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**INSPECTOR GENERAL**  
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UNITED STATES DEPARTMENT OF  
HOUSING AND URBAN DEVELOPMENT

# The U.S. Department of Housing and Urban Development Nondisclosure Agreements' Incorporation of Whistleblower Protections

2024-OE-0007

December 13, 2024

Date: December 13, 2024

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From: John Garceau  
Acting Assistant Inspector General for Evaluation, Office of Inspector General, G

Subject: Final Report – The U.S. Department of Housing and Urban Development Nondisclosure Agreements’ Incorporation of Whistleblower Protections (2024-OE-0007)

Please see the attached final report on the evaluation of the U.S. Department of Housing and Urban Development (HUD) nondisclosure agreements’ incorporation of whistleblower protections. It contains three findings and six recommendations. Our evaluation objectives were

1. To determine whether HUD’s nondisclosure policies, forms, and agreements include the anti-gag provision specified in the Whistleblower Protection Enhancement Act (WPEA) of 2012.
2. To determine HUD’s process to ensure its nondisclosure policies, forms, and agreements include the anti-gag provision as required by WPEA.
3. To determine whether HUD posts the anti-gag provision on its agency website as required by WPEA.

In response to our draft report, the Office of General Counsel (OGC) and the Office of Fair Housing and Equal Opportunity (FHEO) provided technical comments, which we incorporated into the final report as appropriate. We offered OGC, the Office of Administration, the Office of the Chief Financial Officer (OCFO), the Government National Mortgage Association (Ginnie Mae), and FHEO the opportunity to provide formal comments. The Office of Administration’s Office of the Chief Administrative Officer (OCAO) and FHEO provided formal comments. These formal comments, along with our response to those comments, are included as appendix A in this report. We received and agreed with OCAO’s proposed management decision for recommendations 1 and 2. OCFO, OGC, and Ginnie Mae concurred with recommendations 3, 4, 5, and 6 but did not provide a proposed management decision for those recommendations. The status of recommendations 1 and 2 is “resolved-open,” and the status of recommendations 3, 4, 5, and 6 is “unresolved-open.”



I greatly appreciate the assistance you and your staff provided throughout the evaluation. The report will be posted to our website within 3 days. Please contact John Garceau, Acting Assistant Inspector General for Evaluation, at 202-603-8410 or JGarceau@hudoig.gov with any questions.

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## Executive Summary

# THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT NONDISCLOSURE AGREEMENTS' INCORPORATION OF WHISTLEBLOWER PROTECTIONS | 2024-OE-0007

## Why We Did This Evaluation

We conducted this evaluation to determine (1) whether the U.S. Department of Housing and Urban Development's (HUD) nondisclosure policies, forms, and agreements include the anti-gag provision specified in the Whistleblower Protection Enhancement Act (WPEA) of 2012; (2) HUD's process to ensure its nondisclosure policies, forms, and agreements include the anti-gag provision as required by WPEA; and (3) whether HUD posts the anti-gag provision on its agency website as required by WPEA. The "anti-gag" provision is a statement that notifies employees of their right to report wrongdoing. We initiated this review in response to a request from a Member of Congress.

## Results of Evaluation

We obtained HUD's two nondisclosure policies and two nondisclosure forms applicable to HUD employees. We also obtained 13 nondisclosure agreements between HUD and HUD employees. The nondisclosure policies, forms, and agreements did not include the anti-gag provision as required by WPEA. HUD had not ensured that these nondisclosure policies, forms, and agreements included the anti-gag provision as required by law.

When HUD employees are subject to policies, forms, and agreements that do not include the anti-gag provision as required by law, the employees may be discouraged from exercising their legally protected whistleblower rights. In addition, implementing or enforcing nondisclosure policies, forms, or agreements that do not include the anti-gag provision may be a prohibited personnel practice, and the practice may result in disciplinary action or a civil penalty. It may also be a violation of the Antideficiency Act to use congressionally appropriated funds to implement or enforce nondisclosure policies, forms, and agreements that do not include the anti-gag provision as required by annual appropriations acts. We did not make a determination on whether violations of the Antideficiency Act took place at HUD because the Office of the Chief Financial Officer is responsible for making such determinations.

HUD program offices followed a decentralized process for implementing and enforcing nondisclosure policies, forms, and agreements applicable to HUD employees. However, as part of this decentralized process, the Office of General Counsel (OGC) and program offices did not ensure that HUD's nondisclosure policies, forms, and agreements included the anti-gag provision as required by WPEA. Based on the nondisclosure agreements reviewed, HUD did not communicate to its employees the legal requirement to include the anti-gag provision in nondisclosure policies, forms, and agreements. Additionally, HUD's nondisclosure policies did not communicate that HUD employees must include the anti-gag provision in nondisclosure forms and agreements.

WPEA requires agencies that have a nondisclosure policy, form, or agreement to post the anti-gag provision on the agency website, accompanied by the list of executive orders and statutory provisions that are controlling in case of a conflict. On October 15, 2024, in response to our evaluation, HUD posted this information on its website.

## Recommendations

We provided HUD with six recommendations to ensure HUD's compliance with the legal requirement to include the anti-gag provision in its nondisclosure policies, forms, and agreements. Because we received and agreed with the Office of the Chief Administrative Officer's proposed management decision, the status of recommendations 1 and 2 is "resolved-open." The status of recommendations 3, 4, 5, and 6 will remain "unresolved-open" until we agree to the proposed management decisions from Office of the Chief Financial Officer, OGC, and the Government National Mortgage Association (Ginnie Mae).

We recommend that the Chief Administrative Officer, in collaboration with OGC,

1. Revise HUD's Controlled Unclassified Information Policy to include the anti-gag provision.
2. Revise HUD's Controlled Unclassified Information Policy to state that (a) nondisclosure forms and agreements must include the anti-gag provision as required by law and (b) confidentiality clauses in personnel settlement agreements must include the anti-gag provision if the clause restricts disclosure of any other information beyond the terms and conditions of the agreement itself.

We recommend that the Chief Financial Officer, in collaboration with OGC and the other HUD program offices as needed,

3. Review whether potential violations of the Antideficiency Act took place because of implementing or enforcing any nondisclosure policies, forms, or agreements that do not include the anti-gag provision as required by law. If it is determined that a violation occurred, the Chief Financial Officer should take disciplinary actions as appropriate and report the identified violations to the oversight authorities, including the HUD Secretary, the President, the Office of Management and Budget, Congress, and the Comptroller General.

We recommend that the General Counsel, in collaboration with other HUD program offices as needed,

4. Implement a plan to annually survey all HUD program offices to identify nondisclosure policies, forms, and agreements issued and to determine whether they include the anti-gag provision as required by WPEA and, as necessary, to take corrective action to ensure that they include the anti-gag provision.
5. Communicate across HUD that (a) HUD employees are required to include the anti-gag provision in nondisclosure policies, forms, and agreements applicable to HUD employees and (b) program offices should consider requiring their employees to request OGC assistance when implementing and enforcing nondisclosure policies, forms, and agreements applicable to HUD employees.

Lastly, we recommend that the President of Ginnie Mae, in collaboration with OGC,

6. Revise the Ginnie Mae Confidential Information Policy to state that in the future, (a) nondisclosure forms and agreements must include the anti-gag provision as required by law and (b) confidentiality clauses in personnel settlement agreements must include the anti-gag provision if the clause restricts disclosure of any other information beyond the terms and conditions of the agreement itself.

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# Introduction

## OBJECTIVES

Our objectives for this evaluation were

1. To determine whether the U.S. Department of Housing and Urban Development's (HUD) nondisclosure policies, forms, and agreements include the anti-gag provision specified in the Whistleblower Protection Enhancement Act (WPEA) of 2012.
2. To determine HUD's process to ensure its nondisclosure policies, forms, and agreements include the anti-gag provision as required by WPEA.
3. To determine whether HUD posts the anti-gag provision on its agency website as required by WPEA.

The evaluation focused on nondisclosure policies, forms, and agreements applicable to HUD employees.<sup>1</sup>

In this report, a "nondisclosure policy" means any policy that purports to restrict a HUD employee's ability to share information or documents obtained during their HUD employment. A "nondisclosure agreement" means a fully executed agreement, signed by a HUD employee, that purports to restrict the HUD employee's ability to share information or documents obtained as part of their HUD employment.<sup>2</sup> The term "nondisclosure form" means a blank, unsigned nondisclosure agreement template.

## BACKGROUND

Congress passed WPEA in 2012 to "strengthen the rights of and protections for federal whistleblowers so that they can more effectively help root out waste, fraud, and abuse in the federal government."<sup>3</sup> WPEA requires Federal nondisclosure policies, forms, and agreements to contain the following statement, also known as the "anti-gag" provision:

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.<sup>4</sup>

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<sup>1</sup> HUD's nondisclosure policies, forms, and agreements applicable to contractor employees are outside the scope of this evaluation.

<sup>2</sup> According to U.S. Office of Special Counsel guidance, "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." See U.S. Office of Special Counsel, [Memorandum for Executive Departments and Agencies: Non-Disclosure Policies Forms, or Agreements](#), 1 February 2018.

<sup>3</sup> [Whistleblower Protection Enhancement of 2012, Senate Report 112-155, 112th Congress](#)

<sup>4</sup> [Public Law 112-199, section 115\(a\)\(1\)](#)

Further, it is a prohibited personnel practice for Federal employees to implement or enforce a nondisclosure policy, form, or agreement that does not contain the anti-gag provision.<sup>5</sup> WPEA also requires posting the anti-gag provision on an agency’s website.<sup>6</sup>

## Findings

### HUD’S NONDISCLOSURE POLICIES, FORMS, AND AGREEMENTS APPLICABLE TO HUD EMPLOYEES DID NOT INCLUDE THE ANTI-GAG PROVISION AS REQUIRED BY WPEA

HUD must include the anti-gag provision in its nondisclosure policies, forms, and agreements as required by both WPEA<sup>7</sup> and appropriations acts. Annual appropriations acts have regularly prohibited agencies from using appropriated funds to implement or enforce a nondisclosure policy, form, or agreement if such policy, form, or agreement does not include the anti-gag provision.<sup>8</sup> To determine whether HUD had included the anti-gag provision as required by law, we requested and reviewed HUD’s nondisclosure policies, forms, and agreements applicable to HUD employees.

HUD provided 1 nondisclosure policy from the Government National Mortgage Association (Ginnie Mae), 2 nondisclosure forms from the Office of Fair Housing and Equal Opportunity (FHEO), and 13 nondisclosure agreements between FHEO and HUD employees.<sup>9</sup> FHEO employees needed to sign the nondisclosure agreements to access necessary information from government sponsored enterprises while conducting fair lending reviews and to evaluate, recommend, and select applications for funding through its Fair Housing Initiatives Program. We obtained a second nondisclosure policy — HUD’s Controlled Unclassified Information Policy — from HUD’s website.<sup>10</sup> The policies, forms, and agreements did not include the anti-gag provision as required by law.<sup>11</sup> HUD had not ensured that these nondisclosure policies, forms, and agreements included the anti-gag provision as required by law. After we initiated our review and requested documents, Ginnie Mae revised its nondisclosure policy in response to the Office of General Counsel’s (OGC) advice to include the anti-gag provision. FHEO also

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<sup>5</sup> 5 U.S.C. (United States Code) 2302(b)(13)

<sup>6</sup> Public Law 112-199, section 115(a)(2)

<sup>7</sup> Public Law 112-199, section 104 (codifying 5 U.S.C. 2302(b)(13)), and section 115

<sup>8</sup> Nearly all appropriations acts since 1988 have included the anti-gag provision.

<sup>9</sup> The 13 nondisclosure agreements were completed and signed using the two FHEO nondisclosure forms.

<sup>10</sup> OGC confirmed that it was aware of two nondisclosure policies: the Controlled Unclassified Information Policy that applied to all HUD offices other than Ginnie Mae and the Ginnie Mae Confidential Information Policy. We also obtained HUD’s Privacy Policy and HUD’s Privacy Handbook from HUD’s website. Because we obtained these two policies after we completed our fieldwork, we did not assess them in this report, but we are including them here for HUD’s knowledge.

<sup>11</sup> Ginnie Mae’s nondisclosure policy stated that the policy did not limit an employee’s ability to file a charge or complaint with a Federal, State, or local government agency or commission and did not limit or prohibit an employee’s ability to communicate with or report to the Office of Inspector General (OIG) or any government agency or otherwise participate in any investigation or proceeding that may be conducted by OIG or a government agency. Similarly, the Controlled Unclassified Information Policy stated that the policy did “not change or affect existing legal protections for whistleblowers.” However, neither policy contained the anti-gag provision as required by law.

took corrective action regarding its forms and agreements.<sup>12</sup> The Controlled Unclassified Information Policy did not include the anti-gag provision as of October 2024.

Because HUD's nondisclosure policies, forms, and agreements did not include the anti-gag provision as required by law, HUD employees may face negative consequences. Specifically, when HUD employees are subject to policies, forms, and agreements that do not include the anti-gag provision as required by law, the employees may be discouraged from exercising their legally protected whistleblower rights. In addition, implementing or enforcing nondisclosure policies, forms, or agreements that do not include the anti-gag provision may be a prohibited personnel practice, and the practice may result in disciplinary action or a civil penalty.<sup>13,14</sup> It may also be a violation of the Antideficiency Act<sup>15</sup> to use congressionally appropriated funds to implement or enforce nondisclosure policies, forms, and agreements that do not include the anti-gag provision as required by annual appropriations acts.<sup>16</sup> We did not make a determination on whether violations of the Antideficiency Act took place at HUD because the Office of the Chief Financial Officer is responsible for making such determinations.

## **HUD DID NOT COMMUNICATE THE NEED TO INCLUDE THE ANTI-GAG PROVISION IN NONDISCLOSURE POLICIES, FORMS, AND AGREEMENTS AS REQUIRED BY WPEA**

HUD program offices followed a decentralized process for implementing and enforcing nondisclosure policies, forms, and agreements applicable to HUD employees.<sup>17</sup> According to OGC officials, a program office could either prepare a nondisclosure policy, form, or agreement independently or request assistance from the office within OGC that typically serves that program office. For example, OGC's Office of Fair Housing fulfills any requests to handle FHEO's nondisclosure forms and agreements.<sup>18</sup>

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<sup>12</sup> FHEO took the following corrective actions: (1) sent the anti-gag provision in an email to each employee who signed FHEO's nondisclosure forms and (2) updated the two FHEO nondisclosure forms to include the anti-gag provision.

<sup>13</sup> 5 U.S.C. 2302(b)(13) and 5 U.S.C. 1215(a)(3)(A)

<sup>14</sup> FHEO indicated that it was unaware of any enforcement of its nondisclosure agreements.

<sup>15</sup> 31 U.S.C. 1341

<sup>16</sup> The Antideficiency Act prohibits Federal agencies from obligating or expending Federal funds in excess of an appropriation. As noted earlier, annual appropriations acts have regularly prohibited agencies from using appropriated funds to implement or enforce a nondisclosure policy, form, or agreement if such policy, form, or agreement does not include the anti-gag provision. Using appropriated funds in this way could be obligating or expending Federal funds in excess of an appropriation.

<sup>17</sup> As part of HUD's clearance process, HUD offices including OGC review HUD communications that relay important information or guidance about HUD programs, policies, or operations. The participating offices provide input with the goal of ensuring that the information is accurate and does not conflict with other HUD policy. Some but not all HUD policies go through the clearance process, and we did not identify any nondisclosure policies or forms that went through this process. As a result, we do not discuss HUD's clearance process in the report.

<sup>18</sup> HUD officials from OGC's Office of Fair Housing indicated that they respond to any requests to handle FHEO's nondisclosure forms, except for those that were applicable to all of HUD. As a result, those officials could speak to only one of the two FHEO nondisclosure forms. OGC's Office of Finance, Procurement, and Administrative Law may have been responsible for responding to requests to handle FHEO's other nondisclosure form, which relates to reviewing grant applications, a process that cuts across HUD.

However, as part of this decentralized process, OGC and program offices did not ensure that HUD's nondisclosure policies, forms, and agreements included the anti-gag provision as required by WPEA.<sup>19</sup> Based on the nondisclosure agreements reviewed, HUD did not communicate this legal requirement to its employees. As of October 2024, HUD's two nondisclosure policies — the HUD-wide Controlled Unclassified Information Policy and the Ginnie Mae Confidential Information Policy — also did not communicate that HUD employees must include the anti-gag provision as required by WPEA in nondisclosure forms and agreements. In addition, the policies did not communicate that HUD employees must include the anti-gag provision in personnel settlement agreements that restrict disclosing information beyond the terms and conditions of the agreement.<sup>20</sup>

## HUD TOOK CORRECTIVE ACTION TO POST THE ANTI-GAG PROVISION ON ITS AGENCY WEBSITE AS REQUIRED BY WPEA

WPEA requires agencies that have a nondisclosure policy, form, or agreement to post the anti-gag provision on the agency website.<sup>21</sup> Agencies must also post the list of Executive orders and statutory provisions that are controlling in case of a conflict with a nondisclosure policy, form, or agreement.<sup>22</sup> On October 15, 2024, in response to our evaluation, HUD posted the anti-gag provision on HUD's website, accompanied by the specific list of controlling Executive orders and statutory provisions.<sup>23</sup>

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<sup>19</sup> According to a Ginnie Mae official, Ginnie Mae reviewed its policies and procedures annually and planned to begin checking any nondisclosure policies, forms, and agreements it had for the anti-gag provision as part of this review. Ginnie Mae also planned to require its employees to involve OGC when handling nondisclosure policies, forms, and agreements.

<sup>20</sup> U.S. Office of Special Counsel, [Memorandum for Executive Departments and Agencies: Non-Disclosure Policies Forms, or Agreements](#), 1 February 2018

<sup>21</sup> Public Law 112-199, section 115(a)(2)

<sup>22</sup> The U.S. Office of Special Counsel issued a memorandum on February 1, 2018, to assist agencies in understanding and implementing WPEA's requirements. The Office of Special Counsel's memorandum provides the specific list of then-controlling Executive orders and statutory provisions.

<sup>23</sup> U.S. Department of Housing and Urban Development, [Whistleblower Rights and Protections: Nondisclosure Agreements](#)

## Conclusion and Recommendations

HUD's nondisclosure policies, forms, and agreements applicable to HUD employees did not include the anti-gag provision as required by law. Based on the nondisclosure agreements reviewed, HUD did not communicate to its employees the legal requirement to include the anti-gag provision in nondisclosure policies, forms, and agreements. Additionally, HUD's nondisclosure policies did not communicate that HUD employees must include the anti-gag provision in nondisclosure forms and agreements. Lastly, in response to our evaluation, HUD posted the anti-gag provision on its agency website as required by WPEA.

### **WE RECOMMEND THAT THE CHIEF ADMINISTRATIVE OFFICER, IN COLLABORATION WITH OGC,**

#### **1. Revise HUD's Controlled Unclassified Information Policy to include the anti-gag provision.**

To ensure that HUD complies with requirements in WPEA and appropriations acts, the Office of Administration should collaborate with OGC to revise HUD's Controlled Unclassified Information Policy to include the anti-gag provision. Including the provision in the Controlled Unclassified Information Policy would help ensure that HUD employees who implement or enforce the nondisclosure policy do not engage in a prohibited personnel practice as a result.

#### **2. Revise HUD's Controlled Unclassified Information Policy to state that (a) nondisclosure forms and agreements must include the anti-gag provision as required by law and (b) confidentiality clauses in personnel settlement agreements must include the anti-gag provision if the clause restricts disclosure of any other information beyond the terms and conditions of the agreement itself.**

As of October 2024, HUD's Controlled Unclassified Information Policy did not communicate that HUD employees must include the anti-gag provision in nondisclosure forms or nondisclosure agreements (including personnel settlement agreements that restrict disclosing information beyond the terms and conditions of the agreement). The Office of Administration should update the Controlled Unclassified Information Policy to communicate this information to HUD employees and ensure that they are aware of the legal requirement to include the anti-gag provision.

### **WE RECOMMEND THAT THE CHIEF FINANCIAL OFFICER, IN COLLABORATION WITH OGC AND THE OTHER HUD PROGRAM OFFICES AS NEEDED,**

#### **3. Review whether potential violations of the Antideficiency Act took place as a result of implementing or enforcing any nondisclosure policies, forms, or agreements that do not include the anti-gag provision as required by law. If it is determined that a violation occurred, the Chief Financial Officer should take disciplinary actions**

**as appropriate and report the identified violations to the oversight authorities, including the HUD Secretary, the President, the Office of Management and Budget, Congress, and the Comptroller General.**

Annual appropriations acts have regularly prohibited agencies from using appropriated funds to implement or enforce a nondisclosure policy, form, or agreement if such policy, form, or agreement does not include the anti-gag provision. In addition, the Antideficiency Act prohibits Federal agencies from obligating or expending Federal funds in excess of an appropriation. As a result, violations of the Antideficiency Act may have taken place if HUD implemented or enforced a nondisclosure policy, form, or agreement that did not include the anti-gag provision. To ensure compliance with the Antideficiency Act, HUD should review whether potential violations of the Antideficiency Act took place.

**WE RECOMMEND THAT THE GENERAL COUNSEL, IN COLLABORATION WITH OTHER HUD PROGRAM OFFICES AS NEEDED,**

**4. Implement a plan to annually survey all HUD program offices to identify nondisclosure policies, forms, and agreements issued and to determine whether they include the anti-gag provision as required by WPEA and, as necessary, to take corrective action to ensure that they include the anti-gag provision.**

HUD had not ensured that each of HUD's nondisclosure policies, forms, and agreements included the anti-gag provision as required by law. To ensure that HUD regularly reviews for the anti-gag provision, OGC should annually survey HUD program offices to identify nondisclosure policies, forms, and agreements and take corrective action as necessary to ensure that they include the anti-gag provision.

**5. Communicate across HUD that (a) HUD employees are required to include the anti-gag provision in nondisclosure policies, forms, and agreements applicable to HUD employees and (b) program offices should consider requiring their employees to request OGC assistance when implementing and enforcing nondisclosure policies, forms, and agreements applicable to HUD employees.**

Based on the nondisclosure agreements reviewed, HUD did not communicate the legal requirement to include the anti-gag provision in nondisclosure policies, forms, and agreements to its employees. To ensure that future nondisclosure policies, forms, and agreements applicable to HUD employees include the anti-gag provision, OGC should communicate the anti-gag provision requirement to HUD employees. OGC should also communicate that program offices should consider requiring OGC's assistance when implementing and enforcing nondisclosure documents.

**WE RECOMMEND THAT THE PRESIDENT OF GINNIE MAE, IN  
COLLABORATION WITH OGC,**

- 6. Revise the Ginnie Mae Confidential Information Policy to state that in the future, (a) nondisclosure forms and agreements must include the anti-gag provision as required by law and (b) confidentiality clauses in personnel settlement agreements must include the anti-gag provision if the clause restricts disclosure of any other information beyond the terms and conditions of the agreement itself.**

As of October 2024, the Ginnie Mae Confidentiality Information Policy did not communicate that HUD employees must include the anti-gag provision in nondisclosure forms or nondisclosure agreements (including personnel settlement agreements that restrict disclosing information beyond the terms and conditions of the agreement). Ginnie Mae should update the policy to communicate this information to HUD employees and ensure that they are aware of the legal requirement to include the anti-gag provision.

# Appendixes

## APPENDIX A – AGENCY COMMENTS AND OIG’S RESPONSE

### Summary of OCAO’s Comments and OIG’s Response

We requested that the Office of the Chief Administrative Officer (OCAO) provide formal comments in response to our draft report and indicate agreement or disagreement with recommendations 1 and 2. OCAO provided formal comments and agreed with our recommendations.

In its formal comments, OCAO wrote that it concurred with the two recommendations pertaining to the Controlled Unclassified Information Policy. OCAO indicated that it was awaiting an updated Executive order before revising the Controlled Unclassified Information Policy and would implement the two recommendations concurrently. OCAO estimated implementing corrective actions by June 30, 2025.

The status of recommendations 1 and 2 will remain “resolved-open” until we receive and agree to a request from OCAO to close each recommendation.

### Summary of OCFO’s Comments and OIG’s Response

We requested that the Office of the Chief Financial Officer (OCFO) provide formal comments in response to our draft report and indicate agreement or disagreement with recommendation 3. OCFO concurred with the recommendation but did not provide formal comments.

The status of recommendation 3 will remain “unresolved-open” until we receive and agree to OCFO’s proposed management decisions for this recommendation. We will contact OCFO shortly after the issuance of this report to discuss the recommendation.

### Summary of OGC’s Comments and OIG’s Response

We requested that OGC provide formal comments in response to our draft report and indicate agreement or disagreement with recommendations 4 and 5. OGC concurred with both recommendations but did not provide formal comments.

The status of recommendations 4 and 5 will remain “unresolved-open” until we receive and agree to OGC’s proposed management decisions for each recommendation. We will contact OGC shortly after the issuance of this report to discuss the recommendations.

### Summary of Ginnie Mae’s Comments and OIG’s Response

We requested that Ginnie Mae provide formal comments in response to our draft report and indicate agreement or disagreement with recommendation 6. Ginnie Mae concurred with the recommendation but did not provide formal comments.

The status of recommendation 6 will remain “unresolved-open” until we receive and agree to Ginnie Mae’s proposed management decisions for this recommendation. We will contact Ginnie Mae shortly after the issuance of this report to discuss the recommendation.

### Summary of FHEO’s Comments and OIG’s Response

FHEO provided formal comments to clarify FHEO actions referenced in the report. FHEO does not have any recommendations in this report. We thank FHEO for sharing formal comments.



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
WASHINGTON, DC 20410-3000

OFFICE OF ADMINISTRATION

MEMORANDUM FOR: John Garceau  
Acting Assistant Inspector General for Evaluation, Office of  
Inspector General, G

FROM: Bradley S. Jewitt   
Acting General Deputy Assistant Secretary for Administration, A1

SUBJECT: Office of Administrations Response to HUD Office of Inspector  
General Recommendations One and Two for Draft Report 2024-  
OE-0007, November 6, 2024

The Offices of Administration (OA) and Chief Administrative Officer (OCAO) appreciate the opportunity to review and comment on the draft report, *The U.S. Department of Housing and Urban Development Nondisclosure Agreements' Incorporation of Whistleblower Protections*. The two recommendations to the OCAO pertain to Controlled Unclassified Information (CUI) Policy. HUD concurs with the recommendations. The Administration is currently updating the Executive Order covering CUI and expects to deliver its revisions to the Executive Departments within the next few months. Those impending changes will also require HUD to update its CUI Policy and HUD will incorporate the intent of your recommendations regarding anti-gag provisions concurrently. Changes to HUD Policy require Departmental Clearance and this process will include review and concurrence by the Office of General Counsel. Due to the comprehensive nature of Departmental Clearance, we estimate implementing corrective actions by June 30, 2025.

Your recommendations are as follows: We recommend that the Chief Administrative Officer, in collaboration with the Office of General Counsel (OGC), revise HUD's Controlled Unclassified Information Policy to:

1. Include the anti-gag provision.
2. State that (a) nondisclosure forms and agreements must include the anti-gag provision as required by law and (b) confidentiality clauses in personnel settlement agreements must include the anti-gag provision if the clause restricts disclosure of any other information beyond the terms and conditions of the agreement itself.

OCAO will revise HUD's Controlled Unclassified Information Policy to include the anti-gag provision. Further, OCAO will ensure the Policy states that (a) nondisclosure forms and agreements must include the anti-gag provision as required by law and (b) confidentiality clauses in personnel settlement agreements must include the anti-gag provision if the clause restricts disclosure of any other information beyond the terms and conditions of the agreement itself.

Please note that the draft report identifies Kesha Robinson as OA Audit Liaison Officer and Daniel Pierce, Senior Advisor, is currently the OA ALO.

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OFFICE OF FAIR HOUSING  
AND EQUAL OPPORTUNITY

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
WASHINGTON, DC 20410-2000

December 4, 2024

John Garceau  
Acting Assistant Inspector General  
for Evaluation  
Office of Inspector General  
US Department of Housing and Urban Development  
451 7<sup>th</sup> Street SW  
Washington, DC 20410

Subject: *The U.S. Department of Housing and Urban Development Nondisclosure Agreements' Incorporation of Whistleblower Protections'* (2024-OE-0007).

Dear Acting Assistant Inspector General Garceau,

Thank you and your team for sharing the recent draft audit report entitled, "*The U.S. Department of Housing and Urban Development Nondisclosure Agreements' Incorporation of Whistleblower Protections.*" HUD's Office of Fair Housing and Equal Opportunity (FHEO) provided two rounds of technical comments to the draft report. Your team requested remaining comments by formal letter as a matter of record. While the draft report made no findings or recommendations with respect to FHEO, I want to take the opportunity to clarify FHEO actions that are referenced.

As noted in the report, FHEO produced two nondisclosure agreements (NDA) for review that were in use by FHEO's Office of Systemic Investigations and Fair Housing Initiatives Program Division. FHEO took appropriate corrective measures during the audit that are footnoted on page 3 of the report. Specifically, among other corrective actions outlined below, FHEO and the Office of General Counsel (OGC) engaged with the Department's web manager to update HUD's website with the anti-gag language.

As previously communicated but not reflected in the report, the Non-Disclosure Agreement (NDA) used for FHEO's competitive grant program has been discontinued. However, FHEO apprised all HUD employees affected by the prior NDA of the anti-gag provision via email for their information. Should we resume use of the form in the future, we will ensure accurate terms. We are committed to standardizing the inclusion of all applicable and appropriate whistleblower protections.

FHEO also shared the anti-gag provision with employees who signed the NDA involving the Government Sponsored Entities (GSEs). The GSE NDA was originally developed, and has now been revised, in coordination with the Federal Housing Finance Agency (FHFA), as conservator of the GSEs. This NDA has historically been required by the FHFA to release confidential information held by the GSEs, which is essential to FHEO's fair lending monitoring responsibility under the Fair Housing Act. OGC participated in the revision of this form as well as the anti-gag language sent to employees.

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I thank you for the revisions to the report that reflected FHEO's feedback and collaborative spirit during the audit engagement.

Sincerely,

*Lynn M. Grosso*

Lynn M. Grosso  
Deputy Assistant Secretary  
For Enforcement

## APPENDIX B – SCOPE, METHODOLOGY, AND LIMITATIONS

We completed this evaluation under the authority of the Inspector General Act of 1978 as amended and in accordance with the Quality Standards for Inspection and Evaluation issued by the Council of the Inspectors General on Integrity and Efficiency (December 2020).

### Scope

The evaluation scope included, as of the time of our evaluation in calendar year 2024,

- HUD’s nondisclosure policies, forms, and agreements applicable to HUD employees;
- HUD’s process to ensure that nondisclosure policies, forms, and agreements include the anti-gag provision; and
- HUD’s website.

### Methodology

To answer its objectives, the evaluation team gathered documentary and testimonial evidence through a combination of interviews and document requests. Specifically, the team

- obtained nondisclosure policies, forms, and agreements from HUD;
- reviewed nondisclosure policies, forms, and agreements from HUD for the anti-gag provision;
- conducted interviews with HUD employees from OGC, Ginnie Mae, and FHEO; and
- reviewed HUD’s website for the anti-gag provision accompanied by the specific list of controlling Executive orders and statutory provisions.

### Limitations

Our evaluation was limited to reviewing only the nondisclosure policies, forms, and agreements that HUD provided to us or that we obtained independently. Our evaluation was also limited to analyzing whether the nondisclosure policies, forms, and agreements included the anti-gag provision as required by law. In the instances in which we found that the anti-gag provision was not included as required, we did not examine the consequences for HUD and its employees.

## APPENDIX C – ABBREVIATIONS

Abbreviation	Definition
FHEO	Office of Fair Housing and Equal Opportunity
Ginnie Mae	Government National Mortgage Association
OCAO	Office of the Chief Administrative Officer
OCFO	Office of the Chief Financial Officer
OGC	Office of General Counsel
OIG	Office of Inspector General
HUD	U.S. Department of Housing and Urban Development
U.S.C.	United States Code
WPEA	Whistleblower Protection Enhancement Act of 2012

## APPENDIX D – ACKNOWLEDGEMENTS

This report was prepared under the direction of John Garceau, Acting Assistant Inspector General for Evaluation, and Gabrielle Foster, Assistant Director of the Program Evaluations Division. The Office of Evaluation staff members who contributed are recognized below.

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