



CITIZENS FOR
RESPONSIBILITY &
ETHICS IN WASHINGTON

Attn: NDA

Scott Kupor
Director
U.S. Office of Personnel Management
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Via online portal

Comment of Citizens for Responsibility and Ethics in Washington in response to request for comment in response to notice, entitled Confidential Government Information Nondisclosure Agreement

For Submission to Docket ID: OPM-2026-0100

Citizens for Responsibility and Ethics in Washington (CREW) is a nonpartisan nonprofit organization committed to fighting corruption, protecting democracy and building an ethical and accountable government. We respectfully submit this comment to express our strong concerns with the draft nondisclosure agreement (NDA) “for use by Federal agencies for both new and existing employees,” dated May 27, 2026, in the Federal Register notice entitled, “Confidential Government Information Nondisclosure Agreement” at Docket ID OPM-2026-0100.¹ We strongly urge the Office of Personnel Management (OPM) to withdraw this draft NDA, abandon this and any other efforts to impose new requirements on federal employees that may discourage them from making lawful disclosures of information, and refrain from imposing restrictions that interfere with Congress’s ability to conduct oversight or inappropriately interferes with the presses ability to perform lawful First Amendment activities to gather information and report on matters of public interest.

First and foremost, this draft NDA should be withdrawn because it would have a chilling effect on lawful disclosures of information. We believe that would be its principal effect.

¹ Federal Register, Confidential Government Information Nondisclosure Agreement, Docket ID: OPM-2026-0100, FR Doc. 2026-10471, 91 FR 31478 (May 27, 2026), <https://www.federalregister.gov/documents/2026/05/27/2026-10471/confidential-government-informationnondisclosure-agreement>.

Historically, the government’s use of NDAs has been directed at protecting against the unauthorized disclosure of classified national security information.² In fact, the Federal Register Notice accompanying this draft NDA seems to tacitly acknowledge that security concerns are the most compelling reason for imposing an NDA as the “Background and Authority” section of the notice focuses on military and law enforcement “incidents” as the main examples of executive branch leaks presented to justify this proposed draft.³ Nevertheless, the draft NDA published by OPM is not limited to military and law enforcement personnel or information.⁴ Instead, it is much broader in scope and appears to be a blanket attempt to intimidate and silence all executive branch employees from making potentially lawful disclosures. It purports to memorialize an obligation of federal employees and former employees not to disclose “Confidential Government Information” without authorization, but fails to adequately define and appropriately limit exactly what constitutes “Confidential Government Information.” Furthermore, it purports to bind former employees from speaking about or sharing such information without written authorization after they separate from the government.⁵

Federal employees are already subject to laws, rules and restrictions regarding the disclosure of information that would be harmful to the federal government.⁶ In the United States there is a robust network of laws and prohibitions on the disclosures which can subject federal employees to severe consequences, including criminal prosecution. As explained by the Congressional Research Service (CRS), “a patchwork of statutes protect information depending upon its nature, the identity of the discloser and of those to whom it was disclosed, the purpose of disclosure, and the means by which the information was obtained.”⁷ For instance, CRS explains:

Section 641 of Title 18 punishes the theft or conversion of government property or records for one's own use or the use of another... Violators may be fined, imprisoned for not more than 10 years, or both, unless the value of the property does not exceed \$100, in which case the maximum prison term is one year. The statute also covers

² *Information Security: Federal Agency Use of Nondisclosure Agreements*, General Accounting Office (now Government Accountability Office) (Jan. 1991), <https://www.gao.gov/assets/nsiad-91-106fs.pdf>.

³ Federal Register, Confidential Government Information Nondisclosure Agreement, Docket ID: OPM-2026-0100, FR Doc. 2026-10471, 91 FR 31478 (May 26, 2026), <https://www.federalregister.gov/documents/2026/05/27/2026-10471/confidential-government-informationnondisclosure-agreement>.

⁴ *Id.*

⁵ *Governmentwide NDA Form Posted by the Office of Personnel Management*, Regulations.gov Document ID OPM-2026-0100-0003, (May 26, 2026), <https://www.regulations.gov/document/OPM-2026-0100-0003>.

⁶ Elsea, Jennifer K.; Mulligan, Steve P., *Criminal Prohibitions on Leaks and Other Disclosures of Classified Defense Information*, Congressional Research Service (May 11, 2023), https://www.congress.gov/crs-product/R41404#_Ref476669951.

⁷ *Id.*

knowing receipt or retention of stolen or converted property with the intent to convert it to the recipient's own use.⁸

Separately, CRS explains:

Section 1924 of Title 18 prohibits the unauthorized removal of classified material by government employees, contractors, and consultants who come into possession of the material by virtue of their employment by the government. The provision imposes a fine or a prison term of up to five years, or both, for offenders who knowingly remove material classified pursuant to government regulations concerning the national defense or foreign relations of the United States with the intent to retain the materials at an unauthorized location.⁹

A range of laws from the Espionage Act, codified at 18 U.S.C. Sections 793–798, to the criminal statute prohibiting treason, codified at 18 U.S.C. § 2381, protect classified and national security related information, the disclosure of which may be harmful to the United States.¹⁰ Violation of the treason statute is punishable by death, imprisonment, or fine.¹¹

“Appendix A” of the draft NDA itself, acknowledges several of the existing requirements that prohibit the disclosure of government information.¹² Requiring federal employees to sign this new NDA appears to be an attempt to stoke fear among public servants that they would be subjected to increased liability and potential litigation for alleged NDA violations, which they may have to defend in court, even if a claimed violation is not meritorious.

A March 2026 Government Accountability Office (GAO) report explains how employees may be deterred by an NDA from making lawful disclosures. GAO explains:

[A]ttorney fees related to engaging legal counsel for consultation may deter employees from exercising their disclosure rights. Employees may seek legal counsel, and incur costs for that counsel, to better understand their disclosure rights and liabilities as defined by NDAs or other employment policies. ... Employees experiencing workplace retaliation may also face burdensome costs when consulting an attorney to file a retaliation complaint. Employers may raise legal challenges to enforce NDAs or to address retaliation complaints, which may result in higher legal

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Governmentwide NDA_form Posted by the Office of Personnel Management, Regulations.gov* Document ID OPM-2026-0100-0003, (May 26, 2026), <https://www.regulations.gov/document/OPM-2026-0100-0003>.

fees for the employee. According to some of the subject matter specialists we spoke to, fear of a costly legal battle may dissuade employees from pursuing disclosure.¹³

As GAO notes, experts explain:

[E]ven when NDAs are not legally enforceable and do not prohibit an employee from bringing forward information, they may have a chilling effect for employees.¹⁴

As Republican Chairman of the Senate Committee on the Judiciary Chuck Grassley wrote in a June 8, 2026 letter to OPM on this draft NDA, “[w]histleblowers are the government’s most powerful tool in rooting out waste, fraud, abuse, and misconduct, and a fundamental precept of whistleblowing is the First Amendment.”¹⁵

Federal employee whistleblowers have served an important function for our democracy since the Revolutionary War and the enactment of the first whistleblower protections by the Second Continental Congress in 1778.¹⁶ Today, the importance of federal employee whistleblowers is recognised by the Whistleblower Protection Act of 1989, which provides a measure of protection for federal workers who bring to light corruption, misconduct, government waste, and violations of the law.¹⁷ As Chairman Grassley wrote in his June 8 letter about this draft NDA:

Federal agencies that require employees to enter into illegal nondisclosure agreements and impose restrictive policies prevent the flow of information about wrongdoing to Congress, Office of Inspectors General (OIGs), and the Office of Special Counsel. This will result in a chilling effect on employees and former employees from reporting misconduct out of fear they could be penalized for violating the terms of these agreements and policies.¹⁸

In addition to lawful disclosures that may be made to Congress, OIGs or the Office of Special Counsel, the law also recognizes the importance of federal employee whistleblower

¹³ *Protections for Whistleblowers and Others: Selected Agency Actions Regarding Reports of Potential Wrongdoing*, Government Accountability Office, GAO-26-107650 (Mar. 2026), https://files.gao.gov/reports/GAO-26-107650/index.html?_gl=1*_13jfcad*_ga*MzcyMDYwMTg2LjE3NzkxMjkyMDg.*_ga_V393SNS3SR*cZE3ODE2MTOyNTUkbzlkZzEkdDE3ODE2MTO3MDEkajQ4JGwwJGgw

¹⁴ *Id.*

¹⁵ Letter from Sen. Charles E. Grassley to Office of Personnel Management Director Scott Kupor (June 8, 2026), [https://www.grassley.senate.gov/imo/media/doc/grassley to opm - government wide nda.pdf](https://www.grassley.senate.gov/imo/media/doc/grassley%20to%20opm%20-%20government%20wide%20nda.pdf)

¹⁶ Balsler, Jimmy, *The Whistleblower Protection Act (WPA): A Legal Overview*, Congressional Research Service (Dec. 30, 2024), <https://www.congress.gov/crs-product/R48318>.

¹⁷ *Id.*

¹⁸ Letter from Sen. Charles E. Grassley to Office of Personnel Management Director Scott Kupor (June 8, 2026), [https://www.grassley.senate.gov/imo/media/doc/grassley to opm - government wide nda.pdf](https://www.grassley.senate.gov/imo/media/doc/grassley%20to%20opm%20-%20government%20wide%20nda.pdf).

disclosures to “audiences outside of the government, such as the news media,”¹⁹ as those types of disclosures can be similarly important to routing out waste, fraud, abuse or corruption in the government. Good government and transparency organizations, like CREW, routinely make recommendations for legislative actions, investigations and oversight to improve our government and our democracy based on lawful disclosures made public by well-intentioned public servants. Without these lawful disclosures, organizations such as ours will not have the information they need to bring litigation and recommend reforms to strengthen our institutions and root out waste, fraud, and abuse.

CREW is deeply concerned that this draft NDA is an attempt to intimidate and muzzle federal employee whistleblowers which compounds upon other actions by President Donald Trump and his administration that enable fraud, government waste and other abuses. For instance, the Trump administration’s decimation of the federal workforce has devastated fraud enforcement. Across the government in 2025, almost 350,000 workers quit, retired or were laid off, leading to a net reduction of over 10 percent of the federal workforce, with rates even higher at agencies that play key roles in preventing, detecting, and deterring fraud.²⁰ Offices in the Department of Justice (DOJ) have been hollowed out. Around 10,000 employees left the DOJ over the course of 2025.²¹ Despite a stated priority to pursue cases of fraud, the DOJ closed more than 900 cases of federal program or procurement fraud in the first six months of the Trump administration, declining about three times as many cases of major fraud against the U.S. compared to prior administrations.²² Since the beginning of the president’s second term, President Trump has systematically disrupted, weakened or outright eliminated guardrails meant to protect against waste, fraud and abuse within the executive branch.²³ Most notably, days after returning to office, the president unlawfully fired 17 inspectors general (IGs).²⁴ As a result of both the administration’s action and inaction, at the end of 2025, over half—55 percent—of the 38 presidentially appointed federal IG positions remained vacant, and of the total 72 federal IG positions, there were 29 vacancies across the federal government.²⁵ Now, OPM’s draft NDA would have the effect of

¹⁹ Balsler, Jimmy, *The Whistleblower Protection Act (WPA): A Legal Overview*, Congressional Research Service (Dec. 30, 2024), <https://www.congress.gov/crs-product/R48318>.

²⁰ Drew DeSilver, *Federal Workforce Shrank 10% in Trump’s First Year Back in Office*, Pew Rsch. Ctr. (Mar. 13, 2026), <https://www.pewresearch.org/?p=293637>.

²¹ DeSilver, *supra* note 25.

²² Ken B. Morales & David Armstrong, *Trump’s Justice Department Dropped 23,000 Criminal Investigations in Shift to Immigration*, ProPublica (Mar. 31, 2026), <https://www.propublica.org/article/trump-doj-immigration-bondi-declinations-criminal-investigations>.

²³ Dani Schulkin et al., *The Anti-Corruption Tracker: Mapping the Erosion of Oversight and Accountability*, Just Security (Apr. 14, 2026), <https://www.justsecurity.org/117267/anti-corruption-tracker/>.

²⁴ Danielle Caputo, *The Significance of Firing Inspectors General: Explained*, Campaign Leg. Ctr. (Jan. 31, 2025), <https://campaignlegal.org/update/significance-firing-inspectors-general-explained>; *Storch v. Hegseth*, 804 F. Supp. 3d 216, 225 (D.D.C. 2025) (finding it certain that plaintiffs “will succeed in arguing that their terminations violate the IGA”).

²⁵ Isabel Rogers, *By Leaving over 55% of Presidentially Appointed IG Posts Vacant, Trump is Opening the Door for Waste, Fraud and Abuse*, CREW (Feb. 4, 2026),

chilling lawful and important disclosures by federal employee whistleblowers who play an important role in bringing to light matters of concern that IGs and other government oversight entities, which have been under attack, would routinely investigate in order to make recommendations for corrective action.

For the reasons described above, we implore you to withdraw this draft NDA and make every effort to ensure that federal employees are aware of their right and responsibility to lawfully blow the whistle on waste, fraud and abuse.

Sincerely,

A handwritten signature in dark ink, appearing to read "Jason R. Powell", is enclosed within a large, hand-drawn oval. The signature is written in a cursive style.

Jason Powell
Policy Director

<https://www.citizensforethics.org/news/analysis/by-leaving-over-55-of-presidentially-appointed-ig-posts-vacant-trump-is-opening-the-door-for-waste-fraud-and-abuse/>.