



U.S. Department of Agriculture
Office of Inspector General



USDA Compliance With Anti-Gag Provisions

October 2024
50801-0001-23



USDA Compliance With Anti-Gag Provisions

Inspection Report 50801-0001-23

OIG reviewed USDA's compliance with a specific provision of the Whistleblower Protection Enhancement Act of 2012.

OBJECTIVE

Our objective was to determine whether USDA policies, forms, and agreements comply with specific anti-gag provisions as required by law.

REVIEWED

We assessed the existence and completeness of NDA policies and forms for USDA and its 42 agencies and staff offices. Additionally, we reviewed the most recently signed NDA between November 27, 2012, and March 11, 2024, for a Federal employee from each agency and staff office that had signed NDAs.

RECOMMENDS

We recommend that USDA and seven agencies and three staff offices review and update all NDA policies and forms to include the required anti-gag provision. In addition, we recommend that four agencies and one staff office need to review and update active NDAs for current Federal employees to include the required anti-gag provision.

WHAT OIG FOUND

We initiated an inspection to review the United States Department of Agriculture's (USDA) nondisclosure policies, forms, and agreements (NDA documents) to ensure a specific anti-gag provision was included as required by law. The Whistleblower Protection Enhancement Act of 2012 requires all NDA documents for Federal employees contain a specific anti-gag provision. However, we determined that although USDA included the provision in an attached form, the USDA's Departmental Regulation (DR) — dated prior to the passage of the Act — was not updated to contain the required anti-gag provision. Additionally, 11 out of 42 USDA agencies and staff offices had NDA documents, or a combination thereof, that did not contain the required anti-gag provision. As a result, USDA employees may not be aware of how their protections under the Whistleblower Protection Enhancement Act of 2012 apply to nondisclosure agreements (NDAs), potentially discouraging whistleblowers from reporting allegations of misconduct. Furthermore, per 5 U.S.C. § 2302(b)(13), Federal employees who have authority to take, direct others to take, recommend, or approve any personnel action (agency officials) shall not enforce any NDAs without the required anti-gag statement signed by Federal employees after November 27, 2012. This inspection was completed pursuant to a Congressional request. Staff office and agency officials agreed with our finding and recommendations, and we accepted management decision on all recommendations.



OFFICE OF INSPECTOR GENERAL

United States Department of Agriculture



DATE: October 31, 2024

INSPECTION

NUMBER: 50801-0001-23

TO: John Rapp
Director
Office of Budget and Program Analysis

ATTN: Christopher Nelson
Associate Director
Office of Budget and Program Analysis

FROM: Yarisís Rivera-Rojas
Acting Assistant Inspector General for Audit

SUBJECT: USDA Compliance With Anti-Gag Provisions - Final Report

This report presents the results of our inspection of USDA Compliance With Anti-Gag Provisions. Your written response to the official draft is included in its entirety at the end of the report. Based on your written response, we are accepting management decision for all 12 recommendations in the report, and no further response to this office is necessary.

In accordance with Departmental Regulation 1720-1, final action needs to be taken within 1 year of the date of each management decision. Please follow your internal agency procedures in forwarding final action correspondence to the Office of the Chief Financial Officer.

We appreciate the courtesies and cooperation extended to us by members of your staff during our fieldwork and subsequent discussions. This report contains publicly available information and will be posted in its entirety to our website (<https://usdaoig.oversight.gov>) in the near future.

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Background and Objective

Background

The Whistleblower Protection Enhancement Act of 2012¹ (WPEA) was passed, in part, to clarify protections for employees that have signed nondisclosure agreements (NDAs).² According to WPEA³ and U.S. Code,⁴ NDAs are unenforceable by authorized federal government employees unless they contain the following statement:

“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 Counsel⁵ 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.”

Not all USDA agencies and staff offices used NDAs to conduct their mission work, and therefore not all agencies created NDA documents relevant to this review.⁶ Specifically, 22 of the 42 agencies and staff offices did not use nondisclosure forms or agreements, and therefore did not create relevant policies governing their use.

USDA Agencies and Staff Offices That Used NDAs



Figure 1: At the time of our request 22 USDA agencies and staff offices did not use NDAs. The remaining 20 USDA agencies and staff offices used NDAs. Figure by Office of Inspector General (OIG).

A member of Congress⁷ requested 74 Inspectors General to ensure Federal employees were aware of their rights to report wrongdoing and for the United States Department of Agriculture (USDA) Office of Inspector General (OIG) to review all nondisclosure policies, forms,

¹ Whistleblower Protection Enhancement Act of 2012, Pub. L. No. 112-199, 126 Stat. 1467.

² NDAs are legally enforceable agreements between parties to ensure that information identified in the agreement will remain confidential.

³ Whistleblower Protection Enhancement Act of 2012, Pub. L. No. 112-199, 126 Stat. 1467.

⁴ 5 U.S.C. § 2302(b)(13).

⁵ The words “or the Office of Special Counsel” were added to the required statement in the U.S. Code in 2021 as part of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Pub. L. No. 116-283, 134 Stat. 3905.

⁶ There is no statutory requirement that all agencies create NDA documents regardless of need.

⁷ Grassley, The Honorable Charles H., Letter to The Honorable Phyllis K. Fong from the Ranking Member of the United States Senate Committee on the Budget (Mar. 11, 2024).

agreements, and related documents specific to USDA to ensure the anti-gag provision⁸ was included as required by law.⁹

Objective

Our objective was to determine whether USDA policies, forms, and agreements comply with specific anti-gag provisions as required by law.

⁸ According to the Office of Special Counsel, the whistleblower protection outlined in WPEA is also known as the anti-gag provision.

⁹ Whistleblower Protection Enhancement Act of 2012, Pub. L. No. 112-199, 126 Stat. 1467.

Finding 1: USDA's NDA Documents Need to be Updated to Comply With the WPEA

We found that USDA and 11 of its 42¹⁰ agencies and staff offices, had NDA documents, that did not contain the required anti-gag provision statement (see Exhibits A and B). USDA and 10 of the 11 identified agencies and staff offices were unaware that their NDA documents, were not in compliance (i.e., did not contain the required anti-gag provisions statement required by WPEA). The other agency relied on guidance from one of the staff offices to ensure its NDA documents complied with applicable laws. However, that office's forms were also not in compliance with the law. As a result, USDA employees may not be aware of how their protections under the WPEA apply to NDAs, potentially discouraging whistleblowers from reporting allegations of misconduct. Furthermore, per 5 U.S.C. § 2302, Federal employees who have authority to take, direct others to take, recommend, or approve any personnel action (agency officials) shall not enforce any NDAs without the required anti-gag statement signed by Federal employees after November 27, 2012.

The WPEA and 5 U.S. Code § 2302 require that all NDA documents contain the following provision:¹¹

“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 ¹²of 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.”



In addition, according to 5 U.S.C. § 2302(b)(13), agency officials shall not enforce an NDA if the required language is absent in the form, agreement, or policy.¹³ Such enforcement, when required language is absent, constitutes a prohibited personnel practice.¹⁴

¹⁰ USDA OIG was not included within the scope of this inspection.

¹¹ Whistleblower Protection Enhancement Act of 2012, Pub. L. No. 112-199, 126 Stat. 1467., 5 U.S.C. § 2302.

¹² The words “or the Office of the Special Counsel” were added to the required statement in the US code in 2021 as part of William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 Pub. L. No. 116-283, 134 Stat. 3905.

¹³ 5 U.S.C. § 2302(b)(13).

¹⁴ *Id.*

To address our objective, we requested NDA documents from the 42 agencies and staff offices that make up USDA. We requested that each agency and staff office provide OIG with a copy of any NDA policies and forms, and the most recently signed NDA prior to March 11, 2024, by a Federal employee in that agency or staff office.

USDA Policies

USDA did not have a departmental regulation (DR) specific to NDAs. We noted USDA's Policies and Links section of its website states:

“As a [USDA] employee, you may have been required to sign a non-disclosure policy, form, or agreement (NDA) to access classified or other information. You should read the [anti-gag provision] as if it were incorporated into any NDA you have signed.”¹⁵

However, we concluded that including this statement on the Policies and Links portion of the USDA website does not fulfill USDA's responsibilities under the WPEA.

Upon further review, we noted that DR 3099-001, *Records Management Policy for Departing Employees, Contractors, Volunteers and Political Appointees*, was the only USDA-wide regulation that we found which referenced NDA documents. We determined that the DR,¹⁶ last updated in July 2012 prior to the enactment of WPEA,¹⁷ effective date of December 27, 2012, also included Form AD-3001.¹⁸ While the standalone form contained the required anti-gag provision, the DR itself, which contained background information, responsibilities, and instructions, did not contain the required provision and therefore, did not comply with the law. This DR was not updated because the current office of primary interest¹⁹ was unaware that the DR had not been updated to include the required provisions when the WPEA was passed.

In addition, we found 4 of the 42 USDA agencies and staff offices had their own NDA policies,²⁰ and these agencies' policies did not contain the required anti-gag provision statement. Neither the U.S. Code nor the WPEA require agencies to have their own NDA policies. However, the U.S. Code and the WPEA state that any NDA policy must contain the required provision. Agency officials from each of the four agencies informed OIG that they were unaware of the updated anti-gag requirements.

¹⁵ USDA, Policies and Links (Non-Disclosure Agreements Notice) (March 27, 2024), www.usda.gov/policies-and-links.

¹⁶ USDA Departmental Regulation 3099-001, *Records Management Policy for Departing Employees, Contractors, Volunteers and Political Appointees* (July 2, 2012).

¹⁷ WPEA was enacted in November 2012.

¹⁸ USDA Form AD-3001, *Documentary Materials Removal/Non-Removal Certification and Non-Disclosure Agreement* (July 2, 2012).

¹⁹ Officials responsible for maintaining the regulation at the time of its most recent revision in July 2012, and enactment of the WPEA, effective date December 27, 2012, are no longer employed with the Department.

²⁰ Three of the agencies used a joint policy which was noncompliant.

USDA Forms

Of the 42 USDA agencies and staff offices, 20 either created or used their own NDA forms.²¹ While agencies are not required to create their own NDA forms, those that do are required to include the anti-gag statement in their forms. Of those 20 agencies and staff offices, we found:

- 12 used forms that were compliant, and
- 8 used forms that were not in compliance.

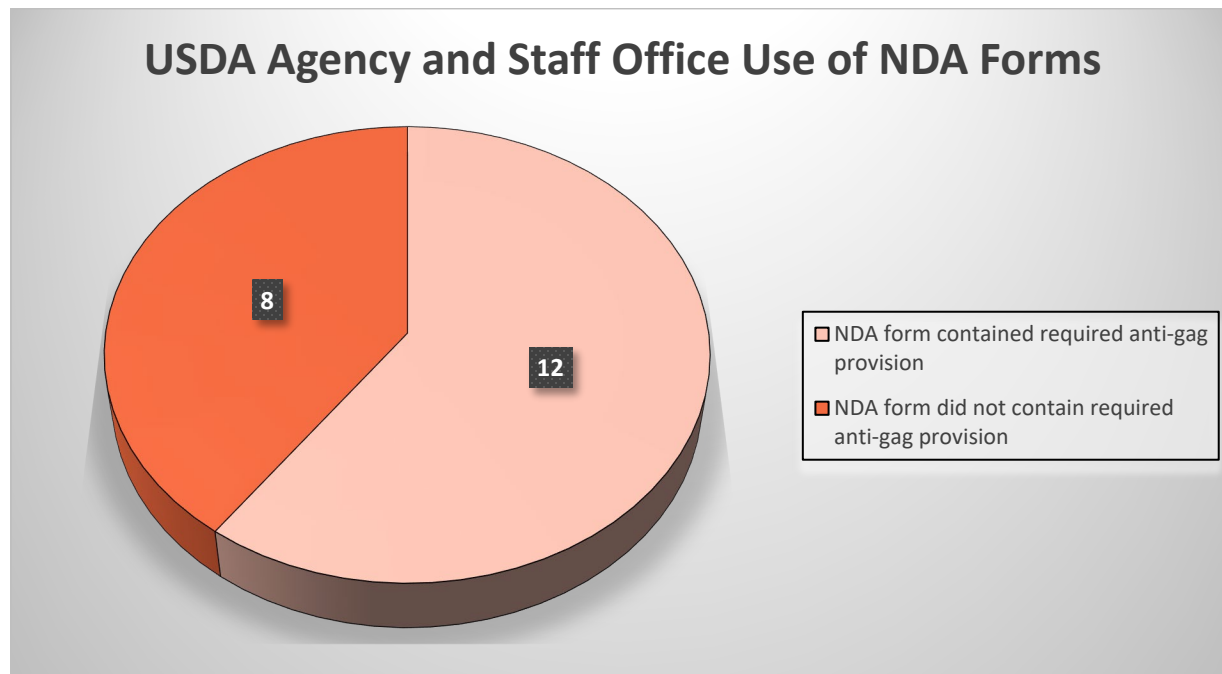


Figure 2: Number of USDA agencies and staff offices that used their own NDA forms. Figure by OIG.

Of the eight agencies and staff offices that used forms that were noncompliant, officials from seven of them were unaware that their forms were not in compliance with the updated anti-gag requirements. For the last agency, an official stated that they relied on the guidance from another staff office. An official from that staff office stated that they did not have any NDA specific guidance, however, they now see the need to issue such guidance and plan to include NDAs in their updated guidance.

²¹ None of the agencies or offices provided Form AD-3001 in their NDA documents because we asked for agency-specific NDA documents. The agencies and staff offices that used NDA forms used the forms for purposes such as information transfer or contractor selection. The remaining 22 agencies and staff offices did not have their own specific NDA forms.



USDA Federal Employee NDAs

In our review of the 42 USDA agencies and staff offices,

- 25 did not have NDAs signed by federal employees, and
- 17 had NDAs signed by federal employees.²²

We found that 5 of the 17 NDAs were not in compliance with the WPEA as they did not contain the required provision statement. Officials from four of those five agencies and staff offices were unaware that their signed agreements were not in compliance with the updated anti-gag requirements. For the last agency, an official stated that they relied on guidance from another staff office, which was not in compliance, for guidance.

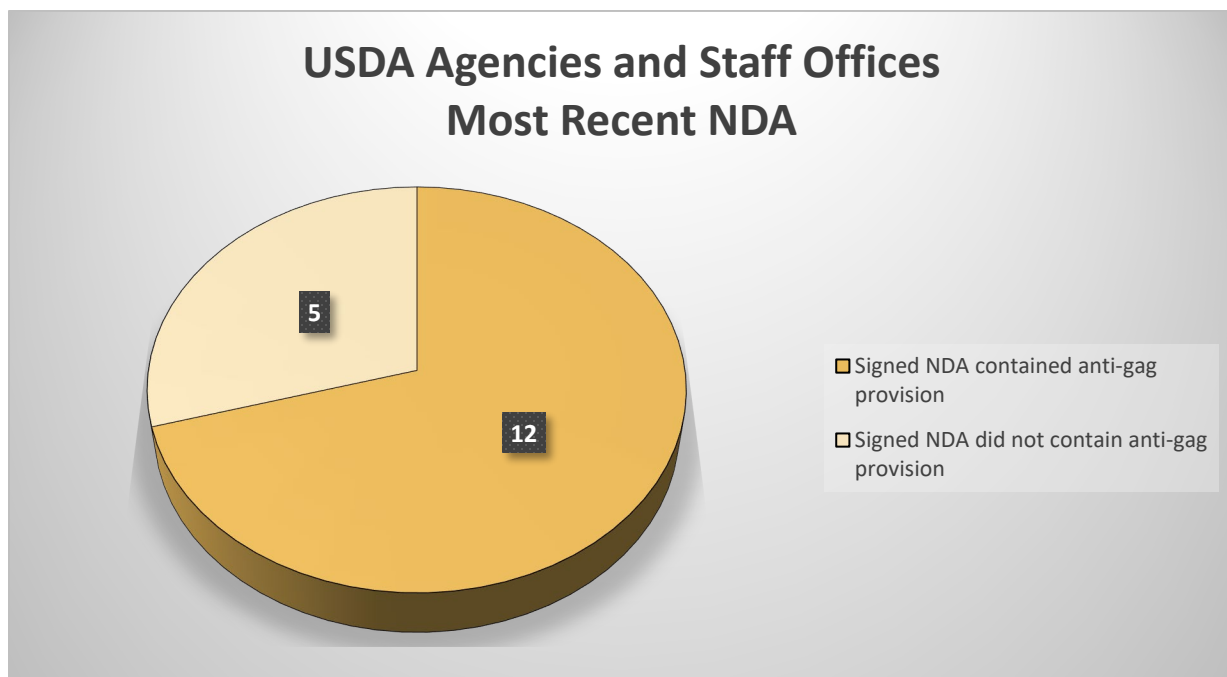


Figure 3: Number of USDA agencies and staff offices that had NDAs signed by federal employees and whether those signed agreements complied with the WPEA anti-gag provision statement. Figure by OIG.

In conclusion, officials from the Department and 10 of its agencies and staff offices were unaware that their NDA documents were not in compliance. However, 7 of the 10 agencies and staff offices stated they were in the process of updating their documents.

Without the added required anti-gag provision statement in nondisclosure forms and NDAs, USDA employees may not be aware of how their protections under the WPEA apply. This may potentially discourage whistleblowers from reporting allegations of misconduct. Additionally, per 5 U.S. Code § 2302, any NDAs without the required anti-gag statement signed by Federal employees after implementation of the WPEA on November 27, 2012, may not be enforceable.

²² Of the 20 agencies that utilized NDAs, 3 did not have any NDAs signed during the scope of the inspection.

For this reason, we recommend agencies and staff offices update their policies and forms to include the anti-gag provision and reissue active NDAs signed by current Federal employees after November 27, 2012, as needed.

Recommendation 1

Ensure the responsible office updates 3099-001 to include the required anti-gag provision within the policy.

Agency Response

In its September 12, 2024, response, the Office of the General Counsel Office of Information Affairs concurred with this recommendation. In accordance with National Archives and Records Administration requirements, following a 2022 Inspection, USDA is in the process of updating Departmental Regulations for the Departmental Records Management Programs, beginning with DR 3080-001, Records Management. USDA will also work to update the DR 3099-001, Records Management Policy for Departing Employees, Contractors, Volunteers and Political Appointees immediately following to ensure consistent messaging. The update will include the required anti-gag provision already included in the corresponding form, AD-3001, Documentary Materials Removal/Non-Removal Certification and Non-Disclosure Agreement.

The Office of the General Counsel Office of Information Affairs expects to begin drafting the updated regulation in April 2025 and submit it for clearance by September 2025. The estimated completion date for the updated regulation is March 2026.

OIG Position

Based on the documentation provided and understanding of the time requirement to complete the process, we accept management decision on this recommendation.

Recommendation 2

Agricultural Marketing Service needs to update its NDA form(s) to include the required anti-gag provision.

Agency Response

In its September 27, 2024, response, the Agricultural Marketing Service concurred with this recommendation. The Agricultural Marketing Service has included the Whistleblower Protection Enhancement Act of 2012 language in forms processed after the start of this engagement. No later than 12 months from the release of the OIG report, the Agricultural Marketing Service will revise all non-disclosure agreements and related forms (i.e., confidentiality agreements, solicitations, employee responsibility agreements, etc.) signed by Federal employees to include the Whistleblower Protection Enhancement Act of 2012 language in full.

The estimated completion date is September 30, 2025.

OIG Position

We accept management decision on this recommendation.

Recommendation 3

Animal and Plant Health Inspection Service needs to update its NDA form(s) to include the required anti-gag provision.

Agency Response

In its September 27, 2024, response, the Animal and Plant Health Inspection Service concurred with this recommendation. The Animal and Plant Health Inspection Service Information Technology Division decided to cancel the only form covered under this provision, “MRP Form 561, PII Administrative Access Non-Disclosure Agreement.” The Information Technology Division removed the form from its official repository of active forms and the Animal and Plant Health Inspection Service public website’s Electronic Forms Library.

The completion date was August 27, 2024.

OIG Position

We accept management decision on this recommendation.

Recommendation 4

Agricultural Research Service needs to update its NDA policy to include the required anti-gag provision.

Agency Response

In its September 16, 2024, response, the Agricultural Research Service acknowledged receipt of the recommendation. Its Office of Technology Transfer has initiated the development of a revision of the “Collaborative Agreement Policy (P&P 141.2).”

The estimated completion date is June 30, 2025.

OIG Position

We accept management decision on this recommendation.

Recommendation 5

Economic Research Service needs to update its NDA policy to include the required anti-gag provision.

Agency Response

In its September 17, 2024, response, the Economic Research Service acknowledged receipt of the recommendation. The Agriculture Research Service Office of Technology Transfer has initiated the revision of the “Collaborative Agreement Policy (P &P 141.2).”²³

The estimated completion date is June 30, 2025.

OIG Position

We accept management decision on this recommendation.

Recommendation 6

Foreign Agricultural Service needs to review and update active NDAs for current Foreign Agricultural Service federal employees signed after November 27, 2012, to ensure they include the required anti-gag provision.

Agency Response

In its September 18, 2024, response, the Foreign Agricultural Service concurred with this recommendation. The Foreign Agricultural Service Export Sales Reporting team has updated their exiting NDA to include the required anti-gag provision. All Federal employees with signed NDAs for the Export Sales Reporting Program have been contacted and notified of the inclusion of the required anti-gag provision and asked to re-sign the NDA.

The completion date was September 30, 2024.

OIG Position

We accept management decision on this recommendation.

²³ The Collaborative Agreement Policy (P &P 141.2) is a joint policy used by the Agricultural Research Service; Economic Research Service; National Agricultural Statistics Service; and Cooperative State Research, Education, and Extension Service.

Recommendation 7

Food and Nutrition Service needs to update its NDA form(s) to include the required anti-gag provision. Food and Nutrition Service also needs to review and update active NDAs for current Food and Nutrition Service Federal employees signed after November 27, 2012, to ensure they include the required anti-gag provision.

Agency Response

In its September 12, 2024, response, the Food and Nutrition Service concurred with this recommendation. With the issuance of the revised “USDA Contracting Desk Book” on June 28, 2024, the Food and Nutrition Service updated its NDA form to incorporate the required anti-gag provision. The Food and Nutrition Service will also review and update any active NDAs for current employees signed after November 27, 2012, in order to bring them into compliance with including the required anti-gag provision.

The estimated completion date is June 30, 2025.

OIG Position

We accept management decision on this recommendation.

Recommendation 8

Forest Service needs to update its NDA policies and form(s) to include the required anti-gag provision. Forest Service also needs to review and update active NDAs for current Forest Service Federal employees signed after November 27, 2012, to ensure they include the required anti-gag provision.

Agency Response

In its September 13, 2024, response, the Forest Service concurred with this recommendation. The agency will review its NDA policies and forms and, as appropriate, update them to include the anti-gag provision. Forest Service will review and update active NDAs for current Forest Service Federal employees signed after November 27, 2012, to ensure they include the required anti-gag provision.

The estimated completion date is October 1, 2025.

OIG Position

We accept management decision on this recommendation.

Recommendation 9

National Agricultural Statistics Service needs to update its NDA policy and form(s) to include the required anti-gag provision. National Agricultural Statistics Service also needs to review and update active NDAs for current National Agricultural Statistics Service Federal employees signed after November 27, 2012, to ensure they include the required anti-gag provision

Agency Response

In its September 24, 2024, response, the National Agricultural Statistics Service concurred with this recommendation. The National Agricultural Statistics Service reviewed its NDA forms and, as appropriate, updated them to include the anti-gag provision. Updated NDA's will be signed upon completion of the mandatory annual AgLearn training starting October 1, 2024. The National Agricultural Statistics Service is currently reviewing its policies and will update as needed to ensure compliance.

The estimated completion date is March 31, 2025.

OIG Position

We accept management decision on this recommendation.

Recommendation 10

Office of the Assistant Secretary for Civil Rights needs to update its NDA form(s) to include the required anti-gag provision.

Agency Response

In its September 23, 2024, response, the Office of the Assistant Secretary for Civil Rights concurred with this recommendation. The Office of the Assistant Secretary for Civil Rights has provided the NDA form to the Office of the General Counsel for review and approval.

The estimated completion date is December 30, 2024.

OIG Position

We accept management decision on this recommendation.

Recommendation 11

Office of the Chief Financial Officer needs to update its NDA form(s) to include the required anti-gag provision.

Agency Response

In its September 27, 2024, response, the Office of the Chief Financial Officer concurred with this recommendation. The Office of the Chief Financial Officer reviewed and updated all active NDAs with concurrence from the Office of the General Council.

The completion date was September 27, 2024.

OIG Position

We accept management decision on this recommendation.

Recommendation 12

Office of Contracting and Procurement needs to update its NDA form(s) and guidance to include the required anti-gag provision. Office of Contracting and Procurement needs to also review and update active NDAs for current Office of Contracting and Procurement Federal employees signed after November 27, 2012, to ensure they include the required anti-gag provision.

Agency Response

In its September 24, 2024, response, the Office of Contracting and Procurement concurred with this recommendation. The Office of Contracting and Procurement has (1) incorporated a sample nondisclosure agreement for acquisitions into the June 28, 2024, update to the USDA Contracting Desk Book at 403.104 *Disclosure, Protection, and Marking of Contractor Bid or Proposal Information and Source Selection Information*. This subsection of the Desk Book has been updated to now require all NDAs for USDA acquisition source selections to include the anti-gag language; and (2) reviewed and updated all active Office of Contracting and Procurement NDAs as of September 17, 2024.

The completion date was September 27, 2024.

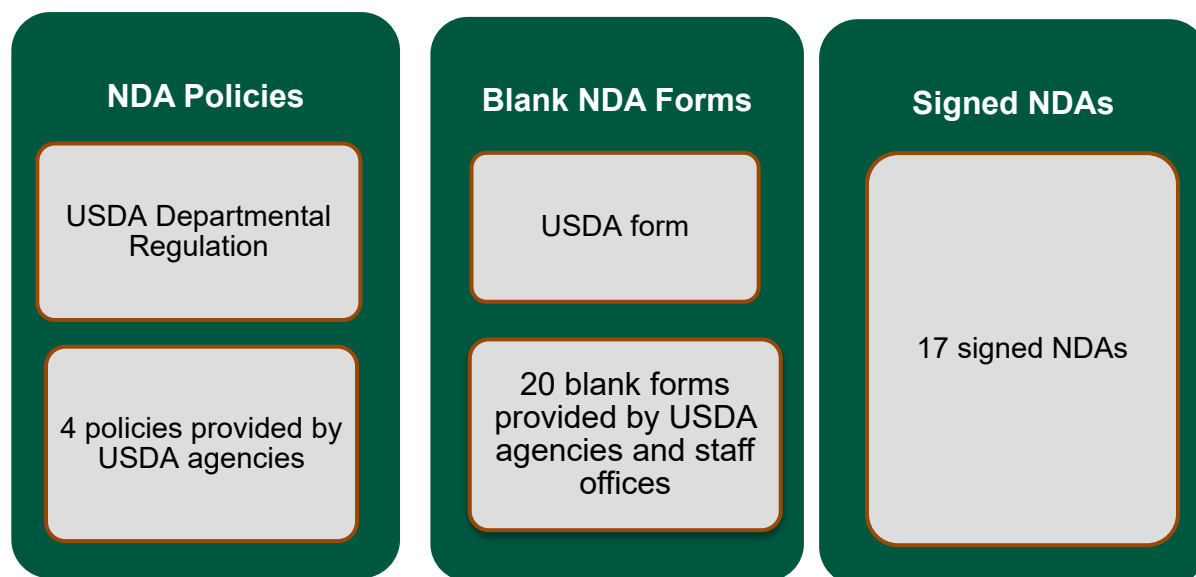
OIG Position

We accept management decision on this recommendation.

Scope and Methodology

We conducted an inspection to review USDA’s NDA documents for Federal employees to ensure a specific anti-gag provision was included as required by law. This inspection was completed pursuant to a Congressional request. The inspection scope included USDA and its 42 agencies and staff offices identified by OIG (see Exhibit B).²⁴ We conducted our fieldwork from March 2024 through August 2024.

To accomplish our objective, we obtained and reviewed the WPEA and 5 U.S. Code § 2302, and interviewed agency officials. Additionally, we obtained and reviewed USDA, agency and staff office policies and blank forms related to NDAs, currently in effect, within USDA. Furthermore, we reviewed the most recent (prior to March 11, 2024) NDA signed by Federal employees for those agencies and staff offices that use NDAs. See below for a visual representation of the nondisclosure policies, blank forms, and signed agreements we obtained and reviewed.



We conducted this inspection in accordance with the Council of the Inspectors General on Integrity and Efficiency’s *Quality Standards for Inspection and Evaluation*.²⁵ These standards require that we obtain sufficient and appropriate evidence to support our findings and provide a reasonable basis for our conclusions and recommendations based on our inspection objective. We believe that the evidence obtained provides a reasonable basis for our finding, conclusions, and recommendations based on our review.

²⁴ USDA OIG was not included as part of the scope of this inspection.

²⁵ Council of the Inspectors General on Integrity and Efficiency’s *Quality Standards for Inspection and Evaluation* (Dec. 2020).

Abbreviations

AD.....	Agriculture Department
DR.....	Departmental Regulation
NDA.....	Nondisclosure Agreement
NDA documents.....	nondisclosure policies, forms, and agreements
OIG	Office of Inspector General
OPI	office of primary interest
U.S.C.....	United States Code
USDA.....	United States Department of Agriculture
WPEA	Whistleblower Protection Enhancement Act of 2012

Exhibit A: Results of Inspection Review

Summary of agencies and staff offices that had nondisclosure policies, forms, or signed agreements that did not contain the required anti-gag provision statement, and therefore, were not in compliance with the WPEA.

Agency or Staff Office	Non-compliant Policies	Non-compliant Forms	Non-Compliant Latest NDA
Office of the Assistant Secretary for Civil Rights		✓	
Office of Contracting and Procurement		✓	✓
Office of the Chief Financial Officer		✓	
Food and Nutrition Service		✓	✓
Agricultural Marketing Service		✓	
Animal and Plant Health Inspection Service		✓	
Forest Service	✓	✓	✓
Agricultural Research Service	✓		
National Agricultural Statistics Service	✓	✓	✓
Economic Research Service	✓		
Foreign Agricultural Service			✓

Exhibit B: USDA Agencies and Staff Offices

Listing of USDA agencies and staff offices as identified by OIG for the purpose of this inspection to assess whether policy and NDA documents contained the required anti-gag statement..²⁶

Mission Area	Agency / Staff Office
Assistant Secretary for Civil Rights	
	Office of the Assistant Secretary for Civil Rights
Assistant Secretary for Congressional Relations	
	Office of Congressional Relations
Assistant Secretary for Administration	
	Office of Contracting and Procurement
	Office of Customer Experience
	Office of Homeland Security
	Office of Human Resources Management
	Office of Operations
	Office of Property and Environmental Management
	Office of Safety, Security, and Protection
	Office of Small and Disadvantaged Business Utilization
General Counsel	
	Office of the General Counsel
Office of the Chief Financial Officer	
	Office of the Chief Financial Officer
Office of the Chief Economist	
	Office of the Chief Economist
Office of the Executive Secretariat	
	Office of the Executive Secretariat
Office of Budget and Program Analysis	
	Office of Budget and Program Analysis
Office of Communications	
	Office of Communications
Office of Tribal Relations	
	Office of Tribal Relations

²⁶ USDA OIG was not included as part of the scope of this inspection.

Mission Area	Agency / Staff Office
Office of Partnerships and Public Engagement	
	Office of Partnerships and Public Engagement
Office of Hearings and Appeals	
	Office of Hearings and Appeals
	Office of the Judicial Officer
	Office of Administrative Law Judges
	National Appeals Division
Office of the Chief Information Officer	
	Office of the Chief Information Officer
Under Secretary for Farm Production and Conservation	
	Farm Service Agency
	Natural Resources Conservation Service
	Risk Management Agency
	FPAC Business center
Under Secretary for Food, Nutrition and Consumer Services	
	Food and Nutrition Service
Under Secretary for Food Safety	
	Food Safety and Inspection Service
Under Secretary for Marketing and Regulatory Programs	
	Agricultural Marketing Service
	Animal and Plant Health Inspection Service
Under Secretary for Natural Resources and Environment	
	Forest Service
Under Secretary for Rural Development	
	Rural Business-Cooperative Service
	Rural Housing Service
	Rural Utilities Service
Under Secretary for Research, Education and Economics	
	Agricultural Research Service
	Office of the Chief Scientist
	National Agricultural Statistics Service
	National Institute of Food and Agriculture
	Economic Research Service
Under Secretary for Trade and Foreign Agricultural Affairs	
	Foreign Agricultural Service
	U.S. Codex Office

**Office of Budget and Program Analysis
Response to Inspection Report**



United States Department of Agriculture

Office of the
Secretary

Office of Budget and
Program Analysis

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Avenue S.W.
Washington, DC
20250

TO: Kimberly Bretz
Director
Office of Inspector General

FROM: John Rapp /S/
Director
Office of Budget and Program Analysis

SUBJECT: USDA Compliance With Anti-Gag Provisions – Departmental Response

The Whistleblower Protection Enhancement Act of 2012 (WPEA) requires all nondisclosure agreements (NDA) documents for Federal employees contain a specific anti-gag provision. Pursuant to a Congressional request, beginning in March 2024, the Office of Inspector General (OIG) initiated an inspection to determine whether USDA nondisclosure policies, forms, and agreements comply with specific anti-gag provisions as required by law.

The Office of Budget and Program Analysis (OBPA) was assigned to consolidate USDA's Agencies responses regarding OIG's investigation on USDA's Compliance with Anti-Gag Provisions.

On August 26, 2024, OBPA received the Office of Inspector General's (OIG) Official Draft Report on USDA's Compliance with Anti-Gag Provisions. OIG determined that although USDA included the provision in an attached form, the USDA's Departmental Regulation (DR) — dated prior to the passage of WPEA was not updated to contain the required anti-gag provision. Additionally, 11 out of 42 USDA agencies and staff offices had NDA documents that did not contain the required anti-gag provision.

OIG's investigation concluded that officials from the Department and 10 of its agencies and staff offices were unaware that their NDA documents were not in compliance. But without the added required anti-gag provision statement in nondisclosure forms and NDAs, USDA employees may not be aware of how their protections under the WPEA apply and this has the potential to discourage whistleblowers from reporting allegations of misconduct. Additionally, per 5 U.S. Code § 2302, any NDAs without the required anti-gag statement signed by Federal employees after implementation of the WPEA on November 27, 2012, may not be enforceable.

Summary of Agency Actions:

OIG provided 12 Recommendations to USDA Offices and Agencies to update forms and policies to ensure that USDA employees are aware of their protections. OBPA shared the Official Draft Report with the Agencies mentioned in Exhibit A, and their responses are enclosed. OBPA assigned the Office of General Counsel to respond on the first Recommendation to update USDA's Departmental Regulation 3099-001 to include the

required anti-gag provision within the policy.

The 12 agencies largely concurred with all of OIG's recommended actions and are working to make these changes as soon as possible. A few agencies were able to quickly update forms and have already completed their recommended actions; however, other actions, such as updating USDA's Departmental Regulation 3099-001, will require a much lengthier process.

Two of the 12 agencies have completed their recommended actions. A third agency's actions are complete by choosing to cancel the form in question as it was never used. The form has been removed from their list of active forms and removed from their agency's public website.

A fourth agency has updated their NDA form and is in the process of obtaining new NDA agreements from their required employees. The agency's plan is to have this action completed by the end of fiscal year 2024. A fifth agency has also revised their NDA agreements and are striving to have newly signed NDAs returned by December 1, 2024, and have all required actions completed by December 30, 2024.

Six of the 12 agencies will require additional time to complete their recommended actions with estimated completion times ranging throughout calendar year 2025.

The Department has begun the process to update DR 3099-001, Records Management Policy for Departing Employees, Contractors, Volunteers, and Political Appointees, but due to necessary stakeholder collaboration, the estimated completion date is March 2026.

Please let us know if OBPA may be of any further assistance.

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