

### § 73b.3

### 45 CFR Subtitle A (10-1-20 Edition)

#### § 73b.3 Reports of violations.

(a) If an officer or employee of the Department has reason to believe that a former officer or employee of the Department has violated any provision of 18 U.S.C. 207 (a), (b) or (c) or if any such officer or employee receives information to that effect, he/she shall promptly make a written report thereof which shall be forwarded to the Inspector General. If any other person has information of such violations, he/she may make a report thereof to the Inspector General or to any officer or employee of the Department.

(b) The Inspector General shall coordinate proceedings under this part with the Department of Justice in cases where it appears criminal prosecution is warranted.

#### § 73b.4 Proceedings.

(a) Upon a determination by the Assistant General Counsel, Business and Administrative Law Division, or his/her designee, after investigation by the Inspector General, that there is reasonable cause to believe that a former officer or employee, including a former special Government employee, of the Department of Health and Human Services (former departmental employee) has violated 18 U.S.C. 207 (a), (b) or (c), the Assistant General Counsel, or his/her designee, shall cause a copy of written charges of the violation(s) to be served upon such individual, either personally or by registered mail. The charges shall be accompanied by a notice to the former departmental employee to show cause within a specified time of not less than 30 days after receipt of the notice why he/she should not be prohibited from engaging in representational activities in relation to matters pending in the Department, as authorized by 18 U.S.C. 207(j), or subjected to other appropriate debarment or disqualification action under that statute. The notice to show cause shall include:

(1) A statement of allegations, and their bases, sufficiently detailed to enable the former departmental employee to prepare an adequate defense;

(2) Notification of the right to a hearing, and that failure to answer shall constitute a waiver of defense; and

(3) An explanation of the method by which a hearing may be requested.

(b) If a former departmental employee who submits an answer to the notice to show cause does not request a hearing or if the Assistant General Counsel does not receive an answer within the time prescribed by the notice, the Assistant General Counsel shall forward the record, including the report(s) of investigation, to the Assistant Secretary for Personnel Administration (Assistant Secretary). In the case of a failure to answer, such failure shall constitute a waiver of defense.

(c) Upon receipt of a former departmental employee's request for a hearing, the Assistant General Counsel shall notify him/her of the time and place thereof, giving due regard both to such person's need for an adequate period to prepare a suitable defense and an expeditious resolution of allegations that may be damaging to his or her reputation.

(d) The presiding officer at the hearing and any related proceedings shall be a federal administrative law judge. He/she shall insure that the former departmental employee has the following rights:

(1) To self-representation or representation by counsel,

(2) To introduce and examine witnesses and submit physical evidence,

(3) To confront and cross-examine adverse witnesses,

(4) To present oral argument, and

(5) To a transcript or recording of the proceedings, upon request.

(e) The Assistant General Counsel shall designate one or more officers or employees of the Department to present the evidence against the former departmental employee and perform other functions incident to the proceedings.

(f) A decision adverse to the former departmental employee must be sustained by substantial evidence that he/she violated 18 U.S.C. 207 (a), (b) or (c). If a judgment of conviction has been entered by a Federal district court against the former departmental employee for violation of 18 U.S.C. 207 (a), (b) or (c), regardless of whether the judgment is based upon a verdict or a plea of guilty, such judgment of conviction shall be conclusive evidence of a