

As a contractor, what actions can be taken against me if I make an unauthorized disclosure?

Besides the potential loss of your security clearance, the USG may also take action against your employing company, such as terminating the contract or seeking monetary damages, based on the terms of the contract.

What must I do prior to publishing a book or article?

Please contact your Security Manager prior to publishing a book or article to seek guidance regarding the process and procedures for ensuring the material does not include classified information. Since you signed the NDA and agreed not to make such disclosures, the USG may petition a Federal court to issue an order to prevent or delay publication if it is believed to contain classified information.

Failure to coordinate with your Security Manager may result in an unauthorized disclosure. The USG might seek monetary damages from you in court for the harm caused by the disclosure, including the forfeiture of any payment you have received or may receive from a publisher or sponsor.

Who is authorized to sign as a “Witness” on the NDA?

Any executive branch employee may witness the execution of the NDA by a USG or non-USG employee.

An authorized representative of a contractor, licensee, grantee, or other non-USG organization designated to act as an agent of the United States may witness an NDA executed by an employee of that same organization.

The witness’ signature serves to validate that the individual’s signature was executed on the NDA form. The individual’s and witness’ signatures must bear the same date.

If I previously signed an NDA, am I required to sign a new form?

If your agency confirms that you previously signed an NDA, the form remains valid and you do not need to sign a new one since the other NDA remains in full force and effect for the lifetime of the individual. However, in 2013, the Office of the Director of National Intelligence (ODNI) revised the NDA to reflect language required by two new statutes: the *Financial Services and General Government Appropriations Act, 2012* (Public Law 112-74); and the *Whistleblower Protection Enhancement Act of 2012* (Public Law 112-199).

If I previously signed an NDA, will my liability change?

Your liability will not change. Published rules require that all these agreements be interpreted and enforced in a manner that is completely consistent with the language of the NDA.

If you have any questions about the NDA, the rules for handling classified information, or your responsibilities for safeguarding classified information, please contact your Security Manager or supervisor.

**Produced by the Office of the Director
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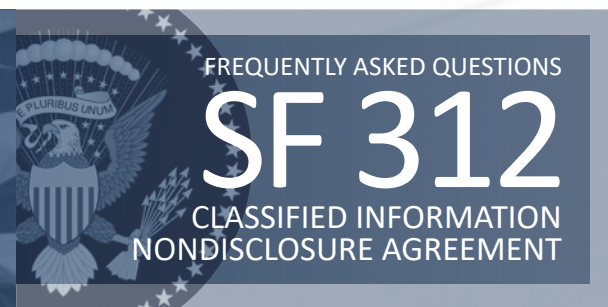
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FREQUENTLY ASKED QUESTIONS

SF 312

**CLASSIFIED INFORMATION
NONDISCLOSURE AGREEMENT**



OVERVIEW

Individuals who hold security clearances are privileged to serve in positions of enormous trust and responsibility in the United States Government (USG). With this privilege, selected individuals are entrusted with safeguarding our nation's most closely-held secrets that underpin our national security and are vital to the defense of the United States. As a part of the process for granting access to classified information, the USG requires individuals to sign the Standard Form 312 (SF-312), *Classified Information Nondisclosure Agreement* (NDA), or approved equivalent (hereafter referred to as NDA). Executive Order (E.O.) 12968, *Access to Classified Information*, and E.O. 13526, *Classified National Security Information*, requires individuals to sign an approved NDA prior to gaining access to classified information. E.O. 13526 also requires that individuals receive contemporaneous training on the proper safeguarding of classified information, and on the criminal, civil, and administrative sanctions that may be applied to any individual who fails to protect classified information from unauthorized disclosure.

FREQUENTLY ASKED QUESTIONS

What is the NDA?

The NDA informs individuals of the trust that is placed in them with their access to classified information. It also advises individuals of their responsibility to protect that information from unauthorized disclosure, and the possible consequences if they fail to honor that responsibility.

The NDA is a legally binding contract that informs individuals of their responsibilities to protect national security information, identifies the consequences of any unauthorized disclosure, and indicates the individual's understanding and agreement to the terms outlined in the document.

Who must sign the NDA?

In accordance with E.O. 12968 and 13526, all persons with authorized access to classified information are required to sign an approved NDA.

What is classified information under this agreement and how do I get access to it?

Classified information is any marked or unmarked information that has been determined by statute or executive order to require protection against unauthorized disclosure to a foreign entity, the media, the public, or anyone else not authorized to receive it.

The granting of a security clearance is one of three conditions that must be met before an individual is approved for access to classified information. Once it has been determined that an individual requires such access, they are submitted for security clearance processing. Authorized officials approve or deny a clearance after a holistic evaluation of the individual's security processing. If approved, an NDA must be signed and executed before access to classified information is granted. To access classified information, the individual must also have a need-to-know the information.

Is an oral attestation statement required to be read aloud prior to an individual being given access to classified information?

The Director of National Intelligence (DNI), as the Security Executive Agent (SecEA), does not require an oral attestation statement be delivered prior to an individual being given access to classified information.

Are digital or electronic signatures authorized on either the briefing or debriefing portion of an NDA?

The NDA must be signed using an original signature. Digital or electronic signatures on the NDA are not authorized pursuant to 32 C.F.R. § 2001.80(d)(2)(ii).

I am in a job that requires a security clearance, but I have not had access to classified information. Do I need to sign the NDA?

Please contact your Human Resources Officer, Security Manager, or supervisor to determine whether or not your official job or duty position requires access to classified information and to determine if an NDA is required.

If your job requires access to classified information, you must sign an NDA.

How long are executed copies of the NDA retained and where are they stored?

The signed original or a copy of the signed original NDA stored on microfiche, microfilm, computer disk, or electronic storage medium must be retained for 50 years following the date of execution. Each agency must retain its executed copies of NDAs in a file system from which the agreements can be expeditiously retrieved in the event that the USG must enforce them.

For USG employees, an agency may store the executed copy of the NDA in that employee's official personnel file.

An agency may permit its contractors, licensees, and grantees to retain the executed agreements of their employees during the time of employment. Upon termination of employment, the contractor, licensee, or grantee shall deliver the signed original or copy of the signed original NDA of that individual to the agency primarily responsible for the individual's classified work. A contractor, licensee or grantee of an agency participating in the National Industrial Security Program, for which the Department of Defense is acting as the Cognizant Security Agency, shall deliver the copy of the signed NDA of a terminated employee to the Defense Security Service.

Are NDAs legally enforceable?

Yes, Federal courts, including the Supreme Court, have held that NDAs are constitutional and legally binding contracts.

What is an Unauthorized Disclosure?

E.O. 13526 defines an unauthorized disclosure as a communication or physical transfer of classified information to an unauthorized recipient.

What actions can be taken against me if I make an unauthorized disclosure?

An unauthorized disclosure of classified information is illegal and may result in administrative, civil, or criminal penalties. The scope of administrative actions will depend upon whether you are a USG employee or non-USG employee. If you are a USG employee, administrative actions may include reprimand, demotion, suspension, removal, and clearance revocation.