

**Farm Credit Administration
Office of Inspector General**

Inspection Report

**Farm Credit Administration's
Inclusion of the Whistleblower
Protection Enhancement Act's
"Anti-gag" Statement in
Nondisclosure Materials**

I-24-02

January 3, 2025

FCAOIG

Farm Credit Administration
Office of Inspector General

January 3, 2025

The Honorable Vincent G. Logan, Board Chairman and Chief Executive Officer
The Honorable Jeffery S. Hall, Board Member
The Honorable Glen R. Smith, Board Member
Farm Credit Administration
1501 Farm Credit Drive
McLean, Virginia 22102-5090

Dear Chairman Logan and Board Members Hall and Smith:

The Office of Inspector General (OIG) completed an inspection, *Farm Credit Administration's Inclusion of the Whistleblower Protection Enhancement Act's "Anti-gag" Statement in Nondisclosure Materials*. The objective of this inspection was to determine whether the Farm Credit Administration (FCA or Agency) had included the required "anti-gag" provision of the Whistleblower Protection Enhancement Act of 2012, as amended (WPEA) in applicable nondisclosure policies, forms, agreements, and related documents.

Overall, the inspection found that the Agency had generally included the required WPEA statement in applicable nondisclosure agreements and Agency personnel responsible for drafting agreements were aware of the "anti-gag" statement requirement for nondisclosure agreements.

However, we identified opportunities for the Agency to more closely adhere to the WPEA's requirements. Although all settlement agreements we tested contained the "anti-gag" statement, some did not contain the updated language from a 2021 amendment that added the Office of Special Counsel as an appropriate authority to which an employee may disclose allegations of wrongdoing and one interagency agreement that did not contain the required "anti-gag" statement. OIG also identified opportunities to improve three internal policies and procedures that restrict the disclosure of information but do not contain the "anti-gag" statement.

OIG made five recommendations to ensure the Agency more closely adheres to the WPEA's "anti-gag" statement requirements. FCA management agreed with, and provided responsive corrective actions for, all recommendations made in the report. In addition, the Agency completed actions on four of the five recommendations over the course of the review, and OIG considers those recommendations closed.

We appreciate the courtesies and professionalism extended by FCA to our staff during the inspection. If you have any questions, we would be pleased to meet with you at your convenience.

Respectfully,



Sonya K. Cerne
Assistant Inspector General for Audits, Inspections, and Evaluations

EXECUTIVE SUMMARY

Farm Credit Administration's Inclusion of the Whistleblower Protection Enhancement Act's "Anti-gag" Statement in Nondisclosure Materials

Report No. I-24-02

January 3, 2025

Objective

The objective of this inspection was to determine whether the Agency had included required provisions of the WPEA in applicable nondisclosure policies, forms, agreements, and related documents.

Recommendations

In order to ensure the Agency more closely adheres to the WPEA's "anti-gag" statement requirement, we made five recommendations to the Agency.

Agency Response

Management agreed with, and provided corrective actions for, all recommendations. Because of the actions initiated during the inspection, we consider recommendations 1-4 closed.

Why We Did This Inspection

The Whistleblower Protection Enhancement Act of 2012 (WPEA) strengthened protections for federal employees who disclose allegations of waste, fraud, abuse, or other wrongdoing. The WPEA required that any nondisclosure policy, form, or agreement contain an "anti-gag" statement to ensure employees are appropriately advised of their obligations and rights concerning disclosure of information. A member of Congress requested the Office of Inspector General review the Farm Credit Administration's (Agency) nondisclosure policies, forms, agreements, and related documents to ensure these documents and agreements contain the required "anti-gag" statement.

How We Did This Inspection

OIG reviewed Agency settlement agreements that were signed between October 1, 2019, through March 31, 2024, to determine whether each agreement contained a nondisclosure provision and the required WPEA "anti-gag" statement. We reviewed documentation related to interagency agreements to determine whether any of the documents contained a nondisclosure provision and the required WPEA "anti-gag" statement. We also identified and reviewed Agency policies and procedures to determine if there were restricted disclosures of information.

What We Found

We determined the Agency had generally included the required WPEA "anti-gag" statement in applicable nondisclosure agreements. However, we identified opportunities for the Agency to more closely adhere to the WPEA's requirements. We found that although all settlement agreements we tested contained the "anti-gag" statement, some did not contain the updated language from a 2021 amendment to the WPEA. We also found one interagency agreement that did not contain the required "anti-gag" statement. Additionally, we identified three internal policies and procedures that restrict the disclosure of information in some manner and do not contain the "anti-gag" statement.

TABLE OF CONTENTS

Background	1
Farm Credit Administration	1
Congressional Request	1
Whistleblower Protection Enhancement Act of 2012	1
U.S. Office of Special Counsel	2
FCA Office Roles and Responsibilities	2
Objective, Scope, and Methodology	3
Objective	3
Scope	3
Methodology	3
Quality Standards for Inspection and Evaluation	4
Inspection Results	4
Settlement Agreements	5
Interagency Agreements	6
Policies, Procedures, and Directives	6
Contributing Factors	7
Impact	7
Recommendations	8
FCA Response	8
OIG Response	8
Acronyms	9

BACKGROUND

Farm Credit Administration

The Farm Credit Administration (FCA or Agency) is an independent federal agency responsible for regulating and supervising the Farm Credit System (System). The Agency is responsible for ensuring that all System institutions are safe, sound, and dependable sources of credit and related services for all creditworthy and eligible persons in agriculture and rural America. To support the mission, employees need a safe avenue to report fraud, waste, and abuse, and the Agency has a responsibility to protect employees' rights in disclosure of such wrongdoing.

Congressional Request

In March 2024, the Office of Inspector General (OIG) received a request from Senator Charles E. Grassley requesting a review of all nondisclosure policies, forms, agreements, and related documents specific to the Agency to ensure these documents and agreements contain a required "anti-gag" statement from the Whistleblower Protection Enhancement Act of 2012 (WPEA). Senator Grassley's request referenced a growing trend among federal agencies to use nondisclosure policies and agreements without the inclusion of the "anti-gag" statement. We conducted this inspection in response to the request.

Whistleblower Protection Enhancement Act of 2012

The WPEA strengthened protections for federal employees who disclose allegations of waste, fraud, abuse, or other wrongdoing. Among other things, the WPEA made it a prohibited personnel practice for agencies to implement or enforce any nondisclosure policy, form, or agreement that does not contain a specific "anti-gag" statement.¹ The required statement, as amended, is:

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 or the Office of Special Counsel² 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

¹ See Pub. L. No. 112-199, § 104(b)(1) (Nov. 27, 2012) (codified, as amended, at 5 U.S.C. § 2302(b)(13)).

² On January 1, 2021, the required statement was amended to insert "or the Office of Special Counsel" after "Inspector General."

Executive orders and statutory provisions are incorporated into this agreement and are controlling.³

For policies, forms, or agreements that were in effect before the WPEA's December 26, 2012 effective date and do not contain the required "anti-gag" statement, it is not a prohibited personnel practice to enforce the policy, form, or agreement if the agency notifies employees about the required statement.

U.S. Office of Special Counsel

The U.S. Office of Special Counsel (OSC) is an independent federal investigative and prosecutorial agency. Federal law established OSC as a secure avenue for whistleblowers to disclose allegations of fraud, waste, and abuse, with a unique process that protects the confidentiality of the whistleblower and ensures that the alleged wrongdoing is investigated. OSC's primary mission includes protecting federal employees and applicants from prohibited personnel practices, especially whistleblower reprisal.

In 2018, OSC issued guidance to executive branch agencies on the WPEA's requirements for nondisclosure policies, forms, or agreements. Although OSC's guidance did not define a nondisclosure policy, form, or agreement, it stated the "anti-gag" notification requirement applies government-wide. OSC cautioned that even if materials are not nondisclosure policies, forms, or agreements, "agencies should not convey information in a way that may have a chilling effect on lawful whistleblowing."

FCA Office Roles and Responsibilities

Because it is a prohibited personnel practice for an agency to implement or enforce a nondisclosure policy, form, or agreement that does not include the required "anti-gag" statement, it is the responsibility of an agency to ensure employees are informed of their obligations and rights to report allegations of fraud, waste and abuse in its nondisclosure agreements and policies. While the Agency has a responsibility to ensure whistleblowers are protected, there are several FCA offices that have specific roles and responsibilities related to nondisclosure provisions.

- The Office of General Counsel (OGC) provides FCA with legal counsel as well as guidance on personnel, ethics, and administrative matters. OGC is responsible for executing settlement agreements on behalf of the Agency. A settlement agreement may contain a confidentiality clause that restricts the individual from disclosing information about the settlement agreement. Where a confidentiality clause goes beyond the terms and conditions of the settlement to restrict disclosure of any other information, the WPEA requires that the settlement agreement include the "anti-gag" statement.
- The Office of Examination (OE) is responsible for examining and supervising each System institution in accordance with the Farm Credit Act and applicable regulations. The Office

³ 5 U.S.C. § 2302(b)(13).

of Secondary Market Oversight (OSMO) is responsible for examining, regulating, and supervising the activities of the Federal Agricultural Mortgage Corporation to ensure its safety and soundness and the accomplishment of its public policy purpose as authorized by Congress. Both offices have requirements that prohibit examiners, and other employees who work on examinations and other Agency oversight activities, from disclosing nonpublic information obtained during oversight activities.

- The Office of Congressional and Public Affairs (OCPA) serves as the Agency's principal point of contact for Congress, the media, other government agencies, and the public. Policies and procedures direct employees that public information, including communication with Congress, shall be released through OCPA.

OBJECTIVE, SCOPE, AND METHODOLOGY

Objective

The objective of this inspection was to determine whether the Agency had included required provisions of the WPEA in applicable nondisclosure policies, forms, agreements, and related documents.

Scope

The scope of the inspection was limited to FCA's policies, forms, agreements, and related documents, executed or in effect, from October 1, 2019, to March 31, 2024. The inspection was conducted at FCA's headquarters in McLean, Virginia, from May through December 2024.

Methodology

We took the following steps to accomplish the objective:

- Reviewed the letter from Senator Charles E. Grassley, requesting OIG conduct a review of all nondisclosure policies, forms, agreements, and related documents specific to FCA to ensure the required WPEA "anti-gag" statement is included, as required by law.
- Identified and reviewed applicable laws, regulations, policies, procedures, guidance, and other background information applicable to the objective.
- Reviewed applicable prior audits, inspections, evaluations, and other reviews related to the inspection objective.
- Interviewed and contacted key Agency personnel to determine Agency procedures relating to disclosure restrictions.

Tests Performed

- Reviewed settlement agreements executed from October 1, 2019, through March 31, 2024, to determine whether each agreement contained a nondisclosure provision and the required WPEA “anti-gag” statement. We limited the sample of settlement agreements based on the timeframe and reasonableness in order to answer the objective. Because the sample was judgmental, we cannot project our findings to the population of all settlement agreements that were signed since the WPEA became effective in 2012.
- Reviewed documentation related to interagency agreements to determine whether any of the documents contained a nondisclosure provision and the required WPEA “anti-gag” statement.

Quality Standards for Inspection and Evaluation

This inspection was performed in accordance with the Council of the Inspectors General on Integrity and Efficiency’s Quality Standards for Inspection and Evaluation. These standards require that we plan and perform the inspection to obtain sufficient and appropriate evidence that provides a reasonable basis for our findings, conclusions, and recommendations. We assessed internal controls and compliance with laws and regulations to the extent necessary to satisfy the objective. Because our review was limited, it would not necessarily have disclosed all internal control deficiencies that may have existed at the time of our inspection. We assessed the information and data collected during the inspection and determined it was sufficiently reliable and valid for use in meeting the inspection objective. We assessed the risk of fraud related to our inspection objective while evaluating evidence and had no matters come to our attention indicating fraud or illegal acts were occurring. Overall, we believe the evidence obtained is appropriate and sufficient to provide a reasonable basis for our findings and conclusions based on the inspection objective.

INSPECTION RESULTS

We determined the Agency had generally included the required WPEA statement in applicable nondisclosure agreements. Specifically, the nondisclosure agreements we tested generally contained the required statement and Agency personnel responsible for drafting agreements were aware of the “anti-gag” statement requirement for nondisclosure agreements.

However, we identified opportunities to more closely adhere to the WPEA’s requirements. Although all settlement agreements we tested contained the “anti-gag” statement, some did not contain the updated language from a 2021 amendment that added OSC as an appropriate authority to which an employee may disclose allegations of wrongdoing. We also found one interagency agreement (IAA) that did not contain the required “anti-gag” statement. Additionally,

we identified three internal policies and procedures that restricted the disclosure of information in some manner and did not contain the “anti-gag” statement.

Settlement Agreements

At times, the Agency may enter into an agreement with an individual in which the individual agrees to settle, waive, and release claims against the Agency. In such agreements, the Agency may restrict the individual from disclosing the terms and conditions specified in the agreement, as well as other information. In a 2018 memorandum to executive branch departments and agencies, OSC explained how the WPEA’s “anti-gag” statement requirement applies to such agreements:

Agencies may distinguish between a non-disclosure policy, form, or agreement and a confidentiality clause in a settlement agreement. A confidentiality clause in a settlement agreement is not covered by the WPEA’s notice requirements if it only restricts disclosure of the terms and conditions of the settlement. If a confidentiality clause in a settlement agreement extends beyond those terms and conditions to restrict disclosure of any other information, agencies must incorporate the WPEA’s statement.

According to OGC, FCA executed ten personnel settlement agreements that were signed within our scope of October 1, 2019, through March 31, 2024. We reviewed the settlement agreements to determine whether each agreement contained a nondisclosure provision and the required WPEA “anti-gag” statement. All ten settlement agreements contained a nondisclosure provision and the required “anti-gag” statement. However, four of the ten agreements did not contain the “anti-gag” statement’s current language.

On January 1, 2021, the WPEA was amended to update the required statement by inserting “or the Office of Special Counsel” after “Inspector General” to read:

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 or the Office of Special Counsel 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.

For the settlement agreements in our scope, all but one of the ten settlement agreements were signed after January 1, 2021, when the required language was updated. Of the remaining nine agreements, four agreements contained the “anti-gag” statement, but did not contain the updated 2021 language.

As part of our review, we requested the templates the Agency uses for drafting settlement agreements, including any standard language. However, the Agency does not use a template to draft new agreements.

Interagency Agreements

Contracting personnel stated the Agency uses an IAA to procure certain services and licenses from other agencies. Specifically, the Office of the Chief Financial Officer uses a standard form for executing IAAs, which does not contain any disclosure restrictions. Therefore, the agreements would not require the “anti-gag” statement.

However, at times, the Agency may execute an IAA that has additional requirements set forth in a memorandum. For example, during the period reviewed, the Agency executed one IAA that included a Memorandum of Agreement with a nondisclosure provision. This agreement did not contain the required WPEA “anti-gag” statement.

Policies, Procedures, and Directives

While different than nondisclosure agreements, the Agency has certain internal policies that restrict the disclosure of information in various ways. Certain offices have internal office directives, and the Agency utilizes a Policies and Procedures Manual (PPM) to outline Agency-wide policies and procedures.

Office Directives

We identified two directives on ethics that include language restricting disclosure of information. Specifically, OE Directive 21, *Examiner Ethics*, and OSMO Directive 3, *Ethics for Employees*, include a “Disclosure of Information” section. Both directives contain similar language informing employees that they may not disclose information obtained during an examination, except with specific written authorization of the FCA Chairman or their designee. The “Disclosure of Information” section in the directives also states that employees may not provide information to the news media, on or off the record, obtained while employed by FCA. Because the two directives could be considered nondisclosure policies, the directives should also contain the WPEA “anti-gag” statement to clarify employees’ rights related to whistleblower disclosures.

Policies and Procedures Manual

We also identified one Agency PPM that includes language restricting disclosure of information. PPM 201, *Information Release Policy*, directs employees to immediately forward written or oral requests for information from the media, Members of Congress, or the public, to OCPA. The PPM states that public information shall be released through OCPA, including information prepared for newspapers, publishing and broadcasting companies, the FCA Home Page, new or revised publications, and all requests for information from outside sources other than federal agencies or System institutions. PPM 201 does not contain a statement notifying employees of their whistleblower protections and rights.

While PPM 201 does not strictly prohibit the disclosure of information, the policy's language directing employees to release information to the media, Members of Congress, or the public through OCPA may be viewed by employees as a nondisclosure policy. OSC has urged agencies to be mindful of its guidance when educating employees about communication requirements or information disclosure restrictions to ensure employees are not discouraged from lawful whistleblowing.

Contributing Factors

There are several contributing factors necessitating improvements to the Agency's communication on nondisclosure requirements. While the Agency substantially complied with the WPEA by including the "anti-gag" statement in settlement agreements, the updated language had not been included in certain agreements. OGC utilizes a prior agreement for certain sections of the settlement agreement, including the required "anti-gag" statement, to draft a new agreement. The new agreement is then tailored to the facts and circumstances of the case. This process does not ensure updated language is consistently implemented.

For IAAs, which the Agency uses to procure services and licenses, they rarely include a nondisclosure provision. This may have contributed to the absence of the required "anti-gag" statement.

The OE and OSMO directives inform employees of their obligation to protect confidential materials and restrict employees from disclosing nonpublic information obtained during an examination or other Agency oversight activities, which is important to the mission and work of the Agency. However, adding the "anti-gag" statement would emphasize whistleblower protections.

For PPM 201, the purpose of the policy is to ensure the editorial consistency and uniformity of information that is released or distributed by the Agency to the public in a manner consistent with applicable laws, regulations, and Agency policy. The policy was created to ensure the proper audience is identified for the release of information and the information is properly structured for the intended audience, excluding information released pursuant to the Freedom of Information Act and the Privacy Act. However, PPM 201 is dated June 27, 1998, which pre-dates the enactment of the WPEA, and has not been updated since its publication date.

Impact

It is important for employees to understand their obligation to report allegations of fraud, waste, and abuse, and the whistleblower protections afforded to employees who make protected disclosures to appropriate authorities. There is an opportunity for the Agency to ensure these obligations and rights are effectively communicated to employees by adding the required WPEA "anti-gag" statement to nondisclosure agreements and applicable policies and procedures to emphasize its commitment to whistleblower protections.

Recommendations

To ensure the Agency more closely adheres to the WPEA's "anti-gag" statement requirement:

1. The Office of Inspector General recommends the Office of General Counsel implement a process to ensure settlement agreements contain the current "anti-gag" statement from the Whistleblower Protection Enhancement Act of 2012, as amended.
2. The Office of Inspector General recommends the Office of the Chief Financial Officer update the Memorandum of Agreement used for interagency agreements to include the "anti-gag" statement from the Whistleblower Protection Enhancement Act of 2012, as amended.
3. The Office of Inspector General recommends the Office of Examination update Directive 21, *Examiner Ethics*, to include the "anti-gag" statement from the Whistleblower Protection Enhancement Act of 2012, as amended.
4. The Office of Inspector General recommends the Office of Secondary Market Oversight update Directive 3, *Ethics for Employees*, to include the "anti-gag" statement from the Whistleblower Protection Enhancement Act of 2012, as amended.
5. The Office of Inspector General recommends the Office of Congressional and Public Affairs update Policies and Procedures Manual 201, *Information Release Policy*, to include the "anti-gag" statement from the Whistleblower Protection Enhancement Act of 2012, as amended.

FCA Response

Management agreed with the recommendations. They created an "anti-gag" template to ensure settlement agreements contain the current "anti-gag" statement from the WPEA. Management updated the standard form used for interagency agreements, OE Directive 21, *Examiner Ethics*, and OSMO Directive 3, *Ethics for Employees*, to include the WPEA's "anti-gag" statement. Management also agreed to update PPM 201, *Information Release Policy*.

OIG Response

OIG finds the completed and planned actions responsive to our recommendations. Because of the actions completed for recommendations 1-4, OIG considers these recommendations closed. The Agency did not provide management comments and waived an exit conference for this inspection.

ACRONYMS

FCA or Agency	Farm Credit Administration
IAA	Interagency agreement
OCPA	Office of Congressional and Public Affairs
OE	Office of Examination
OGC	Office of General Counsel
OIG	Office of Inspector General
OSC	Office of Special Counsel
OSMO	Office of Secondary Market Oversight
PPM	Policies and Procedures Manual
WPEA	Whistleblower Protection Enhancement Act of 2012



Farm Credit Administration
Office of Inspector General

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Phone: (800) 437-7322 (Toll-Free)
(703) 883-4316

Email: fca-ig-hotline@rcn.com

Mail: 1501 Farm Credit Drive
McLean, VA 22102-5090

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