

FEDERAL COMMUNICATIONS COMMISSIONS
OFFICE OF INSPECTOR GENERAL

MEMORANDUM

DATE: September 30, 2024

TO: Narda Jones, Chief of Staff

FROM: Fara Damelin, Inspector General FARA DAMELIN Digitally signed by FARA DAMELIN
Date: 2024.09.30 16:43:19 -0400'

SUBJECT: Review of Non-Disclosure Policies, Forms, and Agreements for Compliance with the Whistleblower Protection Enhancement Act of 2012

On June 27, 2024, the Office of the Inspector General (OIG) informed the Federal Communications Commissions (FCC or Commission) it had initiated a review of the Commission's non-disclosure policies, forms, and agreements to determine compliance with the Whistleblower Protection Enhancement Act of 2012 (WPEA). Our review was limited to determining whether, pursuant to the WPEA, the following statement was included in all non-disclosure policies, forms, or agreements issued by the Commission, or a component of the Commission, to current or former employees:

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.¹

OIG requested the FCC's non-disclosure policies, forms and agreements in use since January 1, 2021. To the extent the required WPEA language was not incorporated into non-disclosure policies, procedures, agreements, or similar documents, we asked what steps FCC would take to ensure compliance with the WPEA. We also asked how the FCC ensures supplemental guidance sent by managers and supervisors, such as reminders to employees about the rules governing communications with the media and Congress or emails to employees about following the 'chain of command' in internal communications, is compliant with the WPEA requirement.

¹ 5 U.S.C. § 2302(b)(13).

The Commission did not Always Include the Requisite WPEA Statement in Non-Disclosure Agreements or Other Related Documents but Took Appropriate Corrective Action

OIG’s review found that five FCC non-disclosure forms and agreements contained the required WPEA language, and eight did not (see the full list of items reviewed, attached). However, as reflected below, the Commission has already remediated five of its non-disclosure documents and is taking steps to update the final three.

Document #	FCC Documents That Did Not Include WPEA Language	FCC Progress to Include WPEA Language
1	NDA for Interns	Complete
2	NDA for Contractors	Complete
3	NDA for Procurement Source Selection	Complete
4	Cybersecurity and Privacy Policy	Complete
5	IT and Privacy Rules of Behavior	Complete
6	Standard Operating Procedures for PII Breaches	In Process
7	Directive 1113.1 – Privacy Act Manual	In Process
8	Directive 1139.1 – Management of Non-Public Information	In Process

Source: OIG analysis of FCC data.

The Commission Has Taken Additional Steps to Further Incorporate WPEA Language into its Current and Future Operations

Beyond the requirements of the WPEA, the Commission responded that it plans to add WPEA language to the Universal Service Administrative Company’s (USAC’s) NDA for evaluators and advisors involved in procurement requests, as well as to USAC’s employee handbook. As USAC is not a component of the FCC, these actions go beyond what is mandated by the WPEA.

In addition, the Commission has added the WPEA language to Directive 1114.4–FCC Directive System which provides guidance to FCC employees regarding drafting or changing policies and procedures. Finally, the Commission committed to take the following additional actions:

- Instruct bureaus and offices to seek review of new non-disclosure forms and policies from the Office of General Counsel, prior to implementation, to help ensure those forms and policies include required language.
- Assess whether to supplement existing *NO FEAR Act* training to include an annual notice to all employees from the Commission’s Office of Workplace Diversity regarding their rights under the WPEA.
- To the extent it utilizes forms prepared by other government entities that lack the requested language, it will watch for updates and replace the existing forms with revised versions as they become available.

We thank the Commission for its cooperation during this review and for the prompt corrective actions it has taken to ensure FCC is fully compliant with the WPEA. The “anti-gag” provision is an important measure to ensure FCC employees are informed of their rights to disclose fraud, waste, and abuse without retaliation. If you have any questions, please reach out to me or to our Acting Chief of Staff, Craig Meklir, at Craig.Meklir@fcc.gov.

cc:

Mark Stephens, Managing Director
Michele Ellison, General Counsel

Attachment – Non-Disclosure Policies, Forms, and Agreements Provided to OIG

Directives:
Directive 1113.1--Privacy Act Manual
Directive 1133.2--FCC Insider Threat Program.
Directive 1139.1--Management of Nonpublic Information
Directive 1479.7--FCC Cybersecurity and Privacy Programs Directive
FCC Rules:
47 CFR § 19.735–203 Nonpublic information
Policy Documents:
Cybersecurity and Privacy Policy (CSPP)
PII Breach SOP
FCC Information Technology and Privacy Rules of Behavior
Forms and Agreements:
Form A-448 Confidentiality Agreement (for departing employees)
Auction Information Disclosure Agreement
NDA for PS&HSB (Classified, full agreement not provided)
General NDA for Interns
General NDA for Interns
NDA—Contractors
NDA 2—Contractors
NDA—Procurement Source Selection Process
OEA use of Non-Public Data NDA (four separate forms)
Standard Form 312
College Student Agreement
Form A-384 Volunteer Service Agreement
Form A-384 Volunteer Service Agreement
Documents Used by Program Administrators
Combined NDA, COI, PEA Form—USAC
Employee Handbook--USAC
NDA—Rolka Loube

Source: FCC