



VIA ELECTRONIC TRANSMISSION

Date:

September 13, 2024

To:

The Honorable Charles E. Grassley
Ranking Member
Committee on the Budget
United States Senate

From:

Nathan J. Deahl, Inspector General, U.S. Government Publishing Office

Subject:

March 11, 2024 Letter: Inclusion of Anti-Gag Provision in Nondisclosure Policies and Agreements

Dear Senator Grassley,

As noted in my April 1, 2024, response to the subject letter, I initiated a special review into both my office's and GPO's compliance with the anti-gag law requiring that all federal agency nondisclosure policies, forms, or agreements include the referenced anti-gag statement.¹

We have completed our review (attached) and found that GPO predominately complies with the WEPA and anti-gag provisions. We made four recommendations to improve GPO's compliance and oversight in its use of nondisclosure policies, forms, and agreements. GPO concurred with all of our recommendations and set forth proposed actions we considered responsive. GPO has already taken corrective action to fully address Recommendation 2.

In the report's body, we summarized management's comments and provided a detailed response throughout. Recommendations 1, 3, and 4 remain open at this time. We also updated the anti-gag language in a Nondisclosure Agreement used by my office with contract personnel.

My oversight committee Chairs and Ranking Members are copied on this letter. Should you have any questions or concerns, please do not hesitate to contact me at ndeahl@gpo.gov or 202.227.5599.

NATHAN J. DEAHL
Inspector General

¹ 5 USC § 2302(b)(13)

Cc:

The Honorable Amy Klobuchar
Chairwoman
Committee on Rules
United States Senate

The Honorable Deb Fischer
Ranking Member
Committee on Rules
United States Senate

The Honorable Bryan Steil
Chairman
Committee on House Administration
U.S. House of Representatives

The Honorable Joseph D. Morelle
Ranking Member
Committee on House Administration
U.S. House of Representatives

Hugh N. Halpern, Director,
U.S. Government Publishing Office

Enclosure: Final Report — Special Review of GPO's Compliance with the Whistleblower Protection Enhancement Act, Anti-Gag Provision, Report Number 24-07.



Date:

September 13, 2024

To:

Director, U.S. Government Publishing Office

From:

Inspector General, U.S. Government Publishing Office

Subject:

Final Report — Special Review of GPO's Compliance with the Whistleblower Protection Enhancement Act, Anti-Gag Provision, Report Number 24-07.

Enclosed is the subject final report. As noted below, the Office of the Inspector General (OIG) reviewed GPO's compliance with the Whistleblower Protection Enhancement Act anti-gag provisions. We made four recommendations to improve GPO's compliance and oversight in its use of nondisclosure policies, forms, and agreements.

GPO reviewed the draft report and provided comments through the Director. We reviewed GPO's comments and included them as an attachment to this final report. Based on the comments, we modified the language of Recommendation 2 to identify the specific policies requiring revision. Based on subsequent GPO actions, Recommendation 2 is closed. We also added language to section 3. *Other GPO Documents Containing Incomplete Anti-Gag Language* to provide additional context.

GPO ultimately concurred with all of our recommendations and set forth proposed actions we consider responsive. In addition, GPO has already taken the necessary action to fully address Recommendation 2. We summarize management's comments and provide a detailed response throughout the body of the report. Recommendations 1, 3, and 4 remain open at this time.

GPO's management and staff were helpful and accommodating throughout this review. If you have any questions or comments about this report, please contact Robert Stachurski, Assistant Inspector General for Investigations, rstachurski@gpo.gov.

NATHAN J. DEAHL
Inspector General

Attachment

INTRODUCTION

In a letter dated March 11, 2024, Senator Grassley requested that the GPO OIG conduct a review of all GPO nondisclosure policies, forms, agreements, and related documents to ensure the Whistleblower Protection Enhancement Act (WPEA) anti-gag provision is included as required by law.¹ Specifically, the anti-gag language reads as follows:

“These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General or the Office of Special Counsel of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive orders and statutory provisions are incorporated into this agreement and are controlling.”²

OBJECTIVE

We evaluated GPO’s nondisclosure policies, forms, agreements, and related documents for compliance with the above.³ We analyzed documentation gathered through an agency-wide data call. We focused on the GPO organizations currently using formal nondisclosure agreements (NDAs), other than the Standard Form 312,⁴ and those having authored policy that limits disclosures by Federal employees.

BACKGROUND: LAW AND POLICY

The WPEA of 2012⁵ aims to strengthen the protection of Federal employees who disclose information related to violations of laws, regulations, mismanagement, or other matters of public interest. Federal agencies must inform employees subject to NDAs that said NDAs do not supersede their right to report wrongdoing.⁶

Further, the WPEA strengthened protections for Federal employees who disclose evidence of fraud, waste, or abuse and required that any nondisclosure policy, form, or agreement include a statement informing employees of their rights to report wrongdoing to Congress, the Inspector General (IG), or the Office of Special Counsel (OSC).⁷ This is known as the “anti-gag provision,” and has been included in almost every appropriations bill since 1988. After further amendment on January 1, 2021, the WPEA also allows for reporting a

¹ 5 U.S.C. § 2302(b)(13); Pub. L. No. 117-328.

² 5 U.S.C. § 2302(b)(13).

³ *Id.*

⁴ Standard Form (SF) 312 (Classified Information Nondisclosure Agreement).

⁵ Pub. L. 112-199, 126 Stat. 1465 (amending the Whistleblower Protection Act of 1989).

⁶ *See* 5 U.S.C. § 2302(b)(13).

⁷ *Id.*

violation of any law, rule, or regulation, mismanagement, a gross waste of funds, or an abuse of authority to either an IG or the OSC.⁸

FINDINGS AND RECOMMENDATIONS

We found that GPO predominantly complies with the WPEA anti-gag provisions. However, we made four recommendations to improve GPO's compliance. Specifically, we found instances where manuals, directives, and NDAs could either include WPEA anti-gag language or need to be revised with the most recent WPEA language. We also recommended that GPO establish a process to review NDAs and directives specifically for WPEA compliance going forward. Please see further information on our findings below.

1. Office of Finance *Policy Manual*, dated Mar. 15, 2023

The Office of Finance provides accurate and reliable financial, cost, and performance information. This organization also provides analysis and insight about the financial implications of business decisions and the impact of those decisions on the achievement of agency goals and objectives.

We found that section 8-2 of this manual prohibits the release of financial information outside of the Office of Finance without the Chief Financial Officer's review and explicit approval by Office of Finance managers but does not include WPEA's required anti-gag language.

Recommendation 1. Amend the GPO *Finance Policy Manual* to include the anti-gag provision to ensure GPO employees fully understand what protections are afforded them under WPEA.

Management Comments

GPO concurred with this recommendation. The Agency will amend the GPO Finance Policy Manual to include an anti-gag provision consistent with 5 U.S.C. § 2302(b)(13).

OIG Response

GPO's concurrence and planned actions are responsive to this recommendation.

2. Office of General Counsel Documentation Review

The Office of the General Counsel (OGC) provides legal advice, counsel, and guidance to the Director and GPO management on a broad range of legal issues.

In response to the data call, OGC provided the following:

⁸ See William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Pub. L. 116-283, § 1138, 134 Stat. 3388, 3905 (codified at 5 USC § 2302(b)(13)).

Item	Quantity
Agency Settlement Agreements from January 2023 through April 2024	18
Agency Directives	2
Agency Instruction	1
Conflict of Interest Certification Template	1
Nondisclosure Agreement Template	1
April 2020 Letter from IG to OGC Subject: <i>Procedures for Managing OIG documents responsive to Office of Special Counsel</i>	1

Regarding the Settlement Agreements

All 18 agreements complied with WPEA requirements. That said, we include one example to highlight an important caveat to the WPEA provision, specifically that the WPEA’s notice requirements are not required if the settlement confidentiality clause only restricts disclosure **of the settlement’s terms and conditions**.

The OGC settlement agreement, signed in the Summer of 2023 in response to a Merit Systems Protection Board (MSPB) appeal, included a confidentiality clause limiting the actions, language, and behaviors of the appellant and the appellant’s family members without including any WPEA language (see below).

The Parties agree to protect the confidential nature of this document and agree not to disclose the terms and conditions of the Agreement to any individual who does not have the need to know the information in the performance of his or her official duties or unless required by law or court order. Appellant may disclose the specifics of this Agreement to [his/her] spouse, attorneys, accountants, and tax advisors, but only on the condition that [he/she] secures their agreement to keep the terms of this agreement strictly confidential. IN WITNESS WHEREOF, the parties hereto, intending to be legally bound, have executed this Agreement on the dates shown below.

Seemingly, the anti-gag provision should have been included. However, the Office of Special Counsel (OSC) has determined that “A confidentiality clause in a settlement agreement is not covered by the WPEA’s notice requirements if it only restricts disclosure of the terms and conditions of the settlement.”⁹ We found no other confidentiality clauses in a settlement agreement absent the WPEA anti-gag language. As stated previously, this settlement agreement did not require the WPEA anti-gag language.

⁹ [See U.S. Office of Special Counsel Memorandum for Executive Departments and Agencies, Non-Disclosure Policies, Forms, or Agreements, \(Feb. 1, 2018\).](#)

Regarding Agency Directives

The following directives can be read to limit disclosures of information by Federal employees:

1. *Procurement Instruction PPA 318.1A*, dated March 24, 1997 section 5, included the following language absent the required WPEA language:

“Except as specifically provided for in this subsection, no person or other entity may disclose contractor bid or proposal information or source selection information to any person other than a person authorized, in accordance with applicable agency regulations or procedures, by the head of the agency or designee, or the Contracting Officer, to receive such information.”

2. GPO Directive 825.12A, *Proprietary Information and Trade Secrets*, dated December 18, 2012, section 4 can read to limit disclosures of information by Federal employees pertaining to fraud, waste, abuse, or gross mismanagement. Specifically, section 4 prohibits employees and agents of GPO from disclosing:

“. . . to any party outside the GPO, any information, data, or other material received or acquires [sic] knowledge of during the course of his employment at GPO, which he knows or has reason to believe is proprietary to or is the trade secret of, any person, firm, corporation, or other party.”

Regarding the April 2020 Letter between IG and OGC

The letter requested that the distribution of OIG-provided documents be limited to OSC’s use only. We acknowledge that this could be seen as limiting disclosure. As a result, future OIG letters requesting limited distribution of documents will include anti-gag language.

Recommendation 2. Revise *Procurement Instruction PPA 318.1A* and GPO Directive 825.12A, *Proprietary Information and Trade Secrets* to include the anti-gag language required by 5 U.S.C. §2302(b)(13).

Management Comments

Regarding *Procurement Instruction PPA 318.1A*, the Agency noted that the language currently in the instruction mirrors the anti-gag language in the Procurement Integrity Act at 41 U.S.C. § 2107 (5). The Agency acknowledged *Procurement Instruction PPA 318.1A* requires review and revision due to its age but initially opined additional anti-gag language beyond that authorized by 41 U.S.C. § 2107(5) was unnecessary. Subsequent to our review of the Agency’s formal management comments and additional discussions, the Agency rescinded *Procurement Instruction PPA 318.1A* in its entirety.

Regarding GPO Directive 825.12A, *Proprietary Information and Trade Secrets*, the Agency revised the directive on September 6, 2024, to add anti-gag language consistent with 5 U.S.C. § 2302(b)(13).

OIG Response

GPO's concurrence and actions taken are fully responsive to this recommendation. This recommendation is closed.

3. Other GPO Documents Containing Incomplete Anti-Gag Language

We identified two additional GPO documents that did not restrict disclosure but referenced incomplete or incorrect WPEA anti-gag language as follows:

1. GPO Directive 655.4D, *Corrective Actions*, dated February 01, 2021; and
2. GPO Directive 615.9, *Merit System Principles and Prohibited Personnel Practices*, dated March 27, 2019.

In accordance with recommendation 4, below, GPO should update the language in these two directives when they are next reviewed.

4. GPO Review of Policy and NDAs for WPEA Anti-Gag Provision

We could not determine if GPO management or counsel reviewed the totality of GPO's NDAs specifically for compliance with the WPEA. In addition, although all GPO directives must be reviewed by multiple Business Units, including OGC, we were unable to identify whether GPO required WPEA compliance as part of its policy review process.

Recommendation 3. Require a WPEA legal review for all future NDAs to ensure anti-gag language is included.

Management Comments

GPO concurred with this recommendation. OGC will review future employee NDAs for WPEA compliance. The Agency will also amend GPO Directive 615.9, *Merit System Principles and Prohibited Personnel Practices*, to formalize the requirement for OGC review of any agency NDA.

OIG Response

GPO's concurrence and planned actions are responsive to this recommendation.

Of note, review of the OIG NDA referenced in Footnote 1 (attachment) determined that it was signed by an OIG Contractor, not a Federal employee, and was therefore not subject to

the WPEA or required to be included in this report. However, this NDA has since been revised to include the language consistent with 5 U.S.C. § 2302(b)(13).

Recommendation 4. Ensure that WPEA compliance is part of the GPO directive review process.

Management Comments

GPO concurred with this recommendation. The Agency will amend GPO Directive 615.9, *Merit System Principles and Prohibited Personnel Practices*, to formalize the requirement for OGC review of directive submissions for WPEA compliance.

OIG Response

GPO's concurrence and planned actions are responsive to this recommendation.

MEMORANDUM

Date: August 27, 2024
To: Inspector General
Subject: Agency Response to the Draft Report 24-07 – Special Review of GPO’s Compliance with the Whistleblower Protection Enhancement Act, Anti-Gag Provision, Project No. 24-03-SP

Thank you for the opportunity to offer the Agency’s response to the Draft Report on the Special Review of GPO’s Compliance with the Whistleblower Protection Enhancement Act, Anti-Gag Provision, 24-07.

Agency Response to Recommendations in the Draft Report

Recommendation 1

Amend the GPO Finance Policy Manual to include the anti-gag provision to ensure GPO employees fully understand what protections are afforded to them under WPEA.

GPO concurs with this recommendation.

The Agency will amend the draft of the GPO Finance Policy Manual to include an anti-gag provision consistent with 5 U.S.C. § 2302(b)(13). The Agency expects to complete the amendment process within 90 days of the date of this memorandum.

Recommendation 2

Revise Procurement Instruction PPA 318.1A, Procurement Integrity, dated March 24, 1997 and GPO Directive 825.12A, Proprietary Information and Trade Secrets, dated December 18, 2012 to include the anti-gag language required by 5 U.S.C. §2302(b)(13).

GPO partially concurs with this recommendation.

Procurement Instruction PPA 318.1A.

The current Procurement Instruction PPA 318.1A, *Procurement Integrity*, already contains the following anti-gag language at ¶ 5:

- (f) Nothing in this section shall be construed to authorize—
 - (1) The withholding of any information pursuant to a proper request from the Congress, any committee or subcommittee thereof, a Federal agency, the Comptroller General, or an Inspector General of a Federal agency, except as otherwise authorized by law or regulation. Any such release which contains contractor bid or proposal information or source selection information shall clearly notify the recipient that the information or portions thereof are contractor bid or proposal information or source selection information

MEMORANDUM

Page 2

related to the conduct of a Federal agency procurement, the disclosure of which is restricted by section 27 of the Act;

The language in Procurement Instruction PPA 318.1A mirrors the anti-gag language in the Procurement Integrity Act itself at 41 U.S.C. § 2107:

[This Act] does not—

(5) authorize the withholding of information from, nor restrict its receipt by, Congress, a committee or subcommittee of Congress, the Comptroller General, a Federal agency, or an inspector general of a Federal agency;

While Procurement Instruction PPA 318.1A needs to be reviewed and revised because of its age, additional anti-gag language beyond that authorized by 41 U.S.C. § 2107(5) is unnecessary.

GPO Directive 825.12A.

GPO Directive 825.12A, *Proprietary Information and Trade Secrets*, places GPO employees on notice of certain Federal statutes that are applicable to them. We agree that paragraph 4 of that directive *could* be read as an agency policy restricting disclosure of information beyond the restrictions contained in the applicable Federal statutes. Accordingly, the GPO will revise the directive to add anti-gag language consistent with 5 U.S.C. § 2302(b)(13).

The Agency expects to complete the revision to 825.12A by November 1, 2024.

Recommendation 3

Require a legal review for WPEA compliance of all future NDAs ensuring anti-gag language is included.

GPO concurs with this recommendation.

Notably, the Special Review did not identify any Nondisclosure Agreements GPO¹ entered into with any of its employees in the past. That is not surprising, as the GPO has no policies, procedures or past practices requiring NDAs. However, in the unlikely event that an NDA is needed in the future, the NDA will be reviewed by the Office of General Counsel for WPEA compliance. The agency will amend GPO Directive 615.9, *Merit System Principles and Prohibited Personnel Practices*, to formalize the requirement for OGC review of any agency NDA.

The Agency expects to complete the revision to Directive 615.9 by November 1, 2024.

¹ The only NDA referenced in the Special Review was one used by the Inspector General that did not contain the anti-gag provisions required by 5 U.S.C. § 2302(b)(13). It is not known whether this NDA was reviewed by OIG legal counsel.

MEMORANDUM

Page 3

Recommendation 4

Ensure that WPEA compliance is part of the GPO directive review process.

GPO concurs with this recommendation.

The agency will amend GPO Directive 615.9, *Merit System Principles and Prohibited Personnel Practices*, to formalize the requirement for OGC review of directive submissions for WPEA compliance.

The Agency expects to complete the revision to Directive 615.9 by November 1, 2024.

Thank you for the opportunity to provide the Agency's input on this product from your office. The Agency spent approximately 10 hours preparing this response. If you have any questions, please contact me.



HUGH NATHANIAL HALPERN

**cc: Deputy Director
Chief of Staff
General Counsel**