

United States Senate
WASHINGTON, DC 20510

May 29, 2024

VIA ELECTRONIC TRANSMISSION

The Honorable Lisa Monaco
Deputy Attorney General
Department of Justice

Dear Deputy Attorney General Monaco:

On May 9, 2024, the Department of Justice Office of the Inspector General (DOJ OIG) issued a Management Advisory Memorandum (Memorandum) to you presenting concerns that the Justice Department failed to comply with 50 U.S.C. § 3341 and the Director of National Intelligence's (DNI) Security Executive Agent Directive 9 (SEAD 9) which provide protections for federal employees who allege their security clearance was suspended, revoked, or denied in retaliation for making legally protected whistleblower disclosures.¹ The DOJ OIG made four recommendations to the Justice Department to ensure its internal policies, directives, and procedures comply with the aforementioned laws and policy and also further recommended the Justice Department direct its components to do the same.² According to the DOJ OIG Memorandum, the Justice Department concurred with these recommendations.³ I write to you concerning the status of the Justice Department's implementation of the DOJ OIG's recommendations to correct these unlawful deficiencies.

50 U.S.C. § 3341 prohibits agencies from taking or threatening to take adverse action with respect to an employee's security clearance out of retaliation for engaging in legally protected whistleblower activity.⁴ The statute requires to the extent practicable, agencies to

¹ Department of Justice Office of the Inspector General, *Notification of Concerns Regarding the Department of Justice's Compliance with Whistleblower Protections for Employees with a Security Clearance*, Management Advisory Memorandum 24-067, (May 9, 2024) <https://oig.justice.gov/sites/default/files/reports/24-067.pdf>.

² *Id.* at 5. The DOJ OIG made the following four recommendations to the Justice Department:

1. Ensure that there is a process for employees to file a retaliation claim with the OIG when a security clearance review or suspension lasts longer than 1 year; 2. Ensure that employees are notified in writing of their right to file a retaliation claim with the OIG when a security clearance review or suspension lasts longer than 1 year; 3. Ensure that employees who have had their security clearance suspended, revoked, or denied, and have made a retaliation claim, have an opportunity, to the extent practicable, to "retain their government employment status" during a security investigation; and 4. Put in place a process to review the monthly reports that DOJ Instruction 1700.00.01 requires of components in suspension cases exceeding 90 days in order to assess whether components are complying with the DOJ Instruction's requirement that components "make every effort to resolve suspension cases as expeditiously as circumstances permit."

³ *Id.*

⁴ *Id.* at 1.

permit employees claiming retaliation to retain their employment status while their security clearance is under review and also allows employees to appeal the suspension after a year if no final decision has been made to revoke or deny the employee's security clearance.⁵ SEAD 9 requires federal agencies to establish a process, with the agency's Inspector General conducting fact-finding, for employees alleging their security clearance was suspended, revoked, or denied out of unlawful retaliation to appeal the decision.⁶

However, the DOJ OIG found the following with respect to DOJ Instruction 1700.00.01:

...while providing for an OIG appeal in alleged retaliation cases where a security clearance has been revoked or denied, [it] does not include an OIG appeal process for employees whose security clearance has been suspended for more than 1 year and who allege retaliation, as required by SEAD 9. It also does not have a process in place that enables employees claiming retaliation, to the extent practicable, to retain employment status pending a security clearance review, as required by Section 3341. We have reviewed security clearance appeal policies for multiple DOJ law enforcement components and they also do not appear to include these requirements of SEAD 9 and Section 3341.⁷

For example, the DOJ OIG opened a reprisal investigation and found that the Federal Bureau of Investigation (FBI) suspended an employee for approximately **15 months** without pay before deciding to revoke this employee's security clearance.⁸ It then took another **4 months** for the FBI to provide the employee with the evidence supporting their revocation decision.⁹ The FBI employee then filed a request to appeal the revocation, which the DOJ OIG says is currently pending.¹⁰ According to the DOJ OIG, in total, this employee has been suspended without pay for **more than 2 years** while waiting for the FBI to make a final decision on the revocation of their security clearance.¹¹ In this matter, the DOJ OIG stated they initiated a reprisal investigation under Section 3341 on their own, notwithstanding the absence of a DOJ policy.¹² The DOJ OIG said that had their office "not decided to move forward with its reprisal investigation as provided for in Section 3341 and SEAD 9, the employee would still not have had the right to file a retaliation complaint with the OIG" under Justice Department policy since the revocation is not yet final.¹³

⁵ *Id.*

⁶ *Id.* at 1-2.

⁷ *Id.* at 2.

⁸ *Id.* at 4.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

The DOJ OIG found that the Justice Department's failure to follow the law "creates the risk that the security process could be misused, as part of an inappropriate effort to encourage an employee to resign."¹⁴ The Justice Department's failure to follow the law only serves to create a chilling effect on employees reporting wrongdoing out of fear they will have their security clearances suspended and indefinitely put on leave without pay, with little recourse to appeal the decision.¹⁵ As a final example, the DOJ OIG found that,

[t]he data provided by the FBI indicated that, in the last 5 years, 106 employees have had their clearances suspended for 6 months or longer. For these 106 employees, the average time between suspension and a decision to revoke or reinstate the clearance, or for the employee's separation during suspension, was 527 days, which is about 17.5 months. Moreover, this time period does not account for the additional time required for the FBI to produce to the employee the documentation supporting the revocation, for the employee to file a request for reconsideration, and for the FBI to issue a decision on the reconsideration request.¹⁶

Accordingly, so that Congress may conduct independent and objective oversight concerning the Justice Department's identified failures and its efforts to implement of DOJ OIG's recommendations, please provide answers to the following no later than June 12, 2024.

1. Please provide, in detail, the efforts the Justice Department and its components have taken or plan to take to fully implement DOJ OIG's recommendations. Provide all updated policies, guidance, and related documents implementing these recommendations.
2. Please explain, in detail, why the Justice Department and its components failed to update its internal policies to comply with the requirements of 50 U.S.C. § 3341 and SEAD 9.
3. Since the conclusion of the DOJ OIG Memorandum review, has the Justice Department and its components notified employees of their rights to appeal security clearance suspensions pending review for over a year to the DOJ OIG pursuant to 50 U.S.C. § 3341 and SEAD 9? If not, why not? If yes, provide the notification transmitted to employees.

¹⁴ *Id.* at 3.

¹⁵ See Geoff Schweller, *DOJ Inspector General Raises Concerns of DOJ and FBI Revoking Security Clearances of Whistleblowers*, Whistleblower Network News (May 16, 2024) <https://whistleblowersblog.org/government-whistleblowers/intelligence-community-whistleblowers/doj-inspector-general-raises-concerns-of-doj-and-fbi-revoking-security-clearances-of-whistleblowers/>.

¹⁶ *Id.* at 4-5.

4. Since the conclusion of the DOJ OIG Memorandum review, has the Justice Department allowed employees with suspended security clearances pending review for over a year to appeal to the DOJ OIG as required by 50 U.S.C. § 3341 and SEAD 9? If not, why not?
5. Has the Justice Department and its components developed and implemented alternatives to indefinite suspensions without pay for employees with a suspended security clearance as required by 50 U.S.C. § 3341 and SEAD 9? If not, why not? If yes, provide all policies, guidance, and related documents of these alternatives.

Thank you for your prompt review and responses. If you have any questions, please contact Brian Randolph of my Committee staff at (202) 224-0642.

Sincerely,



Charles E. Grassley
Ranking Member
Committee on the Budget

cc: The Honorable Michael Horowitz
Inspector General
Department of Justice