

KATZ BANKS KUMIN

DOD IG Interpretation of Defense Contractor Whistleblower Statute Challenged by Congressional Leaders

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A bipartisan group of Congressional leaders involved in oversight of defense contracting activities delivered a strong rebuke to the Department of Defense – Office of the Inspector General (“DoD IG”) regarding its interpretation of the [defense contractor whistleblower](#) statute, 10 U.S.C. § 2409. The IG had taken the position that to qualify as a protected disclosure under the statute, a whistleblower had to report wrongdoing to a tightly circumscribed group of DoD personnel on a particular contract – namely, the contracting officer, the contracting officer’s technical representative, or someone at the Defense Contract Management Agency (“DCMA”). In a [recent letter](#), the Congressional leaders soundly rejected that interpretation of the statute. The signatories stated: “There is no rational basis which supports the view that an ‘employee responsible for contract management or oversight’ is limited to only two people on any given contract and DCMA.” The signatories added that defense contracts are overseen by numerous people, including “program staff that interact with contractors every day and have substantial knowledge and oversight of the contract’s implementation on the ground.” In light of the IG’s erroneous interpretation of the statute, the Congressional letter requested immediate action by the IG:

We therefore respectfully ask that you review your office's interpretation and implementation of all versions of 10 U.S.C. § 2409 to ensure that it is consistent with protecting contractor and subcontractor employees from retaliation. We further request that you report your findings to our Committees. Additionally, we ask that your office reconsider its findings in individual cases of retaliation brought by contractor and subcontractor employees, if they were analyzed under an improper interpretation of the law, and ask that you report on whether any findings have been reversed. We ask that you provide your report to our Committees as soon as possible, but no later than October 17, 2014.

It is unclear how many whistle-blower cases filed with the IG will be affected by the letter. But it seems likely to impact the case of Katz Banks Kumin client, John Edwards. In May 2014 the Project on Government Oversight (“POGO”), a nonpartisan independent watchdog that advocates for government reform, [issued a letter](#) asking the IG to reconsider a ruling in that case. In January 2014, the DoD IG had ruled that Mr. Edwards, a former employee of government contractor SAIC, was not entitled to protection from reprisal for reporting overbilling on a government contract because he did not make disclosures to the proper government official. Although Mr. Edwards made his reports to a DoD official responsible for managing the contract in question, as well as the official ultimately responsible for management and oversight of the contract, the DoD IG ruled that these officials were not proper recipients of the reports because they were not responsible for contract “oversight.” In light of the Congressional letter, the IG seems likely to reverse its findings in the case and hold that Mr. Edwards did make protected disclosures under the statute. “This is a positive development not only for John but for any employee of a [defense contractor](#) who has reported wrongdoing to DoD personnel involved in managing a contract,” said Katz Banks Kumin lawyer, [David J. Marshall](#). “We are confident the IG will do the right thing, heed the Congressional letter, and abandon an interpretation of the statute that contradicts its plain language and ignores the realities of the

contracting workplace.”