the head of each federal executive agency with ensuring that contractors, subcontractors, and grantees of the agency inform their employees in writing of the rights and remedies provided by this law in the predominant native language of the workforce. As of the writing of this article, CAPLAW does not know of any federal agency guidance regarding how grantees and contractors must notify their employees about this law. Absent further guidance, these employers should take a first step toward compliance by sending a notice in the predominant native language of the workforce to all employees informing them of the applicability of this law (41 U.S.C. § 4712, "Enhancement of contractor protection from reprisal for disclosure of certain information") and including the entire text of the statute in the notice. CAPLAW has drafted a sample notice, which can be found [here](#).

Employers should also be aware there are many federal, state, and local laws that protect whistleblowers. Several well-known federal laws include provisions providing specific protections to individuals who report violations under those federal laws, including the Americans with Disabilities Act, Comprehensive Environmental Response, Compensation and Liability Act, Fair Labor Standards Act, the Family Medical Leave Act, the Occupational Safety and Health Act, and the federal False Claims Act. For detailed guidance on adopting a whistleblower policy, see [Section 6 of CAPLAW's Tools for Top-Notch CAAs](#) and CAPLAW's sample [Whistleblower & Complaint Resolution Policy](#).

