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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

May 10, 2013

VIA ELECTRONIC TRANSMISSION

The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

Dear Attorney General Holder:

Time and again, whistleblowers courageously identify, often at great risk to their professional careers, waste, fraud, and abuse. Unfortunately, as a result of their actions, whistleblowers often face intimidation, retaliation, and are subjected to prohibited personnel practices despite proscriptions against such action under federal law.¹

As part of my efforts to protect whistleblowers, starting in 1988 I introduced an amendment known as the “anti-gag” provision to the Treasury, Postal Service and General Government Appropriations Act.² This provision was adopted and has been included in every appropriations bill signed into law since 1988,³ most recently in March 2013 as part of the Consolidated and Further Continuing Appropriations Act of 2013.⁴ In addition the recently passed Whistleblower Protection Enhancement Act (WPEA) codified the anti-gag provision as a prohibited personnel practice and thereby eliminated the need for annual revision.⁵

The new federal law now requires every U.S. Government nondisclosure policy, form, or agreement to contain an explicit statement notifying employees that nondisclosure requirements do not supersede their rights and obligations created by existing statute or Executive Order

¹ See 5 U.S.C. § 2302(a) (2006) (outlining prohibited personnel practices).

² Treasury, Postal Service and General Government Appropriations Act, 1989, Pub. L. No. 100-440, 102 Stat. 1756 (1988).

³ See generally Consolidated Appropriations Act, 2012, Pub. L. No. 112-74, 125 Stat. 932 (2011); Omnibus Appropriations Act, 2009, Pub. L. No. 111-8, 123 Stat. 685 (2009).

⁴ Consolidated and Further Continuing Appropriations Act, 2013, Pub. L. No. 113-6, Div. F, Title I, Sec. 1105 (referencing back to Pub. L. No. 112-74, Div. C, Title VII, Sec. 715).

⁵ Whistleblower Protection Enhancement Act of 2012, Pub. L. No. 112-199, 126 Stat. 1465 (2012).

relating to classified information, communications to Congress, reporting violations and/or misconduct to an Inspector General, or any other whistleblower protection.⁶ Moreover, the law requires any agency using a nondisclosure policy, form, or agreement to also post the aforementioned statement on the agency website, as well as a specific list of controlling Executive orders and statutory provisions.⁷

As the author of this rider and an original cosponsor of the WPEA who worked closely in drafting this provision with Senator Akaka, I want to ensure that this law is fully implemented. Accordingly, please provide the following information:

- 1) All forms, policies, or agreements which mention communications with Congress used within the last five years, including those with either non-disclosure or non-disparagement provisions.
- 2) All forms, policies, or agreements which include the statutorily-defined statement informing employees of their rights on every nondisclosure policy.
- 3) All forms, policies, or agreements which purport to limit a current or former employee's ability to communicate directly with Congress, whether explicitly or as a part of a general prohibition without a specific Congressional exemption.
- 4) A detailed statement of the various efforts that your department has taken to post the "anti-gag" provision on its website, along with a specific list of controlling Executive orders and statutory provisions.

Thank you in advance for ensuring your response arrives no later than May 24, 2013. Should you have any questions regarding this letter, please contact [REDACTED] my Committee staff at (202) 224-5225.

Sincerely,



Charles E. Grassley
Ranking Member
Committee on the Judiciary

⁶ See *id.* § 104(b)(1).

⁷ See *id.* § 115(a)(2).