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BEFORE THE
U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON GOVERNMENT REFORM
SUBCOMMITTEE ON NATIONAL SECURITY,
EMERGING THREATS, AND INTERNATIONAL RELATIONS

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Good afternoon Mr. Chairman and members of the Subcommittee. I am pleased to be here at your request to testify on whistleblower protection at the Department of Energy. We share your concern that whistleblowers be free to express themselves without fear of retaliation. The willingness of whistleblowers to step forward and disclose information is vital to the mission of the Office of Inspector General and to the pursuit of good government.

The Department of Energy has approximately 15,000 Federal employees and 100,000 contractor employees. The Office of Inspector General typically receives over 1,000 contacts a year from these employees and other persons raising concerns about aspects of Departmental operations. These include allegations of programmatic fraud, waste, and abuse; safety and security violations; and, a variety of other issues concerning Departmental activities. We consider all of these individuals to be whistleblowers, whether or not they request formal status.

We carefully review each complaint we receive. Depending upon the nature of the issues raised by a complainant, we may open an audit, inspection, or investigation. For example, last year, allegation-based investigations resulted in the referral of 33 cases for prosecution, 20 criminal convictions and civil judgments, and, over $27 million in settlements and fines. Information provided by whistleblowers played a critical role in these outcomes.

Before discussing specific Office of Inspector General work related to whistleblowers, I would like to discuss whistleblower protection policies in general.

Whistleblower Policies

Department of Energy Federal and contractor employee whistleblowers have access to the protections found in several statutes and regulations. Two avenues routinely used are:

- First, the Whistleblower Protection Act, which covers Federal employees alleging reprisal for providing information about a violation of any law, rule, or regulation; gross mismanagement; a gross waste of funds; an abuse of authority; or a substantial and specific danger to public health or safety; and,
- Second, the Department of Energy Contractor Employee Protection Program, which covers on-site contractor employees alleging reprisal for disclosing information concerning danger to the public or worker health and safety, substantial violations of law, or gross mismanagement; participation in congressional proceedings; or refusal to participate in dangerous activities.

The Department recently issued for comment a draft directive addressing the protection of Department employees who express what are described as "differing professional opinions." The objectives of the directive, as stated in the draft, are to help ensure that Department employees are free to express differing views and that there is an adequate process for considering dissenting views and resolving these differences. The draft is only a policy statement, so there is no definitive Departmental implementation plan. As currently drafted, the directive applies only to Federal employees. We believe that it may be wise to include contractor employees in the directive's coverage and have expressed our view on this issue to responsible Departmental officials.

Office of Inspector General Whistleblower-Related Activities

Now I would like to address specific whistleblower-related activities of the Office of Inspector General. Pursuant to interest expressed in your letter of invitation, I will first discuss whistleblower retaliation through the personnel security clearance process.

In the last 10 years, the Office of Inspector General has received three complaints specifically alleging retaliation through the personnel security clearance process. In the first complaint, which we received in 1995, a Department contractor employee alleged he was not granted a security clearance in retaliation for disclosing unethical business practices by his employer. Our inquiry did not substantiate the allegation.

In the second complaint, which we received on November 29, 1996, a Department employee alleged that during his security clearance background reinvestigation his managers reported that he was mentally and emotionally unstable because he had voiced concerns about wrongdoing in the Department. The complainant specifically expressed concern that the Department had received the completed background investigation over a year previously, but had yet to make a determination whether to continue or revoke his clearance. On January 15, 1997, the complainant advised us that the Department had made a decision to continue his clearance. While this appeared to be a positive outcome, we nonetheless advised Department management of the issues the complainant had raised regarding the clearance process, so appropriate action could be taken.

In the third complaint, which we received in 2000, it was alleged that a Department contractor employee's clearance was revoked for raising concerns regarding the illegal transfer of project funds. We engaged Department management on this issue. It was determined that, in fact, the clearance had not been revoked.

In addition, in 2002, a Department employee wrote to the Secretary of Energy alleging that her security clearance was revoked and that Department officials falsely claimed that budgetary considerations prevented the Department's standard review of her clearance as a pretext for prohibited reprisal for equal employment opportunity and other protected activity. Because the complaint was also sent to the Office of Special Counsel, which has primary jurisdiction for resolving such a complaint, we deferred to the Special Counsel on this matter.

Looking at whistleblower protection more broadly, the Office of Inspector General has been active in a number of other cases. For example, in November 2002, we initiated an inquiry into allegations that senior management at Los Alamos National Laboratory engaged in a deliberate cover-up of security breaches and illegal activities, particularly with respect to reported instances of property loss and theft. Shortly after our review began, the Laboratory terminated the employment of two security officials who had been vocal in criticizing management's handling of property loss and theft issues. The timing of this action raised the specter that the terminations were retaliatory in nature; therefore, we incorporated an examination of the firings into our inquiry. We evaluated the reasons for the terminations that were cited by management and determined that a substantial number of them did not withstand scrutiny. We found that the Laboratory's decision to remove the two officials was, as we stated at the time,

incomprehensible. Our report, which was issued in January 2003, concluded that the events addressed by our review raised doubt about the Laboratory's commitment to solving noted problems and had a potential chilling effect on employees who may have been willing to speak out on matters of concern. Subsequently, the University of California, which operates the Laboratory for the Department, rehired the two terminated employees, entered into a financial settlement with them, and took adverse personnel action against a number of individuals involved in the mismanagement described in our report.

More recently, we have examined whether the Department appropriately followed up on the results of a 2001 survey on the effectiveness of its overall Employee Concerns Program. The Program was established to ensure that Federal and contractor employee concerns related to the management of Department programs and facilities are addressed. We have issued a draft report on the results of our review. We found that essentially no action had been taken to ensure consistent, uniform implementation of the survey recommendations. Since the survey was conducted approximately four years ago, we concluded that the Department should conduct a new survey to gauge the shift, if any, in the views of its approximately 115,000 Federal and contractor employees. Management then needs to ensure that timely follow-up action is taken regarding the results of the survey. We are awaiting management's comments on our draft report.

The Office of Inspector General also has committed extensive investigative and other resources to address the concerns of whistleblowers who file lawsuits under the False Claims Act. The *qui tam* provision of the Act allows private citizens to file a lawsuit, in the name of the U.S. Government, charging fraud by Government contractors. These *qui tam* lawsuits may involve allegations of

double-billing, charging the Government for expenses not incurred, falsely certifying test results, and other fraud schemes. We work closely with the Department of Justice on these cases. The Office of Inspector General has approximately 25 open *qui tam* investigations. The current inventory reflects alleged fraud totaling nearly $200 million. The benefit of this process can be gauged by the fact that over the past five years our *qui tam* investigations have led to settlements totaling over $100 million, a portion of which was shared with the whistleblowers.

Conclusion

As I have testified previously before the Congress, it is important that the Department promote an environment where both Federal and contractor employee concerns can be raised and addressed without fear of retaliation. We take our role in this process seriously and will continue to do so.

Mr. Chairman and members of the Subcommittee, this concludes my statement. I will be pleased to answer any questions.