



**Remarks of Katie Tracy, Center for Progressive Reform
11(c) Whistleblower Protections
OSHA Stakeholder Meeting
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Good afternoon. My name is Katie Tracy. I'm the workers' rights policy analyst at the Center for Progressive Reform. CPR is a DC-based nonprofit research and educational organization with a network of more than 60 Member Scholars around the nation working to protect health, safety, and the environment through analysis and commentary.

Over the past several years, I have monitored and analyzed OSHA's Whistleblower Protection Program, and its administration of 11(c) cases, specifically. It's clear that the program doesn't operate to its full potential due to numerous statutory barriers and due to the program's limited resources.

Today, I'd like to focus on several ways OSHA could improve the administration of 11(c) cases, all of which I believe are within the agency's existing authority and wouldn't take a tremendous amount of resources to implement.

First, beginning when OSHA receives an 11(c) complaint, the agency should assess whether the complaint might also fall under another whistleblower statute the agency administers that potentially provides a more advantageous process for the handling of the complaint or provides better remedies. Statutes with more advantageous procedures would include those that allow more time to file, a less stringent burden of proof, the right to appeal, or a kick-out clause for agency inaction. Statutes with better remedies would include those that authorize an order for preliminary reinstatement or allow the recovery of attorney's fees.

As OSHA's Whistleblower Training Manual states, "OSHA is responsible for determining the statutes under which a complaint is filed." OSHA holds this responsibility if the whistleblower doesn't explicitly state the statute in the complaint, and even if the whistleblower mistakenly files the complaint under one statute, but another statute covers the whistleblower activities. The manual goes on to state that, "If a complaint indicates protected activities under multiple statutes, it is important to process the complaint in accordance with the requirements of each of those statutes in order to preserve the parties' rights under each of the laws."

While investigators may follow the manual in some cases, the agency should be sure that in every case they're processing the complaint under each possible statute that may apply, and work with the whistleblower and any representative to determine the most advantageous statute under which to

proceed. Investigators should receive additional training on the manual to ensure they are aware of this requirement and are processing complaints accordingly.

Second, as I'm sure you'll hear from others here, when OSHA receives a complaint orally and agency staff reduce the complaint to writing, the agency should provide a copy of the written complaint to the whistleblower and allow them reasonable time to address any errors or deficiencies in their complaint. Related to this, OSHA should create an online application for complainants to track their complaint through the process and access related case documents.

Third, when OSHA proceeds to investigate an 11(c) complaint, it should ensure that it makes a determination on the complaint within 90 days, as the statute requires. Delayed investigations have adverse consequences both for OSHA and for the whistleblower. For OSHA, a delay in gathering evidence and investigating a complaint can lead to the erosion of evidence and the inability to contact key witnesses. The longer an investigation takes, the more difficult it may be for the agency to remain in contact with the complainant, as a worker who is fired abruptly from their job may be forced to cut off their phone line, internet service, or even to relocate. For the whistleblower, 11(c) provides no other avenue for recourse if the agency doesn't take action. Additionally, the financial and emotional challenges continue to build as the investigation drags on. Thus, if an investigation can't be completed within 90 days, the investigator should communicate the reason for the delay with the whistleblower and explain when the case may proceed.

A worker who puts their trust in OSHA's whistleblower program is likely to lose confidence if the agency doesn't communicate about the case or if the agency drags its feet on the investigation. If the worker has a negative experience with OSHA, they're less likely to speak up about hazardous conditions or report wrongdoing in the future. This would be a huge detriment to the agency as it relies on workers to serve as the eyes and ears inside the workplace. Further, distrust that may build because of frustration with OSHA's whistleblower protection program is likely to fester beyond the Department of Labor, to distrust of government services more broadly.

Fourth, OSHA should focus additional resources on tracking trends in whistleblower cases. If OSHA determines that an employer retaliated, OSHA should refer the employer to the enforcement unit for a possible inspection, especially if the employer is a repeat offender. OSHA should also make more data on whistleblower cases and trends available to the public, such as by alerting the public about companies found to have committed retaliation. Making such information available would serve as a deterrent against retaliation and help people who are searching for employment avoid companies with a toxic culture.

Finally, OSHA should reestablish the Whistleblower Protection Advisory Committee. While I appreciate the opportunity to share these recommendations with you at this meeting, the Committee provides a critical function in evaluating the program and recommending improvements. Accordingly, OSHA should reinstate the Committee as well as continue to host stakeholder meetings.

I also would like to speak for a moment about OSHA's proposal to centralize the Whistleblower Protection Program in the national office. I join many others in opposing the proposal to centralize because doing so will create new challenges that the agency hasn't addressed in its proposal. In particular, I am concerned as to how the proposed centralization would affect 11(c) appeals because the proposal is silent on that issue. It would seem that, if the proposal is adopted, the Director of the program would supervise both the initial investigations and the review process. Under this approach,

whistleblowers lose the opportunity for an impartial appeal, an outcome that weakens, rather than improves, the whistleblower protection program.

Before I conclude, I just want to mention that, ahead of today's meeting, the Center for Progressive Reform joined with 66 organizations and individuals in submitting comments to the docket with ideas for reforms. The organizations and individuals represent a diverse set of perspectives, but when it comes to whistleblower protections, they all share a common goal of preserving and strengthening the workers' right to raise concerns without fear of reprisal. I hope you will consider both the recommendations I have expressed here and those in the comments we submitted.

Thank you for hosting this meeting and providing an opportunity to share ideas. I know there are many staff at OSHA dedicated to improving this program, and I am thankful for your time and consideration.