



Review of the Department of Justice's Nondisclosure Policies, Forms, and Agreements



AUDIT DIVISION

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Background

The Whistleblower Protection Enhancement Act of 2012 (WPEA) strengthened protections for federal employees who disclose evidence of wrongdoing. In addition, the WPEA requires that employees be notified of these protections in any nondisclosure policy, form, or agreement (collectively, "nondisclosure documents") used by the agency. To accomplish this, the WPEA requires the inclusion of the following statement, notifying the recipient of a nondisclosure document that they retain their rights to report wrongdoing to Congress, the Inspector General (IG), or the Office of Special Counsel (OSC).

"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 IG or the OSC 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."¹

Objective and Scope

In response to a March 2024 congressional request, the Department of Justice (DOJ or the Department) Office of the Inspector General (OIG) initiated a review of the Department's nondisclosure policies, forms, and agreements in use as of May 3, 2024, to assess compliance with the WPEA by inclusion of the required statement.²

Results

To assess the Department's compliance with the WPEA requirement, we requested that the following DOJ components provide the OIG all nondisclosure-related policies, forms, guidance, and agreements: the (1) Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF); (2) Federal Bureau of Prisons (BOP); (3) Criminal Division (CRM); (4) Drug Enforcement Administration (DEA); (5) Executive Office for Immigration Review (EOIR); (6) Federal Bureau of Investigation (FBI); (7) National Security Division (NSD); and (8) United States Marshals Service (USMS).³ The responses from the components we selected for review varied greatly, due in part to the lack of a definition of what constituted a nondisclosure policy, form, or agreement, which resulted in inconsistent interpretations among components of what documents required the WPEA statement. As a result, we provide two recommendations to facilitate DOJ's development of consistent guidance and to update the applicable documents that require the WPEA statement.

¹ Pub. L. No. 112-199, § 104(b)(1) (Nov. 27, 2012) (codified, as amended, at 5 U.S.C. § 2302(b)(13), *Prohibited Personnel Practices*). Although the Federal Bureau of Investigation is not covered by 5 U.S.C. § 2302, an annual appropriations provision makes it unlawful to use any appropriated funds to implement or enforce a nondisclosure document that does not include the whistleblower notification. [See H.R. 2822](#), the fiscal year 2024 Further Consolidated Appropriations Act, P.L. 118-47, Division B, Section 743, [congress.gov/bill/118th-congress/house-bill/2822/text](https://www.congress.gov/bills/118th-congress/house-bill/2822/text).

The WPEA does not define "policies," "forms," or "agreements." In this report, we use these terms in their colloquial sense, particularly as documents that might be construed to limit an employee's ability to make protected disclosures. We consider a document to be: (1) a policy if it prescribes courses or methods of action to guide decisions under given conditions, (2) a form if it contains editable fields that can be filled out by an employee, and (3) an agreement if it binds parties to agree that certain information will remain confidential. For purposes of this review, we did not include settlement agreements between an employee and a component.

² We conducted this review from May 2024 to April 2025 in a manner consistent with our established policies and procedures guiding our independence, competence, engagement planning, evidence, and reporting.

³ Although the OIG was not included in the scope of this review, the WPEA-required statement has long been included in the OIG's nondisclosure documentation, including internal policies and operational materials. Additionally, the OIG includes the WPEA-required statement on the Whistleblower Rights and Protections page of its public website.

In response to our request, selected components identified 89 relevant documents that they determined may require inclusion of the WPEA-required statement. However, only three of the component-identified documents included the entire current WPEA-required statement when they were provided to us, while another 19 included an earlier version of the WPEA-required statement. As indicated, we believe the failure to include the WPEA-required statement is due to the lack of familiarity with the requirement, and also the lack of definitional clarity about what constitutes a nondisclosure policy, form, or agreement for purposes of the WPEA. We do not believe that components intentionally failed to include the WPEA-required statement, and as noted, our recommendations are intended to address the lack of clarity so that components know when the statement is and is not required to be included in a document. During our review, 14 documents were revised to include the entire statement.

DOJ Needs to Update Nondisclosure Documents to Include the Full WPEA-Required Statement

As noted, in response to the OIG's request, components identified approximately 89 documents that they determined required the WPEA statement, but in many of these, the statement was not included. In addition, 19 of the 89 submitted documents included an earlier version of the required WPEA statement but were missing a

reference to an employee's right to disclose information to the OSC, which was included as an addition to the required statement in a January 2021 amendment to the WPEA. To comply with the WPEA, the sampled components agreed that these documents need to be updated to incorporate the entire required statement. We also identified several other documents that components agreed needed to be updated with the required WPEA statement. As the originators and custodians of Department-wide policy, the Office of the Deputy Attorney General and the Justice Management Division agreed that additional steps need to be taken to help components determine when documents become of a nature as to require the WPEA statement.

Components Need Guidelines on When Policies, Forms, or Agreements Become Nondisclosure Documents Subject to the WPEA Requirement

We found that neither the sampled components nor the Office of the Deputy Attorney General have formal processes or controls to identify which policies, forms, agreements, and supplemental guidance may constitute nondisclosure documents and are therefore subject to the WPEA-required statement. When we discussed with the components the methods they used to identify nondisclosure documents for our review, we learned that all the components had largely decentralized approaches. The table below summarizes the methods that each component used to fulfill our request.

Table

Methods Components Used to Identify Component-Specific Nondisclosure Documents

Component	Description of Methods
ATF	ATF officials told us that they reviewed ATF's standard operating procedures and the ATF orders, forms, and manuals portal.
CRM	CRM officials told us that they sent the OIG's request to the Office of the Assistant Attorney General and each of its 17 sections through a data call led by the Resource Planning and Evaluation Team (RPE). This is the standard process RPE uses to respond to audits and requests for information.
DEA	DEA officials told us that when they received the OIG's request for information, it was discussed with all divisions (e.g., Operations, Diversion, Investigations) to determine the applicable types of forms and agreements. The DEA Office of Policy Administration also reviewed several manuals, including those related to personnel, inspection, and diversion that seemed applicable to the WPEA provision language and currently undergoing the review/approval process to include the WPEA-required statement.
EOIR	EOIR officials told us that they conducted a broad search of EOIR files located in email, electronic, and physical files to identify the documents we received.
FBI	FBI officials told us that they performed a keyword search of the FBI's forms and policies libraries to identify documents related to whistleblower protection and nondisclosure. FBI officials explained that they initially had not understood that we only wanted documents that should contain the WPEA-required statement. As a result, the FBI provided documents that were out of scope in its effort to ensure that its response included all requested documents.
NSD	NSD officials told us they reviewed documents housed on NSD's Intranet in consultation with executive office senior staff, including the directors of: (1) resources, (2) management services, and (3) information technology management. They also consulted NSD's Chief of Security and Insider Threat and its Program Manager for Continuity of Operations.
USMS	USMS officials told us that they searched each division's documents individually to determine applicability to the WPEA because they do not have centralized databases of nondisclosure-related documents.

Source: OIG analysis of component-provided documents

Summary and Recommendations

Omitting all or portions of the WPEA-required statement in nondisclosure documents may lead employees to believe they cannot disclose certain information to permissible authorities, such as Congress, the OIG, or OSC. As a result, employees may be unaware of how their protections under the WPEA apply, potentially discouraging whistleblowers from reporting allegations of misconduct or other concerns. It is important for employees to understand their right to report a violation of law, rule, regulation; gross mismanagement; a gross waste of funds; an abuse of authority; and a substantial and specific danger to public health or safety, as well as the protections they are afforded when they make such protected disclosures. It is also important for DOJ to help components and component management determine when it is necessary to include the WPEA-required statement.

This review follows previously-issued management advisory memoranda on DOJ's compliance with: (1) [whistleblower protections for employees with a security clearance \(May 2024\)](#) and (2) [whistleblower rights and protections for contract workers supporting DOJ programs \(February 2021\)](#).⁴ As a result of this review, DOJ components that have WPEA-applicable nondisclosure documents (i.e., policies, forms, agreements and supplemental guidance) committed to start reviewing and updating relevant documents to include the entire required WPEA provision. We provide the following recommendations to assist the Department in complying with the WPEA.

We recommend the Department:

- 1) Develop and disseminate guidance to assist DOJ components in determining when a document constitutes a nondisclosure policy, form, or agreement subject to inclusion of the WPEA-required statement. This guidance should provide clarity on the terms "policies," "forms," or "agreements" because the WPEA does not define those terms.
- 2) Require all components to review documents identified by using the guidance developed as a result of recommendation number 1 and revise or update all such documents, as appropriate, to ensure they incorporate the full statutory language at 5 U.S.C. § 2302(b)(13)(A).

⁴ 4 U.S. Department of Justice (DOJ) Office of Inspector General (OIG), [Management Advisory Memorandum Concerning the Department of Justice's Compliance with Whistleblower Protections for Employees with a Security Clearance](#), Audit Report 24-067 (May 2024), oig.justice.gov/reports/notification-concerns-regarding-department-justices-compliance-whistleblower-protections. DOJ OIG, [Management Advisory Memorandum Concerning the Department of Justice's Compliance with Laws, Regulations, and Policies Regarding Whistleblower Rights and Protections for Contract Workers Supporting DOJ Programs](#), Audit Report 21-038 (February 2021), oig.justice.gov/reports/management-advisory-notification-concerns-regarding-department-justices-compliance-laws.

APPENDIX 1: The Office of the Deputy Attorney General's Response to the Draft Report



U.S. Department of Justice

Office of the Deputy Attorney General

The Deputy Attorney General

Washington, D.C. 20530

MEMORANDUM

TO: Jorge L. Sosa, Jr.
Director
Office of Operations, Audit Division
Office of the Inspector General

FROM: James McHenry, Acting Principal Associate Deputy Attorney General 

DATE: September 17, 2025

SUBJECT: Audit Report, "Review of the Department of Justice's Nondisclosure Policies, Forms, and Agreements"

The Department of Justice (Department) appreciates the opportunity to respond to the Office of Inspector General's (OIG) draft report entitled "Review of the Department of Justice's Nondisclosure Policies, Forms, and Agreements." The Department appreciates OIG's insight into this important topic, which is a priority for the Department, and concurs with OIG's two recommendations.

APPENDIX 2: Office of the Inspector General Analysis and Summary of Actions Necessary to Close the Report

The OIG provided a draft of this report to the Office of the Deputy Attorney General (ODAG). ODAG's response is incorporated in Appendix 1 of this final report. In response to the report, ODAG concurred with both recommendations. As a result, the status of the report is resolved. The following provides the OIG analysis of the response and summary of actions necessary to close the report.

Recommendations for the Department:

- 1. Develop and disseminate guidance to assist DOJ components in determining when a document constitutes a nondisclosure policy, form, or agreement subject to inclusion of the WPEA-required statement. This guidance should provide clarity on the terms "policies," "forms," or "agreements" because the WPEA does not define those terms.**

Resolved. ODAG concurred with our recommendation. As a result, this recommendation is resolved.

This recommendation can be closed when we receive evidence that ODAG developed and disseminated guidance to assist DOJ components in determining when a document constitutes a nondisclosure policy, form, or agreement subject to inclusion of the WPEA-required statement. The guidance should provide clarity on the terms "policies," "forms," or "agreements" because the WPEA does not define those terms.

- 2. Require all components to review documents identified by using the guidance developed as a result of recommendation number 1 and revise or update all such documents, as appropriate, to ensure they incorporate the full statutory language at 5 U.S.C. § 2302(b)(13)(A).**

Resolved. ODAG concurred with our recommendation. As a result, this recommendation is resolved.

This recommendation can be closed when we receive evidence that all sampled DOJ components have reviewed and updated all documents, as appropriate, identified using the guidance developed as result of recommendation number 1 to ensure all applicable documents incorporate the full statutory language at 5 U.S.C. § 2302(b)(13)(A).