United States Government Accountability Office

Report to the Subcommittee on the Legislative Branch, Committee on Appropriations, House of Representatives

May 2019

WHISTLEBLOWERS

Key Practices for Congress to Consider When Receiving and Referring Information

GAO-19-432

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GAO Highlights

Highlights of GAO-19-432, a report to the Subcommittee on the Legislative Branch, Committee on Appropriations, House of Representatives

Why GAO Did This Study

Federal whistleblowers—employees who report violations of law, agency mismanagement or ethical violations—help to safeguard the federal government against waste, fraud, and abuse. Whistleblowers can report to various entities, including the Congress. While these reports are a key source of information for federal oversight, whistleblowers can risk reprisal. Therefore, it is important to appropriately handle whistleblowers' information and identity.

The House Committee on Appropriations Report 115-696 included a provision for GAO to identify congressional avenues, resources, and best practices for working with whistleblowers. This report describes (1) how the Congress receives whistleblower information, (2) the policies and training currently available to congressional staff, and (3) key practices that the Congress could consider for receiving and referring information from whistleblowers. GAO interviewed congressional staff, officials from the Office of Special Counsel (OSC) and the Council of the Inspectors General on Integrity and Efficiency (CIGIE), and selected advocacy groups that have experience working with whistleblowers. GAO analyzed congressional websites and queried congressional staff regarding policies and training on whistleblowers for congressional staff. To develop key practices, GAO reviewed literature, existing procedures, and standards.

GAO is not making recommendations, but is available to assist the Congress with practices for working with whistleblowers. OSC and CIGIE provided technical comments that were incorporated as appropriate.

View GAO-19-432. For more information, contact Michelle Sager at (202) 512-6806 or sagerm@gao.gov.

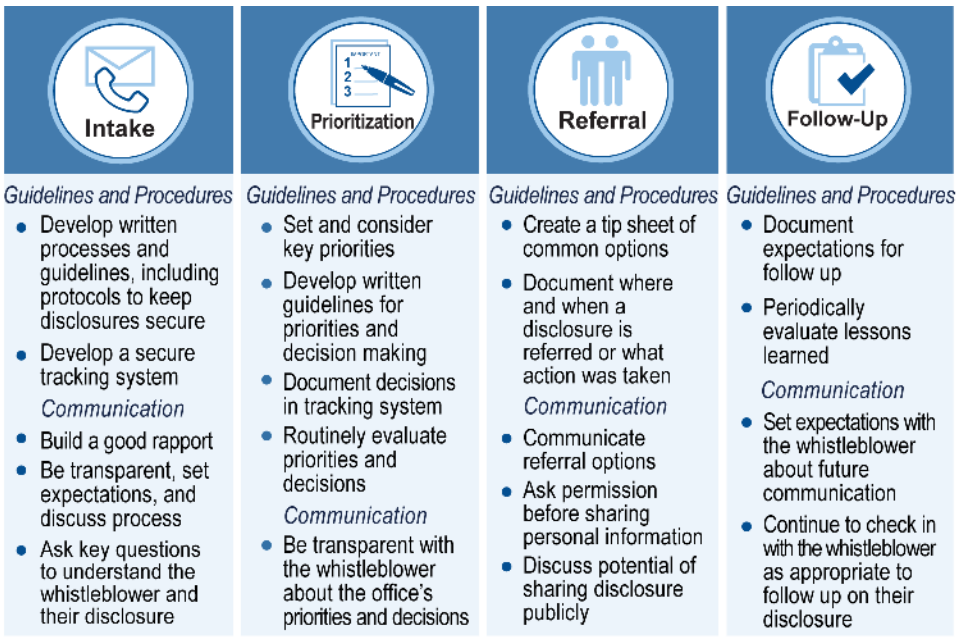
What GAO Found

The Congress receives whistleblower information in multiple ways. Congressional staff and advocacy groups said whistleblowers who contact the Congress typically reach out to oversight committees, the offices of their own representatives or senators, or authorizing committees. Congressional staff said some whistleblowers contact and work with multiple congressional offices simultaneously. Congressional office websites GAO reviewed included contact information to provide whistleblowers with multiple options for reporting suspected wrongdoing, including email links, hotlines, and web-based forms.

Congressional staff can access resources for guidance on working with whistleblowers including congressional advice and internal training on oversight, committee-specific training related to handling whistleblower cases, and training from external advocacy groups on techniques for working with whistleblowers. Staff from several committees said direct experience is important for building skills to effectively work with whistleblowers.

GAO identified key practices the Congress could consider when receiving and referring whistleblower information to other committees and federal agencies. These practices can serve as a resource for congressional offices and staff to intake, prioritize, refer, and follow-up with whistleblowers who contact their office or committee. For each step, GAO identified practices to help offices develop guidelines and procedures as well as for communication, including key questions staff can ask the whistleblower.

Key Practices for Congressional Staff to Consider When Working with Federal Whistleblowers



Source: GAO analysis of academic literature, applicable internal controls, and existing procedures and standards. I GAO-19-432

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Abbreviations

CIGIE	Council of the Inspectors General on Integrity and Efficiency
IG	Inspectors General
OSC	Office of Special Counsel
MSPB	Merit Systems Protection Board

U.S. GOVERNMENT ACCOUNTABILITY OFFICE
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May 7, 2019

The Honorable Tim Ryan
Chairman
The Honorable Jaime Herrera Beutler
Ranking Member
Subcommittee on the Legislative Branch
Committee on Appropriations
House of Representatives

Federal whistleblowers—employees who report violations of law, or agency mismanagement or ethical violations—help to safeguard the federal government against waste, fraud, and abuse. Whistleblowers can report this type of information—called a disclosure—to various entities. These disclosures are a key source of information for the Congress in its oversight of the federal government. Whistleblowers' willingness to come forward holds the potential to improve government operations, but these individuals can risk reprisals, such as demotion, reassignment, or termination as a result of their disclosures. To ensure these valuable disclosures continue, it is important to appropriately handle whistleblowers' information and identity.

Federal laws protect current and former federal employees and applicants for federal employment from adverse personnel actions related to whistleblowing. Federal employees may become whistleblowers by disclosing information to the Congress or multiple federal and non-governmental entities including Inspectors General (IG), the Office of Special Counsel (OSC), and the press. Federal law also provides certain whistleblower protections to contractors and grantees.

House Report 115-696 included a provision for us to identify congressional avenues, resources, and best practices for the Congress in working with whistleblowers.[1] This report describes (1) the ways in which whistleblowers can report information to the Congress, (2) the policies and training currently available to congressional staff on working with whistleblowers, and (3) key practices that the Congress could consider for receiving and referring information from whistleblowers.

[1]H.R. Rep No. 115-696 (2018).

Our work for all objectives focused on civilian federal employees (current employees, former employees, and applicants for federal employment), contractors, subcontractors and grantees. Our findings do not apply to servicemembers or employees who are part of the intelligence community as their options for disclosing, available protections, and recourse options differ.[2] Our work applies to congressional staff working with employees making any type of protected disclosure, whether or not they have made this disclosure elsewhere or if any related actions, including reprisals, have occurred.

For all objectives, we interviewed congressional staff, executive officials, and advocacy groups. Consistent with the government-wide scope of our engagement, we interviewed staff from three congressional oversight committee offices about their experiences working with whistleblowers across the government. We also interviewed staff from the office of a member of the House Whistleblower Protection Caucus, OSC, and the Council of the Inspectors General on Integrity and Efficiency (CIGIE) on their procedures for and experiences with working with whistleblowers. We interviewed representatives of the Project on Government Oversight, the Government Accountability Project, and the National Whistleblower Center on their experiences working with whistleblowers. We selected these advocacy organizations based on the suggestions of staff from executive agencies and congressional committees that work with whistleblowers, as well as organizations consulted in our past work on whistleblowing.

To describe the ways in which whistleblowers might report information to the Congress, we used a web-scraping program to identify congressional websites with terms related to whistleblowing (e.g., “whistleblower,” “whistle blow,” “blow the whistle,” “whistleblower hotline,” and “whistleblower tipline”), reviewed the content of the identified websites to verify relevance, and analyzed the results to determine methods available

[2]Military servicemembers are protected by the Military Whistleblower Protection Act, 10 U.S.C. § 1034. Intelligence community officials are protected by the Intelligence Community Whistleblower Protection Act of 1998, Pub. L. 105-272 (1998). See GAO, *Whistleblower Protection: Opportunities Exist for DOD to Improve the Timeliness and Quality of Civilian and Contractor Reprisal Investigations*, GAO-17-506 (Washington, D.C.: September 29, 2017); and *Whistleblower Protection, DOD Needs to Enhance Oversight of Military Whistleblower Reprisal Investigations,* GAO-15-477 (Washington, D.C.: May 7, 2015).

for potential whistleblowers to report information.[3] To supplement this analysis, we performed similarly structured searches using online search engines to identify congressional websites with whistleblower terms. To identify any additional ways in which whistleblowers may report information to the Congress, we also queried selected congressional staff on the ways in which whistleblowers contact their offices.

To describe the policies and training available to congressional staff on working with whistleblowers, we asked the staff for congressional committees that also provide support for congressional staff—the House Committee on Rules, Committee on House Administration, Senate Committee on Rules and Administration, House Committee on Ethics and Senate Select Committee on Ethics, and House and Senate Counsel—for any information on training they provide to congressional staff on working with whistleblowers. To identify the resources currently provided to congressional staff on interacting with whistleblowers, we interviewed the House Office of General Counsel, the Senate Select Committee on Ethics, the Congressional Research Service, the Project on Government Oversight and the Government Accountability Project about training they provide to congressional staff.

To develop key practices for congressional staff working with whistleblowers, we reviewed IG and OSC procedures, our prior work, and our interviews with advocacy groups and congressional staff. We conducted a literature review to ensure that our key practices incorporated applicable academic and government research and findings. Our literature review included searches of several academic, literature, and government sources, such as ProQuest, Scopus, and DIALOG, for articles or studies published from January 1, 2008, to August 2018.[4] We

[3]"Web-scraping" refers to the automated process of discovering web pages and copying them for subsequent analysis.

[4]The search focused on articles using several combinations of relevant key words such as variants of "whistleblow," "disclose," and "report" with terms such as "government," "department," "agency," "official," or "federal." We conducted a second search on potential best practices or policies in whistleblowing management in the public sector. Whistleblowing and related terms were searched, as well as terms such as "best," "leading," and "practices." This search included the databases above, as well as the Harvard Kennedy School Think Tank Search tool, Lexis CQ hearing transcripts and ProQuest Congressional, and internet searches of government websites. We retrieved 25 academic and 79 grey literature results from the second search. Grey literature comprises documents produced by government, academia, business, and industry in print and electronic formats that are protected by intellectual property rights, but not controlled by commercial publishers.

supplemented these searches with a web search.[5] One analyst reviewed the results to identify relevant articles and a second analyst reviewed these determinations. To analyze and summarize the results of the literature search, one analyst used a data collection instrument to review each relevant article, document information relevant to our objectives, and identify key themes to inform our key practices. A second reviewer then reviewed this analysis.

Using these multiple sources, we identified key practices[6] that align with internal controls and could inform congressional office policies and guidelines.[7] For each step that we identified, we considered relevant internal controls, such as clear and transparent internal and external communication, implementation of policies, and evaluation of existing policies and procedures to identify risks and assess their effect on achieving the defined objectives of the office. To ensure the applicability of our draft key practices, we requested that current and former congressional staff and executive officials review the identified practices and provide feedback on their validity and potential usefulness. These officials included those that we had previously interviewed or were referred to by those we interviewed due to their experience working with whistleblowers.

We conducted our work from July 2018 to May 2019 in accordance with all sections of GAO's Quality Assurance Framework that are relevant to our objectives. The framework requires that we plan and perform the engagement to obtain sufficient and appropriate evidence to meet our stated objectives and to discuss any limitations in our work. We believe that the information and data obtained, and the analysis conducted, provide a reasonable basis for any findings and conclusions in this product.

[5]This search included ".org" sites using "whistleblower" and "best practices" or "leading practices."

[6]We did not assess existing policies and guidelines to determine the extent to which they applied these practices.

[7]GAO, *Standards for Internal Control in the Federal Government*, GAO-14-704G (Washington: D.C.: September 2014).

Background

How is the term "whistleblower" defined?

In this report, we use the term whistleblower more broadly than it is defined by the Whistleblower Protection Act.[8] Our definition of whistleblower includes any federal employee, contractor, or grantee who discloses suspected wrongdoing—regardless of reprisal status or nature of their disclosure. To trigger whistleblower protections under the Whistleblower Protection Act, the disclosure must be a contributing factor to an adverse personnel action, commonly called a reprisal. The act, which covers certain federal employees, defines personnel actions to include effects on performance evaluations or significant changes in working conditions.[9] The act further defines a protected disclosure as any disclosure that an employee reasonably believes evidences "a violation of any law, rule, or regulation" or "gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety." Federal laws protecting other types of employees generally have similar definitions for personnel actions and protected disclosures.

What are the protections for federal whistleblowers?

The Civil Service Reform Act of 1978 provided the first whistleblower protections for disclosures of violations of laws, mismanagement, or gross waste of funds for federal employees, former employees, and applicants for employment, among other things.[10] To strengthen protections for those who claim whistleblower retaliation, the Congress passed the Whistleblower Protection Act of 1989. In 2012, the Whistleblower Protection Enhancement Act clarified the scope of protected whistleblowing under the Whistleblower Protection Act and mandated broader outreach to inform certain federal employees of their whistleblower rights, among other things.[11] The No Fear Act requires agencies to notify and train employees, former employees, and applicants of their rights under antidiscrimination and whistleblower protection laws and requires the Office of Personnel Management to report annually on certain topics regarding antidiscrimination and whistleblower protection

[8]5 U.S.C. § 2302(c).

[9]Employees exempted from competitive service because of their policy-making character are not protected by the Whistleblower Protection Act. Additionally, employees at the U.S. Postal Service, GAO, and intelligence agencies are not protected by the act. Federal law designates 12 personnel actions. See 5 U.S.C. 2302 § (a)(2)(A)(i)-(xii).

[10]5 U.S.C. § 2302(b)(8).

[11]Pub. L. No. 112-199, 126 Stat. 1465 (Nov. 27, 2012).

laws, including disciplinary actions taken for conduct that is inconsistent with these laws.[12] Further, the Dr. Chris Kirkpatrick Whistleblower Act of 2017 enhanced disciplinary penalties for supervisors who engage in whistleblower retaliation.[13] For a summary of protections provided to different types of federal employees, contractors, and grantees, see table 1.

Table 1: Whistleblower Protections for Different Types of Federal Employees, Contractors, and Grantees

Type of employee	Is communication with the Congress protected?	What types of disclosures are protected?	What types of protections are given?	What is the legal basis?
Civilian Federal Employees, Retirees, and Applicants	Yes	Any disclosure an employee reasonably believes evidences a violation of law, rule, or regulation, or evidences gross mismanagement, gross waste of funds, abuse of authority, or a substantial and specific danger to public health.	Protects against prohibited personnel practices including retaliation	Lloyd-LaFollette Act of 1912 5 U.S.C. § 7211, Whistleblower Protection Act, Whistleblower Protection Enhancement Act, Civil Service Reform Act of 1978 5 U.S.C. § 2302
Military Service-members	Yes	Making or preparing to make a lawful communication to a Member of Congress, Inspector General, a member of a Department of Defense audit organization, etc., regarding what the servicemember reasonably believes to be evidence of (1) a violation of law or regulation, (2) gross mismanagement, (3) a gross waste of funds, (4) an abuse of authority, or a substantial and specific danger to public health or safety, or a threat by another servicemember or civilian employee or damage to military, federal, or civilian property.	Unfavorable personnel action, including actions such as performance evaluations or disciplinary or other corrective actions	Lloyd-LaFollette Act of 1912 5 U.S.C. § 7211, Military Whistleblower Protection Act of 1988 10. U.S.C. § 1034

[12]Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002, Pub. L. 107-174 (2002).

[13]Dr. Chris Kirkpatrick Whistleblower Protection Act of 2017. Pub. L. 115-73 (2017).

Type of employee	Is communication with the Congress protected?	What types of disclosures are protected?	What types of protections are given?	What is the legal basis?
Intelligence Community (employees and contractors)	Yes	Complaints and information to congressional intelligence committees with respect to an "urgent concern," such as a serious or flagrant problem, abuse, violation of law or executive order or deficiency relating to the funding, administration, or operations of an intelligence activity involving classified information, a false statement to or willful withholding from Congress.	Protects against prohibited personnel practices including retaliation when employees report to congressional intelligence committees a complaint or information with respect to an "urgent concern"	Lloyd-LaFollette Act of 1912 5 U.S.C. § 7211 (for federal employees), Intelligence Community Whistleblower Protection Act of 1998, Pub. L. 105-272 Presidential Policy Directive PPD-19 (October 10, 2012) 50 U.S.C. § 3234 5 U.S.C. § 2302(a)(2)(A)
Civilian, Department of Defense, and National Aeronautics and Space Administration Federal Contractors, Subcontractors, and Grantees	Yes	Information that the employee believes is evidence of (1) 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, (2) a substantial and specific danger to public health or safety, and (3) a violation of law, rule, or regulation related to a federal contract (including the competition for or negotiation of a contract) or grant.	Provides protection against such actions as demotion and discharge	The National Defense Authorization Act for Fiscal Year 2013 (made permanent in P.L. 114-261 and codified in 41 U.S.C. § 4712 (civilian) and 10 U.S.C. § 2409 (Department of Defense and National Aeronautics and Space Administration))

Source: GAO analysis of applicable legal protections.| GAO-19-432

How does the Congress use information from whistleblowers as part of its oversight activities?

Congressional offices conduct oversight of the federal government through congressional hearings, informal contacts with executive officials, staff reports on investigations, and oversight letters to agencies asking for information or urging them to take certain actions. As part of their oversight activities, the Congress also uses studies prepared by others, such as statutory commissions, Inspectors General, and us.

Members of Congress may initiate oversight action using information from a whistleblower that they receive through constituent services. These activities include case work and fielding public comments related to federal policies, programs, and services, including responding to disclosures of suspected wrongdoing from federal employees, contractors, and grantees. Individual congressional offices manage and prioritize their own casework activities, subject to House or Senate rules and relevant laws.

Where else can a federal whistleblower turn?

In addition to the Congress, a civilian federal employee, contractor, or grantee can report wrongdoing to other entities. Congressional staff and executive officials told us that whistleblowers often reach out to multiple entities concurrently. Entities that work with whistleblowers have different roles and potential remedies.

- **Agency management:** Employees can make disclosures to supervisors or management, who may have the ability to take action to address the concern. These disclosures are protected against reprisal, but whistleblowers may fear that they could be demoted, reassigned, or fired as a result of their disclosure.
- **Inspectors General (IG):** IGs are independent units within agencies that investigate potential fraud, waste, abuse, and mismanagement in their agency's programs and operations.[14] IGs are to report to both the agency head and the Congress about deficiencies in agency programs and operations, and progress in correcting those deficiencies. The agency IG may make recommendations to the agency head, but cannot require action to be taken. Many IGs are required to designate a Whistleblower Coordinator. The Whistleblower Coordinator is required to educate agency employees about prohibitions on retaliation for protected disclosures and inform employees who have made, or are contemplating making, a protected disclosure of their rights and remedies against retaliation for protected disclosures.[15] IGs are also required to prepare semiannual reports summarizing the activities of the office. Such reports include, among other things, a detailed description of any instance of whistleblower retaliation, including information about the official found to have engaged in retaliation.[16]
- **U.S. Office of Special Counsel (OSC):** As an independent federal investigative and prosecutorial agency, OSC reviews disclosures from current federal employees, former employees, and applicants for federal employment.[17] If OSC's review determines that there is a

[14]As of 2014, CIGIE reported that there are 72 statutory IG offices across the federal government. Inspector General Act of 1978, Pub. L. 85-452 (1978).

[15]§3(d)(C)(i)-(iii) of the Inspector General Act of 1978, Pub. L. 95-452 (1978), as amended by the Whistleblower Protection Coordination Act, Pub. L. 115-192 (2018).

[16]§5(a)(20) of the Inspector General Act of 1978, Pub. L. 95-452 (1978), as amended by the Whistleblower Protection Coordination Act, Pub. L. 115-192 (2018).

[17]GAO, *Office of Special Counsel: Actions Needed to Improve Processing of Prohibited Personnel Practice and Whistleblower Disclosure Cases*, GAO-18-400 (Washington, D.C.: June 14, 2018).

substantial likelihood that the types of wrongdoing described above may have occurred, it will refer the allegation to the head of the subject agency for investigation. The subject agency must then report back to OSC on its findings and actions it plans to take as a result of the investigation. OSC then reviews the report to determine if the agency's findings are reasonable and shares it with the whistleblower for comment. OSC then shares the agency report, OSC comments or recommendations, and the whistleblower comments with the Executive Office of the President and the chairmen and ranking members of the congressional committees with oversight responsibilities for the agency. OSC also sends the agency and the whistleblower a closure letter and posts the case information on OSC's public website.[18] If a reprisal has occurred, an employee can make an allegation that a prohibited personnel practice has occurred. OSC then investigates and can seek a stay, corrective actions, or disciplinary actions.

- **Merit Systems Protection Board (MSPB):** An independent federal agency, MSPB considers certain allegations from federal employees who believe they have experienced retaliatory personnel actions in response to making a protected disclosure.[19] When an employee is subject to a personnel action, such as a reassignment with no reduction in pay or grade, and claims that the action was taken because of whistleblowing or other covered protected activity, the employee can appeal to MSPB only after filing a complaint with OSC and if OSC does not seek corrective action on the individual's behalf. Certain personnel actions—such as a removal, demotion, or suspension of more than 14 days due to claims of whistleblowing are directly appealable to MSPB, rather than first exhausting the OSC process. If MSPB determines the appeal is under its jurisdiction, an administrative judge will review both the appealable matter and the claim of reprisal. The employee may appeal the administrative judge's decision to the three-Member board of MPSB or to the U.S. Court of Appeals.[20]

[18]https://osc.gov/Pages/Resources-PublicFiles.aspx (last accessed March 19, 2019).

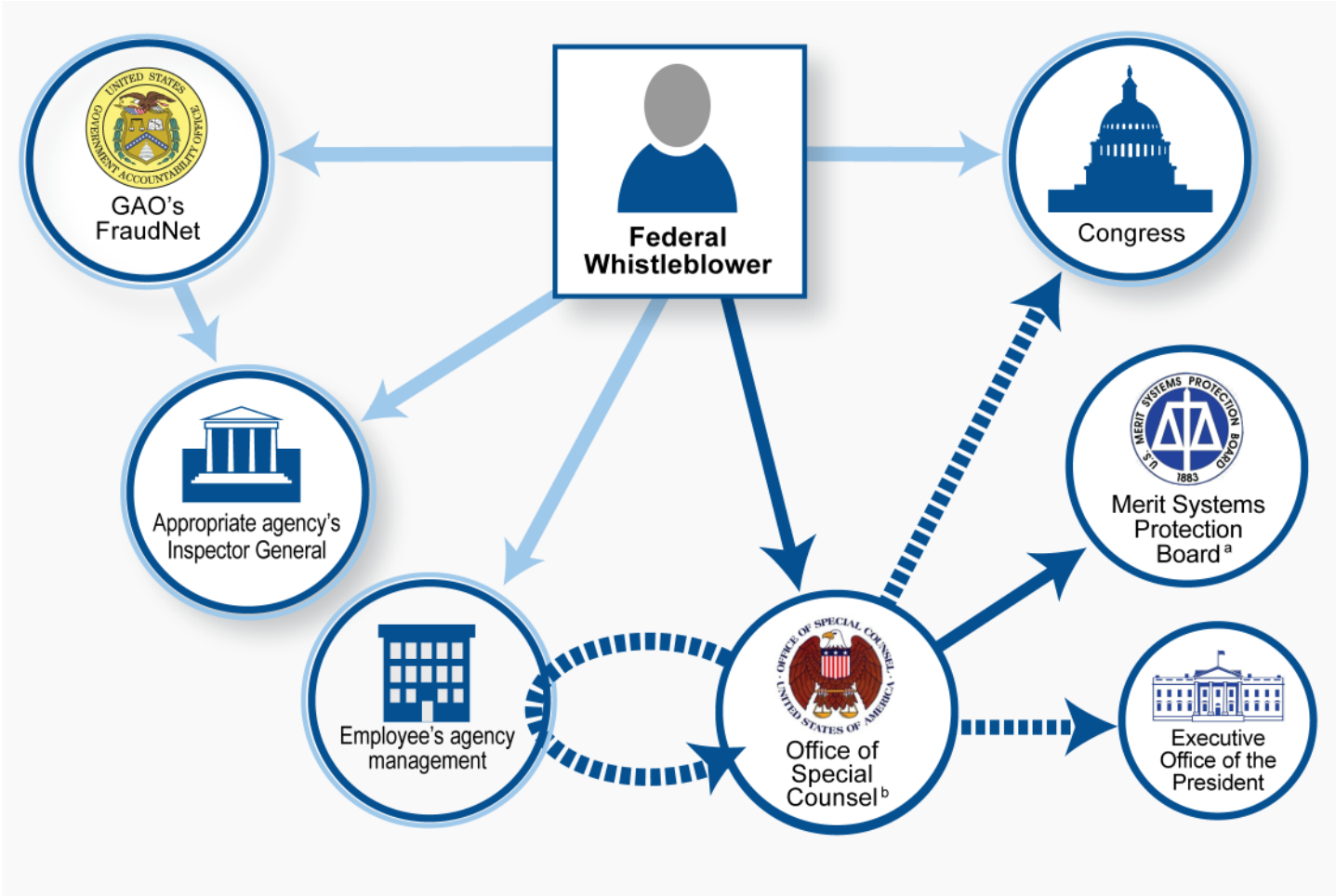
[19]GAO, *Whistleblower Protection: Additional Actions Would Improve Recording and Reporting of Appeals Data*, GAO-17-110 (Washington, D.C.: Nov. 28, 2016).

[20]As of April 23, 2019, the MSPB board had not had a quorum since January 2017. Two nominees for the board had been reported favorably out of committee but the Senate had not yet voted on their nominations.

- **GAO's FraudNet:** FraudNet is a component of our investigative unit that serves as a government-wide clearinghouse for reports of potential fraud, waste, abuse, and mismanagement in federal programs. FraudNet may refer an allegation of wrongdoing to the appropriate IG or federal, state, and local law-enforcement agencies.

See figure 1 below.

Figure 1: Federal Whistleblower Options Available to Federal Civilian Employees, Contractors, and Grantees



Source: GAO analysis of applicable laws and procedures. I GAO-19-432

Note: Federal whistleblowers may also go to law enforcement officials with their disclosures.

[a]Certain personnel actions—such as a removal, demotion, or suspension of more than 14 days—due to claims of whistleblowing are directly appealable to the Merit Systems Protection Board, rather than first exhausting the Office of Special Counsel (OSC) process.

[b]OSC will refer the allegation to the head of the subject agency for investigation. The subject agency must then report back to OSC on its findings and action it plans to take as a result of the investigation.

Congress Receives Whistleblower Information in Multiple Ways

Whistleblowers Typically Contact Oversight Committees, Their Congressional Representatives, or Select Authorizing Committees

The congressional offices and advocacy groups we spoke with told us that whistleblowers who contact the Congress typically reach out to oversight committees, the offices of their own representatives or senators, or select authorizing committees. Congressional oversight committees—the House Committee on Oversight and Reform and the Senate Committee on Homeland Security and Governmental Affairs—have jurisdiction over federal operations in executive branch agencies and regularly work with whistleblowers who are current and former federal employees, contractors, and grantees.

Whistleblowers often contact and work with multiple congressional offices simultaneously, according to congressional staff and advocacy groups we spoke with for this review. Congressional offices regularly exchange whistleblower referrals—with whistleblowers' consent—and, in some instances, collaborate on whistleblower disclosures based on the jurisdiction and relevant expertise of each office. For example, Senate oversight committee staff told us that they worked on a whistleblower disclosure with their counterparts in an authorizing committee because the authorizing committee had jurisdiction over the agency involved in the whistleblower disclosure. House oversight committee staff told us that they were often consulted by Members' congressional staff regarding whistleblower disclosures from their constituents because of the committee's experience in working with whistleblowers.

While data are not available on the number of whistleblower disclosures across Congress, a staff member at one congressional office said the office can receive hundreds of whistleblower disclosures each year. Oversight committee staff told us that the volume of whistleblowers their offices receive tends to increase when congressional oversight issues are prominent in the news media. They said that congressional oversight actions—such as letters to agency officials—can signal congressional interest to agency employees and influence whistleblower disclosures to Congress.

Congress Provides Multiple Ways for Whistleblowers to Disclose Information

Congressional offices include contact information on their websites that provide the public with multiple options for submitting information to representatives' and senators' offices and to congressional committees. Of the congressional websites we reviewed, we found that oversight committees, some authorizing committees, and some Members of Congress have specific contact information on their websites for whistleblowers to use for disclosing suspected wrongdoing. We found the following examples of ways congressional committee and individual Member's websites provide whistleblowers with options for disclosing information:

- **Email:** Email addresses are highlighted for whistleblowers to use for disclosing suspected wrongdoing to a congressional office.
- **Hotlines:** Hotlines allow whistleblowers to call to disclose suspected wrongdoing to a congressional office and, in some instances, include information for relevant federal agency IG hotlines and GAO's FraudNet as additional options.
- **Web-based forms:** Web-based forms allow whistleblowers to submit comments and other information online in a consistent format that can facilitate intake. While the format of these web-based forms varies, most include fields for whistleblowers to (1) identify the agency in which the suspected wrongdoing occurred, (2) describe the suspected wrongdoing, and (3) disclose contact information should the congressional office require additional information. Congressional web intake forms we reviewed either allow for anonymous submission or include disclaimer statements assuring the confidentiality of whistleblower information.

While congressional offices provide whistleblowers with the above options for disclosing information, all congressional staff we spoke with noted the importance of interacting with whistleblowers by phone or in person. For example, oversight committee staff told us whistleblower interactions by phone can help them determine the credibility of the whistleblower's information, the seriousness of the issue being disclosed, and what congressional action, if any, can address the matter.

Congressional Staff Can Request Training on Working with Whistleblowers

There are a range of resources and training available to congressional staff on working with whistleblowers. Internal resources include oversight training and legal advice on specific inquiries related to whistleblowing when requested. Committees or staff may also create training on whistleblowers and provide on-the-job training to their staff. Lastly, external organizations provide training to congressional staff on congressional oversight and working with whistleblowers.

- **General training and advice on congressional oversight:** Both the House Office of General Counsel and Senate Office of Legal Counsel said they provide advice on working with whistleblowers when requested. House Office of General Counsel staff told us they provide training to House Members and staff upon request, including training focused on whistleblower topics, such as legal protections and risks as well as advice for working with whistleblowers. House Office of General Counsel staff also told us they frequently address working with whistleblowers when providing general training on congressional oversight and legal advice to Members and staff. Senate Office of Legal Counsel staff told us they give occasional verbal advice to Members and staff on working with whistleblowers in response to specific inquiries.

  The Congressional Research Service provides congressional staff with training on constituent services and oversight, but does not provide training specifically focused on working with whistleblowers. Congressional Research Service training provides concepts and materials for congressional offices to adapt to their own use and needs.

- **Committee-specific training related to whistleblowing:** Staff from the House Committee on Oversight and Reform stated that they have created internal training for their staff on working with whistleblowers. During these training sessions, they distribute committee guidelines and policies for handling whistleblower cases, such as what information to ask for and how to prioritize among whistleblower claims. These training sessions also include discussion of skills such as building rapport and managing the whistleblower's expectations.

  Oversight staff we spoke with told us that direct experience working with whistleblowers is important. Staff at one committee told us that they identify opportunities for new staff to directly observe more

experienced staff members as they work with whistleblowers to build these skills.

- **External training:** Oversight committee staff told us they leveraged outside training on congressional oversight from external advocacy groups. Staff stated that these training sessions are tailored to congressional staff and focus on how to manage calls and varying techniques for working with whistleblowers. Selected advocacy groups also told us that they provide training for congressional staff on working with whistleblowers.

The congressional committees we queried that support congressional staff—including the House Committee on Rules, Committee on House Administration, Senate Committee on Rules and Administration, House Committee on Ethics and Senate Select Committee on Ethics, and House and Senate Counsel—told us that they do not provide training or policies to all congressional staff on working with whistleblowers.[21]

Key Practices for Congressional Consideration When Receiving and Referring Information from Whistleblowers

While the Congress provides different ways for whistleblowers to disclose information, congressional staff and executive officials we spoke with told us that it is important that this information and the whistleblowers' identity are effectively handled once it is received. We identified key practices to help guide congressional staff receiving information from whistleblowers and to help inform future training based on our review of IG and OSC practices, academic research, current congressional practices, and internal controls.

Our review found four basic steps to follow when receiving and referring information from whistleblowers. We identified intake as the first step in the process. Intake is the initial communication with the whistleblower where key information is collected and a relationship is established. The office can then consider its priorities as a second step, before deciding what action to take with the whistleblower disclosure. This decision process can lead to an oversight action or a referral. The third step we

[21]In January 2019, the House of Representatives established an Office of Whistleblower Ombudsman and directed the Ombudsman to develop best practices for whistleblower intake for House offices and provide training to House offices on how to safely receive information from whistleblowers. Adopting the Rules of the House of Representatives for the One Hundred Sixteenth Congress, and for other purposes, H.Res. 6, 116th Cong. (2019).

identified is referral of the whistleblower, which includes considering different options such as internal referrals to different congressional committees or personal offices, or Executive Branch referral options such as OSC, IGs, or MSPB. At the fourth and final step, the office can consider its follow-up strategy to provide the whistleblower with updates on the status of their disclosure and determine whether delayed reprisal occurred.

For each step, we identified practices to help offices develop office guidelines and procedures to keep the whistleblowers' information and identity secured and ensure all staff know the office's process and priorities. We also identified practices for communication, including key questions that staff can ask the whistleblower to help gather the necessary information to assess the disclosure. In addition, we intend appendix I to be a one-page resource for congressional staff with the practices for communication with the whistleblower as well as referral options.

Recognizing the value of the information that whistleblowers provide the Congress, the following key practices for working with whistleblowers in table 2 can supplement existing guidance and training available within the Congress, including direct experience working with whistleblowers. Not all considerations are applicable in every instance. We recognize that congressional offices have discretion when determining their processes and procedures for working with whistleblowers, subject to House or Senate rules and relevant laws. Further, each office must consider resource tradeoffs inherent in dedicating staff to these efforts and instituting procedures such as ensuring the security of information provided by whistleblowers. These key practices can be used to inform the policies and procedures within individual congressional offices. They can also be helpful as the Congress develops any routine training and resources for staff on interacting with and referring whistleblowers. We are available to further assist the Congress in these efforts to work with whistleblowers.

Table 2: Key Practices for Congressional Staff to Consider When Working with Federal Whistleblowers

Key Steps	Key Practices

Intake of whistleblower disclosures	<u>Internal guidelines and procedures:</u>
	• Develop written processes and guidelines for congressional staff, such as:
	  • Key steps in the offices' process for intake of whistleblowers and key considerations
	  • Protocols to keep disclosures secure and protected, while appropriately limiting access to information on a need-to-know basis
	  • Ensure personally identifiable information (PII) is handled appropriately[a]
	  • Ensure sensitive or classified information is handled appropriately
	• Develop a secure tracking system to document the process for status updates, trends, referrals, etc.:
	  • Document contacts and attempted contacts with the whistleblower, such as in a form or tracking sheet
	  • After initial receipt, create a case file that contains key information that can be updated as necessary
	  • Allow for staff to evaluate and identify trends and risks within the federal government
	• Routinely evaluate the office's processes and guidelines for intake to ensure the process is relevant, clear, and actionable
	<u>External communication with the whistleblower:</u>
	• Build a good rapport and trusting relationship with the whistleblower by communicating respectfully, practicing active listening, and responding in a timely manner
	• Share key information with the whistleblower:
	  • Explain the entire process to make it as transparent as possible
	  • Set clear expectations for the process:
	  • How the office determines whether or not it will take on a disclosure, information the office can or cannot receive, how the information might be used, and abilities of the office to assist the whistleblower, ensuring not to overpromise
	  • Timelines, potential outcomes, and available avenues to file complaints or disclose information while not providing legal advice given the nature of congressional staff's role, which is distinct from the role of legal counsel for the whistleblower
	  • Discuss the extent to which whistleblowers are willing to have their information and identity shared, and receive their permission before releasing information or discussing the details of their disclosure with another government entity[b]
	  • Be transparent about the level of anonymity and confidentiality that can be guaranteed
	• Ask the whistleblower key questions at this stage, such as:
	  • Are you a current, former, or prospective federal employee or federal grant recipient? If not, are you an employee of a contractor for the federal government?
	  • If so, what federal agency?
	  • Are you in immediate danger or does this disclosure pertain to an immediate threat?
	  • Have you filed this disclosure with your agency inspector general or any investigative entity? If so, do you know the status or outcome of this investigation?
	  • Have you filed this disclosure or shared this information elsewhere?
	  • If with another Member of Congress, do we have permission to communicate with that office?
	  • Do you have legal representation? If so, do you prefer that we communicate through them?
	  • Where (and how) did you obtain this information?

Key Steps	Key Practices
	• Do you have any documentation to submit? • Do you have any colleagues that can corroborate your disclosure? • Does this disclosure have implications for federal policy or require oversight or legislative action? • Has the agency taken, failed to take, or threatened to take a personnel action against you? • Are you a constituent of this Member?

Prioritization of whistleblower disclosures	Internal guidelines and procedures:
	• Set key priorities or standards that will be considered for each disclosure, such as does the disclosure pertain to:
	  • Urgent issues/ Dangers to public health or safety
	  • Oversight of the executive branch
	  • Government-wide issues
	  • Issues related to leadership's priorities
	• Develop written guidelines to explain your office's priorities, and how to decide if a whistleblower disclosure will be handled in the office or referred elsewhere
	• Document the outcome of prioritization in the office's tracking system
	• Evaluate the priorities that the office set to determine whether the office's priorities and objectives are addressing identified risks and trends within the federal government
	• Routinely discuss priorities with office leadership
	External communication with the whistleblower:
	• Be transparent to the whistleblower about the type of disclosures the office will take on for further action, understanding that they cannot take on every disclosure

Referral of whistleblower disclosures	Internal guidelines and procedures:
	• Create a document that provides easily available information—such as a tip sheet—for staff that includes the options for whistleblowers and advantages, implications, and appropriateness of each option
	  • Common options include the Office for Special Counsel, Inspectors General, Merit Systems Protection Board, relevant committees, and appropriate Members
	• The office's tracking system should document where and when a disclosure was referred or action was taken
	External communication with the whistleblower:
	• Consider the following additional questions at this stage:
	  • Has this person been reprised against?
	  • Is this person a constituent?
	  • Is this person's disclosure within my office's jurisdiction?
	  • Does this person's disclosure satisfy my office's key standards/priorities?
	• Clearly communicate referral options to the whistleblower
	• Ask whistleblowers for permission before sending their disclosure outside of your office
	• Give the whistleblower the opportunity to discuss or review potential communications as appropriate to ensure the information is accurate and appropriately protects their identity to their desired extent
	• Communicate with the whistleblower about the potential of their disclosure being shared publicly and ensure that the whistleblower approves sharing their information with others
	  • For those whistleblowers who do not want to share their identity, ask if they have colleagues who would be comfortable speaking to the issue, and help identify if the issue is widespread.

Key Steps	Key Practices
	Potential Investigation To Be Done At The Discretion Of Each Office

Follow-up on whistleblower disclosures	Internal guidelines and procedures:
	• Document expectations for follow-up practices, including timelines for follow-up, in internal written policies
	• Periodically evaluate lessons learned and the identification of risks to achieving the office's objectives
	External communication with the whistleblower:
	• Communicate when the whistleblower should expect to hear final follow-up from the office and ensure that this communication occurs, even if the office chooses not to act on the disclosure
	  • Was the disclosure referred?
	  • Was the issue resolved at the agency?
	  • Was there a hearing?
	• Continue to check in with the whistleblower as appropriate to determine if he or she has experienced delayed harassment or reprisal or has new information to share

Source: GAO analysis of academic literature, applicable internal controls, and existing procedures and standards. | GAO-19-432

[a]PII is any information that can be used to distinguish or trace an individual's identity, such as name, date, and place of birth, Social Security number, or other types of personal information that can be linked to an individual, such as medical, educational, financial, and employment information.

[b]Offices may have policies for requesting permission from the whistleblower to allow executive branch agencies to share information with the office. See 5 U.S.C. §552a and Congressional Research Service, *Casework in a Congressional Office: Background, Rules, Laws, and Resources*, accessed September 17, 2018, https://www.crs.gov/reports/pdf/RL33209.

Agency Comments

We provided a draft of this report to the Special Counsel and the Chair of the Council of the Inspectors General on Integrity and Efficiency for comment. The Office of Special Counsel and the Council of the Inspectors General on Integrity and Efficiency provided technical comments that were incorporated as appropriate.

We are sending copies of this report to the appropriate congressional committees, the Special Counsel, the Chair of the Council of the Inspectors General on Integrity and Efficiency, and other interested parties. In addition, the report is available at no charge on the GAO website at http://gao.gov.

If you or your staff have any questions about this report, please contact me at (202) 512-6806 or sagerm@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix II.

Sincerely yours,

Michelle Sager
Director
Strategic Issues

Appendix I: Key Practices and Referral Options for Federal Whistleblowers

See one-page resource below.

CONSIDERATIONS FOR

CONGRESSIONAL COMMUNICATION WITH WHISTLEBLOWERS

Communicate respectfully | Practice active listening | Respond in a timely manner

Make process as transparent as possible | Set clear expectations: do not over promise

Discuss the extent to which whistleblowers are willing to have their information or identity shared

INTAKE

Ask the whistleblower:

- Are you a federal employee, contractor, or grant recipient?
- Are you in immediate danger?
- Have you filed this disclosure or shared this information with your Inspector General or anywhere else?
- Do you have legal representation?
- Where (and how) did you obtain this information?
- Do you have any documentation to submit?
- Do you have any colleagues that can corroborate your disclosure?
- Does this disclosure have implications for federal policy or require oversight or legislative action?
- Has the agency taken, failed to take, or threatened to take a personnel action against you?
- Are you a constituent of this Member?

PRIORITIZATION

- Be transparent about the type of complaints you will take on and which you will refer elsewhere

REFERRAL

- Clearly communicate referral options to the whistleblower

APPROPRIATE OFFICE OF INSPECTOR GENERAL

MERIT SYSTEMS PROTECTION BOARD

U.S. OFFICE OF SPECIAL COUNSEL

GAO'S FRAUDNET

- Ask permission before sending disclosure outside your office
- Give the whistleblower the opportunity to discuss or review potential communications, as appropriate, to ensure accuracy and appropriate protection of identity
- Communicate the potential of their disclosure being shared publicly and ensure whistleblower approves of sharing their information with others

FOLLOW-UP

- Communicate when the whistleblower should expect to hear final follow-up
- Let them know if the complaint was referred, if the issue was resolved at the agency, if there was a hearing, etc.
- Continue to check in with the whistleblower as appropriate, to determine whether he or she has experienced delayed harassment or reprisal or has new information to share

Appendix II: GAO Contact and Staff Acknowledgments

GAO Contact:

Michelle Sager, (202) 512-6806, sagerm@gao.gov

Staff Acknowledgments:

In addition to the contact named above, Melissa Wolf (Assistant Director), Alexandra Edwards (Analyst-in-Charge), Danny Berg, Julie Miller, Enyinnaya David Aja, Jacqueline Chapin, Ann Czapiewski, Sarah Gilliland, Ian Gottesfeld, Steven Putansu, and Kayla Robinson made significant contributions to this report.