



June 26, 2026

Submitted via Federal eRulemaking Portal: <https://www.regulations.gov>

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

Subject: Notice with request for comment, Confidential Government Information Nondisclosure Agreement, 91 Fed. Reg. 31478 (May 27, 2026) (Docket No. OPM-2026-0100)

Dear Director Kupor:

The undersigned organizations write in strong opposition to the Office of Personnel Management’s (OPM) notice of a proposal¹ to institute a standardized nondisclosure agreement (NDA) that federal agencies could require their workers to sign as a condition of employment. Although framed as an acknowledgment of existing obligations, the proposed NDA would define covered “Confidential Government Information” broadly and go much further in other ways, especially when combined with OPM’s proposed “suitability and fitness” regulatory changes. If finalized, it would be unconstitutional, contrary to federal law, and bad policy.

The proposed NDA, if implemented, would violate the First Amendment rights of public employees and the public itself. The proposal would function as a prior restraint on speech, sweep too broadly, and cause employees to self-censor rather than risk the serious consequences of violating the NDA. The proposed NDA would also reduce the effectiveness of congressional oversight, impede inspector general investigations, and deprive the public of information about government operations. The likely effect would be to keep the American people in the dark about corruption, lawlessness, abuses of power, gross mismanagement and public safety threats as well as the normal operations of their government.

¹ Off. of Pers. Mgmt., Confidential Government Information Nondisclosure Agreement, Notice (“OPM’s notice” or “notice”), 91 FR 31478, 31480 (May 27, 2026).

Nor is such a radical change necessary. OPM’s notice fails to demonstrate that the proposed NDA is needed or that it would achieve legitimate goals. The notice’s claim that the executive branch is experiencing a widespread phenomenon of unauthorized disclosures is not supported by credible evidence. Even assuming a widespread problem existed, OPM fails to show that existing legal structures are inadequate to address actual misconduct or that the proposed NDA would prevent prohibited disclosures or lead to their discovery.

Finally, the proposed NDA would have negative impacts on the federal workforce. OPM’s notice is notably silent about the significant recruitment and retention challenges already facing the civil service. Implementing the proposed NDA, especially one so closely linked to potential removal and debarment, would exacerbate those challenges, further weakening the government’s ability to deliver basic services and respond to emergencies.

We urge OPM to abandon the proposed NDA.

I. The Proposed NDA Violates the First Amendment

The sweep and scope of the speech restrictions set out in the proposed NDA exceed the narrow limits the Constitution places on restricting the speech of those working in the public sector. Although government employees relinquish a degree of expressive freedom in exchange for their positions, time and again the Supreme Court has reiterated that they do not relinquish their First Amendment rights to comment on matters of public concern.² By virtue of their positions, government employees have first-hand information about the operation of our government and the use of taxpayer money. Such information is necessarily of concern to the public,³ particularly at a time in American history where independent oversight of government has been severely undermined.⁴ OPM’s notice and proposed NDA collide with the First Amendment’s requirement that the federal government respect its citizens’ rights to freedom of expression.

² See, e.g., *United States v. Nat’l Treasury Emps. Union*, 513 U.S. 454, 465 (1995) (NTEU) (explaining that public employees do not “relinquish[] ‘the First Amendment rights they would otherwise enjoy as citizens to comment on matters of public interest.’” (quoting *Pickering v. Board of Ed. of Township High School Dist. 205, Will Cty.*, 391 U.S. 563, 568 (1968))).

³ See *Lane v. Franks*, 573 U.S. 228, 235–36 (2014) (“Speech by citizens on matters of public concern lies at the heart of the First Amendment, which was fashioned to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people. This remains true when speech concerns information related to or learned through public employment.”) (citations omitted).

⁴ The attacks and undermining of oversight bodies since January 2025 include “inspectors general (fired en masse last January), the Office of Special Counsel, the Merit Systems Protection Board, the Office of Government Ethics, internal Department of Homeland Security watchdogs, and the Government Accountability Office.” F. Williams, *Trump’s First Year of Attacks on Government: What Can Be Fixed*, Project on Government Oversight (Feb. 12, 2026), <<https://www.pogo.org/analyses/trumps-first-year-of-attacks-on-government-what-can-be-fixed>>. See also, e.g., C. Dorgelo K. Romig, N. Law & D. O’Connor, *Trump Administration’s Undercutting of Oversight Hurts Taxpayers and Beneficiaries*, Center on Budget and Policy Priorities (Nov. 5, 2025) <<https://www.cbpp.org/research/federal-budget/trump-administrations-undercutting-of-oversight-hurts-taxpayers-and>> (reporting President Trump “has engaged in a series of unprecedented, irresponsible, and often illegal steps—reversing long-standing bipartisan commitments to integrity and transparency through actions that will increase the risk of fraud and make it more difficult to impartially determine when the Administration is taking illegal or imprudent action. This hostility to oversight

A. The Proposed NDA functions as a presumptively unconstitutional prior restraint not justified by countervailing government interests.

The proposed NDA, in combination with OPM’s proposed “suitability and fitness” regulatory changes⁵ and criminal laws, would make clear to employees that they could risk their livelihoods and potentially severe legal consequences by speaking about certain matters of public concern. Refusal to certify compliance with nondisclosure obligations could be treated as a suitability issue, and a violation of the agreement could potentially trigger penalties under 18 U.S.C §1001, a criminal false-statement act. The practical application⁶ of the proposed NDA would be to coerce agreement as an incident of employment and to use the threat of serious sanctions to deter employees from speaking, even when their communications would be lawful and protected.⁷

Under the First Amendment, the proposed NDA would be a prior restraint on speech, which is abhorrent to the Constitution.⁸ If finalized, the proposed NDA and its accompanying suitability certification framework would restrain speech prior to its publication, funneling information about government activity and public affairs through agency officials who would decide what, when, and whether information may be shared. That structure is incompatible with a system of democratic accountability that depends on an informed public.

Here, as in *United States v. Nat’l Treasury Emps. Union*, 513 U.S. 454, 465 (1995) (*NTEU*), where the Supreme Court struck down a ban on federal employees accepting honoraria for making speeches and writing articles, the proposed NDA “chills potential speech before it happens.”⁹ As such, it is a prior restraint and presumptively unconstitutional.¹⁰ In order to align with the First Amendment, the government must “show that the interests of both potential

has been on display as the President has removed Inspectors General (IG) and the Administration has defunded operations supporting IGs’ work, undercutting independent agency oversight.”); D. Lett & C. Edwards, *Trump Cuts the Inspectors General*, Cato Institute (April 21, 2026) (“For some reason, the Trump administration has fired or forced out at least 21 of the inspectors general (IGs) since January 2025. In its recent budget, the administration proposes cutting real IG funding by 23 percent between fiscal 2025 and fiscal 2031.”).

⁵ See Notice, 91 Fed. Reg. at 31480 (explaining that on February 11, 2025, the President directed OPM to revise its suitability regulations to address integrity-related conduct, including “refusal to certify compliance with nondisclosure obligations.” OPM published a proposed rule titled Suitability and Fitness on June 3, 2025 (90 FR 23467). The proposed rule would emphasize the impact of noncompliance with nondisclosure obligations in suitability and fitness determinations.); Off. of Pers. Mgmt., *Suitability and Fitness*, 90 Fed. Reg. 23467 (June 3, 2025), <https://tinyurl.com/338rz2hz>; Off. of Pers. Mgmt., *Suitability Action Appeals*, 91 Fed. Reg. 5352 (Feb. 6, 2026), <https://tinyurl.com/3bnyc2fr>.

⁶ See Notice, Proposed NDA, Section 4 (imposing a “continuing personal obligation that is not terminated or otherwise modified by change of jobs or employer” to Rule), at <https://www.regulations.gov/document/OPM-2026-0100-0003>.

⁷ See *Citizens United v. Fed. Election Comm’n*, 558 U.S. 310, 335-36 (2010). (“As a practical matter ... a speaker who wants to avoid threats of criminal liability and the heavy costs of defending against [] enforcement must ask a governmental agency for prior permission to speak. These onerous restrictions thus function as the equivalent of prior restraint ...”).

⁸ See, e.g., *Nebraska Press Ass’n v. Stuart*, 427 U.S. 539, 559 (1976) (“[P]rior restraints on speech and publication are the most serious and the least tolerable infringement on First Amendment rights.”); *Gannett Co. v. DePasquale*, 443 U.S. 368, 394 n.25 (1979) (“[T]he Supreme Court has described the elimination of prior restraints as the ‘chief purpose’ of the First Amendment.”).

⁹ *NTEU*, 513 U.S. 454, 468 (1995) (citing *Near v. Minnesota ex rel. Olson*, 283 U.S. 697 (1931)).

¹⁰ While the Supreme Court has not applied a pure prior restraint analysis to actions suppressing government employees’ speech, the principles underlying the presumption of unconstitutionality carry over to speech about public concerns that do not involve job duties. See, e.g., *Lane v. Franks*, 573 U.S. 228 (2014), setting out prior restraint principles justify the “heightened” burden.

audiences and a vast group of present and future employees in a broad range of present and future expression are outweighed by that expression's 'necessary impact on the actual operation' of the Government."¹¹ The justifications set out in the notice and proposed NDA, described below, fall woefully short of satisfying this demanding scrutiny.

B. The Proposed NDA is unconstitutionally overbroad.

The enormous sweep and scope of the proposed NDA is not justified by any legitimate governmental interest that is constitutionally tolerable. The proposed NDA would restrict from public view an enormous amount of material of concern to the public that it calls "Confidential Government Information."¹² OPM defines this as "all non-public, confidential, or proprietary information, to include, but not be limited to":

- Information relating to internal agency operations;
- Personnel matters and records;
- Procurement and business-proprietary processes;
- Personally Identifiable Information (PII) or Personal Health Information (PHI);
- Sensitive, pre-decisional, or deliberative materials that are not currently publicly available.

The prohibited speech at issue here extends far beyond classified national security data to encompass day-to-day government operations. Accordingly, the proposed NDA runs headlong into the First Amendment's proscription against regulations on speech that are overly broad.

As the Supreme Court has repeatedly pointed out, the First Amendment necessarily requires breathing room such that government restrictions on speech must be narrowly drawn.¹³ By design, the proposed NDA shuts space for free expression and "deters or chills constitutionally protected speech" by government workers "harming not only themselves but society as a whole." *Virginia v. Hicks*, 539 U.S. 113, 119 (2003).

Just as in *NTEU*, the NDA "unquestionably imposes a significant burden on expressive activity." 513 U.S. at 469-470, and it proscribes a significant swath of speech that does not run afoul of any laws. The Supreme Court has made clear that just because speech concerns information learned at work does not strip it of First Amendment protection. Indeed, in *Lane v. Franks*, the Court ruled that "the mere fact that a citizen's speech concerns information acquired by virtue of his public employment does not transform that speech into employee—rather than citizen—speech." 573 U.S. 228, 240 (2014).

¹¹ *NTEU*, 513 U.S. at 468 (citing *Pickering*, 391 U.S., at 571).

¹² See Notice, 91 Fed. Reg. at 31479.

¹³ See, e.g., *Broadrick v. Oklahoma*, 413 U.S. 601, 611–12 (1973). ("It has long been recognized that the First Amendment needs breathing space and that statutes attempting to restrict or burden the exercise of First Amendment rights must be narrowly drawn and represent a considered legislative judgment that a particular mode of expression has to give way to other compelling needs of society.").

Instead, restrictions on the speech of government employees must be necessary to protect a substantial government interest *unrelated* to suppressing speech and narrowly drawn to restrict only speech that falls within that zone of interest.¹⁴ The proposed NDA squarely targets the suppression of speech as its primary objective, and the broad blanket justifications offered cannot satisfy this exacting standard.

Finally, the proposed NDA is overbroad because it would extend for five years after an employee leaves federal service. The lengthy post-employment restriction further weakens any justification that the proposal is narrowly tailored to its operational needs. By design or effect, the proposed NDA would shroud government activities by silencing public servants without a correspondingly legitimate justification. As such, it is incompatible with the First Amendment.

C. The Proposed NDA violates constitutional principles prohibiting vagueness and viewpoint discrimination.

The proposed NDA is also problematic because it violates the First and Fifth Amendments' vagueness doctrines and invites unconstitutional viewpoint discrimination.¹⁵ More fundamentally, the proposed NDA violates the basic notions of fair warning and arbitrary application.¹⁶

The vagueness doctrine overlaps First Amendment free speech rights and Fifth Amendment due process concerns. In essence, it requires “regulated parties [to] know what is required of them so they may act accordingly” and “precision and guidance . . . so that those enforcing the law do not act in an arbitrary or discriminatory way.” *FCC v. Fox Television Stations, Inc.*, 567 U.S. 239, 253 (2012).¹⁷ A speech regulation is unconstitutionally vague when it fails to “give the person of ordinary intelligence a reasonable opportunity to know what is prohibited.” *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972)). And a restriction that “is so standardless that it authorizes or encourages seriously discriminatory enforcement” is unquestionably unconstitutional. *United States v. Williams*, 553 U.S. 285, 304 (2008). Put simply, “government officials may not be accorded unfettered discretion in making decisions that impinge upon fundamental rights.”

¹⁴ See, e.g., *McGehee v. Casey*, 718 F.2d 1137, 1142 (D.C. Cir. 1983) (“the speech of government employees must ‘protect a substantial government interest unrelated to the suppression of free speech’ and the restriction must be narrowly drawn to ‘restrict speech no more than is necessary to protect the substantial government interest.’”) (quoting *Brown v. Glines*, 444 U.S. 348, 354-55 (1980) and citing *Snepp v. U.S.*, 444 U.S. 507 (1980); *Nat’l Ass’n of Letter Carriers*, 413 U.S. 548 (1973); *Cole v. Richardson*, 405 U.S. 676 (1972)).

¹⁵ See, e.g., *Hill v. Colorado*, 530 U.S. 703, 723 (2000) (“Laws that discriminate based on viewpoint are most odious.”); *Sanjour v. E.P.A.*, 56 F.3d 85, 96 (D.C. Cir. 1995) (“It is perhaps the most fundamental principle of First Amendment jurisprudence that the government may not regulate speech on the ground that it expresses a dissenting viewpoint.”).

¹⁶ See *Vill. of Hoffman Ests. v. Flipside, Hoffman Ests., Inc.*, 455 U.S. 489, 499 (1982) (“[P]erhaps the most important factor affecting the clarity that the Constitution demands of a law is whether it threatens to inhibit the exercise of constitutionally protected rights. If, for example, the law interferes with the right of free speech or of association, a more stringent vagueness test should apply.”). This principle applies not only in criminal cases, but also in the civil context. See, e.g., *Karem v. Trump*, 960 F.3d 656, 666 (D.C. Cir. 2020) (citing *F.C.C. v. Fox Television Stations, Inc.*, 567 U.S. 239, 258 (2012)).

¹⁷ See also *Keyishian v. Bd. of Regents of Univ. of State of N. Y.*, 385 U.S. 589, 603–04 (1967) (“We emphasize once again that precision of regulation must be the touchstone in an area so closely touching our most precious freedoms, for standards of permissible statutory vagueness are strict in the area of free expression) (citations omitted) (cleaned up).

Schall v. Martin, 467 U.S. 253, 307 (1984) (J. Marshall dissenting).¹⁸ Perhaps no right is more fundamental than freedom of expression.¹⁹ The proposed NDA exemplifies a standardless restriction that provides government officials unbridled discretion in application.

As described above, the definition of “Confidential Government Information” in the proposed NDA lists broad categories of restricted speech. This breadth renders the entire “definition” unlimited by its express terms. Additionally, the definition includes amorphous terms and phrases—such as “non-public,” “sensitive,” “pre-decisional” “deliberative” and “information relating to agency operations” —which, separately and in combination with the lack of categorical limitations, necessarily require employees to speculate as to application and speak at their peril. Absent as well are standards to guide the NDA’s application.²⁰ The result is that government officials have unchecked authority to interpret and apply the proposed NDA.²¹

The proposed NDA’s lack of clear standards would therefore create serious constitutional and practical problems. It would invite arbitrary enforcement, viewpoint discrimination, and self-censorship by employees who cannot reliably determine what they may say or to whom they may say it. Moreover, the proposed NDA is likely to chill federal employees’ ability to speak with the press, thus interfering with both the press’s and public’s right to receive information in that way.²²

D. The Proposed NDA is unconstitutional because it conditions a public benefit based on waiver of a constitutional right.

Because the proposed NDA and OPM’s related suitability framework would treat a refusal to sign or certify compliance as a basis for severe employment consequences, the proposal exposes the fiction that signing is “voluntary,” exposing it as an unconstitutional ultimatum based on a waiver of a constitutional right.

¹⁸ See also *Papachristou v. City of Jacksonville*, 405 U.S. 156, 168 (1972) (in striking down a vagrancy ordinance on vagueness grounds emphasizing the “unfettered discretion it places in the hands of the ... police.”); *Shuttlesworth v. City of Birmingham*, 394 U.S. 147, 151, 153, (1969) (similarly striking down regulations on speech finding such unconstrained flexibility in application constitutionally offensive because it “permits and encourages an arbitrary and discriminatory enforcement of the law.”).

¹⁹ See, e.g., *Gibson v. Fla. Legislative Investigation Comm’n*, 372 U.S. 539, 544 (1963) (“The First and Fourteenth Amendment rights of free speech and free association are fundamental and highly prized, and ‘need breathing space to survive.’”) (quoting *N.A.A.C.P. v. Button*, 371 U.S. 415, 433 (1963); *id.* (“‘Freedoms such as these are protected not only against heavy-handed frontal attack, but also from being stifled by more subtle governmental interference.’”) (quoting *Bates v. Little Rock*, *supra*, 361 U.S. 515 at 523 (1960)).

²⁰ See, e.g., *Heffron v. Int’l Soc. for Krishna Consciousness, Inc.*, 452 U.S. 640, 649 (1981) (warning of the “more covert forms of discrimination that may result when arbitrary discretion is vested in some governmental authority”).

²¹ See, e.g., *Am. Freedom Def. Initiative v. Wash. Metro. Area Transit Auth., WMATA*, 901 F.3d 356, 372 (D.C. Cir. 2018) (“[T]he overlap in analysis between unbridled discretion and vagueness is clear; both doctrines require a court to determine whether a decisionmaker’s exercise of discretion in allowing or disallowing speech is based upon objective and clear standards.”).

²² *Neb. Press Ass’n*, 427 U.S. at 559 (“The damage [of a prior restraint] can be particularly great when the prior restraint falls upon the communication of news and commentary on current events.”).

In *Keyishian v. Board of Regents*, 385 U.S. 589 (1967), the Supreme Court declared that the government cannot condition public employment on the surrender of constitutional rights. It rejected the old theory that, because public employment is a privilege, the government can attach a gag order to it. Indeed, the Court explained that it “has cautioned time and again that public employers may not condition employment on the relinquishment of constitutional rights.” *Lane*, 573 U.S. at 236.

Existing laws restricting federal employees’ speech are narrowly drawn to protect legitimate government interests including classified information, privacy-protected information, and other information specifically protected by law. The proposed NDA would go further by targeting the freedoms protected by the First Amendment – both press and speech freedoms – to obscure information about government activities from the public.

II. The Proposed NDA Would Undermine Federal Whistleblower Protection Laws

Whistleblowing serves a vital function in a republic. During President Trump’s first term, more than five dozen federal inspectors general signed a letter emphasizing the importance of whistleblowers:

For over 40 years, since enactment of the Inspector General Act in 1978, the IG community has relied on whistleblowers, and the information they provide, to conduct non-partisan, independent oversight of the federal government. Because the effectiveness of our oversight work depends on the willingness of government employees, contractors, and grantees to come forward to us with their concerns about waste, fraud, abuse, and misconduct within government, those individuals must be protected from reprisal.²³

The proposed NDA would undermine whistleblower protection laws, with which it is inconsistent.²⁴

A. The Proposed NDA would chill protected whistleblower disclosures.

Whistleblowing in the executive branch is in the public’s best interest and should be encouraged.²⁵ Congress has codified this anticorruption policy through the enactment of laws

²³ Letter from Insp. Gen. Michael Horowitz & 65 other inspectors general to Steven Engel Asst. Atty. Gen., Off. of Legal Counsel, U.S. Dept. of Justice, 3 (Oct. 22, 2019), <https://tinyurl.com/4cywvjwz>.

²⁴ Draft Non-Disclosure Agreement Form (no form number or OMB control number assigned) (May 27, 2026), <https://tinyurl.com/3jcv3vfk>.

²⁵ See Letter from Sen. Chuck Grassley (R-IA) to President Donald Trump (Feb. 25, 2025) (“Whistleblowers have exposed waste, fraud, and abuse in just about every industry and agency in this country. The issues they report have saved billions of taxpayer dollars and countless more through their deterrent effect. In addition to the money they have saved the taxpayers, whistleblowers help the government work better for the American people by exposing wrongdoing and misconduct, to include government weaponization.”), <https://tinyurl.com/5xtszynw>; 11 Journals of the Continental Congress, 1774–1778, at 732 (Worthington Chauncey Ford ed. 1908) (“Resolved, That it is the duty of all persons in the service of the United States, as well as all other inhabitants thereof, to give the earliest information to Congress or other proper authority of any misconduct, frauds or

protecting federal whistleblowers.²⁶ But the proposed NDA would turn the applicable legal standard on its head, thwarting whistleblower protections for federal employees.

The primary federal whistleblower law bars retaliatory personnel actions against covered employees who make qualifying disclosures,²⁷ so long as the disclosure “is *not specifically prohibited* by law.”²⁸ Instead, the proposed NDA would, in context, allow employees to be punished for any disclosures of Confidential Government Information that are not affirmatively authorized.²⁹ Specifically, it would facially prohibit all disclosures, including by whistleblowers, by imposing a new requirement that all disclosures, including those made after leaving an agency, must be authorized. OPM goes so far as proposing that disclosures be cleared by a “Authorized Agency Official,” but does not identify a legal authority that would permit it to impose this new affirmative authorization requirement. The proposed NDA conflicts with federal whistleblower protections mandated by Congress.

Because OPM has issued the proposed NDA in connection with other proposed changes to suitability standards and procedures, and agencies could pursue expedited removal or debarment based on alleged noncompliance, the proposed structure creates a serious certification problem. Although the NDA appears to impose obligations going forward, OPM has not clearly stated that the form is purely prospective or that signing it is not a certification about past disclosures. As a result, an employee who previously made a lawful or protected whistleblower disclosure could reasonably fear that signing the NDA would later be treated as a false certification if the agency disagrees that the disclosure was protected or authorized. Because the proposed form also warns that false certifications may expose employees to criminal prosecution, employees may feel compelled either to report their prior disclosures to the agency or to refrain from making future

misdemeanors committed by any officers or persons in the service of these states, which may come to their knowledge.”), <https://tinyurl.com/24bhrvau>.

²⁶ See, e.g., 5 U.S.C. §§ 2302(b)(8), (9), (13), 1204(a), 1212(a) & (h), 1214, 1215, 1221, 7211, 7701, 7703; 50 U.S.C. §§ 3234(b)(1)-(3), 3033(k)(5) & note; see also 10 U.S.C. § 1034 (military personnel). The Senate has also recognized a whistleblower appreciation day. See, e.g., S. Res.340 - A resolution designating July 30, 2025, as “National Whistleblower Appreciation Day”, 119th Congress (2025), <https://tinyurl.com/5n97a7p4>.

²⁷ A disclosure by a “covered employee,” 5 U.S.C. § 2302(a)(2)(B), qualifies for protection if: (1) the employee reasonably believes the disclosure evidences the violation of a law, rule or regulation, or evidences gross mismanagement, gross waste of funds, abuse of authority, or a substantial and specific danger to public health or safety; (2) the information is not classified or “specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs”; and (3) the disclosure is not “specifically prohibited by law.” 5 U.S.C. § 2302(b)(8)(A). Congress has established broader protections for disclosures to the Office of Special Counsel, an agency’s Office of Inspector General, an agency head’s designee, and Congress. 5 U.S.C. § 2302(b)(8)(B) & (C). Congress has established narrower protections for some employees, such as FBI employees, 5 U.S.C. § 2303, and certain employees of intelligence community elements. 50 U.S.C. §§ 3234(b)(1)-(3), 3033(k)(5) & note.

²⁸ 5 U.S.C. § 2302(b)(8)(A) (emphasis added).

²⁹ The proposed NDA purports to prohibit any disclosure of unclassified information that is not affirmatively “authorized by law, rule, regulation, and applicable Agency policies and procedures.” Proposed NDA, § 1(d).

protected disclosures at all.³⁰ That practical necessity of notifying the administration of disclosures in such cases would profoundly discourage legitimate whistleblowing.³¹

The proposed NDA would be especially inconsistent with a law covering disclosures that employees make to the Office of Special Counsel, an agency's inspector general, or Congress. The statute applicable to most federal workers protects these disclosures even when they would otherwise be "specifically prohibited by law."³² The proposed NDA's requirement that disclosures be authorized would directly contradict the congressional decision not to require authorization.

B. OPM has not shown it can require prior authorization for all disclosures of non-public information.

OPM's notice and the proposed NDA appear to assume that federal employees may disclose non-public information only when the agency has authorized the disclosure in advance. But OPM has not identified any legal authority that permits it to impose that blanket rule across the federal workforce. Federal whistleblower law does not allow agencies to defeat whistleblower protections simply by labeling a disclosure "unauthorized."³³

The authorities OPM cites do not support the broad mandate it is attempting to create.³⁴ An appendix to the proposed NDA cites several other statutes and regulations. Some of the cited statutes prohibit the release of certain categories of information and provide that exceptions can be authorized. But those statutes do not transform all non-public information into information that employees may disclose only with prior agency approval. Nor do they establish a governmentwide authorization requirement for areas outside of their specific coverage.³⁵ The

³⁰ 18 U.S.C. § 1001.

³¹ The proposed form would also violate 5 U.S.C. § 2302(b)(13) because it omits a mandatory advisement that the Office of Special Counsel is a permitted recipient of disclosures.

³² 5 U.S.C. § 2302(b)(8)(B) & (C). For disclosures to the inspector general, the disclosure can include classified information too. *Id.* § 2302(b)(8)(B). Some classified information could be shared with Congress under certain conditions. *Id.* § 2302(b)(8)(C).

³³ 5 U.S.C. § 2302(b)(8)(A). Two other provisions applicable to most employees cannot be overridden by a law that otherwise prohibits disclosures. 5 U.S.C. § 2302(b)(8)(B) & (C).

³⁴ 91 Fed. Reg. at 31479 (citing 5 U.S.C. §§ 3301, 7301).

³⁵ The Privacy Act, for example, establishes prohibitions against disclosure of information from a system of records retrievable by a person's name or other individual identifier. 5 U.S.C. § 552a. The Privacy Act requires authorization (e.g., consent, routine use notice, court order) *only* for disclosures that it otherwise specifically prohibits. 5 U.S.C. § 552a(a)(5), (b). The Freedom of Information Act (FOIA) is not a law that prohibits disclosures; it *requires* disclosure. 5 U.S.C. § 552. Limited exemptions apply, but they serve only to lift the FOIA's positive disclosure requirements and do not address disclosures not made under the FOIA. 5 U.S.C. § 552(b) ("This section does not apply to [exempted information]"). The Privacy Act does not override the FOIA's disclosure mandate. 5 U.S.C. § 552a(t)(2). The other laws and regulations that cited in the proposed NDA's appendix are similarly limited as to their coverage. *See* 26 U.S.C. § 6103 (tax return information); 13 U.S.C. § 9(a) (census information); 13 U.S.C. § 214 (applicable only to certain individuals and types of information). They do not require authorization for the disclosure of other information. *See, e.g.*, 13 U.S.C. § 9(b). The appendix refers to the Federal Records Act generally but does not refer to any particular provision, instead citing a regulation. The proposed NDA does not cite a provision establishing a universally applicable restriction on disclosures.

regulations listed in the proposed NDA’s appendix are irrelevant because a regulation is not a “law” for purposes of the whistleblower provision excluding disclosures “specifically prohibited by law.”³⁶

The risk of chilling legitimate whistleblower disclosures is so high that we urge OPM to abandon the NDA proposal in its entirety. Alternatively, at the very least, OPM should make clear that the proposed NDA does not require employees to obtain agency permission before making disclosures protected by law. At a minimum, OPM must explain the precise legal basis for any authorization requirement, identify the specific categories of information covered by that requirement, and clarify that employees may still make protected disclosures to Congress, inspectors general, the Office of Special Counsel, unions, courts, and other lawful recipients without first obtaining agency approval.

C. OPM’s caveats about whistleblower protections do not ameliorate the effect that the proposed NDA will have on whistleblowers.

The proposed NDA asserts that its restrictions are “consistent with” and do not “alter” employees’ general rights and obligations, including whistleblower protections, but the authorization requirement is inconsistent with those protections.³⁷ OPM does not explain how the authorization requirement will be reconciled with those laws. The proposed NDA also does not explain what protections whistleblower laws confer or which employees they cover, which risks causing confusion to civil servant not well versed in these protections.

The proposed NDA would compound that confusion by creating the appearance of a waiver of whistleblower rights. The form declares that “[t]he Employee consents to the terms in this Agreement,” that the “Employee agrees” specifically to the universal authorization requirement, and that the employee “agrees to comply with [the agreement’s] terms.”³⁸ That matters because, beyond penalties for improper disclosures, the proposal identifies severe penalties for any “[v]iolation of this Agreement” or “breach of this Agreement.”³⁹ The form could be confused

³⁶ *Dep’t of Homeland Sec. v. MacLean*, 574 U.S. 383, 391 (2015) (“[T]he question here is whether a disclosure that is specifically prohibited by regulation is also ‘specifically prohibited *by law*’ under Section 2302(b)(8)(A). (Emphasis added.) The answer is no.”).

³⁷ Proposed NDA, § 1(d), § 3 & Appendix.

³⁸ Proposed NDA, preamble, § 1, signature line.

³⁹ Proposed NDA, § 4. It also provides remedies for a “threatened” breach that has not occurred. *Id.*

with a waiver of whistleblower protections because of the inclusion of language waiving other legal rights of the employee.⁴⁰

While the proposed NDA includes caveats about the continued applicability of whistleblower protections, those caveats would not be enough to protect employees in practice.

III. The Proposed NDA Would Exacerbate Existing Workforce and Governmental Capacity Problems

If finalized, the proposed NDA would harm the interests of the government and the American people by compounding already serious challenges in the federal workforce.

A. The Proposed NDA would worsen the administration's retention and recruitment problems.

The federal workforce is already under unprecedented strain. Recent workforce action by the Trump-Vance administration, including deferred resignation programs,⁴¹ pressure on federal workers to leave government,⁴² public demeaning and disparagement of federal workers,⁴³ removals of untenured probationary or trial-period employees,⁴⁴ no-cause firings of tenured

⁴⁰ Proposed NDA, § 4 (“The Employee understands that a breach or threatened breach of this Agreement would cause irreparable harm to the Agency for which monetary damages would be an inadequate remedy. Accordingly, in addition to any other remedies available at law, the Agency shall be entitled to seek equitable relief, including injunctive relief and specific performance, from any court of competent jurisdiction, without the necessity of posting a bond or proving actual damages. The Agency reserves the right to take additional administrative or legal action as permitted by law, regulation, or other governing authorities, including, but not limited to, application for a court order prohibiting disclosure of information in breach of this Agreement. . . . Both Employee and Agency understand that the U.S. District Court for the District of Columbia is an appropriate forum for any claims based on or arising from this Agreement, including the breach thereof, and consent to venue and personal jurisdiction in that court.” (emphasis added).)

⁴¹ See, e.g., Anastasia Obis, *DoD civilian workforce losses strain military installation operations*, FED. NEWS NETWORK (May 14, 2026), <https://tinyurl.com/2wnwz22d>.

⁴² See, e.g., Tim Reid, *Trump's mass layoff threat drives US government workers to resign*, REUTERS (May 20, 2025), <https://tinyurl.com/2ue9677a>; Erich Wagner, *Agencies ramp up pressure on their workers to quit*, GOV. EXEC (Feb. 4, 2025), <https://tinyurl.com/2fezccr9>; Dave Jamieson, *White House Insults Federal Workers, Urging Them to Quit Their 'Low Productivity' Jobs*, HUFF. POST (Jan 31, 2025), <https://tinyurl.com/5ekmebvww>.

⁴³ See, e.g., Stacy Cowley, *Consumer Bureau's Bank Examiners Criticize New 'Humility Pledge'*, N.Y. TIMES (Nov. 4, 2025), <https://tinyurl.com/ycxkha6b>; Rex Huppk, *Trump adviser insults veterans as not 'fit to have a job.' It's disgraceful*, USA TODAY (Mar. 4, 2025), <https://tinyurl.com/mry52txw>; Tara Suter, *Trump posts SpongeBob meme mocking federal workers after email requesting accomplishments*, THE HILL (Feb. 24, 2025), <https://tinyurl.com/38akeccer>; Erich Wagner, *Trump calls federal workforce 'crooked,' vows to hold them 'accountable'*, GOV. EXEC. (Aug. 28, 2024), <https://tinyurl.com/hj5678xx>.

⁴⁴ See Walter Shaub Jr., Ori Lev, Erica Newland & Jules Torti, *The Mass Removal of Probationary Federal Employees Is an Unlawful Reduction in Force*, PROTECT DEMOCRACY (Mar. 2025), <https://tinyurl.com/5yufndjx>.

employees,⁴⁵ changes to working conditions,⁴⁶ and reductions in force,⁴⁷ have added to staffing gaps and uncertainty across agencies. Adding a broad NDA requirement, especially one linked to potential removal and debarment, would likely compound those challenges rather than address them.

Expertise has literally walked out the door. Reports indicate that many highly qualified employees have left government⁴⁸ and that some agencies have lowered hiring standards or relied on less qualified or experienced recruits.⁴⁹ Agencies have struggled to keep up with their workloads.⁵⁰ Potential job candidates may reasonably question whether this service is stable and valued.⁵¹ These concerns are especially acute where professional staff may worry that service could carry reputational risk.⁵²

Staffing problems have already had operational consequences. The Internal Revenue Service has had too few employees to process tax returns and refunds during the most recent tax season.⁵³ The Social Security Administration has pulled experienced benefits experts off their normal duties to staff call centers.⁵⁴ OPM has been unable to keep up with the influx of retirement applications for federal workers pushed out by this administration.⁵⁵ The National Weather

⁴⁵ See, e.g., Eric Katz, *Trump admin. tells judge it can fire at least some career feds at any time for any reason*, GOV'T EXEC. (July 17, 2025), <https://tinyurl.com/5dcfbv53>.

⁴⁶ Drew Friedman, *Without telework, GAO warns of further SSA staffing losses*, FED. NEWS NETWORK (Feb. 3, 2026), <https://tinyurl.com/2pwtx4zw>.

⁴⁷ See, e.g., Drew Friedman, *Trump administration's RIF overhauls 'troubling' to former MSPB officials*, FED. NEWS NETWORK (May 19, 2026), <https://tinyurl.com/29tja7wf>.

⁴⁸ See, e.g., Eileen Sullivan & Andrea Fuller, *Trump Administration Sees Striking Exodus of Legal Talent*, N.Y. TIMES (May 31, 2026), <https://tinyurl.com/2jn5y5nf>; Monica Hersher & Jeffrey Mervis, *U.S. government has lost more than 10,000 STEM Ph.Ds since Trump took office*, SCIENCE (Jan. 26, 2026), <https://tinyurl.com/3d8est9d>.

⁴⁹ See, e.g., Ben Penn, *DOJ to Start Hiring Prosecutors Directly Out of Law School*, BLOOMBERG LAW (Mar. 16, 2026), <https://tinyurl.com/4nf4f82p>; Thaddeus Johnson & Natasha Johnson, *Almost anyone can be an ICE agent now. That's a problem.*, USA TODAY (Dec. 3, 2025), <https://tinyurl.com/3jktvazu>; Devlin Barrett & Adam Goldman, *F.B.I. Plans to Lower Recruiting Standards, Alarming Agents*, N.Y. TIMES (Aug. 21, 2025), <https://tinyurl.com/4ysmm8d2>.

⁵⁰ See, e.g., *Staffing Challenges Face FDA Amid Growing Workload, GAO Says*, FEDweek (Feb. 6, 2026), <https://tinyurl.com/yc8zv4tc>; Drew Friedman, *MSPB faces high workload, low staffing levels*, FED. NEWS NETWORK (July 4, 2025), <https://tinyurl.com/4jzs445t>.

⁵¹ See, e.g., Eileen Sullivan & Andrea Fuller, *Trump Administration Sees Striking Exodus of Legal Talent*, N.Y. TIMES (May 31, 2026) (“‘A lot of people my age are asking, Is it worth getting a job, and will that help career wise — having one year of Trump administration experience on your résumé?’ said Matthew Duray, who described himself as a conservative Republican and just finished his first year at George Mason University’s Antonin Scalia Law School. ‘Or will that hurt? And that’s the question I guess everyone’s asking, and that’s the bet you have to make ahead of time. But it’s hard to know long term.’” (some internal quotation marks omitted)), <https://tinyurl.com/2jn5y5nf>.

⁵² See, e.g., Mattathias Schwartz, *Losing Trust in Justice Dept., Judges Call Out Its Lawyers’ Behavior*, N.Y. TIMES (June 6, 2026), <https://tinyurl.com/35sz2jdu>.

⁵³ Danny Nguyen, *IRS staffing shortage collides with GOP's tax cut campaign pitch*, POLITICO (Apr. 6, 2026), <https://tinyurl.com/2kjyvjvy>.

⁵⁴ See, e.g., Eric Katz, *'Suicide is only one option': Social Security staff newly assigned to phone duties raise concerns over training*, GOV. EXEC. (Feb. 13, 2026), <https://tinyurl.com/4h2aanwf>.

⁵⁵ Michele Sandiford, *OPM still has 55,000 federal retirement applications pending finalization*, FED. NEWS NETWORK (Apr. 9, 2026), <https://tinyurl.com/yfxj7eum>.

Service and FEMA are struggling as hurricane season opens.⁵⁶ Experts have warned that the nation is now less prepared to respond effectively to emergencies, such as a major hurricane or pandemic.⁵⁷ These concerns would only be compounded if employees believed that lawful speech, whistleblowing, or routine communications could later be penalized as NDA violations.

Recruitment and retention issues are also costly to address. Last year, the administration spent *billions* of taxpayer dollars paying thousands of federal employees not to work,⁵⁸ offered large recruitment bonuses while reducing staff elsewhere,⁵⁹ approved costly overtime pay (like at the IRS) due to the backlogs it created,⁶⁰ and it has had to reassign employees with no relevant experience to meet operational needs.⁶¹

OPM's unprecedented proposal to authorize agencies to impose a broad NDA requirement across the federal workforce would likely exacerbate these problems.⁶² OPM should not repeat the same mistake with this proposal.

B. The Proposed NDA would heighten federal workers' growing fear of retaliation for legitimate activities.

The administration has fostered a climate of fear that could deter lawful disclosures. Adopting the proposed NDA would be reinforce that fear and deter employees from using lawful channels to raise concerns.⁶³

⁵⁶ Thomas Frank, *Holding our breath': Hurricane season is here, and FEMA is shorthanded*, POLITICO (May 31, 2026), <https://tinyurl.com/msxmjps7>; Scott Dance, Judson Jones & Amy Graff, *Storm Season Is Here and the National Weather Service Is Short-Handed*, N.Y. TIMES (May 26, 2026), <https://tinyurl.com/3jm543ce>.

⁵⁷ See, e.g., Eric Katz, *Officials warn disaster response at risk as former and current FEMA leaders clash in court over mass staff cuts*, GOV. EXEC. (Feb. 26, 2026), <https://tinyurl.com/bdr94jzw>; Lawrence Gostin, JD & Peter Lurie, MD, MPH, *Assault on the Centers for Disease Control and Prevention—Budget Cuts, Political Control, and the Erosion of Trust*, JOURNAL OF THE AM. MED. ASSOC. (Oct. 22, 2025), <https://tinyurl.com/2vfpsykyf>; Gov't Accountability Off., *FEMA Staffing Shortages Could Mean Disaster for Future Response Efforts*, (Sep. 17, 2025), <https://tinyurl.com/52n98csk>.

⁵⁸ Drew Friedman, *The government paid \$4.5 billion to feds who took the DRP, one estimate shows*, FED. NEWS NETWORK (Apr. 9, 2026), <https://tinyurl.com/8hetjj3a>.

⁵⁹ See, e.g., Eric Katz, *DHS opens up new \$60K bonuses for Border Patrol agents, other officers*, GOV. EXEC. (Dec. 18, 2025), <https://tinyurl.com/3dkb9eec>.

⁶⁰ See, e.g., Jory Heckman, *Amid staffing cuts, IRS sees overtime hours spike and digitization efforts 'fall short'*, FED. NEWS NETWORK (May 19, 2026), <https://tinyurl.com/5n8a43t4>; Perry Stein & Jeremy Roebuck, *With many career lawyers gone, Justice Dept. hires Trump loyalists for court*, WASH. POST (Apr. 10, 2025), <https://tinyurl.com/4mdfr3hc>; Ken Dilanian & Ryan Reilly, *Trump administration fires DOJ officials who worked on criminal investigations of the president*, NBC NEWS (Jan. 2025), <https://tinyurl.com/59whxwm9>.

⁶¹ Eric Katz, *IRS tasks more staff without any tax experience to process tax returns*, GOV. EXEC. (Feb. 10, 2026), <https://tinyurl.com/3ux6vx5m>.

⁶² Though confidentiality agreements have been used to protect classified information, the subset of federal employees with access to classified information is smaller than the entire workforce. Those agreements are backed by laws imposing strict limitations and penalties, and they apply only to a specific category of information. See, e.g., 18 U.S.C. §§ 793-798, 1924. In contrast, the proposed form could be used for virtually any executive branch employee and the personnel office's notice does not cite an authorizing law.

⁶³ 5 U.S.C. § 3331.

The proposed NDA's breadth could create pitfalls for employees acting in good faith to carry out their duties and prevent government misconduct or waste. That potential creates a risk or perception of selective enforcement against employees who are disfavored by the Trump-Vance administration or who engage in protected activity.⁶⁴ Given the administration's weaponization of government power and targeting of employees who speak out, that risk is not speculative.⁶⁵ The administration has repeatedly targeted people it perceives as opposed to the president.⁶⁶ The president has attacked whistleblowers and individuals who cooperate with law enforcement.⁶⁷ The administration has politicized career hiring, sought to reduce protections against arbitrary firing,⁶⁸ and undermined anticorruption and whistleblower protection mechanisms by firing officials responsible for those mechanisms.⁶⁹

The consequences of these actions have been predictable. A large-scale survey of federal employees by a nonpartisan group in 2025 revealed that only about 22 percent of respondents believed they could report a suspected violation of a law, rule or regulation without experiencing

⁶⁴ See, e.g., Maxine Joselow, *FEMA Suspends Staff Who Signed a Letter Criticizing Trump*, N.Y. TIMES (Aug. 26, 2025), <https://tinyurl.com/yc5rmbae>.

⁶⁵ See, e.g., Sheryl Gay Stolberg, *N.I.H. Reinstates Employee Put on Leave After Criticizing Trump Research Cuts*, N.Y. TIMES (May 1, 2026), <https://tinyurl.com/svx76k67>; Matthew Daly, *EPA fires employees who publicly criticized agency policies under Trump*, ASSOC. PRESS (Aug. 29, 2025), <https://tinyurl.com/msruwhd6>; Jory Heckman, *Federal employees who left 'DEI' roles still fired under Trump administration purge, lawsuit claims*, FED. NEWS NETWORK (Dec. 5, 2025), <https://tinyurl.com/5fuy5fv7>.

⁶⁶ Peter Charalambous, Benjamin Siegel, Alexander Mallin, Katherine Faulders & Elizabeth Schulze, *Here's a list of the individuals, including James Comey, targeted by the Trump administration*, ABC NEWS (June 4, 2026), <https://tinyurl.com/mvvhh8a7>; Peter Eisler, Ned Parker, Linda So And Joseph Tanfani, *Trump's campaign of retribution: At least 470 targets and counting*, REUTERS (Nov. 26, 2025), <https://tinyurl.com/2s3kw5rh>; Isaac Arnsdorf, *Trump Appointees Used "Whistleblower Protection" Law to Target Whistleblowers, Review Finds*, PROPUBLICA (Oct. 24, 2019), <https://tinyurl.com/2p9rtjj8>.

⁶⁷ Maggie Haberman & Katie Rogers, *Trump Attacks Whistle-Blower's Sources and Alludes to Punishment for Spies*, N.Y. TIMES (Sep. 26, 2019), <https://tinyurl.com/y8mxz7ay>; Kevin Liptak, *Trump says longstanding legal practice of flipping 'almost ought to be illegal'*, CNN (Aug. 23, 2018), <https://tinyurl.com/4b7acrpr>.

⁶⁸ See, e.g., Glenn Thrush, Alan Feuer, Mimi Dwyer, Ernesto Londoño & Michael S. Schmidt, *Demanding Support for Trump, Justice Dept. Struggles to Recruit Prosecutors*, N.Y. TIMES (Feb. 11, 2026), <https://tinyurl.com/vtwfsjyp>; Ellen Nakashima & Warren Strobel, *U.S. intelligence, law enforcement candidates face Trump loyalty test*, WASH. POST (Feb. 9, 2025), <https://tinyurl.com/ntv3hyt8>; Off. of Pers. Mgmt., Merit Hiring Plan, at 10 (May 29, 2026) (mandating a political loyalty question for applicants for nonpolitical jobs), <https://tinyurl.com/yzfzkczz>; 91 Fed. Reg. 5580 (Feb. 6, 2026), <https://tinyurl.com/3ss79eye>.

⁶⁹ See, e.g., Sen. Chuck Grassley, Twitter (@ChuckGrassley), 2:39 p.m. (Oct. 17, 2025), <https://tinyurl.com/2zerrkhh>; Alexander Mallin, *Attorney General Pam Bondi fires top Justice Department ethics official*, ABC NEWS (July 14, 2025), <https://tinyurl.com/yzs2xbrb>; Sean Newhouse, *Government oversight employees detail fears of retaliation under Trump administration in new Senate report*, GOV. EXEC. (May 21, 2025), <https://tinyurl.com/3z8pmpuy>; Michele Sandiford, *White House fires head of Merit Systems Protection Board*, FED. NEWS NETWORK (Feb. 12, 2025), <https://tinyurl.com/4uvsjbs4>; *White House Fires Top Whistleblower Protection Official: U.S. Special Counsel Hampton Dellinger Terminated*, NAT'L WHISTLEBLOWER CTR. (Feb. 10, 2025), <https://tinyurl.com/ms5cc2zk>.

retaliation.⁷⁰ That statistic represents a sharp drop from a 2024 report showing that 72 percent of federal employees surveyed by OPM said they did not fear reprisal.⁷¹

OPM does not offer data to contradict the outside report. In fact, it does not appear to have comparable 2025 governmentwide survey data because it failed to conduct the statutorily mandated survey of federal employees that year.⁷²

C. The Proposed NDA would interfere with union representation and collective bargaining.

The proposed NDA would also threaten federal employees' statutory rights to organize, seek union assistance, and participate in collective bargaining. Federal-sector labor law protects employees' rights to act through their unions in bargaining, grievances, arbitrations, unfair labor practice proceedings, and other representational settings. Those rights often require employees to share non-public workplace information with union representatives. Yet OPM's proposed NDA defines covered information broadly to include all non-public information. This could sweep in the very information employees and unions need to enforce statutory and contractual rights.

OPM should not finalize any NDA unless it makes clear that the agreement does not restrict protected communications with union representatives, does not limit a union's ability to carry out its statutory representational duties, does not supersede collective bargaining agreements, and does not permit agencies to avoid bargaining obligations. Without such protections, the NDA could become a tool for weakening collective bargaining and undermining the labor-management framework Congress established for the federal workforce.

IV. OPM Fails to Establish Widespread Misconduct by Career Employees Sufficient to Justify the Proposed NDA

OPM's notice claims as a justification that there have been "several" unauthorized disclosures in the executive branch.⁷³ Based on that claim, the notice concludes that there is a "widespread" problem necessitating the proposed NDA.⁷⁴ But the notice does not demonstrate that a

⁷⁰ Partnership for Pub. Serv., *Federal Public Service in Peril*, <https://tinyurl.com/323u9fdw> (last visited June 5, 2026). The Partnership for Public service conducted the study after the personnel office cancelled the statutorily mandated Federal Employee Viewpoint Survey (FEVS) for 2025. Though federal law mandated that the Office of Personnel Management conduct the FEVS, employee responses were voluntary. See Off. of Pers. Mgmt. Fed. Emp. Viewpoint Survey, *Privacy Act Statement*, <https://tinyurl.com/yfhs77t7> (last visited June 8, 2026).

⁷¹ Off. of Pers. Mgmt., *OPM FEVS Dashboard*, question 8 (number of respondents agreeing with statement "I can disclose a suspected violation of any law, rule or regulation without fear of reprisal" was 68% in 2020, 68% in 2021, 70% in 2022, 70% in 2023 and 72% in 2024), <https://tinyurl.com/43nyfhmu> (last visited June 5, 2026).

⁷² 5 U.S.C. § 7101 note (Pub. L. 108-136, div. A, tit. XI, subtit. C, § 1128, 117 Stat. 1641 (2008)); Drew Friedman, *After months of postponing, OPM opts to fully cancel 2025 FEVS*, FED. NEWS NETWORK (Aug. 15, 2025), <https://tinyurl.com/34d8c8ur>.

⁷³ 91 Fed. Reg. at 31479.

⁷⁴ 91 Fed. Reg. at 31479.

“widespread” problem exists, nor does it supply evidence that career employees were involved. The notice offers only anecdotes and assumptions. Due to the paucity of examples in the notice, it is possible to briefly examine what each of them *does not say*.

The notice cites an article indicating that reporters had seen federal agencies’ comments on an unpublished draft regulation, in which OPM proposed to rate employees’ performance on a curve.⁷⁵ The article states only that the magazine reviewed those comments; it does not identify the information’s source. Though career employees may or may not have had access to the compilation of comments gathered through the regulatory review process, political appointees would certainly have had access. The notice does not show that the information was released by career employees.⁷⁶

The notice cites an article indicating that reporters “obtained” a copy of another draft OPM regulation.⁷⁷ That article similarly does not identify the source. The draft would have been accessible to various political appointees and government contractors.⁷⁸ The notice does not indicate that OPM investigated or identified the source.

The notice cites an article about the doxxing of ICE agents. In accusing a federal employee, the personnel office relies only on the article’s claim that an overseas foreign national, who doxxed federal agents, claimed the source was a “DHS whistleblower.”⁷⁹ The notice does not indicate

⁷⁵ 91 Fed. Reg. at 31479 n.2 (citing Erich Wagner & Eric Katz, *Agencies internally pan OPM's bid to overhaul federal performance management*, GOVT. EXEC. (Jan. 29, 2026), <https://tinyurl.com/2u7j7khe>).

⁷⁶ The history of the administration’s political appointees turning on the president supports the possibility that a disclosure could have been made by political appointees. *See, e.g.*, Zachary Wolf, *24 former Trump allies and aides who turned against him*, CNN (Oct. 3, 2023), <https://tinyurl.com/3ftr3wte>; Aaron Blake, *17 of the ‘best people’ Trump hired — and then attacked*, WASH. POST (May 13, 2019), <https://tinyurl.com/ysbyy6jj>.

⁷⁷ 91 Fed. Reg. at 31479 n.3. (citing Drew Friedman, *OPM seeks broader authority to fire federal employees, draft regulations show*, FED. NEWS NETWORK (Mar. 26, 2025), <https://tinyurl.com/5c349f7p>).

⁷⁸ DOGE was the center of concerns about the handling and possible removal of information, a concern that in at least one case the Trump administration shared. *See, e.g.*, Stephen Fowler & Jude Joffe-Block, *The Trump administration admits even more ways DOGE accessed sensitive personal data*, NPR (Jan. 30, 2026), <https://tinyurl.com/bde4p7md>; Dep’t of Justice, Notice of Corrections to the Record, *F v. Soc. Sec. Admin.*, 1:25-cv-00596 (Jan. 16, 2026 (ECF No. 197), <https://tinyurl.com/fmdn8ww3>). A whistleblower claimed that a DOGE member took unauthorized actions with confidential information. Meryl Kornfield, Elizabeth Dwoskin & Lisa Rein, *Whistleblower claims ex-DOGE member says he took Social Security data to new job*, WASH. POST (Mar. 10, 2026), <https://tinyurl.com/2c9uf5uh>. The DOGE member, who denies wrongdoing, then went to work for a government contractor. *Id.* The personnel office’s Federal Register notice does not indicate whether the Social Security Administration’s inspector general and the Government Accountability Office have completed their reviews of the matter. DOGE had significant influence over and access to the personnel office when Federal News Network obtained the draft regulation. Rene Marsh, *‘It’s the shadow OPM’: How DOGE is using a once-obscure federal agency as ground zero for its plans to shrink government*, CNN (Mar. 3, 2025), <https://tinyurl.com/ynafa4ct>.

⁷⁹ 91 Fed. Reg. at 31479 (citing Putnam, Joanna, *‘ICE List’ doxxing site alleges DHS whistleblower leaked identities of 4,500 agents*, POLICE1 (Jan. 14, 2026), <https://tinyurl.com/msuzas4e>). The cited article alternates between the phrase “DHS whistleblower” and “DHS employee,” but the article is merely summarizing a *Daily Beast* article that used the phrase “DHS whistleblower.”

that DHS has confirmed that a data breach occurred or that an investigation has confirmed the claim that the source was inside DHS.

The notice cites a *Fox News* article reporting that former Secretary of Homeland Security Kristi Noem accused FBI agents of leaking information about planned ICE raids in February 2025, but the article's author cited doubts about that claim.⁸⁰ In February 2025, ICE initially accused state officials of disseminating the information.⁸¹ Administration officials later threatened to polygraph DHS employees, and the House Committee on Oversight opened an investigation. OPM's notice does not indicate that these efforts resulted in identification of the source.⁸²

The notice cites an article claiming that two news outlets refrained from publishing information they received about the administration's planned attack on Venezuela. The cited article does not discuss the source of that information.⁸³ OPM's notice does not state that career civilian employees possessed information about the attack, nor does it indicate that a source has been identified. That a career employee was the source cannot be assumed, given the Defense Secretary's participation in the accidental leak of plans for an earlier military attack.⁸⁴

The notice also cites the leak of a draft Supreme Court opinion. It does not claim that investigations into the matter revealed the source. More importantly, the proposed NDA would not apply to Supreme Court justices or employees. The notice does not accuse U.S. Marshals Service employees of the leak, speculating instead that a judicial branch employee leaked it.

These examples do not come close to justifying the broad use of NDAs in the federal government.

V. The Proposed NDA Would Not Achieve its Stated Purposes

The proposed NDA would not achieve any of the four purposes that OPM articulates in the notice: (1) documenting federal employees' acknowledgment of, and agreement to comply with,

⁸⁰ 91 Fed. Reg. at 31479 (citing Elizabeth Pritchett, *DHS says it 'can, should and will' administer polygraph exams amid ICE raid location leaks*, FOX NEWS (Feb. 19, 2025), <https://tinyurl.com/536jkarp>). The article says that "ICE sources previously told *Fox News* they do not know where Noem got the information or what she based her accusation on," and it states only that "someone leaked information." *Id.*

⁸¹ Marshall Zelinger, *ICE claims Colorado law enforcement leaked news of raid, then deletes accusation*, NBC NEWS9 (Feb. 13, 2025), <https://tinyurl.com/4vr5x2xj>.

⁸² Elizabeth Pritchett, *DHS says it 'can, should and will' administer polygraph exams amid ICE raid location leaks*, FOX NEWS (Feb. 19, 2025), <https://tinyurl.com/536jkarp>; Press Release, *Chairman Higgins Launches Oversight Committee Investigation into Leaks of ICE Raids*, Rep. Clay Higgins (Feb. 25, 2026), <https://tinyurl.com/36h7ubjh>.

⁸³ Max Tani & Shelby Talcott, *News organizations held off on reporting Venezuela raid*, SEMAFOR (Jan. 3, 2026), <https://tinyurl.com/5a67vemp>. The *New York Times*' executive editor Ed Kahn cast some doubt on the accuracy of Semafor's reporting. Sam Sifton, *Your Venezuela Questions*, N.Y. TIMES (Jan. 12, 2026), <https://tinyurl.com/4d5kdf6>.

⁸⁴ Jeffrey Goldberg, *The Trump Administration Accidentally Texted Me Its War Plans*, THE ATLANTIC (Mar. 24, 2025), <https://tinyurl.com/2vft9vre>.

current legal obligations to safeguard non-public, confidential, or proprietary information created or obtained through official duties, while preserving the right to make disclosures authorized by law; (2) consistency across government; (3) better protecting confidential information; and (4) better informing federal employees of their rights and obligations regarding confidential information.⁸⁵

The proposed NDA would not clearly document current legal obligations because the definition of “Confidential Government Information” is vague and overbroad. The proposed NDA includes new waivers of existing rights, purports to create a new authorization requirement for disclosures not specifically prohibited by law and expressly ties the obligations to suitability regulations that are still being finalized. It also does not explain what disclosures the whistleblower laws protect, how those disclosures fall outside of the definition of Confidential Government Information, and which employees those laws cover.

The proposed NDA would not promote consistency across government. Although the notice would require that agencies use the proposed NDA if they implement a nondisclosure requirement, it would not mandate that agencies implement such a requirement.⁸⁶ Achieving consistency would be additionally complicated by the creation of a new category of information, “Confidential Government Information,” that would overlap existing categories, such as Controlled Unclassified Information, Uncontrolled Unclassified Information, Unclassified Controlled Nuclear Information, Confidential, Secret, Top Secret, and their various subcategories. Confusion would be deeper for employees required to sign multiple nondisclosure agreements with differing language.⁸⁷

OPM’s notice does not demonstrate that the proposed NDA would protect confidential information better than existing mechanisms do. The notice does not demonstrate widespread disclosure problems, so cannot establish that the proposed NDA would have a widespread benefit. The notice also does not establish that the proposed NDA would protect confidential information better than civil and criminal penalties or civil liability triggered by violations of the Privacy Act, the Health Insurance Portability and Accountability Act, the Internal Revenue Code, laws applicable to contractor bid information, laws addressing the removal of federal records, and other legal authorities. The notice asserts that the proposed NDA does not create any substantive restrictions beyond those that already exist.⁸⁸ Neither the notice nor the proposed

⁸⁵ 91 Fed. Reg. at 31478.

⁸⁶ 91 Fed. Reg. at 31480.

⁸⁷ See Classified Information Nondisclosure Agreement, Standard Form 312 (rev’d Dec. 2023), <https://tinyurl.com/y6a779eu>; Sensitive Compartmented Information Nondisclosure Agreement, Standard Form 4414 (rev’d Dec. 2023), <https://tinyurl.com/y3k65shv>.

⁸⁸ 91 Fed. Reg. at 31480 (“The proposed NDA does not create new substantive restrictions on employee speech or disclosure rights. Rather, it is designed to provide agencies with a standardized mechanism for employees to acknowledge and agree to comply with obligations that already exist under law and regulation, while expressly preserving rights to make disclosures authorized by law, including protected whistleblower disclosures.”).

NDA claims, much less shows, that the proposed NDA would reveal the identity of an individual who makes a prohibited disclosure. Ultimately, they demonstrate only the potential for the proposed NDA to silence constitutionally protected speech and chill legitimate whistleblowing.

Far from clarifying employees' current legal rights and obligations, the proposed NDA would confuse employees. The vagueness of the definition of "Confidential Government Information" would deter lawful whistleblowing. Contrary to the notice's assertion, the proposed NDA would impose new requirements for disclosures, including affirmative authorization and authorization even for certain internal disclosures to an inspector general or the Office of Special Counsel. The disclaimers regarding whistleblower protections in the proposed NDA would not resolve employees' confusion or reasonable fears. The proposed NDA would deter legitimate exercises of constitutional and statutory rights by escalating the risks for employees. Employees who engage in what they think is lawful whistleblowing will face severe consequences if their disclosures ultimately prove not to meet the technical legal definition of "whistleblowing"—even when those disclosures meet the First Amendment's standard for protected speech or are covered by the statutory right to communicate with Congress.⁸⁹

VI. OPM Did Not Consider a Less Restrictive Option

The notice does not indicate that OPM considered imposing new training requirements on agencies and employees. Training programs would be the most obvious solution for promoting consistency and advising employees of their obligations and rights. Maintaining training attendance records would satisfy the documentation goal. The notice does not identify training failures or indicate that OPM reviewed existing training programs. Congress vested OPM with statutory responsibility for employee training.⁹⁰ OPM could create training programs that would do a better job of educating employees than the proposed NDA would.

VII. Conclusion

For the reasons above, OPM should withdraw the proposed NDA. If finalized, it would chill lawful speech, undermine whistleblowing and oversight, confuse employees about their rights and obligations, and worsen the federal government's recruitment and retention challenges. The First Amendment, federal whistleblower laws, and basic principles of sound public administration all counsel against finalizing the proposed NDA.

⁸⁹ Adding to the potential for confusion, the notice does not explain happens when information is both Confidential Government Information and Controlled Unclassified Information (CUI), which raises a question about the application of a regulation that provides that federal agencies "may not implement safeguarding or dissemination controls for any unclassified information other than those controls consistent with the CUI Program." 32 C.F.R. § 2002.1(c).

⁹⁰ 5 U.S.C. § 1103(c)(2)(E).

Sincerely,

Civil Service Strong at Democracy Forward

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Americans for Democratic Action
Antilles Consolidated Education Association
Avondale ACTION, an Indivisible Group
Campaign Legal Center
Center for Progressive Reform
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Chicago Women Take Action
Citizens for Responsibility and Ethics in
Washington (CREW)
Coalition on Human Needs
Common Cause
Council for Global Equality
Defend Public Health
Demand Progress Education Fund
Democratic Messaging Project
Disability Rights Education and Defense
Fund (DREDF)
Drug Policy Alliance
Environmental Protection Network
Equality California
Federal Education Association
Free Information Group, PLLC
Freedom of the Press Foundation
Freedom Writers Collaborative
Friends of the Earth - U.S.
Government Accountability Project
Houston Immigration Legal Services
Collaborative
Indivisible Georgia Coalition
Indivisible Marin
Indivisible Westside Los Angeles
International Federation of Professional and
Technical Engineers (IFPTE)

Protect Democracy

Jacobs Institute of Women's Health
Just Solutions
Lawyers for Good Government
Lawyers for the Rule of Law
Movement for Black Lives
National Action Network
National Active and Retired Federal
Employees Association (NARFE)
National Association of Agriculture
Employees
National Association of Government
Employees, SEIU (NAGE)
National Center for Health Research
National Education Association
National Federation of Federal Employees
National Nurses United
National Partnership for Women & Families
National Public Health Coalition
National Weather Service Employees
Organization (NWSEO)
National Women's Law Center
Patent Office Professional Association
People Power United
Progressive Democrats of America
Public Justice
Safer Country
Service Employees International Union
Silver State Equality
Stand Up for Science
Technologists for the Public Good
TechTonic Justice
The Steady State
Union of Concerned Scientists