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June 26, 2026

Via Electronic Submission to Regulations.gov

Scott Kupor, Director
Office of Personnel Management
1900 E Street NW
Washington, DC 20415

Re: Confidential Government Information Nondisclosure Agreement (Docket No. OPM-2026-0100)

Dear Director Kupor:

Public Citizen, a consumer advocacy organization with more than one million members across the nation, writes to urge the Office of Personnel Management (OPM) to withdraw its proposed governmentwide nondisclosure agreement (NDA) that it is proposing for federal agencies to impose on new and existing employees as a condition of employment. Requiring an NDA for all federal employees would be unprecedented.¹ OPM's proposal fails to provide adequate justification for the NDA requirement and fails to define key terms giving adequate notice to employees of what they would be forbidden from disclosing.

Federal civil servants are the foundation of our government, providing essential services and benefits to Americans and ensuring our nation thrives. Many federal employees handle controlled unclassified information (CUI) and classified information every day in the line of duty without incident. Disclosure of protected information is prohibited by law and the federal government has legitimate reason for wanting to ensure it is not unlawfully disclosed. OPM's proposed governmentwide NDA, however, would not help to secure protected information.

NDAs are widely criticized for being overbroad, unenforceable, and creating a chilling effect on employee reporting of abuse or legal violations.² In line with criticism of NDAs generally, and as explained below, OPM's proposed NDA is overbroad, unjustified, would stoke fear in existing and future government employees, and would undermine principles of open government and transparency. Accordingly, OPM should not proceed with the proposed NDA.

¹ Andrea Hsu, *Tired of Leaks, The Trump Administration Wants Federal Workers to Sign NDAs*, NPR, May 27, 2026, <https://www.npr.org/2026/05/26/nx-s1-5835300/trump-opm-nda-leaks-federal-employees>.

² Stephen M. Kohn, *Understanding Your NDA (and When it Can Be Broken)*, HARVARD BUSINESS REVIEW, May 15, 2024, <https://hbr.org/2024/05/understanding-your-nda-and-when-it-can-be-broken>.

Background

OPM's proposed NDA responds to President Trump's Executive Order (EO) 14210, *Implementing the President's "Department of Government Efficiency" Workforce Optimization Initiative*.³ The EO directs OPM to amend suitability standards for federal employees⁴ to add criteria relating to "refusal to certify compliance with nondisclosure obligations." On June 3, 2025, OPM published a proposed "Suitability and Fitness" rule,⁵ amending suitability standards to include the new criteria. Now, OPM has issued this notice of a draft NDA that federal agencies may use to document employees' agreement to nondisclosure obligations.

OPM asserts that NDAs are necessary for "employees' acknowledgment of, and agreement to comply with, current legal obligations to safeguard non-public, confidential, or proprietary information, created or obtained through their official duties." OPM also asserts that the NDA preserves employees' rights to make lawful disclosures.

According to OPM, federal agencies are not required to utilize NDAs for their employees; however, if an agency chooses to implement the NDAs, it becomes part of the employee's Electronic Official Personnel Folder (eOPF), whether or not the employee chooses to sign it. The draft NDA includes a note that "Failure to sign may result in removal from federal service and potential debarment." For those who sign, the agreement remains in effect for five years after departure from federal service. Violating the NDA can result in civil and criminal penalties.

OPM Does Not Adequately Justify the Need for NDAs

OPM's notice of the draft NDA makes several assertions to support its determination that government NDAs are necessary. None of these assertions are adequately supported.

OPM Provides Scant Evidence to Support Its Claim of Pervasive Leaks

OPM's notice offers no evidence to support the assertion that federal employees are prone to make unlawful disclosures. Rather, OPM cites only a handful of media reports that reference disclosures of disparate types of government information that OPM deems unlawful and would be covered by the draft NDA.

The federal government has legitimate reasons to protect certain types of information from disclosure. Some of the reports cited are concerning if in fact accurate and unlawful. Yet five news articles are not evidence of pervasive leaks and do not show the need for governmentwide NDAs.

³ Executive Order 14210, Implementing the President's "Department of Government Efficiency" Workforce Optimization Initiative (Feb. 11, 2025), <https://www.govinfo.gov/content/pkg/DCPD-202500254/pdf/DCPD-202500254.pdf>.

⁴ 5 C.F.R. § 731.202(b).

⁵ 90 Fed. Reg. 23,467.

Refreshing Employees on Nondisclosure Laws Does Not Require an NDA

OPM asserts that the draft NDA merely requires compliance with already existing nondisclosure law and would serve as a helpful reminder of those obligations. Federal employees already receive annual training on ethics, disclosures, protecting sensitive information, and whistleblower protections. Posters covering many of these topics are posted in agency breakrooms. Having employees sign an NDA would not provide them with a reminder of their obligations that they do not already receive through annual training and posted signage.

The Proposed NDA Does Not Promote Uniformity

OPM's claim that its NDA proposal would achieve uniformity across government agencies is overstated. Uniformity is not currently lacking, as federal employees are already subject to nondisclosure laws and OPM claims that this NDA does not create new compliance obligations. The NDA is optional for agencies to adopt, and therefore revisions and exceptions would be possible as well, undermining OPM's claim that it would result in a standard application across all agencies that choose to adopt it.

NDA is Overbroad, Stoking Fear and Infringing on Protected Speech

Despite OPM's assurance in its notice that the NDA "does not create new substantive restrictions on employee speech or disclosure rights," the draft is vague and open to a broad reading. The draft defines protected "confidential government information" as:

non-public, confidential, or proprietary information, whether or not marked as such, which may include, but not be limited to, information related to internal agency operations, personnel matters, personally identifiable information (PII), personal health information (PHI), procurement processes, or any sensitive, pre-decisional, or deliberative material that is not currently publicly available and should not be disclosed under applicable law, Federal regulation, or government-wide policy....

The draft NDA definition of "confidential government information" can be read to apply to any information that has not been formally announced to the public. As written, it might apply to an employee discussing a personnel matter involving their performance with a friend or family member, or something as trivial as the items in the agency breakroom.⁶ It might inhibit a government employee from talking with a member of the public about the process for filing for benefits or a status update on their application or decline to speak with communities about potential agency action that may impact them. It could scare off a government employee who was thinking about reporting to Congress a concerning action by an agency head that they believe is waste, fraud, and abuse.

⁶ Letter from Society of Professional Journalists, et. al., SPJ, Coalition Urge Rejection of Proposed Federal Nondisclosure Rule, June 9, 2026, <https://www.spj.org/spj-coalition-urge-rejection-of-proposed-federal-nondisclosure-rule/?utm>.

Indeed, as discussed below, experts and advocates from both sides of the political aisle warn that the notice is written so broadly as to undermine numerous laws, including the Freedom of Information Act (FOIA), federal whistleblower protections, and the First Amendment.

Infringement on the Freedom of Information Act

FOIA establishes a presumption in favor of disclosure. The proposed NDA, however, is in stark tension with employees' obligations under FOIA, both to proactively post certain information,⁷ and to disclose information in response to FOIA requests.⁸ The broad wording of the NDA would almost certainly encourage non-disclosure of information that FOIA requires to be disclosed, as the broad wording of the NDA would make employees fearful of making a wrong decision that could lead to permanent disbarment.⁹

Infringement on Federal Whistleblower Protections

Likewise, warnings abound that this NDA would operate as a gag order in contradiction of federal whistleblower protections.¹⁰ Under federal law, any NDA utilized by a federal agency must include a specific anti-gag clause.¹¹ The draft NDA only includes partial reference to the required language. Senator Chuck Grassley (R-Iowa) sent a letter to OPM urging the agency to update this rule to include the full anti-gag provision.¹² In his letter, Grassley reminds OPM that "legally protected disclosures are authorized by law and are not 'leaks.'" He adds, "Federal agencies must aggressively counsel against the use of nondisclosure agreements that are designed to chill legitimate whistleblowers under the guise of protecting unauthorized disclosures. Sometimes, it will be a fact-specific analysis; however, the balance must always be to the benefit of the patriotic whistleblower."

Additionally, federal whistleblower protection laws often permit any disclosure that is not prohibited by law. The broad scope of the NDA, however, would prohibit any disclosure not affirmatively approved. This is seen most clearly in the requirement to obtain affirmative approval from a government official before making any disclosures for five years after federal employment has ended.

⁷ See 5 U.S.C. § 552(a)(1) & (2).

⁸ *Id.* § 552(a)(3).

⁹ Audrey Nielsen, *What the Trump Administration's Proposed Federal NDA Could Mean for FOIA*, MUCKROCK, June 10, 2026, <https://www.muckrock.com/news/archives/2026/jun/10/what-the-trump-administrations-proposed-federal-nda-could-mean-for-foia/>.

¹⁰ *E.g.*, Letter from Rep. Greg Landsman et al., to OPM Director Scott Kuper (June 24, 2026), https://d12t4t5x3vyizu.cloudfront.net/landsman.house.gov/uploads/2026/06/Quill-Letter-L37266-Letter-to-OPM-Re_-NDAs-for-Federal-Employees-Version-2-06-24-2026-@-09-56-AM.pdf.

¹¹ Press Release, OSC's Enforcement of the Anti-Gag Order Provision in Whistleblower Law, U.S. Office of Special Counsel (Jan. 25, 2017), <https://www.osc.gov/news/2017-01-25/osc-s-enforcement-of-the-anti-gag-order-provision-in-whistleblower-law/>.

¹² Letter from Senator Chuck Grassley to OPM Director Scott Kuper (June 8, 2026), https://www.grassley.senate.gov/imo/media/doc/grassley_to_opm_-_government_wide_nda.pdf.

Infringement on First Amendment Rights

The draft NDA would violate the First Amendment. The OPM proposal would coerce employees to sign the NDA by threatening permanent disbarment if they refuse and including their refusal to sign in their eOPF. The act of not signing the NDA is disciplinary and subject to penalty, even though they have not made any unlawful disclosures. Accordingly, employees are likely to sign the NDA out of fear of adverse action. Combined with overbroad language, employees are likely to err on the side of nondisclosure even when disclosure is lawful.

Conclusion

Public Citizen urges OPM to withdraw the proposal because it does not achieve OPM's stated objectives of protecting confidential information. Rather, it threatens to intimidate federal employees and undermine principles of open government and transparency. Only a government that wants to operate in darkness would propose such an NDA on all its employees.

Respectfully submitted,

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