United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

NOV 19 2014

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

Dear Senator Grassley:

Thank you for your follow-up letter dated July 31, 2014, to Secretary Sally Jewell regarding the Whistleblower Protection Enhancement Act (WPEA). The Department of the Interior (DOI) is committed to ensuring all our employees are aware of their rights under WPEA, specifically the notification requirements set forth in Section 115(a). DOI has met the posting requirements of the Act, and continues to provide updates concerning whistleblower protections to all its employees.

In your letter, you posed three questions regarding the current non-disclosure agreement forms that are used at the Department and whether employees had been notified of Section 115(a) provisions. DOI is currently using SF 312 (Rev 7-2013) prescribed by ODNI, 32 CFR PART 2001.80 E.O. 13526. The Department's Office of Law Enforcement & Security sent out the revised SF 312 via email on August 2, 2013 to all Bureau and Office Security Specialists for immediate use. All employees, including those employees that executed non-disclosure agreements between November 27, 2012 and the revision of SF 312 in July 2013 were notified of the Section 115(a) provisions via an advisory memorandum that was issued on December 12, 2013. A copy of this memo was provided in the July 23, 2014 response and is also attached (Attachment A).

The follow up responses and supportive documents in response to questions 1-3 on your letter dated May 10, 2013 can be found on Attachments B-F.

We appreciate your interest in this matter. If you or your staff has additional questions, please feel free to contact Mr. [redacted], Office of Congressional and Legislative Affairs, at (202) [redacted].

Sincerely,

Mary F. Pletcher
Deputy Assistant Secretary
Human Capital and Diversity

Enclosures

Attachment A –All Employee WPEA Memorandum
Attachment B – Answers to questions 1-3 (letter dated May 10, 2013)
Attachment C – Responsive document(s) for question (1) ((letter dated May 10, 2013)
Attachment D – Responsive document(s) for question (1) ((letter dated May 10, 2013)
Attachment E - Responsive document(s) for question (2) ((letter dated May 10, 2013)
Attachment F - Responsive document(s) for question (2) ((letter dated May 10, 2013)

cc: Chairman, Committee on the Judiciary

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

DEC 12

Memorandum

To: All DOI Employees

From: Mary F. Pletcher
Deputy Assistant Secretary for Human Capital and Diversity (Acting)

Subject: The Whistleblower Protection Enhancement Act of 2012 and Non-Disclosure Policies, Forms, Agreements, and Acknowledgements

On November 27, 2012, President Obama signed into law the Whistleblower Protection Enhancement Act of 2012 (WPEA). The WPEA strengthens the protections for federal employees who disclose evidence of waste, fraud, or abuse. The WPEA also requires that any non-disclosure policy, form, agreement, or acknowledgement (collectively, NDAs) include the statement below, and provides that NDAs executed without the statement below may be enforced as long as agencies give employees notice of the statement. This communication serves as that notice to employees.

As a DOI employee, you may have been required to sign an NDA to access certain information. You should read the statement below as if it were incorporated into any non-disclosure policy, form, agreement, or acknowledgement 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 fraud, waste, or abuse involving classified information programs must continue to be made consistent with established rules and procedures designed to protect classified information.

If you have any questions, please contact Jerry Gidner at jerold_gidner@ios.doi.gov or (202) 302-9731.

In your letter dated May 10, 2013 you asked that we provide the following:

1) **All forms, policies or agreements which mention communications with Congress used within the last five years, including those with either non-disclosure or non-disparagement provisions.**

   The only form, policy or agreement which mentions communications can be found on the attached Chapters (1&2) of our Department Manual (DM) 461. Chapter 1 (Attachment B) provides the policies and procedures for coordination of congressional and legislative activities. Chapter 2 (Attachment C) deals specifically with the expression of views as they relate to proposed legislation, testimony, legislative reports, correspondence, or any other written statement expressing views on a legislative matter.

2) **All forms, policies or agreements which include the defined statement informing employees of their rights on every nondisclosure policy.**

   The only form or agreement the Department has that includes the statement informing employees of their rights on every nondisclosure policy is the new SF 312 (Rev 7-2013) prescribed by ODNI, 32 CFR PART 2001.80 E.O. 13526 (Attachment D). The Department's policy concerning employee rights as they relate to nondisclosure can be found in DM 441 Chapter 6 entitled Security Clearance/Access Requirements (Attachment E).

3) **All forms, policies or agreements which purport to limit a current employee's ability to communicate directly with Congress, whether explicitly or as part of a general prohibition without a specific congressional exemption**

   The Department does not prohibit communication with Congress and does not have any responsive documents to this question.

# Department of the Interior
# Departmental Manual

**Effective Date**: 9/27/04
**Series**: Legislative
**Part 461**: Congressional and Legislative Coordination
**Chapter 1**: General Requirements

**Originating Office**: Office of Congressional and Legislative Affairs

**461 DM 1**

1.1 **Purpose**. The purpose of this chapter is to provide Departmental policy and procedures for the coordination of congressional and legislative activities.

1.2 **Role on Legislative Matters**. The Office of Congressional and Legislative Affairs (OCL) coordinates and provides policy guidance and direction for all legislative matters (other than appropriations bills). This includes proposed legislation, testimony, legislative reports, correspondence on legislation, any other written statement expressing views on a legislative matter, and drafting services. In addition, the OCL provides policy guidance and direction on responses to correspondence received by the Secretariat from Members of Congress.

1.3 **Legislative Drafting Assistance.** A bureau or office receiving a request for information, drafting, or other assistance regarding the consideration or preparation of a legislative proposal, from sources outside of the Department, shall promptly notify the OCL. The OCL will work with the appropriate bureau or office to respond to the request and/or prepare draft legislation. All draft legislation prepared as a service at the request of a Member of Congress will be forwarded from the originating bureau or office to the OCL with the following letters.

A. A letter to the requester to be signed by the Legislative Counsel stating that the legislation has been prepared as a service to the Member; that it has not been reviewed within the Department of the Interior or cleared by the Office of Management and Budget; and that the Department can, therefore, make no commitment concerning the position of the Department on the legislation.

B. A letter to the Director of the Office of Management and Budget (OMB) informing OMB of the request. A copy of the response to the requestor must also be enclosed with the letter.

1.4 **Other Congressional Inquiries**. It is the policy of the Department to expedite the handling of requests from Congress, in a timely and efficient manner. The Secretariat must be fully and currently informed on all matters of interest to the Congress that directly or indirectly affect the Department. Requests from Congress shall be answered within two weeks unless

information is not available to satisfy the request, in which case a letter acknowledging receipt of the request will be sent within the two week period.

A. The OCL coordinates responses to Freedom of Information Act requests concerning Congressional and legislative matters or major Secretarial initiatives. In addition, the OCL, working with the Document Management Unit of the Office of the Executive Secretariat and Regulatory Affairs, coordinates and responds to document requests from Congressional Committees.

B. Bureaus and offices shall notify the OCL of personal visits, telephone calls, and other communications received from Members of Congress or their staffs when the matters or issues may have policy or timing implications or are substantive and may be of importance to the Department. These contacts and communications may be reported to OCL by telephone or e-mail, except that for matters of unusual importance or urgency, both a telephone call and a written report may be necessary. At a minimum, the following information concerning the inquiry or other communication shall be provided to the OCL: date, name of Congressional official, subject and summary of action proposed or taken.

1.5 **Meetings on Legislative Proposals.** The Director of OCL shall be provided prior notification of any meeting at which a legislative proposal is to be discussed. The Director of OCL shall be provided a summary report of discussions on all legislative proposals at conferences or other meetings held outside of the Department and participated in by an officer or employee of the Department, or held within the Department and participated in by one or more officials or other government agencies or the Congress.

1.6 **Representation at Congressional Hearings.**

A. The OCL is responsible for determining Departmental representation at Congressional authorizing Committee hearings. The OCL must be informed immediately of any requests from Congress for a Departmental witness to appear before a Congressional authorizing Committee. It is Departmental policy to request at least two weeks notice for any hearing at which a Departmental representative is asked to testify. As a rule, the Department will not take a position at a hearing on legislation introduced less than one week prior to the hearing date.

B. The Director of OCL assigns responsibility and sets deadlines for testimony preparation. An officer or employee who wishes to attend a Congressional hearing as a representative of the Department or as an official observer shall request approval from his or her respective bureau Congressional Affairs office. No officer or employee shall attend as a representative or otherwise appear officially at a Department of the Interior Congressional hearing without such prior approval. The written statement of the witness must be submitted to the OCL for clearance within the Department and by OMB as prescribed in OMB Circular A-19.

C. The OCL will consult the Solicitor's Office regarding any questions about individual legal representation of a Departmental representative.

1.7 **Editing of Transcripts.** All transcripts received by bureaus and offices shall be immediately delivered to the OCL for coordination and processing. The OCL shall coordinate the editing of all transcripts sent to the Department by an authorizing committee for review. It shall also coordinate prompt responses to questions posed by Committee members during the testimony. Departmental edits and responses shall be forwarded to committees under the signature of the Legislative Counsel. The Legislative Counsel shall transmit any legislative responses or transcripts to the authorizing committees.

1.8 **Legislative Expediters**. The head of each bureau and office and each Assistant Secretary shall designate a member of his or her staff to serve as Legislative Expediter, and shall inform OCL of the designation. Legislative Expediters are responsible for:

A. Expediting the preparation, review, and transmission of legislative matters in their respective bureau or office.

B. Serving as liaisons to OCL.

C. Notifying the OCL of the bureau's or office's interest in legislative items and significant legislative developments pertaining to his or her bureau or office that may affect the Department.

1.9 **Nominations**. The White House notifies OCL of the President's intent to nominate and the nomination of a person for a presidential appointment to the Department.

A. Upon notification by the White House, the OCL shall contact the nominee, arrange an initial meeting to discuss the policies and procedures of the nomination process, and perform the following:

(1) Provide assistance at the request of the nominee in preparing documents required or requested by the Committee(s), e.g., Committee questionnaire, biography, and follow-up forms and letters. OCL will coordinate with the Designated Agency Ethics Officer as required by applicable ethics regulations.

(2) Deliver the appropriate number of copies of all forms and statements, including financial disclosure statements, to the Committees in the time frame required by the Committee.

(3) Arrange for, and accompany the nominee to, all courtesy visits with key Senate staff and the Senators from the Committee(s) that will hold the confirmation hearing(s).

(4) Arrange all Departmental briefings and serve as the single point of contact for all requests for meetings, briefings, and inquiries regarding the nominee. Bureaus and offices receiving requests regarding the nominee must immediately refer the requestor to, and notify, the OCL.

(5) Assist and provide guidance to the nominee to prepare to testify before Congress.

B. The statement of a presidential nominee prior to confirmation does not require clearance from OMB, as such statement is about the nominee and not about DOI programs or policy.

C. Following the confirmation hearing, the OCL shall assist the nominee in answering any written follow-up questions from the confirmation hearing. The written questions are usually transmitted to the OCL by close of business of the day of the hearing. The responses must be promptly returned to the Committee, usually on the day following the confirmation hearing.

D. The OCL will continue to provide general assistance to the nominee until the nominee is confirmed by the U.S. Senate. This includes arranging any additional meetings and accompanying the nominee to any further visits/meetings requested by a Senator.

9/27/04 #3654
Replaces 9/27/77 #2027

# Department of the Interior
# Departmental Manual

**Effective Date**: 9/27/04
**Series**: Legislative
**Part 461**: Congressional and Legislative Coordination
**Chapter 2**: Expression of Views

**Originating Office**: Office of Congressional and Legislative Affairs

**461 DM 2**

2.1 **Official Views**. Any written views expressed by bureaus and offices with respect to the passage, defeat, or amendment of any piece of legislation, or the need for legislation, must be reviewed by the Office of Congressional and Legislative Affairs (OCL) to ensure conformance to the official views of the Department and the Administration.

A. The OCL shall ensure that all appropriate bureaus and offices of the Department are consulted before the Department provides opinions on legislative matters or communicates formally with the Legislative Branch.

B. The OCL is the sole point of contact with the Office of Management and Budget (OMB) for any legislative matter, including proposed legislation, testimony, legislative reports, correspondence on legislation, and any other written statement expressing views on a legislative matter. The OCL is responsible for submitting to OMB the Department's legislative matters for clearance pursuant to OMB Circular A-19.

C. If the proposed legislation relates to an appropriation or other budgetary issue, the Office of Budget in the Office of the Assistant Secretary - Policy, Management and Budget assumes responsibility for coordinating, preparing, and submitting the documents for OMB clearance.

D. If an officer or employee is requested to state his or her personal views on a legislative matter, he or she may do so but must clearly indicate that the views expressed are personal and do not necessarily reflect the position or policy of the Department or the Administration. To ensure accurate interpretation of the Department's position or policy, and to provide an opportunity for necessary clarification of any issue at hand, the officer or employee will make a follow-up report as required in 461 DM 1.4.

2.2 **Testimony.** All testimony shall be transmitted to the OCL through the appropriate program Assistant Secretary. When the Department receives a Congressional request to testify at a hearing before an authorizing committee, the OCL will:

A. Determine which bureau or office shall be responsible for preparing the

Department's testimony;

B. Establish a deadline for the submission of the testimony by the appropriate bureau or office;

C. Review and edit the testimony as deemed appropriate; and

D. Make copies of the testimony and deliver them to the Committee for any hearing where the witness is a member of the immediate Office of the Secretary or the Office of the Solicitor. In all other cases, it is the responsibility of the witness' office, acting through the appropriate Congressional Affairs office, to make copies and ensure their timely delivery to the committee.

2.3 **Legislative Report.** When the Department receives a Congressional request for a report or letter stating the official views of the Department on a legislative matter, the OCL will request the views, recommendations, and substantiating data (collectively "comments") from the appropriate offices and bureaus within the Department. Comments on the subject legislation shall be submitted to the OCL within the deadline specified in the OCL's request.

A. At the request of the OCL, the bureau that has primary jurisdiction over the programs affected by the bill is responsible for preparing a memorandum to the Director of the OCL through the appropriate Program Assistant Secretary. The memorandum shall include the following information:

(l) A description of the legislation and how it would change existing law.

(2) A section-by-section analysis.

(3) An analysis of the impact of the legislation on the bureau's programs, including both positive and negative changes.

(4) A statement of the budget impact of the legislation.

(5) Information as to whether similar legislation has been introduced in this or prior Congresses and, if so, what the Administration's position was on the prior legislation; how the prior legislation differs, if at all; and the key supporters or opponents of the prior legislation.

(6) Any amendments to the legislation that are believed to be in the interests of the Department.

(7) An analysis as to whether the legislation raises mandatory spending or lowers revenues.

B. The OCL shall determine whether to prepare a letter to transmit a Departmental response. A copy of the letter will be sent to the Solicitor's Office, the appropriate Program Assistant Secretary, the Assistant Secretary - Policy, Management and Budget, and other offices

deemed appropriate by the OCL for review. The OCL will send the final letter containing the Departmental response to the appropriate member of Congress.

2.4 **Proposed Bills**. Any bureau or office that prepares draft legislation for proposal to the Congress shall forward to the OCL the draft legislation, a draft transmittal letter, and a section-by-section analysis of the draft legislation. The OCL shall review the draft, coordinate review of the draft legislation by the appropriate offices and bureaus within the Department, and forward the draft to OMB for review and clearance. Upon clearance by OMB, the OCL shall transmit the draft legislation to the Speaker of the House and the President of the Senate, with copies to the appropriate Committee chairmen.

9/27/04 #3655
Replaces 9/27/77 #2027

# Department of the Interior
# Departmental Manual

**Effective Date**: 1/8/10
**Series**: Law Enforcement and Security
**Part 441**: Personnel Security and Suitability Program
**Chapter 6**: Security Clearance/Access Requirements

**Originating Office**: Office of Law Enforcement and Security

## 441 DM 6

6.1 **General**. The provisions of this chapter address National Security positions (Special, Critical or Non-Critical – Sensitive) and are not applicable to Public Trust or Non-Sensitive/Low Risk positions. Only United States citizens can be granted a security clearance (reference Executive Order (EO) 12968 for exceptions). The number of individuals granted a security clearance shall be kept to the minimum required to conduct the Bureau/Office mission. A security clearance should not be granted solely to permit entry to, or ease of movement within, controlled areas when the individual has no need for access to classified information and access may reasonably be prevented. A security clearance can be granted where circumstances indicate individuals may be inadvertently exposed to classified information in the course of their duties. Bureau/Office Security Officers are ultimately responsible for granting security clearances within their respective Bureau/Office. When there is a demonstrated need for an employee to have access to classified information the employee's supervisor or designee shall collaborate with the servicing Human Resources/Personnel Office to update the position description and the position designation. Servicing Human Resources/Personnel Offices will consult with their respective Security Officers prior to affecting a National Security position designation.

6.2 **Sensitive Position Standard**. National Security positions shall be designated as specified in 441 DM 3. An appropriate background investigation commensurate with the position sensitivity designation shall be conducted in accordance with the requirements specified in 441 DM 4. An eligibility determination for access to classified information or assignment to sensitive duties shall be based on a favorably adjudicated background investigation.

6.3 **Granting a Security Clearance**. Confidential security clearances are not granted within the Department of the Interior (DOI). While not recommended, an interim security clearance may be granted prior to the completion and favorable adjudication of the appropriate background investigation if adequate local pre-grant background checks and a justified need are approved by the Bureau/Office Security Officer (for Secret) and the Office of Law Enforcement and Security (OLES) (for Top Secret). The Bureau/Office Security Officer determines what pre-grant checks are adequate. Interim access may only be granted with this approval and verification of the scheduling by OPM of a fully expedited background investigation at an appropriate level. Final (non-interim) security clearance access may not be granted until the following procedures have been successfully implemented:

A. Verification of U.S. Citizenship. A Background Investigation (BI) completed before September 1, 1979, the current Single Scope Background Investigation (SSBI), and formerly the Special Background Investigation (SBI), normally included citizenship verification. However, validation is necessary to ensure citizenship was proven at the time the investigation was conducted. OPM currently includes citizenship verification as part of the SSBI, but must be specifically requested for other types of investigations. Eligibility for a security clearance of persons claiming both U.S. and foreign citizenship shall be determined by application of the adjudication policy on dual citizenship under the "Foreign Preference" guideline. The Immigration Reform and Control Act of 1986 requires servicing Human Resources/Personnel Offices to verify U.S. citizenship for newly hired government employees. Any employee hired subsequent to implementation of this Act is required to provide acceptable proof of citizenship before appointment can be effected. Employees hired prior to the Act were not required to submit proof of U.S. citizenship. Form I-9, Employment Eligibility Verification that is used by the servicing Human Resources/Personnel Offices as certification for U.S. citizenship, may be used as acceptable proof of U.S. Citizenship for security clearance purposes, provided proof is one of the following documents:

(1) If the individual was born in the U.S., a birth certificate officially issued and certified by a state or county agency is acceptable, provided it shows the birth record was filed shortly after birth and it bears a registrar's signature. All documents submitted as evidence of birth must be original or certified copies. Uncertified copies are not acceptable. Acceptable birth certifications are:

(a) A delayed birth certificate (a record filed more than one year after the date of birth) is acceptable, if it shows that the report of birth was supported by secondary evidence as described in (c) below.

(b) A hospital birth certificate is acceptable if all of the vital information is given and it has an authenticating seal or signature. This excludes acceptance of birth certification from commercial birth centers or clinics.

(c) If none of these primary forms of evidence is obtainable, a notice from the registrar that no birth record exists should be submitted. The registrar's notice must be accompanied by the best combination of secondary evidence obtainable. Secondary evidence includes: (1) a baptismal certificate; (2) a certificate of circumcision; (3) affidavits of persons having personal knowledge of the facts of the birth; or (4) other documents such as early census, school or family bible records, newspaper files, and insurance papers. The secondary evidence should have been created as close to the time of birth as possible.

(2) If citizenship was acquired by birth abroad to a U.S. citizen parent, (a) a Certificate of Citizenship issued by the Immigration and Naturalization Service; (b) a Report of Birth Abroad of a Citizen of the United States of America (State Department Form FS 240); or Department of State, is acceptable documentation.

(3) In cases of U.S. citizenship by naturalization, a Certificate of Naturalization is required. A Certificate of Citizenship is required if the individual claims to have derived U.S.

citizenship through the naturalization of the parent(s). If the individual does not have a Certificate of Citizenship, the Certificate of Naturalization of the parent(s) may be accepted if the naturalization occurred while the individual was under 18 years of age (or under 16 years before 5 October 1978) and residing permanently in the U.S. Certificates must be originals, as it is illegal to make copies.

(4) A U.S. passport issued to the individual or one in which the individual is included.

(5) Covered under the provisions of the Child Citizenship Act (CCA), effective February 27, 2001.

Additionally, effective October 1, 2007, all Federal departments and agencies must verify their new hires through the Employment Eligibility Verification Program (E-Verify). This program complements existing implementation plans in support of Homeland Security Presidential Directive 12 (HSPD-12). The program allows employers to verify name, date of birth, and social security number, along with immigration information for non-citizens, against Federal databases in order to verify the employment eligibility of both citizen and non-citizen new hires.

B. SF 312, Classified Information Non-Disclosure Agreement (NDA). The SF 312 NDA is a non-disclosure agreement required under EO 13292 to be signed by employees of the Federal Government or one of its contractors when they are granted a security clearance for access to classified information. Individuals eligible for access to classified information shall be provided an explanation regarding the purpose of the NDA and have the opportunity to read the applicable Sections of Titles 18 and 50 of the United States Code and other Acts referred to in the SF 312. The execution of the SF 312 must be witnessed and the witnessing official must sign and date the NDA at the time it is executed. The witnessing official is normally the Bureau/Office Security Officer but could be any other current government employee or authorized representative designated to act as an agent of the United States by the DOI component authorized to grant the clearance. The SF 312 must be accepted by the Bureau/Office Security Officer, or designee, who if not the witnessing official will verify the witnessing official's authenticity. Executed SF 312s shall be maintained for 70 years from the date of signature. The completed NDA forms shall be retained in the Bureau/Office Security Office where the clearance was granted. If the person refuses to sign the NDA, they shall not be granted a security clearance. Execution of an NDA is required only when the clearance is initially granted. Intra-agency reassignment or transfer requires an SF-312 debriefing at the losing Bureau/Office and re-briefing and execution of a new SF-312 at the gaining Bureau/Office prior to a re-granting of a new clearance. Movement within a Bureau/Office from one location to another does not require the execution of a new NDA.

C. Security Briefings. Prior to executing an NDA, a security briefing shall be provided and, at a minimum, shall familiarize the individual with the security policies and procedures for handling and protecting classified information and applicable Departmental regulations. An individual shall be provided with a copy of the document, Extracts of the Espionage Laws and Sabotage Acts and Other Federal Criminal Statutes (available from OLES), an SF-312 Briefing Booklet, and all applicable issuances cited within the SF-312 form.

D. National Security Position Certification. A National Security position certification shall be prepared when a favorable determination, security briefing, and clearance grant is made by the Bureau/Office. A Certification (Illustration 1 of this chapter) or equivalent shall be prepared with the original being forwarded to Bureau/Office Official Security File. A copy of the OPM Certification of Investigation will be forwarded to the servicing Human Resources/Personnel Office to be filed in the employee's Official Personnel Folder.

E. Timing. A security clearance may be granted any time prior to the validity of the background investigation scope expiring (e.g., five years for an SSBI and a Top Secret grant, ten years for a BI or lower to an ANACI/NACLC for a Secret grant) provided the requirements set forth in this section have been satisfied.

6.4 **North Atlantic Treaty Organization (NATO) Security Clearances**. The supervisor of an employee who requires a NATO security clearance shall submit a written request through their Bureau/Office Security Officer, to OLES justifying the need for the clearance. Based on a favorable adjudication of the appropriate background investigation, OLES will schedule the briefing and grant the security clearance.

6.5 **Security Clearances Under the National Industrial Security Program (NISP)**. Clearances for contractor staff will be processed under the provisions of the National Industrial Security Program (NISP) (DM Part 443) and may be granted when there is a bona fide requirement for access to classified information in connection with performance on a classified contract. Contractor background investigations are conduced by the Defense Security Service. Investigation results are adjudicated and security clearance eligibility is established by the Defense Industrial Security Clearance Office (DISCO).

6.6 **Security Clearance Administrative Withdrawal or Adjustment**. The Bureau/Office Security Officer shall ensure positions occupied by individuals granted security clearances are periodically reviewed to determine a continuing requirement for the clearance. Excessive access, unnecessary or unjustified clearances shall be administratively withdrawn or downgraded. The individual shall be debriefed and shall sign the Security Debriefing Acknowledgement on the reverse side of the SF-312. Failure to sign a debriefing acknowledgement does not negate the individual's inherent responsibility to continue to safeguard the classified information to which they had access. The signed Security Debriefing Acknowledgement is maintained in the individual's Bureau/Office Official Security File. When the level of security clearance/access required for the individual's official duties change, the Bureau/Office Security Officer will adjust the security clearance accordingly, provided the individual meets the investigation requirement commensurate with that level of security clearance. The servicing Human Resources/Personnel Office will also adjust the position designation and position description accordingly. The administrative withdrawal or lowering of a security clearance is not authorized when prompted by developed derogatory information. Developed derogatory information must be fully resolved through the adjudicative process. In the interest of national security, the Bureau/Office Security Officer may immediately suspend the individual's security clearance/access for a temporary investigative and adjudicative period, pending any supplemental investigation and the

adjudicative determination of the derogatory information. When warranted, a Reimbursable Suitability Investigation (RSI) should be initiated through OPM to resolve the issue(s).

6.7 **Security Clearance Denial or Revocation**. If an individual either fails or ceases to meet the standards for a security clearance, the procedures provided in 441 DM 5.9 shall apply.

6.8 **Re-establishment of Security Clearance Eligibility**. Following an unfavorable security determination and denial or revocation of a security clearance, an individual may be reconsidered or may request reconsideration for a security clearance or assignment of sensitive duties no earlier than 12 months from the date of the final decision of denial or revocation. An individual's eligibility can only be re-established under the following circumstances: there is a bona fide offer of employment that requires a security clearance/access and there is convincing evidence of rehabilitation or reformation or new evidence that was not presented earlier during the unfavorable security determination process. If these conditions are met, then the individual must provide the Bureau/Office Security Officer with a letter outlining the reasons why their access authorization should be reconsidered. The Bureau/Office Security Officer will then determine whether the requirements of the regulations have been met and notify the individual of the results. If the determination is favorable then the clearance process begins again. There is no limitation on the number of times an individual may file for re-establishment of security clearance eligibility.

6.9 **Annual Refresher Briefings**. Bureau/Office Information Security or Operations Security (OPSEC) programs are responsible for coordinating, conducting and tracking annual briefings. Documentation of annual briefings may be filed in the Bureau/Office Official Security File.

Illustration 1

**CERTIFICATE OF FAVORABLE ADJUDICATIVE DETERMINATION OF A BACKGROUND INVESTIGATION, SENSITIVE NATIONAL SECURITY POSITION BRIEFING, AND SECURITY CLEARANCE GRANT CERTIFICATION**

To: Official Personnel Folder

This is to certify that the below named individual has been found suitable to occupy a sensitive position and for access to classified information and has been briefed on his/her responsibilities in safeguarding classified information, as specified in Part 442 DM including the signing of a witnessed SF-312. In addition, he/she has been advised of and understands the responsibilities and sensitivity pertaining to the sensitive position to which he/she has been assigned; and he/she agrees to perform his/her duties in a responsible manner, adhering to National Security standards as evidenced by execution of an SF-312.

When access to classified information is no longer required, whether due to a "need-to-know" or termination of employment, the Security officer should be notified by the employee's supervisor/manager and/or Human Resources in order to ensure that the individual concerned completes the Security Debriefing Acknowledgement on the reverse side of the SF 312, Classified Information Nondisclosure Agreement.

NAME:

POSITION:

CLEARANCE LEVEL/DATE:

This security clearance is granted in accordance with Executive Orders 10450 and 12968 and is clearly consistent with the interests of national security based on the following investigation which was favorably adjudicated:

OPM (Case Type & Case #) #:

Date Case Closed:

_____ _____

Security officer Date

CC:
Supervisor/Manager
Technical Leader (when applicable)
Personnel Security File

# CLASSIFIED INFORMATION NONDISCLOSURE AGREEMENT

AN AGREEMENT BETWEEN AND THE UNITED STATES

*(Name of Individual - Printed or typed)*

1. Intending to be legally bound, I hereby accept the obligations contained in this Agreement in consideration of my being granted access to classified information. As used in this Agreement, classified information is marked or unmarked classified information, including oral communications, that is classified under the standards of Executive Order 13526, or under any other Executive order or statute that prohibits the unauthorized disclosure of information in the interest of national security; and unclassified information that meets the standards for classification and is in the process of a classification determination as provided in sections 1.1, 1.2, 1.3 and 1.4(e) of Executive Order 13526, or under any other Executive order or statute that requires protection for such information in the interest of national security. I understand and accept that by being granted access to classified information, special confidence and trust shall be placed in me by the United States Government.

2. I hereby acknowledge that I have received a security indoctrination concerning the nature and protection of classified information, including the procedures to be followed in ascertaining whether other persons to whom I contemplate disclosing this information have been approved for access to it, and that I understand these procedures.

3. I have been advised that the unauthorized disclosure, unauthorized retention, or negligent handling of classified information by me could cause damage or irreparable injury to the United States or could be used to advantage by a foreign nation. I hereby agree that I will never divulge classified information to anyone unless: (a) I have officially verified that the recipient has been properly authorized by the United States Government to receive it; or (b) I have been given prior written notice of authorization from the United States Government Department or Agency (hereinafter Department or Agency) responsible for the classification of information or last granting me a security clearance that such disclosure is permitted. I understand that if I am uncertain about the classification status of information, I am required to confirm from an authorized official that the information is unclassified before I may disclose it, except to a person as provided in (a) or (b), above. I further understand that I am obligated to comply with laws and regulations that prohibit the unauthorized disclosure of classified information.

4. I have been advised that any breach of this Agreement may result in the termination of any security clearances I hold; removal from any position of special confidence and trust requiring such clearances; or termination of my employment or other relationships with the Departments or Agencies that granted my security clearance or clearances. In addition, I have been advised that any unauthorized disclosure of classified information by me may constitute a violation, or violations, of United States criminal laws, including the provisions of sections 641, 793, 794, 798, *952 and 1924, title 18, United States Code; *the provisions of section 783(b), title 50, United States Code; and the provisions of the Intelligence Identities Protection Act of 1982. I recognize that nothing in this Agreement constitutes a waiver by the United States of the right to prosecute me for any statutory violation.

5. I hereby assign to the United States Government all royalties, remunerations, and emoluments that have resulted, will result or may result from any disclosure, publication, or revelation of classified information not consistent with the terms of this Agreement.

6. I understand that the United States Government may seek any remedy available to it to enforce this Agreement including, but not limited to, application for a court order prohibiting disclosure of information in breach of this Agreement.

7. I understand that all classified information to which I have access or may obtain access by signing this Agreement is now and will remain the property of, or under the control of the United States Government unless and until otherwise determined by an authorized official or final ruling of a court of law. I agree that I shall return all classified materials which have, or may come into my possession or for which I am responsible because of such access: (a) upon demand by an authorized representative of the United States Government; (b) upon the conclusion of my employment or other relationship with the Department or Agency that last granted me a security clearance or that provided me access to classified information; or (c) upon the conclusion of my employment or other relationship that requires access to classified information. If I do not return such materials upon request, I understand that this may be a violation of sections 793 and/or 1924, title 18, United States Code, a United States criminal law.

8. Unless and until I am released in writing by an authorized representative of the United States Government, I understand that all conditions and obligations imposed upon me by this Agreement apply during the time I am granted access to classified information, and at all times thereafter.

9. Each provision of this Agreement is severable. If a court should find any provision of this Agreement to be unenforceable, all other provisions of this Agreement shall remain in full force and effect.

10. 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.

*(Continue on reverse.)*

11. These restrictions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by Executive Order No. 13526 (75 Fed. Reg. 707), or any successor thereto section 7211 of title 5, United States Code (governing disclosures to Congress); section 1034 of title 10, United States Code, as amended by the Military Whistleblower Protection Act (governing disclosure to Congress by members of the military); section 2302(b) (8) of title 5, United States Code, as amended by the Whistleblower Protection Act of 1989 (governing disclosures of illegality, waste, fraud , abuse or public health or safety threats); the Intelligence Identities Protection Act of 1982 (50 U.S.C. 421 et seq.) (governing disclosures that could expose confidential Government agents); sections 7(c) and 8H of the Inspector General Act of 1978 (5 U.S.C. App.) (relating to disclosures to an inspector general, the inspectors general of the Intelligence Community. and Congress); section 103H(g)(3) of the National Security Act of 1947 (50 U.S.C. 403-3h(g)(3) (relating to disclosures to the inspector general of the Intelligence Community); sections 17(d)(5) and 17(e)(3) of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403g(d)(5) and 403q(e)(3)) (relating to disclosures to the Inspector General of the Central Intelligence Agency and Congress); and the statutes which protect against disclosure that may compromise the national security, including sections 641, 793, 794, 798, *952 and 1924 of title 18, United States Code, and *section 4 (b) of the Subversive Activities Control Act of 1950 (50 U.S.C. section 783(b)). The definitions, requirements, obligations, rights, sanctions, and liabilities created by said Executive Order and listed statutes are incorporated into this agreement and are controlling.

12. I have read this Agreement carefully and my questions, if any, have been answered. I acknowledge that the briefing officer has made available to me the Executive Order and statutes referenced in this agreement and its implementing regulation (32 CFR Part 2001 , section 2001 .80(d)(2) ) so that I may read them at this time, if I so choose.

* NOT APPLICABLE TO NON-GOVERNMENT PERSONNEL SIGNING THIS AGREEMENT.

| SIGNATURE | DATE | SOCIAL SECURITY NUMBER *(See Notice below)* |
|---|---|---|
| | | |

ORGANIZATION (IF CONTRACTOR, LICENSEE, GRANTEE OR AGENT, PROVIDE: NAME, ADDRESS, AND, IF APPLICABLE, FEDERAL SUPPLY CODE NUMBER) *(Type or print)*

| WITNESS | | ACCEPTANCE | |
|---|---|---|---|
| **THE EXECUTION OF THIS AGREEMENT WAS WITNESSED BY THE UNDERSIGNED.** | | **THE UNDERSIGNED ACCEPTED THIS AGREEMENT ON BEHALF OF THE UNITED STATES GOVERNMENT.** | |
| SIGNATURE | DATE | SIGNATURE | DATE |
| | | | |
| NAME AND ADDRESS *(Type or print)* | | NAME AND ADDRESS *(Type or print)* | |
| | | | |

## SECURITY DEBRIEFING ACKNOWLEDGEMENT

I reaffirm that the provisions of the espionage laws, other federal criminal laws and executive orders applicable to the safeguarding of classified information have been made available to me; that I have returned all classified information in my custody; that I will not communicate or transmit classified information to any unauthorized person or organization; that I will promptly report to the Federal Bureau of Investigation any attempt by an unauthorized person to solicit classified information, and that I (have) (have not) (strike out inappropriate word or words) received a security debriefing.

| SIGNATURE OF EMPLOYEE | DATE |
|---|---|
| | |

| NAME OF WITNESS *(Type or print)* | SIGNATURE OF WITNESS |
|---|---|
| | |

**NOTICE**: The Privacy Act, 5 U.S.C. 552a, requires that federal agencies inform individuals, at the time information is solicited from them, whether the disclosure is mandatory or voluntary, by what authority such information is solicited, and what uses will be made of the information. You are hereby advised that authority for soliciting your Social Security Number (SSN) is Public Law 104-134 (April 26, 1996). Your SSN will be used to identify you precisely when it is necessary to certify that you have access to the information indicated above or to determine that your access to the information indicated has been terminated. Furnishing your Social Security Number, as well as other data, is voluntary, but failure to do so may delay or prevent you being granted access to classified information.