



August 22, 2014

The Honorable Charles E. Grassley  
Ranking Member  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510

Dear Senator Grassley:

Thank you for the opportunity to update you on the Department of Commerce's compliance with the Whistleblower Protection Enhancement Act (WPEA). The WPEA was signed into law on November 27, 2012 and strengthens protections for federal employees who disclose evidence of waste, fraud, or abuse. The Department of Commerce takes the protection of whistleblowers seriously. The careful stewardship of government resources, including protecting whistleblowers and appropriately addressing concerns they raise, is vital to the Department's mission and future success.

As you note, the WPEA modifies the rules on the use of non-disclosure policies, forms, and agreements (NDAs) by government agencies. First, the WPEA amends 5 USC § 2302(b), making it a prohibited personnel practice to implement or enforce any nondisclosure policy, form, or agreement that does not contain specific language highlighting employees' rights to disclosure to Congress and Inspectors General. Second, it allows NDAs in effect before December 26, 2012 to remain in effect by agencies providing notice to federal employees of the new mandatory language. Third, the WPEA requires the language to be displayed on the agency's website, thereby allowing the agency to continue to enforce NDAs signed by former federal employees.

In furtherance of the WPEA, the Commerce Department has posted a link about the WPEA on the Department's homepage. The link emphasizes that the Department of Commerce does not tolerate retaliation against whistleblowers. It also explains that the provisions of the Department's nondisclosure policies, forms, and agreements are consistent with and do not supersede, conflict with, or otherwise alter the employee's obligations, rights, or liabilities created by existing statute or executive order relating to (1) classified information, (2) communications to Congress, (3) reporting to an Inspector General a violation of any law, rule, or regulation; 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 WPEA page can be viewed at <http://www.commerce.gov/Whistleblower%20Protection%20Enhancement%20Act>.

Additionally, the Department of Commerce has provided email notice to its employees of their rights under the WPEA. This notice, similar to the webpage link, reminds each employee of the changes effectuated by the WPEA, highlighting both (1) that the law strengthens the protections for federal employees who disclose evidence of waste, fraud, or abuse and (2) that any non-disclosure policy, form, or agreement should include the appropriate language explaining an employee's obligations, rights, or liabilities. The attached email memorializes the notice provided to all employees. Regarding Standard Form 312, the Department is using the updated form that includes the WPEA required language. Finally, the Commerce Department is in the process of comprehensively reviewing all NDAs to verify that they comply with the WPEA.

Thank you for your continued attention to this important matter. If you have any further questions, please contact Margaret Cummisky, Assistant Secretary for Legislative and Intergovernmental Affairs, at 202-482-3663.

Sincerely,

A handwritten signature in blue ink that reads "Kelly Welsh" followed by a stylized flourish.

Kelly R. Welsh

Enclosure

[REDACTED]

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**From:** Broadcast, DOC [REDACTED]  
**Sent:** Friday, August 08, 2014 8:33 AM  
**To:** Broadcast, DOC  
**Subject:** Whistleblower Protection Enhancement Act Notice

All Hands:

I am writing to remind you of certain provisions of the Whistleblower Protection Enhancement Act of 2012 (WPEA), which was signed into law by President Obama on November 27, 2012. The law strengthens the protections for federal employees who disclose evidence of waste, fraud, or abuse. The WPEA also requires that any non-disclosure policy, form, or agreement (NDA) include the statement copied below, and provides that NDAs previously executed without the language may be enforced as long as agencies give employees notice of the statement. This communication serves as that notice to employees.

As a Department of Commerce employee, you may have been required to sign an NDA to access classified or other information. You should read this statement as if it were incorporated into any non-disclosure policy, form, or agreement you have signed:

**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 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.**

Employees are reminded that reporting evidence of waste, fraud, or abuse involving classified information or classified programs must continue to be made consistent with established rules and procedures designed to protect classified information.

Whistleblower disclosures or reports of prohibited personnel practices, including reprisal for whistleblowing, can be made to the U.S. Office of Special Counsel at [www.osc.gov](http://www.osc.gov).

Reports of fraud, waste, abuse, or mismanagement in Department of Commerce programs and operations, can be made to the OIG Hotline at [www.oig.doc.gov](http://www.oig.doc.gov). This includes alleged or suspected wrongdoing by Department of Commerce employees, contractors, grantees, recipients of financial assistance, and others involved in the Department's programs and operations.

For more information, you may contact Brian DiGiacomo, Chief, Employment and Labor Law Division, Office of the Assistant General Counsel for Administration, Office of the General Counsel, at 202-482-5393.

Sincerely,  
Kelly R. Welsh  
General Counsel