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'Whistleblowers Play a Critical Role': Agencies Explain How to Report Concerns, Fight Retaliation

By Theresa Defino

As the founder and inaugural coordinator of HHS' whistleblower protection program, Eyana J. Esters gets it.

"I understand the challenges you face as a grant or contract recipient when trying to determine what to do to report wrongdoing with anything related to a grant or contract," said Esters, who launched the program in 2018. She also knows it's not easy to know how to get help if you "experience retaliation as a result of making such a report or filing a complaint."

To spread the word, Esters and a host of colleagues from the HHS Office of Inspector General (OIG) and NIH developed training videos that also address, as she explained, "your rights and responsibilities for reporting wrongdoing related to an NIH grant or contract."^[1] Esters and the other speakers discussed NIH's role when a complaint gets forwarded to OIG, and steps that might result from a report, as well as how complaints of retaliation are handled.

Esters' goal is to "empower the HHS community with the protections they need to report wrongdoing without fearing the consequences." Additionally, "it's also critical that we ensure employers are aware that there are consequences for taking retaliatory acts against our most precious asset: HHS employees and employees of HHS contractors and grantees," she said.

OIG officials review "every complaint that we receive," Esters said, although complainants "may not hear back from us about your complaint, at least after the initial confirmation email." Still, she said, HHS and OIG officials "take every notification seriously. We have an entire team dedicated to looking into every claim...claims do not disappear in some government black hole. In fact, it's quite the opposite."

A whistleblower disclosure can result in an audit, investigation or an evaluation.

To begin, Esters explained that a "protected disclosure is a report of wrongdoing, a complaint of fraud, waste, or abuse, unlawful activity or a danger to public health or safety."

"The person who made the protected disclosure is referred to as a whistleblower," Esters added. Although this term "might have negative connotations, but, in fact, the opposite is true. Whistleblowers play a critical role in ensuring that we operate within the law."

Melissa Tucker, OIG senior counsel, said whistleblowers "are really the eye-openers for our agency in terms of trying to figure out what is going on in the programs and the departments in which they work."

Adding more specifics, Elizabeth Tyson—whose title is also OIG senior counsel—said, "protected disclosures are information that the employee reasonably believes is evidence of gross mismanagement of a federal contract or grant, a gross waste of federal funds, an abuse of authority relating to a federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule or regulation related to a federal contract

or grant, which includes the competition for or negotiation of a contract.”

Examples Include Money Transfers, Inappropriate Billing

Brooke Hargrave, an auditor in the Division of Program Integrity at NIH, described the following examples of protected disclosures:

- An accounting clerk “reported to a recipient institution management official that NIH funds were being transferred from one grant to another to cover year-end deficits.”
- An employee of a grant recipient “reported to NIH that the principal investigator was using grant funds for personal expenses, including vacations and personal vehicles.”
- A lab associate “reported that NIH funds were used to remodel the principal investigator's office.” This report was submitted via the email address, nihhotline@nih.gov, she added.
- An employee of an NIH contractor “reported to management that the contractor was billing NIH for items not used on several projects.”
- A contractor “knowingly misrepresented the total labor hours that their staff worked on a federal contract and falsely billed the government for the labor effort that was in excess of what was actually provided by the contractor.” Hargrave did not specify who reported this.

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