



Office of Inspector General

MANAGEMENT ADVISORY MEMORANDUM
REGARDING FLRA NONDISCLOSURE
REQUIREMENTS AND WHISTLEBLOWING RIGHTS

MANAGEMENT ADVISORY
MEMORANDUM
REGARDING FLRA
NONDISCLOSURE
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WHISTLEBLOWING RIGHTS

Report No. MAM-24-02

May 2024

Federal Labor Relations Authority
1400 K Street, N.W., Washington, D.C. 20424

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Acronyms

FLRA	Federal Labor Relations Authority
MAM	Management Advisory Memorandum
OIG	Office of Inspector General
U.S.C.	United States Code
WPEA	Whistleblower Protection Enhancement Act of 2012, as amended



INSPECTOR GENERAL

UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY

May 9, 2024

Memorandum

TO: Susan Tsui Grundmann
Chairman

FROM: Dana Rooney
Inspector General

SUBJECT: Management Advisory Memorandum Regarding FLRA Nondisclosure
Requirements and Whistleblowing Rights (Report No. MAM-24-02)

In accordance with a request from a Member of Congress, my office reviewed Federal Labor Relations Authority (FLRA) policies, forms, and agreements to identify any nondisclosure provisions that ostensibly bind FLRA employees without inclusion of requisite statutory language from the Whistleblower Protection Enhancement Act of 2012, as amended (WPEA).¹ Specifically, under the WPEA, the following is a prohibited personnel practice:

Any employee who has authority to take, direct others to take, recommend, or approve any personnel action shall not, with respect to such authority- ... implement or enforce any nondisclosure policy, form, or agreement, if such policy, form, or agreement- ... does not 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 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.”²

¹ Pub. L. No. 112-199, 126 Stat. 1465 (codified, in relevant part, at 5 U.S.C. § 2302).

² 5 U.S.C. § 2302(b)(13)(A). *See also* Further Consolidated Appropriations Act, 2024, Pub. L. No. 118-47, div. B, tit. VII, § 743(a), 138 Stat. 460, 584 (“No funds appropriated in this or any other Act may be used to implement or enforce the agreements in Standard Forms 312 and 4414 of the Government or any other nondisclosure policy, form, or agreement if such policy, form, or agreement does not contain the following provisions: [provisions identical to those at 5 U.S.C. § 2302(b)(13)(A)]”).

Findings

We reviewed FLRA policies, forms, and agreements contained in FLRA’s internal employee site and FLRA’s public website. Specifically, we reviewed 31 policies, 6 isolated forms, and 26 memoranda of understanding, agreements, and annual notices, as well as other information posted on FLRA’s internal employee site and public website. Of those documents reviewed, we identified the following 6 documents as having nondisclosure provisions without the statutory language from 5 U.S.C. § 2302(b)(13)(A):

FLRA Policies, Agreements, and Procedure

1. FLRA Instruction No. 6910, *FLRA Electronic Mail* (May 31, 2000) (*see* § 2.C.5. (page 4)).
2. FLRA Instruction No. 6920, *FLRA Internet Access* (June 9, 2000) (*see* § 2.E.5. (page 4)).
3. FLRA Policy No. 3891, *Reasonable Accommodation Procedures for Individuals with Disabilities* (May 13, 2019) (*see* Addendum, § D.3. (page 26); Form B, ¶ 5 (page 1); Form C, ¶ 3 (page 1)).³
4. FLRA/UAE, “2012 Collective Bargaining Agreement” (Dec. 21, 2012) (*see* Article 20, § 1.(c) (page 33); Article 20, § 2.(b) (page 33)).
5. The Federal Labor Relations Authority and the Union of Authority Employees, “Labor-Management Forum Charter” (Oct. 27, 2022) (*see* Operating Principles, General Guidelines, bullets 7-8 (page 5)).
6. “PERFORMANCE MANAGEMENT ALTERNATIVE DISPUTE RESOLUTION PROCEDURE.” (*see* § IV.B., ¶ 5 (page 4); Attachment A, “Are ADR sessions confidential?” (page 3); Attachment B, ¶ 6 (page 1)).

We made one recommendation and will perform a follow-up review in Fiscal Year 2025.

Recommendation

The Executive Director incorporate the statutory language at 5 U.S.C. § 2302(b)(13)(A) into the six policies, forms, and agreements identified above.

Management Comments

On April 17, 2024, we provided a draft of this memorandum to the FLRA. On May 7, 2024, the Executive Director concurred with the OIG’s recommendation and conveyed that the agency has begun the process of incorporating the statutory language into new versions of the identified documents. FLRA’s response is in Appendix 1. Below is the OIG’s response to FLRA’s comments.

OIG Response

FLRA concurred with our findings and recommendation. We accept the agency’s stated course of action to incorporate the statutory language at 5 U.S.C. § 2302(b)(13)(A) into new

³ This policy did not contain the current statutory language.

versions of the identified documents, but note that the response did not include a date by which the agency would complete the course of action. As of the date of this Memorandum, none of the six identified documents have been re-issued with the statutory language. The agency should promptly revise and re-issue the identified documents. Although finalizing the agreements is not entirely within the control of the agency, re-issuing the policies and procedure is within the control of the agency. We consider FLRA's response adequate and we plan to conduct a follow-up review to ensure FLRA finalizes the agreements and re-issues the policies and procedure.

Appendix 1: Management Comments



UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY

May 7, 2024

MEMORANDUM

TO: Dana Rooney, Inspector General

FROM: Rebecca J. Osborne, Director of Legislative Affairs and Program Planning

THROUGH: Michael Jeffries, Executive Director 

SUBJECT: Management Response to *Management Advisory Memorandum Regarding FLRA Nondisclosure Requirements and Whistleblowing Rights* (Report No. MAM-24-02)

Thank you for the opportunity to review and provide comments on the Office of Inspector General's (OIG) *Management Advisory Memorandum Regarding FLRA Nondisclosure Requirements and Whistleblowing Rights* (Report No. MAM-24-02). The Federal Labor Relations Authority (FLRA). The FLRA is committed to making sure that all employees are aware of their rights as well as the safeguards that are in place to protect them.

RECOMMENDATION

- I. “[W]e recommend that FLRA management officials incorporate the statutory language at 5 U.S.C. § 2302(b)(13)(A) into the policies, forms, and agreements identified [by this Management Advisory Memorandum].”

The policies, forms and agreements identified in the Management Advisory Memorandum include:

- a. FLRA Instruction No. 6910, *FLRA Electronic Mail* (May 31, 2000) (§ 2.C.5. (page 4)).
- b. FLRA Instruction No. 6920, *FLRA Internet Access* (June 9, 2000) (§ 2.E.5. (page 4)).
- c. FLRA/UAE, “2012 Collective Bargaining Agreement” (Dec. 21, 2012) (Article 20, § 1.(c) (page 33); Article 20, § 2.(b) (page 33)).
- d. The Federal Labor Relations Authority and the Union of Authority Employees, “Labor- Management Forum Charter” (Oct. 7, 2022) (Operating Principles, General Guidelines, bullets 7-8 (page 5)).
- e. “PERFORMANCE MANAGEMENT ALTERNATIVE DISPUTE RESOLUTION PROCEDURE.” (§ IV.B., ¶ 5 (page 4); Attachment A,

Appendix 1: Management Comments

- “Are ADR sessions confidential?” (page 3); Attachment B, ¶ 6 (page 1)).
- f. FLRA Policy No. 3891, *Reasonable Accommodation Procedures for Individuals with Disabilities* (May 13, 2019) (Addendum, § D.3. (page 26); Form B, ¶ 5 (page 1); Form C, ¶ 3 (page 1)).

Management Response: As the Management Advisory Memorandum states, the above documents do not contain the most current statutory language required by the Whistleblower Protection Enhancement Act of 2012 (as amended), Pub. L. No. 112-199, 126 Stat. 1465 (codified, in relevant part, at 5 U.S.C. § 2302), or do not contain the language at all. While we are a small Agency with extremely limited resources, we take Whistleblower Protection seriously. The Executive Director concurs with the recommendation and has already begun working with the Director of Legislative Affairs and Program Planning to ensure that the listed policy documents are updated, thoroughly reviewed, and enacted timely. As of the date of this response, the FLRA has already:

- 1) Ensured that the current Whistleblower Protection language is included in its Collective Bargaining Agreement and Labor-Management Forum Charter, which are nearly complete and will be released in the near future;
- 2) Redrafted the FLRA *Electronic Mail* and *Internet Access* Policies to include the requisite language. Those Policies are currently being reviewed by FLRA Senior Management.

The FLRA is also proceeding to update its Performance Management Alternative Dispute Resolution Procedure and Reasonable Accommodation Procedures for Individuals with Disabilities Policy.

As always, we appreciate your consideration of these responses and look forward to continuing our efforts to find innovative ways to improve.

Appendix 2: Report Distribution

Federal Labor Relations Authority

Colleen Duffy Kiko, Member

Michael Jeffries, Executive Director

Rebecca J. Osborne, Director of Legislative Affairs and Program Planning

Contacting the Office of Inspector General

IF YOU BELIEVE AN ACTIVITY IS WASTEFUL,
FRAUDULENT, OR ABUSIVE OF FEDERAL FUNDS,
CONTACT THE:

HOTLINE (877) 740-8278
[HTTP://WWW.FLRA.GOV/OIG-HOTLINE](http://www.flra.gov/oig-hotline)

EMAIL: OIGMAIL@FLRA.GOV
CALL: (771) 444-5712 FAX: (202) 208-4535
WRITE: 1400 K Street,
Washington, D.C. 20424

The complainant may remain confidential; allow their name to be used; or anonymous. If the complainant chooses to remain anonymous, FLRA OIG cannot obtain additional information on the allegation, and also cannot inform the complainant as to what action FLRA OIG has taken on the complaint. Confidential status allows further communication between FLRA OIG and the complainant after the original complaint is received. The identity of complainants is protected under the provisions of the Whistleblower Protection Act of 1989 and the Inspector General Act of 1978. To learn more about the FLRA OIG, visit our Website at <http://www.flra.gov/oig>



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