

Protecting Whistleblowers with Access to Classified Information

As a United States Department of Veterans Affairs (VA) employee, you may have been required to sign a non-disclosure agreement (NDA) Standard Form 312 (SF-312), policy form to access classified systems, equipment, and information. You should read the following statement as if it were incorporated into any NDA you have signed due to the SF 312 being recently revised by the Director of National Intelligence (DNI) to conform with two new federal statutes: the Financial Services and General Government Appropriations Act (Public Law 112-74); and the Whistleblower Protection Enhancement Act (WPEA) (Public Law 112-199). The WPEA was enacted into law on November 27, 2012, and strengthens protections for federal employees who disclose evidence of waste, fraud, or abuse. In addition, the WPEA modifies rules on the use of non-disclosure policies, forms, or agreements (NDAs) by government agencies.

The WPEA requires that each agreement contained in an SF- 312 and Intelligence Community Form 4414 "Sensitive Compartmented Information (SCI) Nondisclosure Agreement, (IC Form 4414), and any other Government NDA contain the following **statement**:

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.

The provisions in the following list of Executive orders and statutory provisions are controlling in case of any conflict with a VA NDA:

- Executive Order No. 13526;
- 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);

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- the Intelligence Identities Protection Act of 1982 (50 U.S.C. 421, et seq.) (governing disclosures that could expose confidential Government agents);
- the statutes which protect against disclosure that may compromise the national security, including sections 641, 793, 794, 798, and 952 of title 18, United States Code; and
- section 4(b) of the Subversive Activities Act of 1950 (50 U.S.C. 783(b)).

In the case where the SF 312 and IC Form 4414 agreements were in effect before the WPEA's effective date (27 November 2012), the law allows agencies to continue to enforce a policy, form, or agreement that does not contain the statement if the agency gives an employee notice of the above required statement.