

The Whistleblower Protection Enhancement Act of 2012 (WPEA) 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 executed without the language may be enforced as long as agencies give employees notice of the statement. This communication serves as that notice to current and former ATF employees.

As an ATF 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.

Below is a list of Executive orders and statutory provisions, which are controlling in the case of any conflict with an agency 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);
- 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)).