



TO: Caroline Pham, Acting Chairman
Kristin Johnson, Commissioner

FROM: Christopher Skinner, Inspector General

DATE: July 16, 2025

SUBJECT: Management Advisory Report 25-MAR-01: Review of CFTC's Nondisclosure policies, forms, and agreements to assess compliance with the Whistleblower Protection Enhancement Act of 2012

Summary. At the request of a member of Congress, the Commodity Futures Trading Commission (CFTC) Office of Inspector General (OIG) requested and reviewed CFTC nondisclosure policies, forms, and agreements to assess their compliance with the Whistleblower Protection Enhancement Act of 2012 (WPEA), which requires the inclusion of specific language concerning whistleblower disclosure rights. The OIG also reviewed the CFTC's websites for compliance with WPEA posting requirements and found the following:

1. Current CFTC nondisclosure policies, forms, and agreements include the required whistleblower disclosure statement and, thus, comply with the WPEA.
2. Some employment-related settlement agreements in use by the CFTC prior to April 2023 did not include the required whistleblower disclosure statement; however, this issue has now been corrected.
3. The CFTC's websites (both the public-facing site and the agency intranet site) lacked the whistleblower disclosure statement required by the WPEA but the agency corrected this during the review.

During the review, we identified a collateral issue concerning intra-agency coordination of employment-related negotiated settlements (i.e., an opportunity to improve coordination among three CFTC divisions involved in resolving employment disputes). Senior leadership has now directed the Division of Administration (DA) to coordinate all settlement agreements through the Office of General Counsel (OGC) to ensure appropriate legal review and that the agreements meet the WPEA requirements. Additionally, the Office of Equal Employment Opportunity (OEEO) has agreed to ensure the language in settlement agreements from their directorate either contain the required language or are coordinated with OGC as appropriate.

Background. On March 11, 2024, Senator Chuck Grassley sent a [letter](#) to all Inspectors General raising concerns about federal agencies' implementation of nondisclosure policies and similar agreements without the inclusion of certain provisions required by law and requesting further

review.¹ Accordingly, in June 2024, the CFTC OIG announced an engagement to assess the CFTC’s compliance with the WPEA.² This report memorializes the results of the OIG’s review.

Criteria. The WPEA requires that all federal agency nondisclosure policies, forms, and agreements include the following statement notifying employees of their rights to report wrongdoing, also known as the “anti-gag” provision:

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.³

Attempting to implement or enforce a nondisclosure policy, form, or agreement that does not include the foregoing language is a prohibited personnel practice.⁴ Additionally, appropriations law prohibits the use of government funds to enforce any agreement that fails to contain the anti-gag provision.⁵ Finally, the WPEA requires agencies making use of any nondisclosure policy, form, or agreement to post the anti-gag provision on the agency website, accompanied by the specific list of controlling Executive Orders and statutory provisions.⁶

Methodology. The OIG requested that the CFTC’s operating divisions identify and provide all nondisclosure forms, policies, and agreements in use by the agency between October 1, 2022, and June 1, 2024, and assessed what was provided for inclusion of the anti-gag provision.⁷

¹ Senator Chuck Grassley. (2024, March 12). *Grassley Calls on All 74 Federal Inspectors General to Fortify Whistleblower Protections*.

² Initially, the OIG framed this engagement as an evaluation to be conducted in accordance with the Council of the Inspectors General on Integrity and Efficiency, *Quality Standards for Inspection and Evaluation* (Dec. 2020) (Blue Book). Due to competing priorities and internal changes to our organization, including a major revision to our internal evaluation standards under the Blue Book, we converted this engagement to a Management Advisory. Our methodology is described herein.

³ 5 U.S.C. § 2302(b)(13).

⁴ *Id.* See also 5 U.S.C. § 2302(a)(2)(A)(xi).

⁵ See Consolidated Appropriations Act, 2024, Div. B, Financial Services and General Government Appropriations Act, 2024 Title VII, §743(a) (March 23, 2024).

⁶ Whistleblower Protection Enhancement Act of 2012, Pub. L. 112-199, § 115(a)(2) (5 U.S.C. § 2302 note) (“Agencies making use of any nondisclosure policy, form, or agreement shall also post the statement required under paragraph (1) on the agency website, accompanied by the specific list of controlling Executive orders.”)

⁷ We also reviewed a 2023 agency letter that placed a now-former employee on administrative leave. It did not contain an express nondisclosure requirement but directed the recipient not to contact CFTC employees or contractors. To the extent such direction was tantamount to a nondisclosure requirement, the agency promptly

We included in our request settlement agreements in which CFTC employees were parties. Finally, we searched CFTC.gov and the CFTC intranet (CFTCNet) sites for the language required to be posted to the agency website.

Results. Among the CFTC's 14 operating divisions, four reported nondisclosure forms, policies, or agreements in use during the review period. The Division of Administration (DA) Cyber and Physical Security Branch (CPSB) reported the use of two standard forms related to security clearances that contained nondisclosure provisions. In addition, the Office of Equal Employment Opportunity (OEEO), the Office of General Counsel (OGC), and the DA Human Resources Branch (DA-HRB) reported having entered into settlement agreements with CFTC employees that contained nondisclosure provisions.

1. Nondisclosure Forms, Policies, and Agreements in Use by DA CPSB

DA-CPSB reported and provided two standard forms in use: the Sensitive Compartmented Information Nondisclosure Agreement and the Classified Information Nondisclosure Agreement.⁸ This review identified that the agency had been using the 2013 version of the Classified Information Nondisclosure Agreement rather than the updated 2023 version. In response, CFTC security has begun using the 2023 version of the form.⁹ The foregoing agreements all included the requisite anti-gag provision and, thus, complied with 5 U.S.C. § 2302(b)(13).¹⁰

2. Settlement Agreements in Use by OEEO, OGC, and DA-HRB

OEEO, OGC, and DA-HRB reported and provided settlement agreements (concerning employment disputes) that contained nondisclosure or confidentiality provisions within the review period.¹¹ A review of a sample of these agreements indicated that some contained the required statement and some that preceded April 2023 did not.

There is some ambiguity regarding the application of the requirement to settlement agreements. The plain text of the statute appears to clearly provide that an agency may not "implement or

rescinded the requirement and has since updated its form for use in such situations as the result of recommendations in a separate OIG engagement. https://www.cftc.gov/media/12051/oig_SROI_042425/download

⁸ Standard Form 4414 (Rev. 12-2013) and Standard Form 312.

⁹ The updated 2023 form contains, *inter alia*, additional language guaranteeing whistleblower protections: "Nothing in this agreement shall be construed to prohibit or restrict an employee or applicant for employment from making a lawful disclosure of information relating to any whistleblower protection." Per discussion with the Office of Special Counsel, if at any time the agency seeks to enforce the 2013 nondisclosure agreement against an employee, the agency will need to inform affected employees of the updated language in the 2023 version.

¹⁰ This review also identified forms in use by other DA offices that grant employees and contractors access to the CFTC information technology network or shared databases administered by third party service providers; however, those forms did not include nondisclosure agreements. In those cases and others, such as procurements of sensitive information, nondisclosure requirements are covered by existing statutes and are, thus, outside the scope of this review. See, e.g., 41 U.S.C. § 423, 5 U.S.C. § 552a, and 7 U.S.C. § 12(a)(1).

¹¹ Employees engaged in an EEO-administered Alternate Dispute Resolution Program subject to the Administrative Dispute Resolution Act of 1996 are bound to confidentiality by statute and are not otherwise required to sign a confidentiality agreement.

enforce *any* nondisclosure policy, form, or *agreement* if such policy, form, or *agreement* does not contain the anti-gag provision.¹² However, the Office of Special Counsel (OSC) opined in 2018 that settlement agreements restricting disclosure to only the terms and conditions of the settlement (and not to the underlying facts) do not require the anti-gag provision.¹³

The nondisclosure provision in the settlement agreements provided by the agency applied only to the terms of the settlement and not to the underlying facts. However, the statutory text in our view plainly requires the anti-gag provision in all agreements implemented by an agency in which a federal employee is a party. Accordingly, we concur with DA-HRB's and OGC's April 2023 update to settlement agreement forms to include the anti-gag provision. Moving forward, DA-HRB has been directed by senior CFTC leadership to coordinate settlement agreements with OGC to ensure their settlement agreements include the required WPEA statement. OEEO indicated they will coordinate with OGC when appropriate,¹⁴ otherwise, they will ensure the WPEA language is included.

3. *Agency Websites*

As noted above, the WPEA requires agencies making use of any nondisclosure policy, form, or agreement to post the anti-gag provision on the agency website, accompanied by the specific list of controlling Executive Orders and statutory provisions.¹⁵ Our review identified a paragraph on CFTC.gov describing "whistleblower protection laws." However, the website did not contain the required anti-gag provision. We were similarly unable to locate any reference to it on the CFTC intranet known as CFTCNet. After conferring with the agency on this issue, the required WPEA language and controlling Executive Orders and statutory provisions have been posted on both the intranet and external website.¹⁶

Findings. The nondisclosure forms, policies, and agreement currently in use and provided by the CFTC contain the WPEA's anti-gag provision and, thus, comply with 5 U.S.C. § 2302(b)(13). Some settlement agreements implemented by the agency prior to April 2023 did not contain the anti-gag provision; however, the agency has corrected this. The agency's websites similarly lacked required WPEA language but the agency corrected that during this review.

Conclusion. We would like to thank staff for their cooperation and collaborative efforts throughout the preparation of this report to ensure the agency complies with the WPEA requirements. The OIG will furnish this report to Senator's Grassley's office and publish it to oversight.gov as well as the OIG's website at cftc.gov/OIG. If you have any further questions, please contact Elizabeth Bulla, Assistant Inspector General for Evaluations.

¹² 5 U.S.C. § 2302(b)(13) (emphases added).

¹³ OSC Memorandum for Departments and Agencies: Nondisclosure Policies, Forms, or Agreements (Feb. 1, 2018).

¹⁴ OEEO noted that there may be cases in which OGC is conflicted out of reviewing an agreement, such as when OGC personnel are party to an agreement.

¹⁵ Whistleblower Protection Enhancement Act of 2012, Pub. L. 112-199, § 115(a)(2) (5 U.S.C. § 2302 note) ("Agencies making use of any nondisclosure policy, form, or agreement shall also post the statement required under paragraph (1) on the agency website, accompanied by the specific list of controlling Executive orders.")

¹⁶ <https://www.cftc.gov/WPEA>