

October 10, 2012

PRESIDENTIAL POLICY DIRECTIVE/PPD-19

SUBJECT: Protecting Whistleblowers with Access to Classified Information

This Presidential Policy Directive ensures that employees (1) serving in the Intelligence Community or (2) who are eligible for access to classified information can effectively report waste, fraud, and abuse while protecting classified national security information. It prohibits retaliation against employees for reporting waste, fraud, and abuse.

To ensure the timely and effective implementation of the goals of this directive, I hereby direct that the following actions be taken:

A. Prohibition on Retaliation in the Intelligence Community

Any officer or employee of a Covered Agency who has authority to take, direct others to take, recommend, or approve any Personnel Action, shall not, with respect to such authority, take or fail to take, or threaten to take or fail to take, a Personnel Action with respect to any employee serving in an Intelligence Community Element as a reprisal for a Protected Disclosure.

Within 270 days of the date of this directive, the head of each Intelligence Community Element shall certify to the Director of National Intelligence (DNI) that the personnel policies that apply to that element provide a process for employees to seek review of Personnel Actions they allege to be in violation of this directive and that the review process is consistent with the requirements of this directive. Such review process shall apply to Personnel Actions that arise after the date on which the department or agency ("agency") head certifies the agency review process. If the head of any Intelligence Community Element fails to make this certification or if the DNI disagrees with the certification, the DNI shall notify the President.

The review process required by the above paragraph shall be consistent, to the fullest extent possible, with the policies

and procedures used to adjudicate alleged violations of section 2302(b)(8) of title 5, United States Code. The review process shall provide for the protection of classified national security information and intelligence sources and methods. As part of the review process, the agency Inspector General shall conduct a review to determine whether a Personnel Action violated this directive and may recommend that the agency take specific corrective action to return the employee, as nearly as practicable and reasonable, to the position such employee would have held had the reprisal not occurred. An agency head shall carefully consider the findings of and actions recommended by the agency Inspector General. To the extent authorized by law (including the Back Pay Act), corrective action may include, but is not limited to, reinstatement, reassignment, the award of reasonable attorney's fees, other reasonable costs, back pay and related benefits, travel expenses, and compensatory damages.

B. Prohibition on Retaliation by Affecting Eligibility for Access to Classified Information

Any officer or employee of an executive branch agency who has authority to take, direct others to take, recommend, or approve any action affecting an employee's Eligibility for Access to Classified Information shall not, with respect to such authority, take or fail to take, or threaten to take or fail to take, any action affecting an employee's Eligibility for Access to Classified Information as a reprisal for a Protected Disclosure.

Within 270 days of the date of this directive, the head of each agency in possession of classified information shall certify to the DNI, acting in his or her capacity as the head of the entity selected by the President under subsection 435b(b) of title 50, United States Code, and as the Security Executive Agent designated in Executive Order 13467 of June 30, 2008, that the agency has a review process that permits employees to appeal actions affecting Eligibility for Access to Classified Information they allege to be in violation of this directive and that the review process is consistent with the requirements of this directive. Such review process shall apply to actions that arise after the date on which the agency head certifies the agency review process. If the head of any agency fails to make this certification or if the DNI disagrees with the certification, the DNI shall notify the President.

The review process required by the above paragraph shall, to the fullest extent possible, be consistent with and integrated into

the policies and procedures used to review security clearance determinations under Section 5.2 of Executive Order 12968 of August 2, 1995, as amended. The review process shall provide for the protection of classified national security information and intelligence sources and methods. As part of the review process, the agency Inspector General shall conduct a review to determine whether an action affecting Eligibility for Access to Classified Information violated this directive and may recommend that the agency reconsider the employee's Eligibility for Access to Classified Information consistent with the national security and with Executive Order 12968 and recommend that the agency take other corrective action to return the employee, as nearly as practicable and reasonable, to the position such employee would have held had the reprisal not occurred. An agency head shall carefully consider the findings of and actions recommended by the agency Inspector General. To the extent authorized by law (including the Back Pay Act), corrective action may include, but is not limited to, reinstatement, reassignment, reasonable attorney's fees, other reasonable costs, back pay and related benefits, travel expenses, and compensatory damages.

C. Inspector General External Review Panel

An employee alleging a reprisal who has exhausted the applicable review process required by Section A or B of this directive may request an external review by a three-member Inspector General panel (External Review Panel) chaired by the Inspector General of the Intelligence Community (on behalf of the DNI, acting in his capacity as the head of the entity selected by the President under subsection 435b(b) of title 50, United States Code, and as the Security Executive Agent designated in Executive Order 13467 of June 30, 2008). If such a request is made, the Inspector General of the Intelligence Community shall decide, in his or her discretion, whether to convene the External Review Panel, and, if so, shall designate two other panel members from the Inspectors General of the following agencies: Departments of State, the Treasury, Defense, Justice, Energy, and Homeland Security and Central Intelligence Agency. The Inspector General from the agency that completed the initial review shall not be a member of the External Review Panel. The External Review Panel shall complete a review of the claim, which may consist of a file review, as appropriate, within 180 days.

If the External Review Panel determines that the individual was the subject of a Personnel Action prohibited by Section A while an employee of a Covered Agency or an action affecting his or her Eligibility for Access to Classified Information prohibited

by Section B, the panel may recommend that the agency head take corrective action to return the employee, as nearly as practicable and reasonable, to the position such employee would have held had the reprisal not occurred and that the agency head reconsider the employee's Eligibility for Access to Classified Information consistent with the national security and with Executive Order 12968.

An agency head shall carefully consider the recommendation of the External Review Panel pursuant to the above paragraph and within 90 days, inform the panel and the DNI of what action he or she has taken. If the head of any agency fails to so inform the DNI, the DNI shall notify the President.

On an annual basis, the Inspector General of the Intelligence Community shall report the determinations and recommendations and department and agency head responses to the DNI and, as appropriate, to the relevant congressional committees.

With respect to matters covered by this directive, all agencies shall cooperate with their respective agency Inspectors General, the Inspector General of the Intelligence Community, and External Review Panels and provide such information and assistance to their respective agency Inspectors General, the Inspector General of the Intelligence Community, and members of External Review Panels as such Inspectors General may request, to the extent permitted by law.

D. Policies and Procedures

Within 365 days of the date of this directive, the DNI shall, in consultation with the Secretary of Defense, the Attorney General, and the heads of agencies containing Intelligence Community Elements, issue policies and procedures for ensuring that all employees serving in Intelligence Community Elements are aware of the protections and review processes available to individuals who make Protected Disclosures. These policies and procedures shall to the extent practicable be publically available, and shall provide:

- (1) guidance for individual officers or employees regarding what disclosures are protected;
- (2) guidance for potential recipients on the appropriate handling of Protected Disclosures, including for referral by the DNI or Inspector General of the Intelligence

Community to appropriate agency officials of any Protected Disclosures unrelated to national intelligence; and

- (3) information regarding the review processes required by Sections A, B, and C of this directive.

E. Review of Regulations Implementing Section 2303 of Title 5, United States Code

Within 180 days of the date of this directive, the Attorney General, in consultation with the Special Counsel and Federal Bureau of Investigation employees, shall deliver a report to the President that assesses the efficacy of the provisions contained in part 27 of title 28, Code of Federal Regulations in deterring the personnel practices prohibited in section 2303 of title 5, United States Code, and ensuring appropriate enforcement of that section, and describes any proposed revisions to the provisions contained in Part 27 of title 28 that would increase their effectiveness in fulfilling the purposes of section 2303 of title 5, United States Code.

F. Definitions

For purposes of this directive:

- (1) The term "Covered Agency" means an executive department or independent establishment, as defined under sections 101 and 104 of title 5, United States Code, that contains or constitutes an Intelligence Community Element, as defined below.
- (2) The term "Eligibility for Access to Classified Information" means the result of the determination whether an employee (a) is eligible for access to classified information in accordance with Executive Order 12968 (relating to access to classified information), or any successor thereto, and Executive Order 10865 of February 20, 1960, as amended (relating to safeguarding classified information with industry), or any successor thereto; and (b) possesses a need to know under such orders.
- (3) The term "Intelligence Community Element" means any executive agency or unit thereof determined by the President under section 2302(a)(2)(C)(ii) of title 5, United States Code, to have as its principal function the conduct of foreign intelligence or counterintelligence activities, including but not limited to the Office of the

DNI, the Central Intelligence Agency, the National Security Agency, the Defense Intelligence Agency, the National Geospatial-Intelligence Agency, and the National Reconnaissance Office. For purposes of this directive, the term "Intelligence Community Element" does not include the Federal Bureau of Investigation.

- (4) The term "Personnel Action" means an appointment, promotion, detail, transfer, reassignment, demotion, suspension, termination, reinstatement, restoration, reemployment, or performance evaluation; a decision concerning pay, benefits, or awards; a decision concerning education or training if the education or training may reasonably be expected to lead to an appointment, reassignment, promotion, or performance evaluation; a decision to order psychiatric testing or examination; and any other significant change in duties, responsibilities, or working conditions.

The term "Personnel Action" does not include the termination of an employee pursuant to section 1609 of title 10, United States Code. The term "Personnel Action" does not include the termination of an employee pursuant to section 102A(m) of the National Security Act of 1947, section 104A(e) of the National Security Act of 1947, or section 7532 of title 5, United States Code, so long as the official authorized by those provisions to terminate the employee (and not his or her delegatee)

(i) determines that the alternative legal procedures to terminate the employee cannot be invoked in a manner consistent with the national security and (ii) promptly notifies the Inspector General of the employing agency. The term "Personnel Action" does not include actions taken with respect to a position that the agency head has designated, prior to the action as being of a confidential, policy determining, policymaking, or policy advocating character. The term "Personnel Action" does not include actions taken with respect to a member of the Armed Forces, as used in section 1034 of Title 10, United States Code. The term "Personnel Action" does not include any actions taken prior to the issuance of this directive.

- (5) The term "Protected Disclosure" means:

- (a) a disclosure of information by the employee to a supervisor in the employee's direct chain of command up to and including the head of the employing agency, to the Inspector General of the employing agency or

Intelligence Community Element, to the Director of National Intelligence, to the Inspector General of the Intelligence Community, or to an employee designated by any of the above officials for the purpose of receiving such disclosures, that the employee reasonably believes evidences (i) a violation of any law, rule, or regulation; or (ii) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;

- (b) any communication described by and that complies with subsection (a)(1), (d), or (h) of section 8H of the Inspector General Act of 1978 (5 U.S.C. App.); subsection (d)(5)(A) of section 17 of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403q); or subsection (k)(5)(A), (D), or (G), of section 103H of the National Security Act of 1947 (50 U.S.C. 403-3h);
- (c) the exercise of any appeal, complaint, or grievance with regard to the violation of Section A or B of this directive;
- (d) lawfully participating in an investigation or proceeding regarding a violation of Section A or B of this directive; or
- (e) cooperating with or disclosing information to an Inspector General, in accordance with applicable provisions of law in connection with an audit, inspection, or investigation conducted by the Inspector General,

if the actions described under subparagraphs (c) through (e) do not result in the employee disclosing classified information or other information contrary to law.

G. General Provisions

This directive shall be implemented in a manner consistent with applicable law, including all statutory authorities of the heads of agencies and Inspectors General, and does not restrict available rights, procedures, and remedies under section 2302(b) of Title 5, United States Code.

This directive is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law

or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

BARACK OBAMA