After more than a decade of advocacy, better protections for the brave truth-tellers who safeguard health, safety, security, and taxpayer dollars have finally been enacted. On November 27, President Obama signed the long-beleaguered Whistleblower Protection Enhancement Act (WPEA, S. 743) into law. The WPEA closes many loopholes and upgrades protections for federal workers who blow the whistle on waste, fraud, abuse, and illegality. Both the House and the Senate recently passed the bill unanimously, showing that Congress can put aside partisan posturing and deliver better government accountability to the American public. These reforms will substantially improve the status quo for federal whistleblowers and taxpayers.

Incarcations of the WPEA have come close to passing many times since Senator Daniel Akaka (D-HI) first introduced the bill 14 years ago. The Project On Government Oversight has been advocating for these critical reforms from the beginning, and has helped lead an extraordinary campaign representing diverse interests and ideologies advocating on the issue.

The WPEA will ensure protection for legitimate disclosures of wrongdoing, increase government accountability to taxpayers, and save billions of taxpayer dollars by helping shed light on waste, fraud, abuse, and illegality. The WPEA restores free speech rights and expands coverage to a wider universe of government workers (including federal scientists and Transportation Security Administration officers); strengthens due process rights, ensuring fair judicial processes and practices; provides compensatory damages for prevailing whistleblowers, incentivizing individuals to come forward; and requires Inspector General Offices to designate Whistleblower Protection Ombudsmen to educate agency staff about whistleblower rights. This is a real victory for whistleblowers and taxpayers.

Passage was made possible by the committed co-sponsors of this legislation, their dedicated staff, and our allies. We especially wish to thank longtime champions of the WPEA Senator Daniel Akaka (D-HI) and Representative Todd Platts (R-PA), both of whom are retiring this year. We also thank Senators Susan Collins (R-ME), Joe Lieberman (I-CT), Charles Grassley (R-IA), and Claire McCaskill (D-MO), and Representatives Darrell Issa (R-CA), Elijah Cummings (D-MD), Chris Van Hollen (D-MD), and all the other co-sponsors for their strong support, especially in helping to find bipartisan agreement.

While the final version of the WPEA was a compromise that includes many significant reforms, it certainly does not include everything we have sought—or all that is needed. Because some new protections were stripped

Continued on page 3.
Dear Friends,

As the dust settles from the divisive presidential election, chances are that some of your friends, family members, or coworkers had a different reaction to the result than you did.

I know there are still raw feelings, but we have to put it behind us. The people on the other side are NOT all evil. They are concerned about the future too. So how about taking the time to work together for our common good? I don’t buy the current narrative that our choices are either to “give in” or to “stand our ground.” The fiscal “cliff,” the war in Afghanistan, undue influence of Wall Street on Washington, approval of unsafe drugs, the national security establishment’s erosion of Constitutional rights….Our problems are too complex to have only two possible answers, yours or the other guy’s.

The passionate energy, imagination, and enthusiasm you brought to the election debate are needed now to find solutions. And compromising to get things done is not abandoning your core principles or beliefs. It’s stepping back and looking at the problem again. Is your solution really the only way to meet your goals? Are there solutions that both you and the other side could live with?

We know the paralysis can be overcome. Just last month, the Whistleblower Protection Enhancement Act was signed into law. The law could be better. There were compromises by both sides. But after more than a decade in the works, this law provides real whistleblower protections that both sides could agree on. The “Do-Nothing” Congress finally did something.

Now is the time to hold your elected officials accountable. Let them know YOU elected them; their party leadership did not, nor did their campaign contributors or the pundits on TV and the radio. POGO can help you let them know that you want them to stop feeling good about posturing and accomplishing nothing. POGO.org’s “Do Something” section helps you take action and contact the right policymakers at the decisive moment. We’re already seeing evidence that we’re helping to get the ball rolling again!

Ever hopeful,

Danielle Brian
Executive Director
Passage of Whistleblower Protection (cont.)

in the House, we urged President Obama to take executive action. On October 10, the President did what Congress did not and issued a landmark directive extending whistleblower protections to many in the intelligence and national security community for the first time. We will continue to press the next Congress to put these and other much-needed reforms into statute.

However, every provision in the new law is a common-sense reform that reflects a true bipartisan agreement to enhance protections for federal whistleblowers and increase government accountability to taxpayers. POGO has worked closely with our partners in the Make It Safe Coalition, and together we built a movement for this reform that included hundreds of organizational supporters as diverse as the federal employee unions and Americans for Tax Reform. Finally, together, we won the political support needed from the White House and Congress to restore and modernize the Whistleblower Protection Act.

It has been a long time coming. The reforms signed into law will go a long way to change the fact that for far too long the truth about government wrongdoing could easily be suppressed through intimidation and retaliation against the truth-tellers. Federal workers will now have a fighting chance at justice when they face retaliation for blowing the whistle on waste, fraud, abuse, and other illegalities. POGO’s Angela Canterbury said, “Americans should be encouraged by this law’s passage—it demonstrates extraordinary support for a better government that transcends the partisanship that so often characterizes Washington today. With the passage of the WPEA, the public’s trust, health, and safety were put before politics.”

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Human Trafficking Policies Improved, but More Work Needed

Did you know that modern slavery is a problem around the world, and particularly in the Middle East?

Shocked?

Would you be more shocked if we told you the U.S. government is part of the problem?

In certain cases, the government’s logistics and reconstruction systems in Iraq and Afghanistan are sending workers to those areas under false pretenses. The workers often are hired under a commission system that requires them to pay the majority of their earnings to a broker or loan shark. That commission system, which is commonplace around the world, often subjects the workers to extreme cruelty because their personal safety—and sometimes that of their families—have been threatened by those who brokered their employment.

It is up to the federal government and all contractors, both prime and subcontractor, to eradicate this modern slavery system. The Administration and Congress have made moves to do so. In October, President Obama signed an Executive Order (EO) strengthening the government’s zero-tolerance policy on trafficking in persons (TIP). The EO expanded the definition of human trafficking and prohibits using misleading or fraudulent recruiting practices; charging employees recruitment fees; destroying, concealing, confiscating, or denying access to employee personal identification documents; and failing to pay return transportation costs for third country nationals.

The strengthened policy is a start, but criminal fines and imprisonment are still needed to deter TIP violations. Such changes require congressional action. Proposed TIP legislation (H.R. 4259 and S. 2234) will ensure all anti-trafficking improvements become law and would amend the federal criminal code to impose a fine and/or prison for up to five years for violations.

The EO and the proposed legislation will bring us closer to protecting the foreign workers who assist the U.S. government’s missions abroad, and to reducing U.S. government-supported slavery.
One Year Later: Assessing Progress on Open Government National Action Plan

September 20 marked the one-year anniversary of the Open Government Partnership (OGP), an international initiative bringing government and civil society together to promote greater openness in countries around the world. In the U.S. National Action Plan (NAP), the Obama Administration made a number of important commitments to openness, some of which are of great interest to POGO and OpenTheGovernment.org, a coalition in which POGO is a partner.

The Administration’s National Action Plan details 26 specific commitments to make the U.S. government more open, transparent, and accountable to the public. These commitments are categorized under three broad challenges—increasing public integrity, managing public resources more effectively, and improving public services.

POGO and our allies in the transparency community had offered recommendations to the Administration to ensure a robust plan, and we were glad the commitments incorporated many of our ideas for reform. Now, a year later, is a good time to take stock of developments. In September, OpenTheGovernment.org published the Civil Society Progress Report about the Administration’s headway since the NAP was released. (POGO’s Executive Director Danielle Brian chairs OpenTheGovernment.org’s Steering Committee, and POGO’s Director of Public Policy Angela Canterbury contributed to the progress report.)

According to the report, the Administration has met eight commitments in full, although some had already been achieved before the NAP’s launch, and has made progress on the rest.

For example, working towards the commitment to reform records management policies and practices across the executive branch, President Obama issued a Presidential Memo launching an effort to transition to electronic management of government records. To expand public involvement in development of federal regulations, the Administration has made significant improvements to the public participation interface of Regulations.gov, an online portal for viewing and commenting on pending regulations. The commitment to use Data.gov as a platform to spur innovation is another bright spot, with startups using accessible government data sets to create new apps and communities emerging on Data.gov to focus on a range of issues from education to safety.

The Administration also deserves tremendous credit for going above and beyond the commitment to strengthen federal whistleblower protections. The President issued a directive providing safeguards for national security and intelligence community whistleblowers in October, and signed the landmark Whistleblower Protection Enhancement Act (WPEA) in November.

The Administration has more to do, however, if it is to fully implement the NAP by the January 2013 deadline.

The commitment to improve Freedom of Information Act (FOIA) administration is one example. The Administration has continued to press agencies to reduce backlogs and process requests faster, but the public is still enduring long delays. OpenTheGovernment.org found that there is no indication the Administration has embraced a “holistic approach to using technology to make it easier for the public to make and track FOIA requests, to make it easier for the government to manage FOIA requests, and to make it easier for the public to access information released under the FOIA.”

The commitment on monitoring agency implementation of Open Government Plans has also only been partially met. In 2010, OpenTheGovernment.org and its partners, including POGO, performed an initial independent audit of agency open government plans, reviewed agencies’ progress in their updated plans, and more recently, did an assessment of the 2.0 versions. In the one-year anniversary progress report, OpenTheGovernment.org mentions that even though most agencies have released updated versions of the Open Government Plans in the last year as required, the Administration’s Open Government Dashboard has not been updated to reflect agencies’ efforts to implement version 1 or the release of version 2.

We will keep you updated on how the Administration does on fully implementing the U.S. action plan by its January 2013 deadline.
Walking the Tightrope: Plugging Leaks vs. Whistleblower Protection

The Obama Administration has a remarkably confusing record when it comes to whistleblowers. On the one hand, the Administration has taken more action to strengthen whistleblower protection laws than any of its predecessors. On the other hand, it has prosecuted more so-called leakers under the Espionage Act than all other administrations combined. Just in the past few months, the Administration has released seemingly contradictory policies: signing a law and issuing a Presidential Directive to protect whistleblowers, and at least two policies that threaten to use a heavy hand to thwart any “unauthorized” disclosures of classified information.

Secretary of Defense Leon Panetta recently issued a new Department of Defense (DoD) anti-leak policy meant to stanch the flow of secret information into the public domain. It warned DoD employees that the government will scour news reports for leaks of classified information, try to unmask the leakers, and refer cases to the Justice Department—which of course has the power to prosecute. In addition, the President issued a memorandum disseminating a National Insider Threat Policy that extends to the “unauthorized disclosure of classified information, including the vast amounts of classified data available on interconnected United States Government computer networks.”

These are just the latest of several efforts by this Administration to stop and penalize unauthorized disclosures of classified information since WikiLeaks published thousands of Defense and State Department documents allegedly supplied by Army Private Bradley Manning.

The government argues, “It is not an overstatement to say that human lives are at times jeopardized when someone leaks classified information. We can and must do a better job of deterring and preventing these types of disclosures,” according to Panetta’s memo.

It is also not an overstatement to say that the classified designation gets slapped on enormous amounts of information—sometimes for convenience, and sometimes for no other reason than to hide wrongdoing. The illegitimate marking of information as secret makes it far more difficult for us to protect our legitimate secrets. Furthermore, non-profit watchdogs, including the Project On Government Oversight, have long argued that overzealous plugging of leaks and prosecution of leakers silences whistleblowers and chills efforts to hold the government accountable for waste, fraud, abuse, misguided policies, and other misconduct.

At the same time, the Administration has also created a framework of protections for those who use channels within the government for whistleblower disclosures. In addition to signing the Whistleblower Protection Enhancement Act (see page 1), the President recently issued a Presidential Policy Directive giving many national security and intelligence community (IC) employees whistleblower protections for the first time. No other President has so affirmatively protected those who could reveal wrongdoing in his Administration.

The Directive is welcome protection for national security and IC whistleblowers who are too often punished for reporting fraud, waste, and abuse with no recourse for justice. It picked up the whistleblower protections Congress had left by the wayside, finally providing intelligence community workers with specific free speech rights and some protections against retaliation for disclosing wrongdoing, including remedies such as compensatory damages.

POGO’s working theory is that President Obama truly believes in protecting whistleblowers, but does not consider public disclosures by intelligence and national security agency employees “whistleblowing.” It is true that effective protections for internal disclosures make it more likely whistleblowers would try to fix the problems internally before reaching out to the press or NGOs like ours. But POGO has seen repeatedly that working through internal channels does not always stop serious wrongdoing or illegality, making public disclosure of classified information necessary. POGO believes federal prosecutors should use discretion and balance the public good of the release with any harm.

It is critically important that the President’s whistleblower Directive be properly implemented. POGO will be focused on watchdogging that as well as any overreaches by the national security and intelligence agencies to chill whistleblowers from doing the right thing.
Myth of the “Fiscal Cliff”

There has been much talk about the so-called “fiscal cliff,” as though Congress and the Administration have only three options: the Republican way, the Democrat way, or the Cliff. Not so. Matt Wuerker shows quite well that there are numerous other ways. Policymakers should take one of those routes.

Mission Statement

The Project On Government Oversight is a nonpartisan independent watchdog that champions good government reforms. POGO’s investigations into corruption, misconduct, and conflicts of interest achieve a more effective, accountable, open, and ethical federal government.