



Finance & Administration Committee

Action Item III-A

December 3, 2015

Updated Whistleblower Policy

Washington Metropolitan Area Transit Authority
Board Action/Information Summary

Action Information

MEAD Number:
201677

Resolution:
 Yes No

TITLE:

Update Whistleblower Policy

PRESENTATION SUMMARY:

Updates to Metro's Whistleblower Policy

PURPOSE:

To obtain Board approval of updated Metro policy on Whistleblower Rights and Responsibilities.

DESCRIPTION:

Key Highlights:

- Consistent and faster response to whistleblower activity
- Proactively identify and respond to potential retaliation
- Specify Board oversight and delegations

Background and History:

A policy was first originated in 1999 by the Board of Directors and was later revised by a Resolution to the Board 2010-40 on July 22, 2010. The adopted policy revisions were made to ensure good faith allegations of fraud, abuse, waste, gross mismanagement and safety violations are reported and investigated by various groups within Metro. The current update clarifies and puts the administration of the policy with the Office of Inspector General (OIG). The updated policy will proactively prevent retaliation of Metro employees.

Discussion:

The updated policy having had an opportunity to work with the policy for six years, staff has observed areas in which the policy could be improved or clarified. The updated policy supports Metro's goals to create a safer organization, prevent retaliation and maintain and enhance Metro's image.

The major differences in the updated policy:

- Board of directors now have the responsibility to ensure WMATA is complying with the policy.

- OIG has been delegated full authority to prevent whistleblower retaliation and to serve as the gatekeeper of all cases.
- The GM/CEO is responsible for delegating management authority to qualified program officers.
- The Office of Equal Employee Opportunity (OEEEO) shall notify the Supervisors of the protected status of the complainant and maintain those records.
- The new policy encourages collaboration to resolve issues.
- Reports of protected activity within the OIG are no longer presented to the Chair of the Audit and Investigations Committee of the Board. The OEEEO will handle those cases.
- The Office of General Counsel (COUN) responsibility has been changed to an advisory role.
- The OIG is tasked with maintaining records of the investigations and reporting to the Board.
- It is recommended that the Whistleblower panel review reports within 45 days.
- Pertinent federal whistleblower laws are incorporated in order to keep up with changes in those laws rather than quoted.
- Clarification that some protected activities, such as under civil rights laws, are addressed by separate WMATA policies rather than whistleblower.
- Ensurance of consistent and more prompt response to issues by funneling safety issues to SAFE and all others to OIG.

FUNDING IMPACT:

There is no impact on funding.

Project Manager: Isabel Cumming, Assistant Inspector General - Investigations

Department/Office: Office of Inspector General

TIMELINE:

Previous Actions	The Board approved Resolution 2010-40 on July 22, 2010.
Anticipated actions after presentation	The Finance and Administration Committee recommend Board approval of updated policy on Whistleblower Rights and Responsibilities.

RECOMMENDATION:

Approval of the updated policy on Whistleblower Rights and Responsibilities.

This chart addresses significant and substantive changes between the current and updated Whistleblower Rights and Responsibilities P/I.

CURRENT	PROPOSED	REASON FOR CHANGE
Purpose incorporates federal protections for whistleblowers.	1.00 & 2.00 Purpose and Policy include compliance with federal whistleblower laws.	Federal protections are subject to change. For example, current reference to ARRA is dated.
Policy does not guide employees regarding non-whistleblower-type protected activities.	3.01 "This P/I does not apply in absence of Protected Activity. Other workplace issues are governed by other WMATA policies, procedures and collective bargaining agreements."	Under law, whistleblower activities are mainly safety or finance related. The goal is to focus on anti-retaliation measures on whistleblower activity, and direct other protected activities to the appropriate WMATA policy.
"Prohibited Personnel Practice" occurs when the Protected Activity was a "contributing factor" to the Prohibited Personnel Practice (3.03).	4.05 (a) "Prohibited Personnel Practice" requires the Protected Activity to be a "motivating factor."	Motivating is the familiar and well-established standard used in Title VII retaliation cases. Whistleblower retaliation is similar to Title VII retaliation.
"Protected Disclosure," describes whistleblowing activities in terms of reporting information (3.04).	4.06 "Protected Activity" encompasses reporting information and activities such as refusing to violate unlawful orders, participating in an investigation or seeking a remedy under P/I.	Expanding "Protected Activity" beyond reporting information is more complete and aligns with federal whistleblowing terms of art.

CURRENT	PROPOSED	REASON FOR CHANGE
<p>Only defined responsibilities are for employees, Department of Human Resources and Contacting Officers (4.01-03).</p>	<p>5.01 Board of Directors is responsible to ensure WMATA is complying with the NTSSA and other laws.</p> <p>5.02 The Office of Inspector General (OIG) delegated full authority with respect to preventing whistleblower retaliation. The OIG takes a leadership role in reviewing reports of Protected Activities and determining appropriate actions; investigating Prohibited Personnel Practices; providing a report of investigation to the Hearing Panel; maintaining records regarding whistleblower-related activities.</p> <p>5.03 GM/CEO is responsible for delegating management authority to qualified officers.</p>	<p>Consistent with other Board policies, the revision gives the ultimate responsibility to the Board.</p> <p>Centralizing these functions with the OIG will result in more consistent treatment of Protected Activity, accelerate efforts to prevent Prohibited Personnel Practices and help identify trouble areas and lessons-learned.</p> <p>GM/CEO manages delegation.</p>
<p>Makes HR responsible for notifying applicants and employees of whistleblower rights and responsibilities (4.02).</p>	<p>5.04 is more specific about the notice, and adds developing and implementing training and collaborating with OEEEO, OIG & COUN to prevent Prohibited Personnel Practices.</p>	<p>There is a great need for training employees, supervisors and those responsible for implementing the P/I and Procedures in whistleblower rights and responsibilities. HR has agreed to do this.</p>

CURRENT	PROPOSED	REASON FOR CHANGE
<p>Policy focuses more on reacting to retaliation than proactively preventing retaliation.</p>	<p>5.05 The Office of Equal Employment Opportunity (OEEEO) in partnership with OIG, HR, COUN and other offices, notifies supervisors regarding potential Protected Activity and notifies potential whistleblowers about the actions being taken to investigate Protected Activity.</p>	<p>Supervisor notice is an important part of preventing Prohibited Personnel Practices.</p> <p>Employee notice addresses the complaint of some whistleblowing employees that their reports were ignored. This often leads to a downward spiral in employee-supervisor relations, which in turn can end in an employment action that appears retaliatory. The proposed P/I seeks to break this chain by informing employees what is happening with their report.</p>
<p>Counsel's sole responsibility was to participate as member of Panel considering OIG reports regarding Prohibited Personnel Practices (6.04).</p>	<p>5.06 The Office of General Counsel (COUN) provides legal advice throughout the whistleblower process, and responds to any whistleblower complaint filed with an outside agency.</p>	<p>Clearly states COUN's role as legal advisor and litigator, and avoids over-involvement in fact-finding, which has led to conflicts.</p>
<p>Policy does not define responsibilities outside HR and contracting officers (4.01-03).</p>	<p>5.07 – 5.10 In the new model for preventing Prohibited Personnel Practices, the Department of Safety and Environmental Management (SAFE), the Director of the Office of Labor Relations and all Metro departments and offices may be called upon to collaborate when needed to prevent Prohibited Personnel Practices.</p>	<p>An office may be asked to participate when for instance OIG needs subject matter expertise to determine whether there is Protected Activity (e.g. objectively reasonable belief that a situation presents a specific threat to health or safety) and a credible threat of retaliation.</p>

CURRENT	PROPOSED	REASON FOR CHANGE
(No similar provision.)	6.01 encourages, but does not require, elevating issues within the chain of command and collaborating to resolve issues before engaging in Protected Activity.	The P/I does not intend to replace business processes that are effective in resolving issues. At the same time, employees are not obligated to work with their supervisor, in case the supervisor is viewed as part of the problem. The provision also reminds supervisors if collaboration isn't working, they should proactively report the matter as Protected Activity. Unresolved issues are a common source of friction and allegations of retaliation.
Policy provides many avenues for reporting Protected Disclosures. Requires recipients of reports regarding Protected Activity to make a record and gave recipients some latitude in how to respond (5.01-02).	6.02 Reports of Protected Activity should be directed to OIG or SAFE. Any other recipient directs the report to OIG.	Experience has shown that having too many avenues for reporting Protected Activity results in inconsistent treatment, more than one office dealing independently with the same issue, a lack of clarity over which office is responsible for each matter and some matters going without response and inconsistent record-keeping. Under the new model, OIG quarterbacks whistleblower matters.
GM/CEO can reward whistleblowing that assists in recovering or prevents a significant loss in public funds (5.04).	(No similar provision.)	The GM/CEO has discretion to reward employees without need for this provision.
A Panel (Chief of Staff (CHOS), Chief Human Resources Officer (CHRO) and General Counsel) reviews the OIG report and determines whether retaliation occurred and if so establishes an appropriate remedy (6.00).	7.00 The CHOS and CHRO select a third Panel member who will enhance the credibility of the decision.	This part of the current P/I has been effective. To avoid conflicts, however, the General Counsel will advise the Panel but not participate in the decision. Also, the Panel should provide its determination within 45 days.



Washington Metropolitan Area Transit Authority

Updated Whistleblower Policy

Finance & Administration Committee
December 3, 2015



Purpose

Obtain Board of Directors approval of proposed updates to Metro Policy/Instruction “Whistleblower Rights and Responsibilities”





Background

- In 2010, the Board updated Metro's Whistleblower Policy
- 2010 update has worked well for responding to allegations of retaliation
- Proposed revisions incorporate best practices for proactively preventing retaliation



Principal Updates

Current

- Policy lacks delegations from Board
- Addresses what to do if there is retaliation
- Many avenues to report issues

Proposed

- Clear delegations from Board to OIG and GM/CEO, with oversight
- Measures to prevent retaliation from happening
- Report to SAFE and OIG for consistent and more rapid response



Board Oversight & Delegations

- Reformatted as Board Policy
- Board oversight through OIG reports
- Board delegations to OIG and GM
- Increased role for SAFE, HR, OEEEO, LABR and others





Proactively Prevent Retaliation

- Not a focus of current policy
- Proposed policy clarifies responsibilities
 - SAFE handles unresolved issues regarding safety
 - OIG handles other unresolved issues
 - Any activity involving potential retaliation goes to OIG
 - OIG requires other offices to provide notices and review personnel action before it is implemented
 - COUN advises



Consistent & Faster Response

- Current policy provides many avenues to report issues
 - Pro: believed employees more likely to report
 - Con: inconsistent and untimely responses actually discourage
- Proposed update: Report to OIG and SAFE
 - Where many issues are reported
 - Leverage established processes to address concerns
 - Centralized data to diagnose problem areas



Other Proposed Updates

- Contractors implement whistleblower protections
- Clarify definitions
- Employee-friendly process to address concerns
- Training
- Counsel advises





Recommendation

- Board Approval to:
 - Adopt updated policy
 - Delegate to OIG developing and maintaining procedures

SUBJECT: UPDATE OF WHISTLEBLOWER POLICY

RESOLUTION
OF THE
BOARD OF DIRECTORS
OF THE
WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

WHEREAS, In Resolution 2010-40, the Washington Metropolitan Area Transit Authority (WMATA) Board of Directors approved the "Whistleblower Rights and Responsibilities" policy in order to promote safety and enhance operations; to encourage good faith reports of fraud, waste, mismanagement, abuse of authority, violations of law and threats to health, safety and security, and to prevent all forms of retaliation against employees and others who make such reports; and

WHEREAS, The Whistleblower Rights and Responsibilities policy has been effective in responding to and addressing allegations of retaliation; and

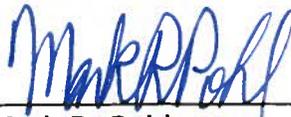
WHEREAS, The Whistleblower Rights and Responsibilities policy should be updated to more proactively identify and respond to whistleblower activity, which can help WMATA to more quickly address issues and to prevent retaliation from occurring; and

WHEREAS, As a policy of the Board of Directors, the Whistleblower Rights and Responsibilities policy should clearly establish Board delegations and oversight; now, therefore be it

RESOLVED, That the Board of Directors approves the attached updated "Whistleblower Rights and Responsibilities" policy; and be it finally

RESOLVED, That this Resolution shall be effective immediately since the policy is solely for internal management.

Reviewed as to form and legal sufficiency,



Mark R. Pohl
Acting General Counsel



DRAFT POLICY/INSTRUCTION

WHISTLEBLOWER RIGHTS & RESPONSIBILITIES

SUPERSEDES: P/I 7.8.1

APPLICABLE TO: ALL EMPLOYEES

1.00 PURPOSE

This Policy/Instruction (P/I) establishes the Washington Metropolitan Area Transit Authority's (Metro's) whistleblower rights and responsibilities and is designed to be in compliance with the National Transit Systems Security Act (NTSSA). Metro Employees must comply with this P/I as a condition of employment.

2.00 POLICY

- 2.01 The public interest is served when Metro Employees report fraud, gross misuse or waste of public resources, violations of law, and substantial and specific threats to health, safety and security without fear of actual or threatened discrimination, retaliation or reprisal. To support this interest, this policy prohibits retaliation against Metro Employees who engage in Protected Activity. By contract, Metro requires its contractors and subcontractors to comply with whistleblower laws and afford their Employees similar rights and responsibilities.
- 2.02 Under the NTSSA, 6 U.S.C. § 1142, Metro, an officer or Employee of Metro, shall not discharge, demote, suspend, reprimand, or in any other way discriminate against an Employee for engaging in activity that is protected under the NTSSA. The United States Occupational Safety and Health Administration enforces the NTSSA and provides further information about the NTSSA via its website and regional offices.

3.00 SCOPE

- 3.01 This P/I does not apply in absence of Protected Activity. Other workplace issues are governed by other Metro policies, procedures and collective bargaining agreements.
- 3.02 Nothing in this P/I shall diminish the rights or remedies of Employees pursuant to any applicable federal law, provision of the U.S. Constitution or other Metro P/I.

4.00 DEFINITIONS

- 4.01 Complaint means an allegation of Prohibited Personnel Practice submitted to the Office of Inspector General.
- 4.02 Employee means a current or former Employee.
- 4.03 Investigation or Proceeding is an inquiry or review by an authorized Metro official, or an authorized regulatory or law enforcement agency, regarding a Protected Activity or a Prohibited Personnel Practice, or an enforcement or judicial proceeding arising from such inquiry or review.
- 4.04 Personnel Action means:

- (a) Recommending, threatening or ordering a termination, demotion, suspension, discipline, corrective action or reprimand, involuntary transfer or reassignment, investigation or

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examination, referral for psychiatric or psychological counseling, or any other action that would discourage a reasonable Employee from engaging in or supporting a Protected Activity;

- (b) Recommending, threatening or ordering a significant change in duties, responsibilities or working conditions inconsistent with the Employee's job description, qualifications or training, which has a negative or adverse impact on the Employee; or
- (c) Recommending against, threatening against or failing to make an appointment, promotion or other favorable personnel action for an Employee.

4.05 Prohibited Personnel Practice occurs when a Supervisor takes or threatens to take a Personnel Action against an Employee because of Protected Activity.

- (a) The term "because of" in the above definition means that the Protected Activity engaged in by the Employee was a motivating factor in the Personnel Action, unless a different standard applies by operation of law.
- (b) No Prohibited Personnel Practice occurs where management demonstrates it would have taken the Personnel Action in the absence of a Protected Activity.

4.06 Protected Activity means lawfully and in good faith, a) making or being perceived as making a disclosure of information that an Employee reasonably believes is evidence of fraud, gross misuse or waste of public resources, violation of law, or a substantial and specific threat to health, safety or security; b) refusing to obey an order that would violate legal requirements; c) participating in or cooperating with an Investigation or Proceeding; d) engaging in activity protected by the NTSSA; or e) seeking a remedy under this P/I or applicable law after engaging in a Protected Activity. An activity that is fully proscribed by another Metro policy (e.g. Equal Employment Opportunity (EEO), Americans with Disabilities Act (ADA), background checks) is not a Protected Activity under this P/I.

4.07 Supervisor is an individual employed by Metro who has the authority to take, direct others to take, recommend or approve a Personnel Action or direct an Employee to obey an order.

5.00 RESPONSIBILITY AND AUTHORITY

5.01 Board of Directors. The Board is responsible to ensure that Metro is complying with the NTSSA and any other federal law, rule, or regulation relating to public transportation safety or security, or fraud, waste, or abuse of federal grants or other public funds intended to be used for public transportation safety or security.

5.02 The Office of Inspector General (OIG) is delegated full authority with respect to preventing whistleblower retaliation. The OIG will establish and maintain procedures to implement this P/I, provided, however, that any modifications to this Whistleblower P/I shall be reported to the Board in a timely manner. The OIG responds to reports of Unresolved Protected Activity that do not involve threats to health, safety and security. The OIG shall review reports of suspected Prohibited Personnel Practices and, in collaboration with other offices as needed, determine

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appropriate actions. The OIG investigates Prohibited Personnel Practices and provides a report of investigation (ROI) to the Hearing Panel (Panel). The OIG shall also maintain records regarding Prohibited Personnel Practices and Investigations and Proceedings and report on this information to the Board. The OIG will report to the Board (in executive session, as appropriate) information on the following: a) Investigations and Proceedings, including trends and outcomes; b) Panel actions on OIG Reports of Investigation (as provided by the Panel); c) report of training of Employees and supervisors (as provided by the Department of Human Resources (HR)); and d) report on regulatory proceedings or litigation that relate or refer to any Protected Activity or Prohibited Personnel Practices (as provided by the Office of General Counsel (COUN)).

- 5.03 General Manager/Chief Executive Officer (GM/CEO). The GM/CEO is responsible for delegating management authority to qualified program officers and authorizing the re-delegation of authority to other qualified Employees of the Authority. The GM/CEO is also responsible for establishing a system of accountability for responsibilities under this P/I. The GM/CEO exercises this delegation authority as stated in the following parts of this section 5.
- 5.04 The Department of Human Resources (HR) shall provide written notice of the rights and responsibilities in this policy at all Employee orientations, post a notice of whistleblower rights and responsibilities under this policy and federal law electronically (such as by posting on Metro's Intranet) and prepare a written notice for posting throughout Metro facilities. HR shall immediately forward any Employee disputes including reports of Prohibited Personnel Practices to the OIG. HR shall develop and implement training regarding this P/I, and provide the OIG with periodic updates on the progress of training. HR shall collaborate with the Office of Equal Employment Opportunity (OEEEO), OIG, COUN and other offices to prevent Prohibited Personnel Practices. The Chief, Human Resources Officer (CHRO) may revise the attached Procedures with concurrence from the OIG and COUN, provided the changes are reported to the Board in a timely manner.
- 5.05 The Office of Equal Employment Opportunity (OEEEO) shall, in partnership with OIG, HR, COUN and other offices, take measures reasonably calculated to prevent Prohibited Personnel Practices, including notifying Supervisors of their obligation to prevent Prohibited Personnel Practices and informing Employees of the actions being taken to investigate Protected Activity. OEEEO shall immediately forward any EEO charges that include reports of Protected Activity to the OIG.
- 5.06 The Office of General Counsel (COUN) shall provide legal advice to OIG, HR, OEEEO, other offices, and the Panel in performing their functions under this P/I. COUN is also responsible for responding to any whistleblower complaint filed with an outside agency, and for providing the OIG with periodic updates on the progress of such regulatory proceedings or litigation.
- 5.07 The Department of Safety and Environmental Management (SAFE) shall investigate reported Protected Activities that involve threats to health, safety and security, maintain records of the outcome and documented closure of such Protected Activities, and immediately forward any safety hotline reports involving potential Prohibited Personnel Practices to the OIG.
- 5.08 The Chief Procurement Officer shall ensure that appropriate whistleblower protection provisions are treated as federal flow down provisions and included in all appropriate Metro contracts.

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5.09 The Director, Office of Labor Relations shall immediately forward any grievances involving potential Prohibited Personnel Practices to the OIG.

5.10 All Metro Departments and Offices shall provide any reports involving Prohibited Personnel Practices they receive to the OIG. They shall also collaborate to resolve issues underlying Protected Activities; upon request, support the investigation of Prohibited Personnel Practices' and prevent Prohibited Personnel Practices. In addition, they will refer any whistleblower complaint filed with an outside agency to COUN for response, and cooperate with COUN in preparing the response.

6.00 POLICIES AND PROCEDURES

6.01 Collaborating to Resolve Issues

- (a) Metro encourages its Employees to share their questions, concerns, suggestions or complaints with someone who can address them properly. In most cases, an Employee's supervisor is in the best position to address areas of concern.
- (b) When Employees encounter a situation they reasonably believe constitutes fraud, gross misuse or waste of public resources, violations of law, or substantial and specific threats to health, safety and security, they are encouraged to proactively and promptly resolve the issue first by following standard operating procedures. Supervisors will collaborate with Employees to resolve issues and elevate them within the chain of command as needed to reach a resolution.

6.02 Unresolved Protected Activity

- (a) When collaboration and elevating an issue through the chain of command is impractical, or fails to achieve a resolution, Employees shall promptly report the Unresolved Protected Activity to SAFE (if a health, safety or security issue) or OIG (all others), through any reasonable means including in person, via email, other writing, or the SAFE or OIG hotline. Any other recipient of a report of Unresolved Protected Activity shall immediately forward it to OIG.
- (b) Employees shall act in good faith and make reasonable efforts to verify information when reporting Protected Activity. Employees shall not report or state an intention to report false information about Protected Activity or willfully or recklessly disregard the truth or falsity of the information or allegation.
- (c) Employees are encouraged but not required to put their names on reports of Protected Activity because appropriate follow-up questions and investigation may not be possible without knowing the source of the information. Knowing the source also helps Metro prevent Prohibited Personnel Practices and resolve underlying issues. Employees may, however, report Protected Activity anonymously or request confidentiality. Concerns expressed anonymously will be looked into appropriately, but consideration will be given to the seriousness of the issue raised, the credibility of the concern, and the likelihood of confirming the allegation from attributable sources. When an Employee requests

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confidentiality, SAFE and OIG will make all reasonable efforts to protect the reporting Employee's identity and disclose confidential information only to the extent required by law or to conduct an Investigation or Proceeding.

- (d) The most appropriate response to Unresolved Protected Activity will depend upon the circumstances and on established OIG and SAFE processes. At a minimum, however, SAFE and OIG will confirm receipt of reports in their subject matter areas, and as soon as practicable provide the reporting Employee a summary of the outcome of the report.
- (e) Any report of Protected Activity that includes an allegation of Prohibited Personnel Practice will be provided to the OIG for consideration under the process for investigating suspected Prohibited Personnel Practices.

6.03 Prohibited Personnel Practices

- (a) Employees must not engage in Prohibited Personnel Practices. This P/I does not prohibit a Personnel Action that would have been taken in the absence of a Protected Activity.
- (b) Employees must not interfere with or deny the right of another Employee to engage in Protected Activity.

7.00 ENFORCEMENT

7.01 Any Employee who violates this P/I is subject to discipline up to and including termination.

7.02 Reporting and Investigating Suspected Prohibited Personnel Practices

- (a) An Employee who believes that he or she has been subjected to a Prohibited Personnel Practice is encouraged, but not required, to attempt to resolve the matter within the Employee's chain of command. If the matter is not resolved, the Employee may submit a Complaint to the OIG through any reasonable means including in person, in writing through external or Metro internal mail, via email, or through the OIG hotline. If the Complaint is against the OIG, the Employee may submit it to OEEO, which shall assume the responsibilities of the OIG in this part.
- (b) Complaints are timely if submitted within 180 days of the occurrence of the Prohibited Personnel Practice. The OIG may return untimely complaints with no further action.
- (c) A Complaint should contain as complete and specific information as possible, including facts and circumstances that demonstrate a Prohibited Personnel Practice, including:
 - (1) What Protected Activity the Employee engaged in, how it occurred, when it occurred, any witnesses to it, and any Investigation or Proceeding related to the Protected Activity;
 - (2) What the Prohibited Personnel Practice is, who took it, how it was made, when it was made, and any witnesses to it;

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- (3) What demonstrates that the Prohibited Personnel Practice was because of the Protected Activity; and
- (4) Any corrective action sought by the Employee and the response to that request.
- (d) Employees shall in good faith, and must make reasonable efforts to verify facts before making a Complaint. Employees shall not report or state an intention to make a Complaint knowing it to be false or with willful or reckless disregard for the truth or falsity of the information or allegation.
- (e) OIG Investigation
 - (1) The OIG will acknowledge receiving a Complaint in writing within five business days.
 - (2) The OIG shall make reasonable efforts either directly or through an appropriate office to provide the Complainant with the status of its investigation every 30 days, and to provide a written report regarding a Complaint (ROI) to the Panel within 150 working days of receipt.
 - (3) Employees shall cooperate with Investigations or Proceedings, including providing necessary information and records.

7.03 Hearing Panel (Panel)

- (a) The Panel is comprised of the Chief of Staff (CHOS), CHRO, and a third neutral member chosen by the CHOS and CHRO for each hearing. COUN or designee provides legal advice to the Panel. The Panel receives ROIs regarding suspected Prohibited Personnel Practices, determines whether such Practice took place and directs corrective and remedial action. The Panel shall make reasonable efforts to render its determination within 45 working days of receiving the ROI. If the Complaint is resolved prior to the Panel issuing its determination, the Panel may dismiss the Complaint.
- (b) Management will comply with the Panel's determination within 14 working days, unless it seeks reconsideration in accordance with these procedures. Unless the complainant or management exercises appeal rights as set forth below, the Panel's decision is final.
- (c) Requests for Reconsideration of Panel Decisions
 - (1) All requests for reconsideration should be sent to the CHRO within 10 working days of the Panel's determination. The request for reconsideration must state specific reasons why the Panel's determination is in error.

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- (2) The Panel shall convene and consider any timely submitted request for reconsideration and render a written decision. The Panel shall make reasonable efforts to render such a written decision within 30 working days of the filing of a request for reconsideration. The Panel's decision on a request for reconsideration is final.

7.04 Election of Remedies and Externally Filed Whistleblower Retaliation Complaints

These procedures for Complaints are intended to supplement and not limit Employees' access to other applicable processes for redress of Prohibited Personnel Practices, including but not limited to, applicable federal law, another Metro P/I or grievance procedures under applicable collective bargaining agreements. If an Employee invokes another process, Metro may stay or close proceedings under this P/I.

8.00 EXCEPTIONS

No exceptions, except where superseded by a grievance procedure in an applicable collective bargaining agreement. Nothing in this P/I shall diminish or enlarge the rights, responsibilities or remedies of Employees pursuant to any applicable federal law, provision of the U.S. Constitution or other Metro P/I.

9.00 RELATED POLICIES, REGULATIONS AND RESOLUTIONS

WMATA Board Resolutions 99-51, 2010-23, 2010-40 and 2015-__

American Recovery and Reinvestment Act (ARRA), Public Law 111-5, § 1553

National Transit Systems Security Act (NTSSA), 6 U.S.C. § 1142

10.00 LIST OF APPENDICES

APPENDIX A: Procedures (to be developed)

APPENDIX B: OSHA NTSSA Fact Sheet, <https://www.osha.gov/Publications/OSHA-factsheet-whistleblower-trans-agencies.pdf>

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