

**Proposal**

**for**

**Presidential Executive Order**

**Giving Immediate Relief and Redress**

**to**

**Specifically Selected and Named**

**Federal Law Enforcement and National Security Whistleblowers**

**December 2007**

## **Introduction and Background**

This Executive Order will send a message to federal government managers of those employees tasked with combating terrorism, and protecting public safety, that the new administration will not condone whistleblower retaliation when gross mismanagement and corruption is exposed, or when public safety is being endangered.

The Whistleblower Protection Enhancement Act of 2007 (S.985) currently offers no assistance or redress to past whistleblowers. This Executive Order would protect and make whole, those who trail-blazed a path in order for S.985 to pass, and would ensure in the future, whistleblowers will create better government accountability in these dire economic times, while also allowing for improved national security awareness of possible pending terrorist attacks. By passage of this Executive Order, the new Congress and White House administration will set the tone in that future whistleblowers, employed in both federal law enforcement and national security positions, will be unafraid and even encouraged to expose agency corruption, gross mismanagement, abuse of authority, and waste, fraud, and abuse of taxpayer funds.

Unlike federal employees who have endured retaliation due to protected Equal Employment Opportunity ("EEO") Title VI actions, whistleblowers currently do not have the right to a forum with a jury trial, nor are they afforded any compensatory or punitive damages. Note: Compensatory or punitive damages are not requested in this proposal.

After being terminated from federal service, law enforcement and national security whistleblowers find it nearly impossible to find a new career position in their field of work, both in the government civil service sector and in the private sector. No private company, local or state government agency, that depends on federal assistance and funds, would ever hire a federal whistleblower, and inherit the wrath of an embarrassed federal government that was publicly exposed for engaging in corruption, gross mismanagement, abuse of authority, and waste, fraud, and abuse of public funds.

Federal law enforcement and national security whistleblowers, who's federal managers ultimately fail to succeed in removing them from federal service, are often blackballed, leaving their careers stagnant and subject to subtle and continual reprisal. Whistleblowers frozen in the very government agency that they exposed, are passed over for career enhancing collateral duties and details, lateral transfers, training, awards, bonuses, and promotions. Whistleblowers who have been previously removed from federal service, usually under questionable

circumstances, often need to relocate to find new work, forcing them to sell their homes to move in with friends or relatives.

Once whistleblowers are unemployed, it is nearly impossible for them to get a standard loan -- they instead have to rely on high interest rate credit card purchases or credit card cash advances to survive, which have even higher interest rates. Even the Thrift Savings Program (TSP) will not grant loans to government whistleblowers after they have been forcibly removed from federal service. Whistleblowers reduction or loss of income often destroys their credit and forces them to file for bankruptcy.

The public often forgets federal law enforcement and national security whistleblowers, because their numbers are so small. In the rare case a whistleblower does get reinstated to his former position, or manages to get a position with a different government agency, that whistleblower is subject to further retaliation, and will usually fail to report corruption again, after previously experiencing a corrupt system that had the odds stacked against him or her. Attorneys often do not accept government whistleblower cases, because they know the employee cannot find new work to pay their legal fees, and the few attorneys that do accept whistleblowers cases, are often faced with arguing in a legal forum that almost always rules against federal government whistleblowers.

This forum is the Merit Systems Protection Board (MSPB), a panel of members appointed by the President for a term of five years. This is the only forum whistleblowers can seek remedy from, since the Office of Special Counsel (OSC) has been completely ineffective in protecting the rights of federal government whistleblowers. Appeals of MSPB decisions can only be argued before the U.S. Court of Appeals for the Federal Circuit -- a court whose primary duties is to review trademarks and patents infringements. Even more disturbing, government agencies have unlimited taxpayer funded resources to fight whistleblowers cases, using an army of agency attorneys that have the time and resources to stall whistleblowers cases for years.

Just two months ago, congress passed the "Inspector General Reform Act of 2008" (S.928), which was desperately needed, but when this bill is finally signed into law, it will take a long time before it is fully implemented. Once the law is in effect, future federal government whistleblowers should have a safer avenue to make disclosures of violations of law, without being forced to go to the media as a last resort.

While federal law enforcement and national security whistleblowers had the courage to make critical disclosures that exposed corruption and protected life at the expense of their own personal safety and

financial security, their government peers took the safe route by turning a "blind eye" and remaining silent, so that their careers could advance. Meanwhile, the careers of those whistleblowers took a dramatic downturn, and they were forced to piece together what was left of their shattered federal careers.

Additionally, whistleblower appeals take so long that often the managers who executed or tolerated the retaliation often become retired or go on to private practice without ever being held accountable for their unlawful actions. In the current system, whistleblowers will never be made 100% whole, and they will always bare the burden of a target painted on their back. Whistleblowers face the reality that they will be labeled a "snitch" or a "rat" for the rest of their federal career.

This Proposal is not intended to protect or reward tabloid-like "leakers," who for their own personal or political gains, leaked information to the media in order to simply ruin an individual's reputation, or for the specific purpose of embarrassing executives in an agency or administration -- thereby perpetuating a leak having no benefit to the general public's safety or for the purpose of enhancing national security.

For example, past "leaks" have been disseminated in order to expose an officer's covert status with an intelligence agency, a person's extramarital affairs, one's sexual orientation, a personal nude photo uploaded onto the Internet, or a private conversation caught on tape without that person's knowledge or permission. This is not whistleblowing in the interest of public safety or national security.

After legitimate whistleblower disclosures that exposed the Watergate scandal, the 1980's report of charging taxpayers exorbitant amounts for cheap tools, such as \$400 for Pentagon hammers, the security lapses that led to the September 11, 2001 attacks, dangerous pharmaceuticals being introduced into the market, WorldCom and Enron's financial collapse, Abu Ghraib torture, the mismanagement that led up to the home mortgage crisis, and the warrantless domestic wiretapping; now more than ever, it is vital to send a message to federal executive managers, that employees who are aware of agency corruption, gross mismanagement, abuse of authority, and waste, fraud, and abuse of tax-payer funds, will no longer fear government sanctioned witch-hunts and retaliation.

## **Relief and Redress**

It is hereby proposed, that an Executive Order be issued by the President of the United States, allowing specifically selected and named government federal law enforcement and national security whistleblowers, to obtain redress for wrongful retaliation and other unlawful acts committed against them, thereby granting these selected and named whistleblowers the following relief:

1. Selected whistleblowers covered by this Executive Order *shall* have been in, or have held a federal government career position in federal law enforcement, or have been employed in a national security related career field, when their whistleblower disclosures were made (e.g. DOD, DHS, DOE, FAMS, FBI, NSA, TSA).
2. Selected whistleblowers covered by this Executive Order *shall* have met at least one of the following whistleblower disclosure requirements, as specified in 5 U.S.C. § 1213: a) disclosed a violation of law, rule, or regulation; b) disclosed gross mismanagement; c) disclosed gross waste of funds; d) disclosed abuse of authority; e) disclosed a specific danger to public health and safety. Any whistleblower disclosure must have been filed to a federal government agency authorized to investigate such disclosure (e.g. OSC, OIG, OPR, GAO, Congressional Committee).
3. Any member of the House of Representatives or Senate *may* sponsor and name any government federal law enforcement or national security whistleblower, who is currently residing in or outside their state or district, who *may* be included and covered by this Executive Order.
4. A designated panel *shall* be convened to select and name the government whistleblowers that will be covered under this Executive Order. The panel *may* consist of members from the Senate Committee on Homeland Security & Governmental Affairs and House Committee on Oversight & Government Reform. The panel *shall* include members from the private whistleblower advocacy groups Government Accountability Project (GAP), The Project On Government Oversight (POGO), and Public Employees for Environmental Responsibility (PEER)
5. Selected whistleblowers covered by this Executive Order, who were removed from federal service as a result of retaliation for filing a whistleblower disclosure to a federal government entity authorized to investigate such disclosure, *shall* be reinstatement to their former career positions at the highest step (General

Schedule) or at the highest level of the pay band (Core Compensation or SV Pay Band Systems), or to a another career position that is equivalent with the same promotion potential as their former position, at the highest step (General Schedule) or at the highest level of the pay band (Core Compensation or SV Pay Band Systems).

6. Selected whistleblowers covered by this Executive Order, who were removed from federal service as a result of retaliation for filing a whistleblower disclosure to a federal government entity authorized to investigate such disclosure, *shall* receive comprehensive reimbursement of all lost compensation and benefits, with interest, to include all annual within grade or pay band increases that the employee lost as a result of being removed from federal service. Such compensation *shall* be calculated to include monthly compounded interest of the current average credit card rate, according to Bankrate.com at the time.
7. In order to protect the selected whistleblowers that are covered by this Executive Order, who were not removed from federal service and are still currently employed in a federal government position, but who might be currently receiving continuous and unlawful retaliation and adverse personnel actions by their agency, such whistleblowers *shall* have the choice, at their discretion, to transfer to any other federal government agency, into an equivalent career field position (i.e. LEO 6c coverage).
8. Selected whistleblowers covered by this Executive Order *shall* be exempt from reporting non-federal employment income to their agency, after being removed from federal service, and later reinstated back to their agency, and such non-federal employment income amount *shall not* be deducted from any subsequent back-pay payments or any other payments that are awarded to selected whistleblowers upon their reinstatement.
9. Selected whistleblowers covered by this Executive Order *shall* receive moving expenses, paid in a lump sum prior to any move, if the whistleblower must, or chooses to move away to a new duty station area. Moving expenses *shall* be paid as follows:  
  
\$30,000: Owns home, with dependant(s)  
\$25,000: Owned home with no dependants  
\$20,000: Rented home with dependant(s)  
\$15,000: Rented home with no dependant(s)
10. Selected whistleblowers covered by this Executive Order *shall* be immediately reimbursed by the federal government, of all

attorney fees and all other expenses and costs, associated with *any* adverse employment action requiring an appeal to the Merit Systems Protection Board (MSBP), U.S. Appeals Courts, and the U.S. Supreme Court.

11. Selected whistleblowers covered by this Executive Order, who are currently employed in a federal government position, *shall* be given 30 days Administrative Leave Pay, if employee has chosen to transfer from one local federal government position, to another federal government position located in the same local duty station area, and such Administrative Leave Pay *shall not* be charged against the employee's accrued annual leave earnings.
12. Selected whistleblowers covered by this Executive Order, who have been previously removed from federal service, and who currently hold a private sector position, and the employee has chosen to transfer back to a federal government position in a new duty station area, *shall* be given 60 days Administrative Leave Pay, in order to resign their private sector career position, including cases where employee is required to transfer management responsibilities of a small business, to other managers or owners, and such Administrative Leave Pay *shall not* be charged against the employee's accrued annual leave earnings.
13. Selected whistleblowers covered by this Executive Order, who have either been previously removed from federal service, or are currently employed in a federal government position, *shall* be given 90 days Administrative Leave Pay, if employee has chosen to relocate to a new federal government position that is located outside of their current local area, and such Administrative Leave Pay *shall not* be charged against the employee's accrued annual leave earnings.
14. Selected whistleblowers covered by this Executive Order *shall* be given a security clearance waiver of any and all derogatory information contained in the employee's consumer credit reports (e.g. late payments, collections, judgments, bankruptcies, and foreclosures), which occurred any time subsequent to the employee's initial whistleblower disclosure to a federal government agency authorized to investigate such disclosure.
15. Selected whistleblowers covered by this Executive Order *shall* have any and all derogatory information removed from their official agency personnel files (e.g. Standard Form 50), which occurred any time subsequent to the employee's initial whistleblower disclosure to a federal government agency authorized to investigate such disclosure, that resulted in *any*

adverse personnel action, Letter of Warning, Letter of reprimand, Letter of Counseling, Conduct Incident Report, suspension, demotion, and/or removal from federal service.

16. Selected whistleblowers covered by this Executive Order, who have not been removed from federal service and currently hold a federal career position, but who have clearly suffered retaliation and continued hostile work environment in their current position, *shall* be promoted to the next higher grade or pay band, if an initial whistleblower disclosure was made to a federal government agency authorized to investigate such disclosure, within the last six (6) years. Such promotion shall occur in either the employee's current agency, or if the employee chooses to transfer to another agency, the promotion will occur in the new agency upon transfer.
17. Selected whistleblowers covered by this Executive Order, who have previously been removed from federal service as a result of filing a whistleblower disclosure to a federal government agency authorized to investigate such disclosure, *shall* receive a promotion to the next higher grade or pay band, within 180 days after reinstatement into a new government career position.
18. Selected whistleblowers covered by this Executive Order, who were removed from federal service and who choose to return to their previous agency position, or to a similar position in another agency, *shall* have a choice to attend basic and/or journeyman schools or academies on a Temporary Duty (TDY) status, in order to refresh any lost skills. Since any whistleblower would have already passed required academies or schools during their initial probationary period, passing scores in school academics are not required, but attendance is mandatory, unless on Emergency Annual Leave, Emergency Sick Leave, or Sick Leave.
19. Selected whistleblowers covered by this Executive Order, who were removed from federal service, or who are currently employed in a federal government position, and who choose not to return or remain with their former or current agency, *shall not* be required to take any entry level written knowledge examinations administered by the new agency that the employee is transferring or being reinstated to, as a prerequisite of hiring into their new government career position.
20. Any Selected whistleblowers covered by this Executive Order, *shall not* be required to sign a new mobility agreement, when transferred or reinstated into a new position, if employee was not required to sign a mobility agreement in their previous career position (includes 6c covered positions).



21. Any Selected whistleblowers covered by this Executive Order, who are currently employed and subject to a mobility agreement, *shall not* be required to move from their current or newly transferred duty station, for a period of eight (8) years.
22. Whistleblowers miss out on many agency sponsored leadership training, career-enhancing details, career-enhancing collateral duties and/or educational opportunities, after being blackballed or remove from federal service. This lost time causes whistleblowers to not be competitive with other employees, whose careers continued without hindrance. Therefore, whistleblowers covered by this Executive Order *shall* be offered the opportunity to complete a BA or BS degree from a state funded university or college, during *paid* Administrative Leave from their federal career position, and such leave shall not exceed two (2) years.
23. A Human Resources Specialist from the Office of Personnel Management (OPM) *shall* be assigned to each selected whistleblower covered by this Executive Order, to ensure proper adherence to the requirements set forth in this Executive Order have been properly complied with.