

**Post-Hearing Questions for the Record**  
**Submitted to**  
**Ms. Angela Canterbury, Project on Government Oversight**  
**From Senator McCaskill**  
**“WHISTLEBLOWER PROTECTIONS FOR CONTRACTOR WHISTLBLOWERS”**  
**Tuesday, December 6, 2011, 10:00 A.M.**  
**United States Senate, Subcommittee on Contracting Oversight,**  
**Committee on Homeland Security and Governmental Affairs**

1. During the hearing, Senator Portman questioned the first panel regarding applying a statute of limitation to contractor whistleblower complaints. Would you have any concerns if the law were to require a statute of limitations for whistleblower claims?

One concern would be if the statute of limitations were related to the disclosure and not the retaliation, since commencement of retaliation might happen long after the disclosure, such as after a multi-year investigation into the alleged misconduct. Notably, the Whistleblower Protection Act (WPA) does not have a statute of limitations for whistleblower retaliation claims. In WPA cases, there are many examples of administrative investigations and procedures for remedies dragging on for years. If there were any statute of limitations for contractor claims, it should be tied to the commencement of retaliation and should not be any shorter than the three years provided for claims under the False Claims Act and the Securities and Exchange Commission whistleblowers protections. If less time were afforded, the concern would be that potential remedies that might be utilized by an employee, such as internal compliance programs or mediation with the employer, might not be exhausted before the statute of limitation for civil action were reached. Worse, the potential remedies for resolution between the employer and whistleblower prior to civil action might become traps for the whistleblower should an employer seek to strategically delay resolution to surpass the statute of limitations. Therefore these other remedies might not be utilized at all by some whistleblowers, thereby undermining the potential incentives for whistleblowers to work for resolution of retaliation internally.

2. Have you seen any examples as to how contractors may be complying with the Recovery Act’s notice requirements? Do you have any suggestions as to how these notice requirements should be implemented in the contractor workplace?

I have not personally visited Recovery Act worksites and haven’t found information regarding compliance, so I cannot speak to whether posters and notices are being placed as required. However, a quick survey of what is posted online produces many “hits” and widespread examples of notification of the requirements and online compliance.<sup>1</sup> Because it’s not clear if

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<sup>1</sup> Some examples: City of Portland: <http://www.portlandonline.com/index.cfm?c=50617#whistleblower>; University of Central Florida: <http://pegasus.cc.ucf.edu/~inspgen/Investigations.htm>; NYSDOT instructions to contractors and contracting agencies: <https://www.dot.ny.gov/recovery/repository/eb09024.pdf>; “Request for Quote” for subcontract under AARA, cites compliance: “*Whistleblower Protection* (Section 1553 of Division A, Title XV, of the American Recovery Act of 2009, P.L. 111-5) —Contractor certifies that it will comply with all provisions of the American Recovery and Reinvestment Act of 2009 as they relate to whistleblower protection. A copy of the Whistleblower Rights Poster published by the DoC Office of the Inspector General

onsite compliance parallels online compliance, it may be that requiring both, wherever possible, would be helpful. However, it does appear that the law has been well promulgated by requiring that all solicitations and contracts funded in whole or part include a clause stipulating the notification requirement.<sup>2</sup>

In addition, to implement contractor whistleblower notices, a toll-free hotline number for the appropriate Inspector General should be required (as opposed to an internal hotline). POGO has also recommended for similar worksite postings that the notices of rights be provided in the languages of the workers. This is especially important overseas with contractors and subcontractors who employ local or foreign nationals, but also could be important domestically at many worksites.

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will be posted at all work sites.”<http://www.jkmconsultinginc.com/uploadedFiles/File/RFQ-ProjectBEAR-ProgramSpecificAudit.pdf>

<sup>2</sup> FAR 3.907-7: Use the clause at 52.203-15, Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 in all solicitations and contracts funded in whole or in part with Recovery Act funds.