

## Whistleblower Protection Overview

Glenna Davis: Hello. Hello. Hello, everyone, and welcome to the Whistleblower Protection Overview Virtual Learning Session webcast. It is now my pleasure to turn the floor over to our Deputy director, Captain Tala Hooban. Captain Hooban, the floor is yours.

Captain Tala Hooban: Thank you, Glenna so much for having our intro and sharing some housekeeping for today. I'm seeing people still trickling in, so I'll try to talk slow to buy time. I would like to welcome the Head Start community to this webinar. It is the Whistleblower Overview Virtual Learning Session. Thank you for joining today. We have nearly 300 people registered for today's session. This is a very important topic. It's beneficial and important to all of us to be aware of what whistleblower protections are and what our roles and responsibilities are in this process.

A whistleblower is someone who reports waste, fraud, abuse, or dangers to public health and safety to another person in a position to address it. The U.S. Department of Health and Human Services Office of Inspector General is responsible for investigating whistleblower reprisal claims related to all HHS grantees and sub-grantees. An employer cannot take any adverse action against employees, including firing or laying off, demoting, denying overtime or promotion, or reducing payer hours for engaging in activities protected by whistleblower laws.

OIG will provide us this information and training around whistleblower protections, reprisal investigations, and obligations. We are happy to be joined today by Ms. Melissa Tucker from the HHS Office of Inspector General, OIG. Melissa is a senior counsel in the Office of Counsel to the Inspector General. She provides guidance on whistleblower investigations, law enforcement matters, and information disclosure. Thank you, Melissa, for joining us, and I will turn it over to you.

Melissa Tucker: Thank you so much, Captain Hooban. And thank you all very much for joining this afternoon for what I hope will be a very interesting and informative overview on whistleblower laws and how they apply to you and your coworkers. Without further ado, we are going to get started.

And very kind and lovely Catherine is going to be administering my slides today. Catherine, if you could turn to the next one, that would be great.

I'm still seeing the main screen, Catherine, are you able to turn – bear with us folks. I think we're having a bit of technical difficulties.

Catherine: Just a bit of technical difficulties. We'll be right there.

Melissa: OK, thank you. While Catherine is helping us advance the slideshow, I'll give you a little bit of background about what I'm going to be talking about today and what's going to happen at the end. I'm going to be giving you an overview of a couple different things. I'm going to be giving you an overview of the Whistleblower Protection Coordinator, which is a position here in HHS OIG. It's actually a department-wide position, but the coordinator herself works with me in

OIG. And I'm going to tell you about what she does. I'm going to tell you about what different laws generally apply to federal employees in terms of whistleblower protections.

And then we're going to get into the more specific law that applies to contractor employees, subcontractor employees, grantee and sub-grantee employees who work for HHS. That's why we have invited all of you to join us. And we're going to talk specifically about that law, which I'll tell you about later, is called the NDAA for short. We're going to talk about what it does and the protections under it. And some other interesting details that go along with that. And the rights and remedies that are involved in whistleblower protection under the NDAA.

After we go through that, I'll talk about some disclosure laws that apply to whistleblower retaliation. And then at the end we are going to have some time for Q&A. Throughout this presentation, you can feel free to put some of your – any questions that you have in the chat. And I will go through them at the end, and I will do my best to answer as many as I can. I like to pick the questions that are most applicable to everyone.

If you have a very specific question about a situation in your work environment or a coworker or something like that, you can certainly feel free to email the Whistleblower Protection Coordinator, and we'll talk about that. Or contact me separately. But I think the most useful questions are the ones that apply generally to lots of people.

All right. Thank you very much for bearing with us. It looks like we are ready to begin. And, I think, I pretty much just stated – given you guys a summary, but here's our agenda, and let's get started. Next slide, please.

Thank you. OK, whistleblower Protection Coordinator. The Inspector General Act of 1978 is the law that established offices of Inspector General, including ours in HHS where I work. And we call it the IG Act for short. And the statute there, if you'd ever like to take a look, begins at 5 U.S.C 401 and specifically in section 403(d) is where we find the authority that is given in this statute for the Whistleblower Protection Coordinator, formerly known as the Whistleblower Ombudsman.

The duties of the coordinator are, as we like to say, E.P.I.C. The first duty is to educate HHS employees on their whistleblower protections. The second duty is to promote the timely and appropriate handling and consideration of protected disclosures – and we'll talk a little bit about what those are in a minute or so – and allegations of reprisal. Next slide, please.

The I in E.P.I.C. is for inform. The Whistleblower Protection Coordinator and her team provide information to whistleblowers on the timeliness of reprisal complaints, alternative dispute resolution, and other avenues for relief. And finally, the C in E.P.I.C. is for Connect. Connecting or rather facilitating coordination with HHS OSC, which stands for the Office Special Counsel, CIGIE, which is the main body that oversees and works with IGs – Inspector Gs – the Council and Inspector Generals, Congress, and others on issues related to reprisal complaint timeliness; the appropriate handling of whistleblower disclosures; and the implementation and administration of whistleblower protection laws, rules, and regulations. That is in a nutshell what the coordinator does. Next slide, please.

All right, the next part we're going to be getting into are the specifics involving whistleblowers. Next slide, please. Who is a protected whistleblower? When we think of whistleblowers, there are actually – we think of anybody who makes a claim or makes a report, expresses a concern about something that's going on that they think represents misconduct. But in actuality, as far as federal laws are concerned, there are only certain types of protected whistleblowers. While everybody is free and able to make a complaint to the federal government and to inspectors general about wrongdoing that they observe, only specific individuals are considered protected from retaliation under the law when they make a complaint.

Who are these protected whistleblowers? Well, they're federal employees civilian or military, applicants for federal employment, federal contractor and subcontractor employees, including personal services contractors, and federal grantee and sub-grantee employees. Next slide, please. Who is not a protected whistleblower? Medicare, Medicaid beneficiaries. Providers delivering health care services under a Medicare, Medicaid provider agreement. Employers of insurance or pharmaceutical companies. And concerned members of the public.

As I was saying before, all of these individuals on this list are certainly able to make whistleblower complaints. They can submit to us wrongdoing, things that they've observed or that they're concerned about. But they are not protected under the law in the same way that those individuals that were on the previous slide are. And we'll get into some details about that in a little bit. Next slide, please.

Whistleblower disclosures versus retaliation. There are two types of complaints that the Office of Inspector General, OIG, can receive from individuals. The first are considered whistleblower disclosures. And that occurs when OIG receives a complaint from a federal employee, an applicant for federal employment, contractor, subcontractor, grantee, or sub-grantee employee alleging unlawful activity, the actual wrongdoing. A whistleblower disclosure is a complaint of fraud, waste, or abuse. And we frequently refer to those in the Inspector General's office as FWA. You'll probably see that later on in some slides.

And fraud, waste, or abuse includes complaints of substantial and specific dangers to public health or safety or unlawful activity. And these are disclosures that are filed by protected whistleblower. And the complaints of substantial and specific dangers to public health or safety, I wanted to point out, tend to come up frequently in the cases that I've seen submitted related to Office of Head Start. That's not the case necessarily with other agencies.

But because you all deal with children and with health and welfare and issues like that, those complaints tend to come up more so in your agencies and in your employment context than in other agencies in terms of child abuse or concerns about welfare of children, cleanliness, hygiene, things like that. Just wanted to point that out there. And at the bottom of the page is the citation for where this information comes from in the IG Act. Next slide, please.

Whistleblower retaliation. Unlike the disclosure aspect which we just discussed, which is the reporting of the actual wrongdoing, the whistleblower retaliation occurs when an employer takes or fails to take, or threatens to take or fails to take – I'll explain that in a second – a personnel action with respect to an employee or applicant for employment because that employee made a disclosure of unlawful activity. Let's break that down.

When does whistleblower retaliation or otherwise known as reprisal occur? We'll give some examples. It's when an employer takes or fails to take. Let's say that would be terminating someone, that would be an affirmative taking action. Or failing to take, that would be failing to promote, for instance, someone who rightfully should have been promoted. Or threatening to take, threatening to terminate someone or threatening to not promote someone because they made a protected disclosure. Next slide, please.

Let's break that down a little bit more. This is a great summary slide to keep in mind if you ever want to return to the two different kinds of complaints we receive. The first one is the disclosure about the underlying wrongdoing, the fraud, waste, or abuse, et cetera. And the second kind is the retaliation complaint. The personnel action taken against someone because of that disclosure that they made. The allegation would then lead to the retaliation. Next slide, please.

By virtue of the fact that those two different types of complaints are so intrinsically involved, right? When someone comes to us because they've been retaliated, it's because they were retaliated against for having made a disclosure. There's a dual nature of whistleblower reprisal complaints. As I was just saying, the golden rule is that every retaliation complaint consists of two individual cases that we in the Inspector General's office investigate.

The first one is that allegation of retaliation. And there are a set of investigators here in IG that I have the distinct pleasure and honor of working with who spend their jobs investigating – their time and their responsibilities – investigating retaliation associated with a particular individual's complaint. The other types of investigations are the investigations into the underlying fraud, waste, or abuse that the employee reported.

When they come to us ... Let's say we have Jane Doe who comes to us at the Inspector General, and she says, "I reported that such and such agency mismanaged millions of dollars of funds. And because I reported that to my boss, she terminated me." We have one set of investigators in our special investigations branch, SIB, who would investigate the retaliation and only the retaliation aspect of Ms. – what did I say, Jane Doe? – of Ms. Doe's case. And then a second set of investigators in the relevant regional or field office would investigate the actual mismanagement of the money.

We bifurcate them and have two independent investigations going on. And they do not collaborate or talk to each other unless necessary for details, because they're neutral in terms of each other in the various two investigations that are going on. Next slide, please.

Now we're going to talk a little bit about some of the disclosure aspects that go along with these cases and what the Inspector General's office can and more specifically cannot disclose about whistleblowers who come to us with this sensitive information. Under the IG Act, specifically section 407(b), it provides that the Inspector General shall not after receipt of a complaint or information from an employee disclose the identity of the employee without the employee's consent unless the Inspector General determines such disclosure is unavoidable during the course of the investigation.

Similarly, section 420(b)(2)(B) of the IG Act prohibits the disclosure of the identity of any individual who files a complaint with the OIG hotline without their consent unless for the same

reason as in the other section, the IG determines that the disclosure is unavoidable during the course of the investigation. The difference between those two sections there is that the first one, 407 applies to employees, federal employees that come to us, HHS employees. And the second one applies to anybody who submits a complaint to the OIG hotline. And we'll get into the hotline in a little bit later.

Just to recap, these sections prevent the disclosure of the identity of whistleblower employees without their consent, and that includes disclosure to the OPDIVS or the staffDIVS. When we are conducting our investigation, unless it is unavoidable during the course of the investigation, we do not actually disclose the identity of a whistleblower to his or her respective OPDIV or staffDIV unless necessary. And this identity extends to more than just an individual's name, it includes identifying information, their address, their email, phone number, work unit. Or anything else that would allow for that person to be revealed without their consent. Next slide, please.

OK. Now this is a little bit of a preview about the NDAA that I mentioned before, and then later we're going to get into more specifics. But what I wanted to tell you now about the NDAA is that this statute, which applies to contractor, subcontractor, grantee, and sub-grantee employees, has a similar provision regarding a prohibition on disclosure. And what that provision says is that the IG may not respond to any inquiry or disclose any information from or about any person alleging reprisal except to the extent that such response or disclosure is made with the consent of the person alleging the reprisal; made in accordance with the provisions of and that long line there refers to the privacy act or is necessary to conduct an investigation of the alleged reprisal.

What I will tell you is that in the course of these retaliation cases, we do ask the whistleblowers for their consent to disclose their identity. Because practically speaking, it's very difficult, if not impossible to conduct an accurate and thorough investigation into a personnel action taken against an employee if we can't see their personnel record, talk to their boss about their performance or about their disclosure and other things that are completely necessary and critical to their investigation. That's why we do seek their consent and usually get it. OK. Next slide.

Before we go on a little bit further into the other aspects of that whistleblower statute, I wanted to talk a little bit about these different regulations that apply to contractors, grantees – they're both contractors and grantees, excuse me – on the two different issues. The first one is contractor regulation that comes from the FAR code of business ethics and conduct within the federal acquisitions regulation. And what that reg says is that contractor employees are required to disclose information sufficient for law enforcement to identify the nature and extent of violations and to identify individuals who may be responsible.

Why am I bringing this and the other regs that I'll talk about in a second to your attention? Because when we conduct these investigations, we frequently need to speak to management officials, coworkers, other people who are involved in an employee's retaliation claim. And we need to ask them about information that would sufficiently allow us to identify the nature of their claims and the validity of them, the accuracy of them before we issue our report of findings. These regs are what allow us to get that cooperation from contractors and grantees.

That second one there on the screen is that Grantee Mandatory Disclosure. And just like the reg with the contractors, it requires employees to disclose in writing to HHS or pass through entity all violations of federal criminal law potentially affecting the grant. And that next reg underneath that is a grantee record retention and access reg. And it provides OIGs with the right to receive records, documents, or papers and interview grantee personnel or interviews in connection with an investigation. If you were ever contacted by the Inspector General and asked to provide certain documents, information, or to speak with them, have an interview with them, please know that these are the authorities under which we would be contacting you to ask for your cooperation. And under which you are required to assist us. Next slide, please.

All right, part three. Now we are going to get into the real meat and potatoes of the whistleblower statute that applies to HHS contractors, grantees, and subs. And that statute without further ado, is the one we've been talking about the NDAA. Next slide, please. The NDAA stands for the National Defense Authorization Act. This law was established in 2017, and it was part of an appropriations bill. It was actually a trial temporary law that was further extended and then made permanent. It is in that National Defense Authorization Act, but actually applies to all federal grantees and subs, and contractors and subs. And it addresses retaliation in specific. Next slide, please.

What does the NDAA say? Well, first let's get into the statute. If you ever would like to look it up. It's 41 USC 4712. And what it did was it expanded whistleblower protections to employees of federal contractors, subcontractors, grantees, and sub-grantees. When we say expanded, what we mean is that before this law was enacted, there was a law, still good law on the books today called the Whistleblower Protection Act, which applies to federal employees. But it came to Congress's attention that there are plenty of contractors and grantees who should be entitled to protection as well. Just like federal employees when they make a protected disclosure and are retaliated against.

That's what this law did. It provides that a protected individual may not be discharged, demoted, or otherwise discriminated against in reprisal for making a protected disclosure. In addition, the NDAA provides that HHS must ensure that all contractors and grantees have been informed in writing of their whistleblower protections, rights, and remedies. Next slide, please.

What is protected under the NDAA? What we're going to talk about now is really the details about what constitutes a protected disclosure of wrongdoing, fraud, waste, or abuse, et cetera. Here are the specific categories in the NDAA that constitute protected disclosures. A violation of law, rule or regulation related to an HHS contract or grant; gross waste or mismanagement of HHS funds; an abuse of authority related to an HHS contractor grant; or a substantial and specific danger to public health or safety.

Now what's important to note is those categories that we've underlined for related to an HHS contract or grant, we wanted specifically to bring to your attention. Because those categories have to be connected to an HHS contract or grant. In other words, a contractor who came to the IG and said, "I want to tell you about a violation of law that occurred related to another federal law," that did not have to do with that contract or grant, would not be considered protected. The violation has to relate to a contract or grant within HHS. And same thing with abuse of authority. And we talked about substantial and specific danger to public health or

safety a little bit before, but that does not of course have to be related to a contract or grant. If you observe a specific danger substantial to public health or safety, you by all means have every right to report it and will be protected for that.

The most important thing I want to have you guys take home from this is that the whistleblower's disclosure does not need to be an actual violation of law. The standard under applicable case law is that the whistleblower had a reasonable belief that what they were reporting constituted one of these protected categories. What does that mean? That means that the whistleblower does not have to be factually accurate at the end of the day if they reported that their supervisor violated a rule related to an HHS contract.

If we find out that that supervisor did not actually violate that rule or contract, that doesn't mean that the complaint is dismissed. If that whistleblower had a reasonable belief, which of course, is very specific to every circumstance, then that is sufficient enough under the law for the whistleblower to be protected from retaliation. And that's reasonable belief based on objective and subjective standards. In other words, in that person's particular position, do they have enough information, firsthand knowledge, experience, to think that what they saw reasonably was a violation? And objectively speaking, would anybody else in their position have thought that too based on what they knew? OK. Next slide, please.

What is not a protected disclosure? Violations of Title VII discrimination laws are not protected disclosures. There is an exception that applies for these under the statute for military members. I'm not going to get into that today because it's particularly specific to those group of individuals. But happy to answer questions about that later. But just know that violations of Title VII laws, generally speaking, are not protected. Because again, when we think about it, those laws would not relate necessarily to an HHS contract or grant. And a violation of law under the NDAA has to relate to an HHS contract or grant.

Union grievances, labor law violations, same thing, not protected under this statute. And administrative grievances, workplace disputes, things of that nature are also not protected under the NDAA. And just a note at the bottom to show the distinction between, a whistleblower retaliation complaint is not the same as an EEO complaint. Two different things. OK, Next slide, please.

Who are the protected sources under the NDAA? Let's get into what that means. When a federal contractor or subcontractor grantee or sub-grantee makes a protected disclosure of one of those categories we were just talking about. In order to be considered a protected disclosure under the law, they have to have made the report of their concern to one of these entities. And there are a couple more on the next slide, but let's go through them. Members of Congress or representatives of Congressional committees; an Inspector General; Government Accountability Office known as GAO; an HHS employee responsible for contract, grant, or oversight.

And can we have the next slide, please? And I may come back to this in a second, but I just want to go through the whole list. The Department of Justice or another law enforcement official. A court or a grand jury. Or a management or employee of the contractor, grantee who is responsible for investigating, discovering, or addressing misconduct. These seven entities are

what we consider to be protected sources under the statute. Meaning that in order to be protected from retaliation, a whistleblower must make a protected disclosure to one of these seven individuals or entities in order to be protected.

What's important to take home about this for your purposes, working for Head Start as a Head Start grantee rather, is that you most likely might find yourself or your colleague might find themselves in the position of being a management or employee of the grantee who is responsible for investigating, discovering, or addressing misconduct. If you have some level of responsibility to do one of those things and someone comes to you with a report, they would possibly be considered to have made a protected disclosure under the law.

Number seven does not apply to just the coworker next to somebody in a cube. If I tell my coworker who's my equal, "Hey, I noticed something really bizarre going on. I'm reporting it to you." That does not count. It has to be someone who would be in management. My supervisor or who is otherwise in a position like a compliance position or an ethics position. It really depends. There are whole lots of them. But they have to have some responsibility for investigating, discovering, or addressing misconduct. It's not just anybody who works for the agency. OK. Next slide, please.

What makes this law, the NDAA special? Well, there are a couple different provisions in the law which are unique to the law. We wanted to highlight them here for you, just to give you a sense of what's inside this law. There is a right to sue the employer given in the NDAA. The NDAA provides that complainants may sue their contractor or grantee once they've exhausted their remedies through OIG.

What does that mean? That means that they required a grantee, sub-grantee, contractor, subcontractor employee who believes they've been retaliated against for making a protective disclosure is required to first go to the Inspector General's office, where I work and file a complaint. And we have to be given a certain amount of time, which we'll get into in the next slide to investigate that complaint. And make some kind of decision. Or if we fail to do so in the amount of time specified under the law. And then once that process is over, the employee has the right to sue his or her contractor or grantee once they've exhausted the remedies.

There's also a right to sue the department. Complainants and other people who are affected by orders that the HHS secretary issues if those orders are representative of an unfavorable decision, they can sue the department. In addition, the NDAA gives the HHS secretary the specific ability to enforce any order to remediate retaliation against the contractor or grantee.

What does that mean? That means that if we in the Inspector General's office, let's say we conduct an investigation of a complainant, Mr. Smith. Mr. Smith says that he was retaliated against for making a protected disclosure. We conduct an investigation. We find that that's true. We substantiate his claims. We provide our report to the secretary. The secretary agrees and orders. Let's say he was retaliated against by being denied a promotion and the secretary agrees. And the secretary says, "I order you, grantee employee to give Mr. Smith the promotion. He was entitled to it, and you retaliated against him." If that grantee does not do that, give him the promotion that the secretary ordered, the secretary can go into court and enforce the grantee to take that action. Next slide, please.

And lastly, there is a special provision under the NDAA that we mentioned before. But just to let you all know again that it's out there that requires HHS to notify all contractor, grantee, and sub-employees in writing of their whistleblower protections, rights, and remedies. Next slide, please. OK. This last part is going to get into what we do, how we conduct our reprisal investigations when somebody files a complaint with us here at the Inspector General's office. Next slide, please.

There are special rules about our investigations that are contained in the statute in terms of time limits. We in the Inspector General's office must investigate a complaint and submit our report of findings to the HHS secretary within 180 days of receipt of a complaint from a complainant. There is a provision, however, in the statute that allows us to ask the complainant for an extension to continue investigating and issuing our report. And we cannot unilaterally extend the time period. We must seek the complainant's consent to get that extension. Next slide, please.

As far as what happens next. After we conduct an investigation, and usually what that entails is talking to the complainant, talking to the supervisors, or whoever took the personnel actions against the complainant. And other witnesses, other people involved in the underlying allegations. We then issue a report of our findings to the complainant, the contractor or grantee involved, the agency and the secretary. The secretary then determines whether there is sufficient basis to conclude that the contractor or grantee concerned, engaged in retaliation. And the secretary is supposed to issue this decision, this determination within 30 days of receiving our report. And they then issue an order either denying or granting the complainant relief.

They could, let's say if we unsubstantiated a complaint, they would agree with us, they could agree with us, secretary deny relief. Or if we substantiate a complaint and we recommend certain relief, they could grant that relief. Or they could come up with – the secretary could come up with their own decision as to what relief should be granted. The secretary has that discretion under the statute. Next slide, please.

In terms of the kind of relief that the secretary can grant, there are several different possibilities. The secretary could order the contractor or the grantee to take affirmative action to abate the reprisal. What does that mean? Well, that would depend of course on the specific reprisal that took place. Let's say that the secretary agreed with OIG that a complainant was given a written reprimand. It was placed in their file and that was a retaliatory act for having made a protective disclosure. The secretary could then take affirmative action in saying, "I want you to remove that reprimand from that employee's file." That would be abating or undoing essentially the reprisal.

The secretary can order the contractor to reinstate someone if they were terminated or if they were demoted to a position that they held prior to the reprisal, along with awarding any compensatory damages, back pay benefits,

or other terms and conditions that would make that person the complainant whole. And or the secretary can order the contractor or the grantee agency to pay the complainant in amount

equal to all of the costs and expenses that the complainant reasonably incurred in bringing their complaint. Next slide, please.

What is the consequence if the contractor or grantee does not follow the secretary's order? Well, the consequence is that the secretary can file an action in a U.S. district court to enforce that contractor or grantee to comply with the secretary's order in directing one of those forms of relief that we just discussed. Next slide, please.

I think we're nearing the end. There may be a couple more slides though. Thank you, Glenna. OK, let's go over a couple of the highlights of what I hope that all of you will keep in mind and remember about what we've discussed today. And specifically, about the NDAA and the statute. Remember that the statute requires that agencies ensure contractors and grantees inform their employees of their whistleblower protections.

Remember that my office, HHS OIG, has sole jurisdiction to investigate whistleblower retaliation complaints under all statutes except the Whistleblower Protection Act. And I'll explain that in a second. They cannot be investigated by other HHS investigative entities. For instance, investigators within an OPDIV or the EEO. And HHS OIG cannot, as we discussed for a little while in the beginning slides disclose the name and any whistleblower information without their consent unless unavoidable during the course of an investigation.

What I wanted to come back to for a second is just to tell you about the Whistleblower Protection Act, which I mentioned in brief towards the middle part of our discussion today. That statute applies to federal employees. And the Office of Special Counsel has jurisdiction to receive complaints from those employees. But for your purposes, what's important to know is that contractor and grantee employees and sub-employees can come only to us. We have sole jurisdiction here at OIG for receiving their complaints. Next slide, please.

Well, folks, we have come just about to the end before our Q&A session. Couple things I wanted to point out here. Some really important information that I hope you keep in mind is available for you to consult with whenever you would like, the HHS OIG hotline. Where do folks submit complaints to us for disclosures of the underlying wrongdoing and for retaliation? Well, that is done online through our HHS OIG hotline. We also have some telephone operators who answer the phone number there on your screen, HHS TIPS, T-I-P-S. And they take complaints over the phone as well. And what happens after those complaints are taken? Or after we receive them, they're assigned to investigators to determine whether we have jurisdiction. And then to decide who, and when, and how the investigation is going to take place if we have jurisdiction.

The HHS Whistleblower Protection Coordinator, that position I mentioned at the very beginning of our presentation today. If you'd like to know more about the whistleblower Protection Coordinator and that program you can certainly look up in our website about fraud whistleblower that link there. There's some information about notices to HHS contractors. And finally the whistleblower coordinator has a public facing email address there on your screen [whistleblower.coordinator@OIG.hhs.gov](mailto:whistleblower.coordinator@OIG.hhs.gov). And folks are welcome to email the coordinator's inbox. And particularly, she's available for employees like we mentioned, grantees, contractors, et cetera. In terms of letting them know about their rights with regard to retaliation and

directing them to the hotline or any other appropriate resources. I think, that's our last slide. If you can just double check for me. And then I'd be happy to look at the Q&A.

Yeah, that looks like it. All right, folks, well, let me pull up the Q&A. I thank you so much for listening to me for all of this talking time. And looks like we have a couple of questions. I'll let you all take a exercise stretch or coffee break for just a second while I read through them. And answer what I can. OK, here's one. "If a Head Start teacher wanted to file a complaint, would they be able to call the OIG hotline?" Yes, absolutely. The hotline is available to all grantee employees, sub-grantee employees, contractor employees, anyone actually, I should be clear about this. Anyone in the public can call and file a complaint. We accept complaints from everyone with regard to the underlying disclosure.

As far as the actual protections that would apply for retaliation, if a Head Start teacher is employed by the grantee agency, then yes. They would also be able to call and report any retaliation that they encountered as a result of having reported to someone misconduct.

OK, let's see what else I can get you. Somebody asked, "Do I need an attorney? If so, at what point do I get one?" I don't see any more context to this one, so I apologize, I'm not sure you'd need to get an attorney. But what, I think, this question is getting at is do you need to file a – excuse me, hire an attorney in order to file a complaint with HHS OIG? And the answer to that is no. There are very plain speaking forms that you can fill out if you feel you would like to report something to us, whether that's fraud, waste, and abuse, or retaliation. And they ask specific questions about what happened to you. When did it happen. Who took these actions, et cetera, witnesses, your information.

And then an investigator will get back to you if we find we have jurisdiction. And we'll contact you and interview you and get the fuller story. You certainly, do not need an attorney at the beginning of the process. If you feel at some point during that process that you would like to have an attorney, you may, but it is not at all necessary, legally speaking.

OK. "Surprised to learn that whistleblower retaliation is not covered by this act. What happens if someone reports retaliation against a protected class?" Great question. There are a whole set of laws, different laws that apply, they're called Title VII or Employment Discrimination Laws that apply to someone who is discriminated against for their race, their religion, sexual orientation, age, things of that nature. Those are not considered to be whistleblowers for the purposes of what we're talking about today.

What we're talking about today is whistleblower retaliation for people who have made specific reports about wrongdoing related to HHS money, programs, substantial and specific health issues in HHS programs, et cetera. If you experience retaliation because of your race, your religion, your gender, or something like that, and other protected status, you should contact the EEOC and or an attorney. And find out about your rights under those statutes. But those are a totally different set of laws that are not part of what we do here in the Whistleblower Retaliation Program.

"Is there a timeframe for when a report must be made?" Yes, insofar as the whistleblower statute the NDAA has ... Bear with me folks. I just want to pull up one thing real quick in the statute myself and take a look about the statute of limitations. Because I want to make sure I

get this perfect. Yes, no more than 3 years. Under the NDAA, a complaint may not be brought to OIG more than three years after the date on which the alleged reprisal took place. That means that you must come to us with your complaint within three years of when you experienced retaliation. If you experienced a demotion, a reprimand, termination et cetera, something like that because of a disclosure, you must report it within three years in order for us to continue to have jurisdiction.

"Is there a particular notice that we should be using to disseminate to our employees, letting them know about whistleblower policies and protections?" That is an excellent question. I don't have that notice offhand. I can certainly touch base with some of the administrators who are on this call or the other administrators in ACF and we can make sure that we get that to you. Or find out where you can get it. Thank you for that question. And please follow up if we don't get to you with that, because that is really important, and I want to make sure that you have an answer.

"Would parents be able to complain to the same hotline?" Yes, parents can certainly call as members of the public and complain, make a complaint to the hotline if they feel that they've observed some kind of wrongdoing, mismanagement, substantial and specific safety concern. But again, unless the parents happen to be employees, sub-contractors, grantees, et cetera, they're not going to be protected from retaliation. Anybody can make a call, but only those certain employee categories are considered protected under whistleblower laws from retaliation.

Another good question about when to be given that notice staff, whether it's annually or just at hire? I believe it is annually. I'm not involved with that piece on a day-to-day basis. I'm going to make a note of that and hopefully we can get back to you about that. I don't think it's just at hire, but let's see if we can get you some further answers after this call. Thank you for bringing that up. Let me see. I think, I have pretty much answered ... Here's another question.

"Can a contract employee assigned to a program file a complaint about the program? If yes, what is the process?" That's a difficult question to answer because I'm not sure what you mean about complaint about the program. If the complaint is of the nature of those protected disclosures that we talked about earlier, like mismanaging federal monies, grant monies, or contract monies or other typical fraud, waste, abuse, things like that, yes. Certainly a contract employee can file a complaint with the hotline. That would be the process that should be filed – followed, pardon me. I think, I have pretty much answered all of the questions I see. Catherine, do you see anything else? I assume I have the same screen as you for these purposes. I pretty much think I've hit it all and might be ...

Catherine: Yes.

Melissa: Yeah? OK. Super. Well, thank you all so much again for your time, for your patience. This is a lot to take in. Certainly and hopefully, when you receive these slides after the presentation, that will be more helpful in terms of being able to go over a lot of what we talked about today. And all these buzzwords may come to life a little bit more. If you have any questions, I highly recommend clicking on those websites, the bottom here of this screen. Or

emailing the whistleblower coordinator and we will get back to you. Again, thank you so much for your time and your attention. Really appreciate it.

Captain Hooban: Thank You, Melissa. And just like Melissa said, we'll post the recording on ECLKC. And like Glenna said earlier, we will have the email that you get post-event will also have the PowerPoint that Melissa was sharing. Thank you all for attending today's webinar. And thank you so much, Melissa, for your time and your clear instructions. And you all have a great Wednesday.

Melissa: Yes, take care everyone. Thanks again.