



U.S. Office of Special Counsel  
1730 M Street, N.W., Suite 218  
Washington, D.C. 20036-4505

## OSC Granted Stay in Challenge to Commerce Department Gag Clauses

---

### FOR IMMEDIATE RELEASE

CONTACT: Ann O'Hanlon, (202) 254-3631; [aohanlon@osc.gov](mailto:aohanlon@osc.gov)

WASHINGTON, D.C./November 30, 2012 –

The Merit Systems Protection Board (MSPB) yesterday granted a stay requested by the Office of Special Counsel (OSC) prohibiting enforcement of unlawful gag clauses in settlement agreements between the Commerce Department's Office of Inspector General (OIG) and four former employees of the OIG, each of whom was coerced into signing an agreement under threat of harm to their career prospects and future employment. The order is available [here](#).

The agreements prohibit employees from voluntarily communicating with OSC or Congress. The employees were told that manufactured negative performance appraisals would be shared with prospective employers if the employees did not sign the nondisclosure agreements.

The MSPB's action means that the personnel actions taken or threatened to be taken by OIG senior management must cease for 45 days, giving OSC further time to investigate the allegations. These personnel actions include the threatened communication with prospective employers and the imposition of significant changes in the employees' working conditions.

The order concludes that an agreement restricting employees' ability to report wrongdoing is a change in working conditions and is therefore a personnel action under the Whistleblower Protection Act. In addition, the order applies the Lloyd-LaFollette Act, a 1912 law codifying the rights of federal employees to blow the whistle to Congress.

Because the act of disclosing the gag provision may itself be prohibited by the harsh terms of the agreements, OSC is protecting the employees' identities.

"OSC is committed to ensuring that agencies do not interfere with whistleblowing to Congress," said Special Counsel Carolyn Lerner. "We are pleased that the MSPB has granted the stay so that OSC can further investigate this matter."

\*\*\*

*The U.S. Office of Special Counsel (OSC) is an independent federal investigative and prosecutorial agency. Our basic authorities come from four federal statutes: the Civil Service Reform Act, the Whistleblower Protection Act, the Hatch Act, and the Uniformed Services Employment & Reemployment Rights Act (USERRA). OSC's primary mission is to safeguard the merit system by protecting federal employees and applicants from prohibited personnel practices, especially reprisal for whistleblowing. For more information, please visit our website at [www.osc.gov](http://www.osc.gov).*