



THE SIGNALS NETWORK

Holding Power to Account. One Whistleblower at a Time.

Working with Policymakers as a Whistleblower

What to Know about
the US Congress



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Introduction

If you believe a federal law may have been violated by your company's practice, there may be reason to involve the US Congress. While Members of Congress can be some of your most powerful allies, working with them can be a confusing process with long delays and high stakes, so the information below is meant to provide insight if you are considering this route. This resource is meant to help you make informed decisions, to give a balanced and concrete overview of the possibilities and pathways, and to remove some of the uncertainty that so many former whistleblowers experienced in order to help you build your own overall strategy.

While this document is intended to give you insight into the process, we strongly advise you get specialist advice before engaging. The Signals Network is a 501(c)(3) non-profit that supports whistleblowers who speak out in the public interest with legal, psychological, advocacy, and other services. We can help you negotiate your journey in a way that ensures you are as protected as possible. You can contact us at info@thesignalsnetwork.org.

Benefits of working with Members of Congress

Congressional offices can help highlight information to the press on your behalf and help push the story along through hearings and other actions.

You can bring information to Congress while simultaneously pursuing enforcement or a reward through a regulator, such as a federal or state agency like the Securities and Exchange Commission, Federal Trade Commission, or Department of Justice, National Labor Relations Board, or the California Labor Commission. Congress can also press regulators to keep your case moving forward and in getting it attention.

Since Congress creates the laws that federal agencies implement, forming a relationship with a Congressional office could possibly help lead to regulatory changes, but this would be much further down the line and there is no guarantee of this happening. That being said, relationships with Congressional offices can often help your case. The media usually pays more attention to congressional action than, for example, civil society action.

If the company knows that you are working with Congress and have their backing, it may potentially reduce the risk of retaliation against you. Unfortunately, the inverse can also be true. If an employer finds out that an employee is working with Congress, they might increase retaliatory actions. Each case is unique, and is therefore advisable to work with a lawyer on your plan.

What to know before you begin

Supporting a whistleblower can be a risk for congressional offices since companies may claim that a disclosure includes trade secrets and/or is against the law, and thus revealing them could put the personal Member of Congress at risk of being pulled into litigation. Therefore, congressional offices often carefully vet who they are working with

to assess their motivations. It is important to have a clearly articulated case, as well as clearly articulated motivations, so the office understands where this case is heading and what risk they might incur. It is also important to be clear on what steps you've already taken through other "official processes". This can include through your employer or through federal or state agencies.

Many congressional offices are overwhelmed and may not be the best first point of contact when revealing information because of the lack of official processes in place and the time commitment associated with making sense of new information. However, the House of Representatives has the House Office of the Whistleblower Ombuds designed to help its Members work with whistleblowers – both private and public. It provides significant support for the Members, as well as significant information for the public – but it does not accept information directly from whistleblowers.¹

The House of Representatives has also passed an internal rule that prohibits Members and their staffs from disclosing the identity or personally identifiable information of an individual who is covered under certain federal whistleblower laws.² There are exceptions relating to anonymity for those whistleblowers who have consented to their identity being known, or have voluntarily disclosed their identity. See Appendix 1 for more details. The Senate does not have a similar official rule. You can still work with Senate offices to keep your identity private, although just be aware there is still no guarantee your identity won't be revealed.

Approaching the right Member of Congress

There are three primary reasons an individual may approach a specific Member of Congress.

- They are a leader on the issue that the individual is whistleblowing on. For example, the Facebook whistleblower, Frances Haugen, worked with offices that have focused on tech oversight and that sit on the relevant committees.
- The Member is a leader on whistleblower issues. They may be the chair or a member of Whistleblower Protection Caucus,³ or have regularly made pro-whistleblower statements.
- They are the Representative or Senator for the location where the whistleblower lives or works.

Checklist for working with Congress

(Adapted from the US House Office of the Whistleblower Ombuds)⁴

Whistleblower disclosures play a vital role in congressional oversight, and they can have an impact. When communicating with Congress, keep in mind that offices have far

¹ whistleblower.house.gov/

² whistleblower.house.gov/sites/whistleblower.house.gov/files/Congress_Obligations_When_Working_With_Whistleblowers.pdf

³ whistleblower.house.gov/resources/house-whistleblower-protection-caucus

⁴ whistleblower.house.gov/whistleblower-best-practices-working-congress

more work than bandwidth, and they may not be able to respond quickly or pursue all matters brought to their attention. Congressional offices are not required to provide aid to whistleblowers, and Members of Congress have broad discretion to determine the scope of the assistance they provide to constituents – largely subject to the Member’s priorities. The following guidelines provide best practices for communications with Congress.

1. Before you proceed, are you prepared to risk retaliation to report the alleged misconduct? The “personal assessment” in the Tech Worker Handbook provides a list of considerations that can help you think through your options.⁵ We’ve reproduced it in Annex 5 of this document.
2. Consult an experienced whistleblower attorney and consider partnering with whistleblower support organizations to help you safely and effectively work with Congress.
3. Incorporate “Whistleblower Survival Tips” to help protect yourself during your whistleblowing process.⁶
4. Identify the best congressional committee(s) or Member office(s) to communicate your disclosure, based on jurisdiction, history or interest in the topic, track record working with whistleblowers, and a direct connection such as your district office.
5. Develop ground rules for your working relationship with each congressional office, including confidentiality requests and any limitations around the use of your evidence.
6. Limit your first meeting to a succinct summary with a timeline of key events and focus on the public consequences of your disclosures.
7. Be clear in your congressional “asks” – whether it is investigating the underlying misconduct and/or helping to shield you from retaliation.
8. Do not provide documents in your initial outreach to Congress. To limit liability, summarize the underlying disclosure without providing documents barred from

“Congressional allies will be easier to find if your dissent is supported by a solid constituency base or promises opportunities for public visibility on an important political or public interest issue that matters to the voters.”

- Tom Devine & Tarek F. Maassarani, *The Corporate Whistleblower’s Survival Guide: A Handbook for Committing the Truth* (2011), p. 115
Devine & Maassarani, 2011, p. 115

“Find out not only if they have helped whistleblowers in the past but also if they followed up once the headlines faded. You can do this by researching their past work in back issues of newspapers, by talking with NGOs that have ongoing relationships with offices and staff, and by directly discussing those issues with the member’s staff person.”

- (Devine & Maassarani, 2011, p. 116)

⁵ thesignalsnetwork.org/tech-whistleblowing-essentials-conducting-a-personal-assessment/

⁶ whistleblower.house.gov/whistleblower-survival-tips

- release, and make a list or “roadmap” of documents Congress can request.
9. Do the work of congressional staff whenever possible, such as researching and demystifying documents and ghostwriting questions or communications.

More detailed steps and advice for whistleblowers working with Congress can be found on the site for the Office of the Whistleblower Ombuds.⁷

What congressional offices will likely ask you

- ⇒ Do you have a lawyer, and do you prefer we communicate through your lawyer?
 - ⇒ What is your employment status and position, and who is your employer?
 - ⇒ Describe the issue you want to disclose and your goals in working with our office
 - ⇒ How did you obtain this information, and are there legal limitations around its release?
 - ⇒ How would we safely obtain supporting documentation?
 - ⇒ Do you have colleagues who can corroborate or support your disclosure?
 - ⇒ Have you filed your disclosure elsewhere? If so, where, and what is the status of any related Investigation?
 - ⇒ Are you a constituent of this Member; have you contacted other offices?
- (Source: *Whistleblower Intake Checklist: US House Office of the Whistleblower Ombuds*)⁸

FAQs for working with Congress

What types of wrongdoing can you report?

- ⇒ You can report any information that you believe is in the public interest, however, it may not always constitute a legally protected disclosure, which is why it can be advantageous to work with a lawyer to determine what whistleblower protection statutes may cover your disclosure. Additionally, congressional offices may be wary of receiving information that would be illegal to possess and/or publish, such as trade secrets or classified documents. It helps to have a brief outline of the information you could provide, how it relates to relevant laws, and your motivations for sharing it with them instead of sending them all of the documents at once.

How long is the average process?

- ⇒ It depends what the “goal” is. Do you want to get a hearing, legislation, just help policymakers navigate the situation/issue? The length of the process also depends on the political layout of the House/Senate. It could be a month or even years depending on the goal and the political layout. Finally, in some cases, whistleblower revelations may not amount to action at all. This “personal assessment” can help you think through your goals and steps.⁹ We’ve reproduced it in Annex 5 of this document.

⁷ whistleblower.house.gov

⁸ whistleblower.house.gov/sites/whistleblower.house.gov/files/Whistleblower_Intake_Checklist.pdf

⁹ thesignalsnetwork.org/tech-whistleblowing-essentials-conducting-a-personal-assessment/

Will your anonymity be protected by Congress?

- ⇒ Congress as an institution has a long history of making information public, and not always on purpose. A congressional office can try to keep your identity secret, but there is no guarantee, and your information could come out even if congress tries to keep it private. It helps to work with a specific staffer to set out the rules of how they will work with you, the information, and what they can say about you. Be aware though, that members of Congress, or their staff, may themselves reveal confidential or even classified information. For example, in the Espionage Act prosecution of Jeffrey Sterling, Sterling argued that the members of the House may have been the sources for James Risen's book, not Sterling.¹⁰ Additionally, staff may not respond to anonymous requests.

Is it possible to get a financial reward?

- ⇒ Congress does not manage a rewards program and therefore you should not expect a reward for going to Congress. However, other agencies of the US government have reward programs depending on the issue, and if a whistleblower has filed with one of these agencies, then Congress can sometimes be helpful in pushing for the agency to investigate. Filing with these other agencies can also offer protection against retaliation.

Will you have to appear to testify?

- ⇒ If Congress decides to hold a hearing based on your disclosures, they may ask if you would be willing to testify. In some instances, they will formally subpoena whistleblowers to enable them to make public their disclosures in a protected manner. Offices, however, will work closely with whistleblowers to make sure this is something they want to do. Where whistleblowers want to remain anonymous, they may ask for the whistleblower's help in preparing for hearings. It's important to state from the beginning how public you're willing to be and whether you would be willing to testify. The "personal assessment" in Appendix 5 can help you think this through in more detail.

Is there protection from being sued?

- ⇒ Congress cannot legally protect you from being sued, but they can make public and private statements on your behalf to dissuade the company from pursuing action.

Is it a breach of a non-disclosure agreement to give information?

- ⇒ If you have a non-disclosure agreement it is important to get legal advice before doing anything. It may be a breach of a non-disclosure agreement, to give information. In certain circumstances, the Government can compel you to testify, thereby protecting you from breaching the non-disclosure agreement. For

"Thank you, Ms. Haugen. Thank you for taking that personal risk and we will do anything and everything to protect and stop any retaliation against you and any legal action that the company may bring to bear or anyone else. And we've made that I think very clear in the course of these proceedings."

- **Senator Blumenthal** during Facebook whistleblower **Frances Haugen's** testimony on October 5th, 2021

¹⁰ sfp.fas.org/jud/sterling/100411-exclude234.pdf

example, Frances Haugen was subpoenaed to give evidence, and in this way, was 'compelled' by the government. In certain circumstances, and under certain laws, NDAs will not/cannot be enforced as against public policy. For example, restrictive non-disclosure agreements are prohibited in government contracts and government-funded business. The Consolidated Appropriations Act of 2016, prohibits funds appropriated by the Act for a "contract, grant, or cooperative agreement with an entity that requires employees or contractors ... seeking to report fraud, waste or abuse to sign internal confidentiality agreements... prohibiting or otherwise restricting such employees from lawfully reporting such waste, fraud, or abuse."¹¹ Similarly, the SEC has interpreted Rule 21F-17 of the Dodd-Frank Act to prevent companies from requiring employees to sign NDAs that bar them from reporting fraud and misconduct to proper regulatory authorities. It is important, though, if you have a NDA to get legal advice, as each NDA will be different and therefore specialist advice as to its enforceability is advisable.

Who should you have on your legal team?

- ⇒ It helps to work with lawyers who know which Senators and Representatives 1) care about the issue you are dealing with; 2) have relevant oversight positions; and 3) have a good track record of working with whistleblowers.

Can you speak to a journalist simultaneously?

- ⇒ Yes, there is no legal restriction on talking with a journalist while also giving information to Congress. It is advisable, however, to see legal counsel before doing, as you may not be protected when speaking to the press. It would help the congressional office if you make your intentions to talk with a journalist clear as it will affect their calculation on how to handle your disclosure. Some offices can also help prep whistleblowers for media interactions.

Can you use this route if you've already spoken to a journalist?

- ⇒ Yes, speaking to a journalist does not restrict your ability to also speak to Congress.

What other resources are available?

- ⇒ House Resolution 8 codified the House Office of the Whistleblower Ombuds, building on the work of the 116th Congress. The House had previously established the Office of the Whistleblower Ombuds to develop best practices for the intake of information by whistleblowers for House offices and provide training for House staff. While this office is not able to accept or address disclosures from whistleblowers, its website contains guiding resources that may be useful. There is no corresponding office in the Senate. Additionally, this resource provides a list of whistleblower protection statutes for private sector whistleblowers.¹²

What is the time commitment for working with Congress?

- ⇒ This depends on the goals of the whistleblower. Depending on how much attention the issue receives and the political layout at the time, a whistleblower's

¹¹ See Public Law No. 114-113 Section 713 (2015).

¹² whistleblower.house.gov/sites/whistleblower.house.gov/files/Private_Sector_Whistleblower_Fact_Sheet.pdf

involvement could be for months or years. It also depends on how many policymakers and committees are involved in the issue.

Working with legislatures outside the US

When whistleblower revelations will impact people outside the US, it can be helpful to engage with the relevant legislatures of those countries, especially the policymakers whose constituents are affected. Similar to engaging with the US Congress, engaging with legislatures outside the US can help bring change through oversight and also help prevent retaliation if they are outspoken about protecting the whistleblower. Depending on the size and responsibilities of the legislatures, it can also be easier to directly connect with the policymakers themselves than it is in the US. Also like the US, you should be intentional when selecting who to approach and what you want from them.

The rules for engaging with legislatures and the protections they can provide vary by country and by region. For example, the UK will have different rules than Germany, which will have different rules than the EU. Each is responsible for different regulatory decisions and can offer various levels of protection. Different legislatures also have different rules governing their responsibility to protect whistleblowers' identities. The Signals Network regularly engages with legislatures outside the US and can support whistleblowers to pursue this pathway. If you would like to know more about this option, please contact us.

Example: Engaging with the UK Parliament

The UK has a concept of "parliamentary privilege," which states that Members of Parliament (MPs) can't be sued (for example, for defamation) or prosecuted for anything they say in the Chamber, Westminster Hall, or a committee of the House. This allows them to speak up on behalf of constituents, express an opinion, or condemn corruption, malpractice or even criminal activity without fear of legal action, as long as they do so in proceedings of the House. This protection extends to written proceedings: for example, written and oral questions, motions, early day motions, and amendments tabled to bills and motions.

Anyone [officially] giving evidence to a committee of the House also has this protection, which is a safeguard for witnesses and also ensures that select committees are not obstructed in their inquiries by threats of legal action, or any other kind of threat against witnesses. A similar protection applies to any document published by order of the House, or under its authority. However, while this is the rule, it is not guaranteed in practice, so it is best to consult with a legal professional before sharing sensitive information with an MP or committee. Privilege doesn't necessarily apply to the repetition outside Parliament of things said in proceedings.

(Source: *MPs' Guide to Procedure*:

<https://guidetoprocedure.parliament.uk/articles/szEQIFBF/freedom-of-speech>)

Appendices

Appendix 1: Provisions for anonymity in the House and Senate

On January 4th, 2021, the House of Representatives passed House Resolution 8, an internal rule in the 2021–22 Congress. Clause 21 states that Congress must not disclose the identity of whistleblowers who qualify under certain federal laws that establish the right for individuals to make protected disclosures to Congress.¹³ While this is an encouraging development, it is still possible for mistakes to be made or to not qualify for these protections so it is important to be as careful as possible and clearly communicate with congressional staff about how any information they pursue may lead to your identity being compromised. The House rule is only valid until the last day of the current Congress, January 3rd, 2023. The new Congress will vote on its new rules when it convenes in January 2023. The current Senate has not passed a similar rule, although you may still request that a Senate office protect your anonymity, with the understanding that there is no 100% guarantee they'll be able to.

Any violation of the Code of Official Conduct by a House member or staff can result in consequences including expulsion, censure, reprimand and/or fine.

However, there are three exceptions to these new rules. The limitation on the public disclosure of a whistleblower's identity or information by the House will not apply in cases where:

1. The individual provides advance written consent to the disclosure;
2. The individual has voluntarily publicly disclosed their identity; or,
3. The disclosure is made by the chair of a committee after an affirmative two-thirds vote of the members of the committee that such a disclosure is in the public interest.

Congress may also request a Government Accountability Office (GAO) investigation of companies that receive federal funds, the results of a federal agency's implementation of an activity, or a federal agency's handling of a whistleblower's claims. The GAO provides authoritative accounts to lawmakers and will try to keep your identity protected, but cannot make a guarantee.

Appendix 2: Best practices for congressional staff

The US House Office of the Whistleblower Ombuds provide details and best practices on how congressional staff should work with whistleblowers. It may be helpful to review these as well to ensure the person you're working with is following these best practices. It can also help you know what to expect.¹⁴

¹³ whistleblower.house.gov/sites/whistleblower.house.gov/files/Maintaining_Confidentiality.pdf

¹⁴ whistleblower.house.gov/resources/guidance-documents

Appendix 3: Federal whistleblowing protections

There are many laws that protect private company whistleblowers from retaliation, and some of them will also provide a means to participate in a reward or bounty. See, for example,

- Compilation of Federal Whistleblowing Protection Statutes, Congressional Research Service, R46979, Nov. 24, 2021.¹⁵
- Private Sector Whistleblower Fact Sheet.¹⁶

Appendix 4: US Congress office contacts

- You can find the full list of US House committees here:
<https://clerk.house.gov/committees>
- You can find the full list of US Senate committees here:
<https://www.senate.gov/committees/>
- You can find the full list of US House Members here:
<https://clerk.house.gov/Members#MemberProfiles>
- You can find the full list of US Senators here:
<https://www.senate.gov/senators/>
- The US House Office of the Whistleblower Ombuds has a tool for whistleblowers to find relevant committees for their issues here:
<https://whistleblower.house.gov/committee-jurisdiction-tool>

Appendix 5: Personal assessment

These are questions to consider when you are thinking about speaking out regarding wrongdoing at your company. Not all of them will apply in every case, and you shouldn't feel you need to answer positively to all of them before speaking out. These questions are helpful to assess where you are and what you are willing to go through in order to speak out.

"One of the most important pieces of advice is that the world may not believe that the issue has the same significance that the whistleblower thinks it has."

- Ben Wizner, Director of the ACLU Speech, Privacy, and Technology Project

My objectives

1. What do I hope to achieve by speaking out? What are my intentions? What impact do I want to have? How realistic is it that I will make this impact? What are the paths/leverages to achieving my goals?

¹⁵whistleblower.house.gov/sites/whistleblower.house.gov/files/survey_of_federal_whistleblower_and_employee_protection_statutes.pdf

¹⁶whistleblower.house.gov/sites/whistleblower.house.gov/files/Private_Sector_Whistleblower_Fact_Sheet.pdf

2. What level of risk (professional, financial, legal, personal, etc.) am I willing to take to achieve my goals?
3. Would I be okay if the information I revealed didn't have the impact or achieve the objectives I wanted it to?
4. What would I like my life to look like after speaking out? What would I like to see happen to be at peace with my decision so that I can move on?
5. Why is speaking out externally the best option over an alternative solution (i.e., internal reporting, speaking with colleagues, talking to the board, etc.)?

"Sometimes whistleblowers' valid objective is to do the right thing so they can live with themselves, regardless of the impact."

- Tom Devine, Legal Director of the Government Accountability Project

Whistleblowing process

1. Is this objectively misconduct? Am I in a position to know that what I see as misconduct really is a misconduct? Does my job position provide sufficient insight to ensure my conclusions are not the mistaken product of tunnel vision, even if my information is accurate?
2. Will knowledgeable peers and colleagues support my concerns, and help to expand the record from my personal knowledge?
3. Have I read other accounts of whistleblowers to understand what the process can be like?
4. Am I willing to commit to a multi-year endeavor (one year, three years, five years, or more) and what support will I need to do so?
5. Am I willing to invest significant amounts of time working with lawyers, educating NGOs, government investigators, Congress, and the media?
6. Do I understand how to engage properly with the media?
7. How do I feel about repeated public speaking engagements?

Emotional support

1. Do I have an emotional support system? Who do I turn to for emotional support? (Partner, family, friends, religious mentor, professional mentor, therapist, etc.)
2. Are there other people at the company who would help me in this effort without getting me in trouble?
3. Do I have a plan for countering retaliation or negative things the company may say about me?
4. Can I remain sufficiently centered and detached to emotionally withstand inevitable smear campaigns?
5. Who are my allies and who are the people who would work against my effort?
6. Am I prepared for the potential trauma caused by whistleblowing?
7. Do I have a system of evaluating who I can trust with sensitive information?
8. Do I have pre-existing medical conditions that could be aggravated by stress?

Legal support

1. Do I know where to find legal support for my case? What type of lawyer do I need to reach out to (i.e., employment lawyer, whistleblower lawyer, healthcare fraud lawyer, etc.)?
2. Do I have a secure way of reaching out? Personal phone/computer? Signal Messenger app? ProtonMail?
3. Do I have a way to pay for a lawyer if they do not work fully on contingency?
4. Do I have a friend or a family member who is a lawyer? To advise me? To find the right lawyer? To help read my lawyer engagement letter, etc.?
5. Have I prepared a concise summary of my case, and a timeline of key events to have ready for initial interviews with prospective lawyers?

Employment

1. Will I try to find another job before revealing the information?
2. What is my exit plan for my current role? Should I resign? What happens if I get fired? What will happen to my immigration status (if applicable)?
3. What other kinds of jobs would I like to have?
4. Would I be okay not working in this industry again?
5. Would I be okay not working in a similar role again?

Finances

1. What benefits will I need to cover (health care, child care, education repayment, etc.) if I lose my job? What is my plan for paying for those? (See the **Budget Template**¹⁷ to help assess what costs you'll have coming up)
2. How much savings do I have?

Considerations about staying anonymous

1. Will an anonymous internal disclosure effect change? Or will it give the wrongdoers an opportunity to cover up the problem?
2. Does the anonymous channel, such as a hotline, operate with credible, effective technology to prevent exposure?
3. Will remaining anonymous sustain my access to ongoing evidence and developments that the institution is trying to conceal?
4. Can I prove my allegations with information/documents that do not require my public explanation?

"Whichever path you choose – anonymity or public disclosure – be decisive. The worst approach you can take is to remain semi-anonymous."

- Tom Devine, Legal Director of the Government Accountability Project

¹⁷ <https://techworkerhandbook.org/legal/budget-template/>

5. Can this information/documentation be traced back to me because only a small group of people have access to them or because my copies are uniquely marked? (Beware of trace-backs through printers' identifications or email trails.)
6. How likely is it that I will be the focus of suspicion because of my previous efforts to raise concerns?
7. Can I act nonchalantly when these documents are disclosed so as not to attract suspicion?
8. Do I feel comfortable and justified in being evasive or not telling the complete truth if confronted by my boss about the disclosure?
9. Am I prepared for the possibility that somehow my anonymity is broken without my consent?

Considerations about going public

1. Are my family and I financially and mentally prepared for a protracted public fight with my employers and exposure to attacks to prove my allegations? And to try to retain a job?
2. Am I mentally ready to have my fellow workers and perhaps some friends turn against me because my public disclosures threaten the institution's health and their jobs?
3. Will going public cut off support from witnesses who would otherwise back my charges in official proceedings?
4. Will going public cut off the flow of evidence necessary to prove my charge or more effectively make a difference, and, if so, are the benefits from public solidarity more significant?
5. Am I ready for personal attacks against my character and to have any past indiscretions made public?
6. Do I have enough evidence to prove my charges without having to go back to my workplace?
7. Even if I can prove my initial allegations, would I be more valuable if I didn't go public and kept my access to new information?
8. Am I sure that my motivations are to expose the wrongdoing on behalf of the public interest and not just for revenge, a quest for financial gain, or public attention?
9. Am I financially and mentally ready to risk my career?
10. Am I ready to have the professional reputation of someone who attacked their employer?