

## 2018 Current Fiscal Year Report: Whistleblower Protection Advisory Committee

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### 1. Department or Agency

Department of Labor

### 2. Fiscal Year

2018

### 3. Committee or Subcommittee

Whistleblower Protection Advisory  
Committee

### 3b. GSA

### Committee No.

80475

### 4. Is this New During Fiscal Year?

No

### 5. Current Charter Renewal Date

04/25/2016

### 7. Expected Term Date

04/25/2018

### 8a. Was Terminated During Fiscal Year?

Yes

### 8b. Specific Termination Authority

### 8c. Actual Term Date

04/25/2018

### 9. Agency Recommendation for Next Fiscal Year

Terminate

### 10a. Legislation Req to Terminate?

No

### 10b. Legislation Pending?

Not Applicable

### 11. Establishment Authority

Agency Authority

### 12. Specific Establishment Authority

Agency Authority

### 13. Effective Date

06/01/2012

### 14. Committee Type

Continuing

### 14c. Presidential?

No

### 15. Description of Committee

Other Committee

### 16a. Total Number of Reports

No Reports for  
this Fiscal Year

### 17a. Open

0

### 17b. Closed

0

### 17c. Partially Closed

0

### Other Activities

0

### 17d. Total

0

### Meetings and Dates

No Meetings

Current FY      Next FY

<b>18a(1). Personnel Pmts to Non-Federal Members</b>	\$0.00	\$0.00
<b>18a(2). Personnel Pmts to Federal Members</b>	\$0.00	\$0.00
<b>18a(3). Personnel Pmts to Federal Staff</b>	\$1,000.00	\$0.00
<b>18a(4). Personnel Pmts to Non-Member Consultants</b>	\$0.00	\$0.00
<b>18b(1). Travel and Per Diem to Non-Federal Members</b>	\$0.00	\$0.00
<b>18b(2). Travel and Per Diem to Federal Members</b>	\$0.00	\$0.00
<b>18b(3). Travel and Per Diem to Federal Staff</b>	\$0.00	\$0.00
<b>18b(4). Travel and Per Diem to Non-member Consultants</b>	\$0.00	\$0.00
<b>18c. Other(rents,user charges, graphics, printing, mail, etc.)</b>	\$0.00	\$0.00
<b>18d. Total</b>	\$1,000.00	\$0.00
<b>19. Federal Staff Support Years (FTE)</b>	0.01	0.00

**20a. How does the Committee accomplish its purpose?**

The WPAC was convened to advise, consult, and make recommendations to the Secretary and the Assistant Secretary regarding matters relating to investigations of whistleblower complaints filed under the whistleblower statutes OSHA enforces. Specifically, WPAC made recommendations regarding the development and/or implementation of: better customer service to both workers who raise complaints and employers who are subject of investigations; improvement in the investigative and enforcement process, and training of OSHA investigators; improvement of regulations governing OSHA investigations; cooperative activities with federal agencies responsible for areas also covered by whistleblower protection

statutes enforced by OSHA; and other matters concerning the fairness, efficiency, and transparency of OSHA's whistleblower investigations as identified by the Secretary or Assistant Secretary. All advice and recommendations by the WPAC were submitted to the Secretary and Assistant Secretary. All necessary support for the WPAC was provided by OSHA.

**20b. How does the Committee balance its membership?**

The WPAC was comprised of 12 voting representative members appointed by the Secretary, one of whom the Secretary appointed to serve as chair. DWPP selected members from the following groups: four members that represented Management in industries covered by the whistleblower laws; four members that represented Labor in industries covered by the whistleblower laws; one member that represented the State OSH Plan states; three members that represented the public with extensive knowledge and expertise on whistleblower statutes and issues. Balance was ensured by the broad cross-section of membership, including those directly affected, interested, and qualified as appropriate to the nature and functions of the council. Composition of the committee depended on several factors, including the geographic, ethnic, social, economic, or scientific impact of the committee's recommendations; the types of specific perspectives required; the need for divergent points of view on the issues before WPAC; and the relevance of State, local, or tribal governments to the development of the committee's recommendations. Committee membership was consistent with achieving the greatest impact, scope, and credibility among

diverse stakeholders, insofar as to the extent permitted by FACA and other laws. The diversity in membership included, but was not limited to, race, gender, disability, sexual orientation, and gender identity. Members served two-year terms. At the discretion of the Secretary, members were appointed to successive terms and could be removed at any time.

**20c. How frequent and relevant are the Committee Meetings?**

WPAC was chartered to meet twice a year. In accordance with Executive Order 13781, Comprehensive Plan for Reorganizing the Executive Branch, to improve the efficiency, effectiveness, and accountability of Executive Branch agencies, WPAC had been under evaluation by the Department.

**20d. Why can't the advice or information this committee provides be obtained elsewhere?**

The purpose of the WPAC emanated directly from the recommendations contained within the General Accountability Office, Office of the Inspector General, and OSHA evaluation reports, as well as recommendations made by a wide array of stakeholders. The WPAC was an advisory and consultative body composed to improve the fairness, efficiency, and transparency of OSHA's whistleblower investigations.

**20e. Why is it necessary to close and/or partially closed committee meetings?**

Not applicable

**21. Remarks**

The WPAC is being replaced with more targeted stakeholder meetings, allowing more focused engagement with specific stakeholders and

providing a forum for those individuals to offer the agency ways to improve the program. As evidenced by recent evaluations of the whistleblower program, the need for more effective and efficient examination of the technical aspects of each whistleblower statute would be better served with focused engagement.

### **Designated Federal Officer**

Anthony Rosa Deputy Director, Directorate of Whistleblower Protection Programs

<b>Committee Members</b>	<b>Start</b>	<b>End</b>	<b>Occupation</b>	<b>Member Designation</b>
Abruzzo, Jennifer	12/01/2016	04/25/2018	Deputy General Counsel, National Labor Relations Board	Regular Government Employee (RGE) Member
Banks, Lisa	12/01/2016	04/25/2018	Partner, Katz Marshall & Banks, LLP	Representative Member
Brock, Jonathan	12/01/2012	11/30/2017	Emeritus Faculty Member, University of Washington	Representative Member
Eherts, David	12/01/2012	04/25/2018	Vice President Global EHS, Allergan, Inc.	Representative Member
Frumin, Eric	12/01/2012	11/30/2018	H & S Director, Change to Win	Representative Member
Gaylo, Kym	12/01/2015	04/25/2018	Global HSE Associate Director, Proctor & Gamble	Representative Member
Johnson, Sylvia	12/01/2015	11/30/2017	Deputy Legislative Director United Automobile Aerospace and Agricultural Implement Workers of America (UAW) Program Coordinator,	Representative Member
Lessin, Nancy	12/01/2012	11/30/2017	Steelworkers' Charitable and Educational Organization	Representative Member

Miller, Robert	12/01/2014	04/25/2018	Director, Office of Policy, Strategic Planning, and Regulations, Federal Motor Carrier Safety Administration Appeals, Audit and Discrimination Senior Program	Regular Government Employee (RGE) Member
Perrin, Lezlie	12/01/2015	11/30/2017	Manager, Washington State Department of Labor and Industries Strategic Legal Advisor, National Guestworker Alliance	Representative Member
Rosenbaum, Jennifer	12/01/2014	04/25/2018	Professor of Law, Northeastern University School of Law	Representative Member
Spieler, Emily	12/01/2012	04/25/2018	Assistant Professor, St. Thomas University School of Law	Representative Member
Weldon, Marcia	12/01/2012	11/30/2017	Global Director and Head of Case Management, BP PLC	Representative Member
Wilson, Michael	12/01/2016	04/25/2018		

## Number of Committee Members Listed: 14

### Narrative Description

The mission of OSHA's Whistleblower Protection Program is to enforce whistleblower statutes and protect employees who believe they have been the subject of an adverse employment action in retaliation for engaging in activities related to workplace safety or health. These efforts serve to satisfy the Secretary's strategic initiatives of ensuring workplace health and safety by protecting employees that serve as the frontline of reporting, identifying, and preventing workplace hazards. The Whistleblower Protection Advisory Committee (WPAC) further contributed to this initiative by offering a diverse, educated perspective to support and improve the processes of OSHA's Whistleblower Protection Program. WPAC made recommendations regarding the development and implementation of: better customer service to both workers who raise complaints and employers who are subject of investigations;

improvement in the investigative and enforcement process, and training of OSHA investigators; improvement of regulations governing OSHA investigations; cooperative activities with federal agencies responsible for areas also covered by whistleblower protection statutes enforced by OSHA; and other matters concerning the fairness, efficiency, and transparency of OSHA's whistleblower investigations as identified by the Secretary or Assistant Secretary.

**What are the most significant program outcomes associated with this committee?**

	Checked if Applies
Improvements to health or safety	<input checked="" type="checkbox"/>
Trust in government	<input checked="" type="checkbox"/>
Major policy changes	<input checked="" type="checkbox"/>
Advance in scientific research	<input type="checkbox"/>
Effective grant making	<input type="checkbox"/>
Improved service delivery	<input checked="" type="checkbox"/>
Increased customer satisfaction	<input checked="" type="checkbox"/>
Implementation of laws or regulatory requirements	<input checked="" type="checkbox"/>
Other	<input checked="" type="checkbox"/>

**Outcome Comments**

WPAC aimed to improve the investigative and enforcement process and training of OSHA investigators, as well as other matters concerning the fairness, efficiency, and transparency of OSHA's whistleblower investigations as identified by the Secretary or Assistant Secretary.

**What are the cost savings associated with this committee?**

	Checked if Applies
None	<input checked="" type="checkbox"/>
Unable to Determine	<input type="checkbox"/>
Under \$100,000	<input type="checkbox"/>
\$100,000 - \$500,000	<input type="checkbox"/>
\$500,001 - \$1,000,000	<input type="checkbox"/>
\$1,000,001 - \$5,000,000	<input type="checkbox"/>

\$5,000,001 - \$10,000,000



Over \$10,000,000



Cost Savings Other



### **Cost Savings Comments**

WPAC did not generate any cost savings.

### **What is the approximate Number of recommendations produced by this committee for the life of the committee?**

8

### **Number of Recommendations Comments**

WPAC made one recommendation at its fifth meeting on November 10, 2015. WPAC recommended a series of methods for disseminating the Recommended Practices document. The committee also recommended a list of organizations to reach out to. WPAC made one recommendation at its fourth meeting on April 21, 2015. WPAC recommended a series of best practices for preventing retaliation against whistleblowers that OSHA can disseminate to organizations. WPAC made four recommendations at its third meeting on September 4, 2014. The Transportation Industry Work Group drafted a recommendation that the full committee revised and approved. The committee recommended that OSHA develop and offer statute-specific training to transportation and other industries subject to whistleblower laws to assist company managers, supervisors, and employees in understanding their rights and responsibilities under whistleblower laws. The 11(c) Work Group drafted three recommendations that the full committee approved. The committee recommended that OSHA work with the Department of Labor's Office of the Solicitor to develop consistent, articulable standards regarding the circumstances when punitive damages may be appropriate in 11(c) cases; OSHA should develop an information and education campaign on the dangers of incentive programs that discourage the reporting of injuries; and OSHA should advocate for specific changes to the provisions of 11(c), including a longer statute of limitations, revised standards of proof, a preliminary right to reinstatement, review by ALJs, right to attorneys' fees and full damages; a kick out provision, and a provision guaranteeing rights similar to that in Section 806 of Sarbanes-Oxley. WPAC made two recommendations at its second meeting on March 11, 2014. Both recommendations originated in the Transportation Industry Work Group and were voted on by the full committee. The first recommendation encouraged OSHA to be more consistent in its information sharing across regions and encouraged investigators to share information with both parties in accordance with laws, regulations, and OSHA's internal guidelines. The second recommendation encouraged OSHA to take steps to improve consistency in the application of laws, regulations, and statutes subject



to OSHA's jurisdiction.

**What is the approximate Percentage of these recommendations that have been or will be Fully implemented by the agency?**

12%

**% of Recommendations Fully Implemented Comments**

OSHA implemented the recommendation regarding information sharing by issuing a memorandum to the field about cross-referrals on June 27, 2014. OSHA has always had a policy of cross-referrals. OSHA has also had a non-public disclosure policy since April 11, 2006. It was formalized in the Whistleblower Investigations Manual in 2011. In addition, OSHA issued instructions to the field on information sharing in April 2012.

**What is the approximate Percentage of these recommendations that have been or will be Partially implemented by the agency?**

37%

**% of Recommendations Partially Implemented Comments**

OSHA partially implemented the recommendation regarding incentive programs by conducting an internal webinar to its field staff on that topic on February 10, 2015. OSHA conducted a roll-out campaign when the incentive program memo was released on March 12, 2012. On April 24, 2014, prior to WPAC's recommendation regarding changes to 11(c), OSHA's Assistant Secretary advocated for changes to the law before the Senate HELP committee. He reiterated his call on October 7, 2015 before the House Committee on Education and the Workforce. On April 21, 2015, OSHA updated its Whistleblower Investigations Manual to include additional details about how punitive damages are calculated. The update had been in process prior to WPAC's recommendation regarding punitive damages. In the fall of 2013, OSHA began working on a revised training directive for its employees. OSHA has actively been involved in outreach and developing training materials since the whistleblower program was given its own directorate. In January 2017, OSHA issued Recommended Practices for Anti-Retaliation Programs, which was based on a WPAC recommendation. The agency used, in part, a document created by the committee in its dissemination plan for the Recommended Practices document.

**Does the agency provide the committee with feedback regarding actions taken to implement recommendations or advice offered?**

Yes ☒ No ☐ Not Applicable ☐

**Agency Feedback Comments**

WPAC received Agency feedback at its meetings from several sources. Traditionally the Agency Decision maker, the Assistant Secretary of Labor for Occupational Safety and Health, addressed the committee at each meeting and responded to questions from the committee members. This presentation and discussion routinely included an overview of Agency progress, upcoming events, hot topics and references to more specific staff presentations during the meeting.

**What other actions has the agency taken as a result of the committee's advice or recommendation?**

Checked if Applies

Reorganized Priorities	<input type="checkbox"/>
Reallocated resources	<input type="checkbox"/>
Issued new regulation	<input type="checkbox"/>
Proposed legislation	<input type="checkbox"/>
Approved grants or other payments	<input type="checkbox"/>
Other	<input type="checkbox"/>

**Action Comments**

OSHA has not reorganized priorities, reallocated resources, issued new regulations, proposed new legislation, or approved grants based on any WPAC recommendations.

**Is the Committee engaged in the review of applications for grants?**

No

**Grant Review Comments**

Not applicable

**How is access provided to the information for the Committee's documentation?**

Checked if Applies

Contact DFO	<input checked="" type="checkbox"/>
Online Agency Web Site	<input checked="" type="checkbox"/>
Online Committee Web Site	<input checked="" type="checkbox"/>
Online GSA FACA Web Site	<input checked="" type="checkbox"/>
Publications	<input type="checkbox"/>
Other	<input type="checkbox"/>

**Access Comments**

Not applicable

