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## 2013 National Defense Appropriations Act: Important Expansion of Whistleblower Protections

### Introduction

On July 1, 2013, the 2013 National Defense Authorization Act (“NDAA”) went into effect. This Act is the latest example of the legal trend towards making it easier to achieve “whistleblower” status and providing greater protections when one becomes a whistleblower. Simply put, it is now easier for millions of potential whistleblowers to achieve that status and be afforded increased protections.

### Key Provisions

One of the key changes in the NDAA is its expansion of whistleblower protections afforded to employees of government contractors, subcontractors, and grant recipients. While employees of government contractors were already afforded certain strictly defined protections, such as the anti-retaliation provisions of the False Claims Act, the NDAA considerably expands the subject matter which gives rise to those protections. Under the NDAA, a federal employee may raise a reasonable concern about gross mismanagement, gross waste of funds, substantial and specific danger to the public health and safety, or a violation of law relating to federal contracts without fear of retaliation.

Another important change in the NDAA is the expansion of the recognized parties that protected disclosures can be made to. Previously, a whistleblower needed to bring their concerns to federal or state officials before being afforded protected status. Now, a whistleblower can bring their concerns to a contractor’s employee who has the responsibility to investigate, discover, or address misconduct. Needless to say, this is a significant change which if not handled properly by contractors, could lead to the award of a whistleblower’s lost employment benefits and/or legal fees as discussed below.

Therefore, it is likely that most contractors, following an assessment of their compliance program, will need to add measures to ensure compliance with the NDAA. These additional measures may include, but are not limited to, the proper training of middle management, and the implementation of new or revised procedures for handling whistleblower complaints.

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Other key aspects of the NDAA include the following:

- The requirement that agencies ensure that their contractors provide employees with written notice of their rights and remedies under the NDAA;
- The ability of an agency head to award a whistleblower lost employment benefits as well as legal fees upon a finding of prohibited reprisal by the Inspector General; and
- The creation of whistleblower protections for the employees of subcontractors, if they report wrongdoing directly to the government.

According to the Department of Defense, the amendments to the NDAA will apply to all contracts awarded on or after July 1, 2013, all task orders entered on or after July 1, 2013 and all contracts awarded before July 1, 2013 that are modified to include a contract clause applying the amendments.

## Conclusion

The current expansion of whistleblower protections will most assuredly lead to increased whistleblower-initiated investigations and litigation. The NDAA's addition of contractor and subcontractor employees as proper recipients of disclosures can lead to catastrophic consequences for those government contractors who do not have the proper procedures in place to deal with whistleblower related issues. Simply put, all contractors will need to have whistleblower and compliance programs in place that establish detailed policies and procedures for dealing with whistleblower complaints and investigations. Those who do not will likely not survive in the highly regulated government work environment.