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ISOO Notice 2013-05: Revision of the Standard Form (SF) 312, “Classified Information Nondisclosure Agreement”

August 19, 2013

This message is being forwarded on behalf of Brian A. Prioletti, Assistant Director for Special Security, Office of the Director of National Intelligence, Office of the National Counterintelligence Executive.

The “Classified Information Nondisclosure Agreement, Standard Form 312” (SF 312) was revised by the 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 revised SF 312 dated 7-2013 is posted in the General Services Administration (GSA) forms library on its website and can be directly downloaded at: <http://www.gsa.gov/portal/forms/download/116218>. The form is also posted on ODNI’s NCIX Security Executive Agent’s (SecEA) website: <http://www.ncix.gov/SEA>. Use of earlier editions of the SF 312 is not permitted.

The WPEA requires that each agreement contained in an SF 312, “Sensitive Compartmented Information (SCI) Nondisclosure Agreement, IC Form 4414” (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.”

In the case of SF 312 and IC Form 4414 agreements 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. Agencies making use of SF 312 and IC Form 4414 shall also post the above required statement on the agency’s website, accompanied by the specific list of controlling Executive Orders and statutory provisions.

The following is a list of “Executive Orders and statutory provisions,” which are controlling in the case of any conflict with an agency’s 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)).

DNI is currently in the process of updating the IC Form 4414 to reflect the language required by the statutes referenced above. Once complete, IC Form 4414 will be distributed IC-wide. Until IC Form 4414 is updated, please ensure that an addendum to that form is provided to individuals that will require access to SCI. Have the individual sign and date the IC Form 4414, as well as the addendum. The language required by statute that must be contained in the addendum is the required statement above.

Questions may be sent to email address SecEA@dni.gov or IC-email address SecEA@dni.ic.gov.

Please direct any questions regarding this ISOO Notice to: isoo@nara.gov.