



PEER

PUBLIC EMPLOYEES FOR ENVIRONMENTAL RESPONSIBILITY

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PEER Comments on OPM-2026-0100-0004

Confidential Government Information Non-Disclosure Agreement

Comments submitted at [://www.regulations.gov/docket/OPM-2026-0100/document](https://www.regulations.gov/docket/OPM-2026-0100/document)

Overview

Public Employees for Environmental Responsibility (PEER) submits these comments in opposition to the Office of Personnel Management's (OPM) proposed government-wide non-disclosure agreement (NDA) for federal workers.

If implemented, the NDAs could cover a broad range of information including internal operations and pre-decisional material. The agreement is effective for five years after the signatory leaves federal service. Violations of the NDA could result in disciplinary action, including terminations or civil and criminal penalties for current and former federal employees.

We have ten specific concerns with this proposal.

1. The NDA Language is Extraordinarily Broad
2. Whistleblower Protections Are Inadequate
3. The Proposal Conflicts with Existing Law and Policy
4. The Government Framing is Incorrect and Misleading
5. The Enforcement Mechanisms Sharpen Our Concern
6. It Silences Former Government Employees
7. It Elevates Politics and Silences Expertise
8. It Can Be Weaponized Against Federal Employees
9. It Purports to Treat Federal Employees Like Private Sector Employees
10. It Cannot be View in Isolation

Our concern isn't with government's need for confidentiality — governments have legitimate interests in protecting information that should not be publicly disclosed, and federal employees already face a range of criminal and other sanctions for releasing to the public specific types of information without prior approval.

The problem is that this formulation is so hopelessly vague that it would leave current and former federal workers guessing and in fear about what they can and cannot say — with the threat of being fired, and with criminal prosecution or civil sanctions hanging over them if they say something about their work that the government in power perceives as threatening to its interest.

This threat will make current and former federal workers reluctant to respond to congressional inquiries, inspector general investigations, media questions, or requests from outside groups—all of which have historically served as checks on executive branch power. The voices most likely to be silenced by this proposal are the ones that contradict an official political narrative.

This proposal is the latest in a long list of actions by the most corrupt administration in U.S. history to intimidate and silence the federal workforce and to undermine a merit-based civil service.

For these reasons, we urge OPM to withdraw this proposed NDA.

1. The NDA Language is Extraordinarily Broad and Vague

OPM’s proposal would require federal employees to sign an NDA promising not to disclose “non-public, confidential, or proprietary information . . . or any sensitive, pre-decisional or deliberative material that is not currently publicly available and should not be disclosed under applicable law.”

The sample NDA also states it covers all speech that “*should not* be disclosed under applicable law, Federal regulation, or *government-wide policy* (collectively “Confidential Government Information”)(italics added).

The administration cannot decree by political whim (policy) when information should or should not be released to the public and thereby what falls within the definition of “Confidential Government Information.” Government-wide policies can only be used to clarify or provide direction with respect to existing statutes and regulations, not impose additional legal obligations.

The fact that OPM apparently believes “Confidential Government Information” could include anything this administration sees fit with zero public transparency is antithetical to our system of government.

As written, this proposal could cover virtually everything that happens inside an agency before a policy or work product is finalized, or information is made public by the agency.

2. Whistleblower Protections Are Inadequate

OPM states that the proposed NDA preserves the right to make protected whistleblower disclosures. The language in this proposal is at odds with this claim.

For example, federal law requires any government NDA to include specific language protecting employees who report wrongdoing to both the Inspector General **and** the Office of Special Counsel (OSC). OPM's draft omits the OSC from the required text. The OSC is an independent federal agency created by Congress to receive and investigate federal whistleblower disclosures.

In fact, requiring federal employees to sign NDAs with the errors and omissions contained in this proposal may itself constitute a prohibited personnel practice under federal law.¹ See Attachment A for more details on how this proposal contradicts the Whistleblower Protection Act and is insufficient under the “anti-gag” provisions of U.S.C. § 2302(b)(13).

In addition, it is important to note that whistleblower protections are narrower than they might appear — they primarily cover disclosures of waste, fraud, abuse, or illegality made through specific channels. They generally do not protect the broad category of policy-related or operational information that this NDA's definition sweeps in.

Finally, if signing a broad and poorly worded NDA becomes a condition of employment for federal employees, and refusing gets you fired, the chilling effect on employees who may want to report wrongdoing will be real.

3. This Proposal Conflicts with Existing Law and Policies

OPM incorrectly maintains that this new policy merely codifies “current legal obligations.”

Our brief review of relevant statutes, policies and legal principles finds that the proposed NDA violates or is at odds with the Whistleblower Protection Act, the Lloyd–La Follette Act, the First Amendment, the Inspector General Act, the right to counsel, merit system principles as expressed in 5 U.S.C. § 2301 (b)(9),² scientific integrity policies³, EPA’s fishbowl policy⁴, and President Trump’s Restoring Gold Science Standing Executive Order (14303).⁵

This broad-reaching proposal will have significant legal and policy implications for the long-term well-being of this country. Democracy depends on an informed public. That requires civil servants who can, when necessary, tell us what's happening inside our government, either through the press, to Congress, or to 3rd party groups, like PEER, the CATO Institute, or the ACLU, for even our friends, neighbors and community groups, for example.

¹ 5 U.S.C. § 2302(b)(13).

² <https://www.law.cornell.edu/uscode/text/5/2301>.

³ See e.g., *Scientific Integrity Policy for Transparent & Objective Science*, U.S. Environmental Protection Agency (2012), <https://www.epa.gov/system/files/documents/2024-12/2012-scientific-integrity-policy.pdf>; *Departmental Regulation on Scientific Integrity*, U.S. Department of Agriculture (May 2, 2024), <https://www.usda.gov/sites/default/files/documents/dr-1074-001.pdf>; *DOE Scientific Integrity Policy*, U.S. Department of Energy (July 24, 2025), <https://www.energy.gov/documents/scientific-integrity-policy>.

⁴ Memorandum from William D. Ruckelshaus, EPA Administrator, to All EPA Employees, “Fishbowl Memo” (May 19, 1983), <https://www.regulationwriters.com/downloads/EPA-Fishbowl-Memo-05-19-1983-Ruckelshaus.pdf>.

⁵ Exec. Order No. 14303, 90 Fed. Reg. 22601 (May 23, 2025).

See Attachment A for more details on some of the laws and policies this proposal may conflict with.

4. OPM's Framing is Incorrect and Misleading

OPM's case for a government-wide NDA is built on contradictions and unsupported claims.

OPM simultaneously argues the NDA creates no new restrictions on employee speech while insisting the proposal is necessary—a contradiction it never resolves. It asserts that the NDA will promote consistency and better protect information without providing any evidence or identifying any actual gaps in existing laws or regulations that need to be filled.

It provides examples of harmful leaks involving classified material already covered by criminal law. Most tellingly, OPM's claim that a Supreme Court leak was “likely” caused by a law clerk is entirely unsupported — revealing that the reasoning for this proposal is irrelevant and not fact-based.

5. The Enforcement Mechanism Sharpen the Concerns

The enforcement mechanisms in this proposal are draconian.

Violations of the NDA could result in disciplinary action, including terminations or civil and criminal penalties for current and former federal employees.

The combination of these enforcement threats, a vague definition of information covered by these NDAs, and broad agency discretion in enforcement will create a strong chilling effect on federal employees who many need to speak about issues important to the public— even if enforcement never materializes.

6. It Silences Former Government Employees

This proposal would cause the public to lose access to years of expertise and institutional knowledge from federal employees.

Former federal employees would need written permission from their agency before speaking publicly about issues covered in the NDA for five years after they leave government service.

This means many former employees would need approval before testifying to Congress, talking to a journalist, writing a memoir, or sharing important information or experiences on government operations to an advocacy group, a “think tank,” or as part of community talk.

To make matters worse, there's no defined timeline for an agency to respond to a former employee's request to speak publicly, and there are no clear approval standards. If an employee wished to speak out without approval, they could face sanctions up to criminal penalties.

It is worth noting that major scandals, government failures, and abuses of authority typically surface in the years immediately after an administration acts. A five-year restriction appears calibrated to outlast the political moment when disclosures would matter most.

This effort to muzzle federal employees after they leave government service is called a prior restraint and most likely unconstitutional. The Supreme Court has treated the government's prior restraint of speech with deep suspicion since at least the Pentagon Papers case.²

7. It Elevates Politics and Silences Expertise

The OPM material does not expressly include high-level political officials. This creates a dangerous asymmetry: the people most accountable to the public face no restrictions, while career employees who might contradict or correct the official record are silenced for five years after leaving government service.

Political appointees typically have deeper access to confidential government information than most civil servants do. Political appointees also provide background briefings to reporters in which they are not quoted by name because they are not authorized to speak for the record. Former political appointees are also far more likely to write books or articles about their prior government experience and speak to the press.

When career employees are gagged while political appointees are allowed to speak freely, policy failures will go unchallenged, misconduct will go unreported, and government will be less likely to serve the public interest.

8. It Can be Weaponized Against Federal Employees

The proposal also states that the NDA or the refusal to sign an NDA will be included in the employees' Electronic Official Personnel Folder (eOPF), which is controlled by OPM. The eOPF is a file containing records reflecting an employee's appointment, employment history, and benefits information. eOPFs contain long-term records that serve to protect the legal and financial rights of the government and the employee.⁶

Ordinarily, placing a negative document in an employee's personnel file requires some level of due process protections — notice, an opportunity to respond, and appeal rights. The proposal does not establish any equivalent process for NDA-related entries, meaning an agency could annotate an employee's permanent record based on disputed NDA compliance without the procedural safeguards that normally apply.

⁶ The electronic Official Personnel Folder (eOPF) is an electronic version of the Official Personnel Folder (OPF). The eOPF is a file of records within an electronic database system that stores federal employee personnel forms and employment history. It provides instantaneous record access for employees and Human Resource staff. The Office of Personnel Management (OPM) and the respective agency Human Resource staff use eOPFs to “make decisions about employees’ rights, benefits and entitlements throughout their careers.” *Enterprise Human Resources Integration*, U.S. Office of Personnel Management, <https://www.opm.gov/policy-data-oversight/data-analysis-documentation/enterprise-human-resources-integration/>.

Placing NDA compliance into eOPFs converts a neutral administrative tool into an instrument of control — one that can affect an employee's career, mobility, and financial security for the rest of their federal service and beyond.

9. It Purports to Treat Federal Employees Like Private Sector Employees

In justifying this proposal publicly, OPM Director Scott Kapor stated: “In much of the private sector, employees handling sensitive business or customer information are routinely required to sign confidentiality agreements, and the federal government should not be held to a lower standard.”⁷

This private sector comparison sounds intuitive. But it rests on a fundamental misunderstanding of what government is, who it serves, and what the Constitution and our national laws require of public employees. Private companies are accountable primarily to their owners and shareholders, whereas government agencies are ultimately accountable to the public.

In the private sector, NDAs are generally used to protect internal trade secrets, intellectual property, financial data, and business strategies. In government, confidentiality must be balanced against the need for transparency, public oversight, and the public's right to know how decisions are made. There is no “competitive advantage” for the government to hide how or why a regulation was written, the existence of cost overruns a project, or why the government decided to suppress science, for example. Those are matters of democratic accountability, not trade secrets.

Moreover, where the public interest demands confidentiality, federal employees are already held to a higher standard than the private sector. Enacted laws passed by Congress and signed by the President such as the Privacy Act and Trade Secrets Act include accountability mechanisms and penalties (including criminal) more stringent than is possible through any private sector NDA.

10. It Can Not Be Viewed in Isolation

The NDA proposal is not a standalone confidentiality measure — it is the part of an emerging system of government designed to intimidate and silence the career civil servants and to give the president unbounded control over the entire federal government.

This proposal comes of the heels of administration efforts to end the independence of Inspectors General, the Office of Special Counsel, the Merit Systems Protection Board (MSPB). The MSPB is an independent, quasi-judicial agency established to protect the federal merit system against partisan political and other prohibited personal practices.

The cruel irony here is that the NDA proposes to close off the public discourse option for public employees and points them toward oversight bodies that it is simultaneously attempting to strip them of their independence.

⁷ *OPM Prepares NDA for Federal Employees Handling Sensitive Information Following Series of Major Leaks*, U.S. Office of Personnel Management, <https://www.opm.gov/news/news-releases/opm-prepares-nda-for-federal-employees/>.

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Attachment A: Some Ways this Proposal Conflicts with Existing Laws and Policies

Whistleblower Protection Act

The Whistleblower Protection Act of 1989⁸ protects most federal civil service employees who disclose government illegality, waste, and corruption from adverse personnel actions. The WPA, which amended the Civil Service Reform Act of 1978, prohibits retaliation against federal employees who act as whistleblowers. In general, the WPA covers current employees, former employees, and applicants for employment to positions in the executive branch of the government.

The WPA protects a disclosure of information that a covered employee reasonably believes demonstrates “a violation of any law, rule, or regulation” or “gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.” The WPA prohibits employees with authority over government personnel from retaliating against a whistleblower by taking, failing to take, or threatening to take a personnel action, including a decision regarding a promotion, pay or benefits, removal, suspension, or any other significant change in duties, responsibilities, or working conditions, among other actions.

The WPA protects disclosures made to any recipient, including a reporter, non-profit advocacy group, or anyone else as long as the underlying information is not restricted from release by executive order or statute. This obviously would include information that is non-public. Hence, the NDA could not legally restrain any form of whistleblowing to any source.

The only portion of the WPA which the OPM proposal acknowledges (in a footnote) is the requirement that any nondisclosure policy, form, or agreement issued by a federal agency must include a legally mandated addendum clearly stating that whistleblower protections supersede any restrictive terms.⁹ Among other things, any NDA must inform federal employees of their overriding right to communicate with Congress, Inspectors General, and Office of Special Counsel. Implementing or enforcing a restriction on speech without that addendum is illegal.

Additionally, Congress reinforces these rights annually through appropriations laws. For example, the Financial Services and General Government Appropriations Act for fiscal year 2024¹⁰ explicitly states that no federal funds may be used to implement or enforce nondisclosure agreements without the mandated whistleblower addendum. Any violation of this provision

⁸ 5 U.S.C. § 2302(b)(8)-(9).

⁹ Whistleblower Protection Enhancement Act (5 U.S.C. § 2302(b)(13)).

¹⁰ Public Law 118-47 –138 STAT. 461 Sec. 743 Mar. 23, 2024.

makes enforcement of the gag order unlawful, and Congress can even eliminate the salary of any manager who issues such an order.

Lloyd–LaFollette Act

The Lloyd–La Follette Act provides *inter alia* for right of civil servants to petition Congress or provide information to either House or its committees without interference or denial. This statute does not contain any limitation on the type of information federal employees may provide to congressional committees or individual members.

To the extent that the NDAs being proposed interfere or restrict this right it is illegal.

First Amendment

Government employees at all levels, including federal employees, do not forfeit their First Amendment rights when they accept public employment. On their own time, not speaking within their scope of duties or as an official representative of their agency, they have the right to speak on matters of public concern, but this right is balanced against the government's interest in promoting an efficient and disruption-free workplace. The Supreme Court has established key precedents that define the boundaries of these rights as determined by balancing the public importance of the speech versus any interference that speech has on the efficient operation of the government agency.¹¹

The proposed NDAs do not provide for any such balancing of interests. Instead, it seeks to prohibit whole categories of speech, for example, if it is heretofore “non-public.”

As applied to private speech by federal employees which pose no or remote disruption of the workplace, it would be an unconstitutional infringement on that person’s First Amendment free speech rights.

Moreover, any attempt to apply a NDA to a former federal employee, as the draft proposed NDA supplied by OPM purports to do, would be an unlawful prior restraint of that person’s First Amendment rights since a former employee’s speech is not subject to the balancing test referenced above. There is no legal basis for restricting former employee speech except for very limited situations such as classified information.

Inspector General Act

The Inspector General Act of 1978 prohibits any personnel action against another federal employee for making a complaint or disclosing information to the OIG, unless the disclosure was knowingly false or made with willful disregard for its truth.¹²

¹¹ See *Pickering v. Board of Education* 391 U.S. 563 (1968) which held that government employees do not lose their First Amendment rights to speak on matters of public concern just because they work for the government.

¹² 5 U.S.C. § 407(c).

Significantly, any good faith disclosure by a federal employee to an Office of Inspector General is protected even if it is deliberative, non-public, or confidential. Nor does such disclosure have to constitute protected whistleblowing. However, it is quite likely that communications to an IG would include non-public information about procurement practices, personnel policies, and other internal operations of the agency – the very type of information an NDA would purport to prohibit an employee from communicating.

Thus, no NDA may legally serve as the basis of disciplinary action against a federal employee for any good faith communication with the IG.

The Right to Counsel

In proceedings before administrative bodies such as the Merit Systems Protection Board¹³ and the Equal Employment Opportunities Commission¹⁴ an employee has the right to assistance of legal counsel. By their very nature, disputes decided by these bodies often involve personnel practices and information covered by the privacy exemption under the Freedom of Information Act.

Similarly, the Federal Labor Relations Authority, the independent agency which administers labor–management relations for federal employees, including unfair labor practice charges, representation petitions, arbitration appeals, and impasse assistance, provides employees with the right to counsel in its proceedings.¹⁵ Again, these matters entail personnel practices and details about internal operations which OPM’s proposed NDA would treat as confidential and thus non-disclosable.

Competent legal representation requires a complete disclose of all potentially relevant information to counsel, including non-public information. Yet, OPM’s draft NDA makes no provision to exempt attorney-client communications from potential sanctions, thereby creating potential legal problems of constitutional dimensions.

Merit System Principles

Merit system principles (as stated at 5 U.S.C. § 2301) embody how the federal workforce should be treated and the principles federal employees should follow. Important among these principles is 2301 (b)(9), which states that “[e]mployees should be protected against reprisal for the lawful disclosure of information which the employees reasonably believe evidences - (A) a violation of any law, rule, or regulation, or (B) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.”

¹³ Section 5 CFR 9701.706(a) states that a covered federal employee has the right to be represented by an attorney or other representative and to a hearing if material facts are in dispute.

¹⁴ 29 CFR § 1614.605 guarantees that at any stage of processing an EEO complaint – including the initial counseling stage – an employee may be accompanied, represented, and advised by a representative of his or her choice.

¹⁵ 5 U.S.C. § 7114 confirms that employees may be represented by an attorney or other representative of their own choosing in grievance or appeal actions, even if an exclusive labor representative is involved.

By requiring employees to sign the (now draft) NDA, upon threat of removal for failure to sign, the government will create an inevitable conflict between the duty of employees and managers to follow the merit system principles articulated above, and their own self-interest in not facing legal jeopardy under the NDA. A form will be undermining law and the intent of Congress in rendering into statute how federal employees should be treated, protected, and how they should behave in the federal workplace.

Scientific Integrity Policies

The Scientific Integrity Policy of the U.S. Environmental Protection Agency (EPA)¹⁶ is typical of those policies in place for more than a score of federal agencies. That Policy promotes “the free flow of scientific information,” “access to scientific information” and “transparency.” It also encourages “Independent peer review of Agency science... by qualified experts.” It also “strongly encourages and supports transparency and active, open communications through various forms including, but not limited to, publication in peer-reviewed or refereed journals, conference papers and presentations, [and] media interviews...”

These sanctioned activities conflict with the proposed NDA in that they entail sharing of information before it has been made public, conferring with colleagues outside of federal service, and open discussion of what are often pre-decisional issues.

Agency Transparency Policies

The OPM NDA proposal also conflicts with agency pledges of transparency. Perhaps, the most famous of these is EPA’s “fishbowl” policy is a long-standing commitment to full transparency in the agency’s decision-making process, ensuring that the public can see how regulations are developed and what data underlie them.¹⁷

This “fishbowl policy” stems from a 1983 memo by then-EPA Administrator William Ruckelshaus, who pledged that the agency would “operate in a fishbowl,” i.e., it would be open to scrutiny from all stakeholders, from environmental advocates to regulated industries.

OPM’s NDA proposal would forbid discussion of pre-decisional and other internal operations without exception, moving EPA from a transparent fishbowl to an opaque black box.

Trump Science Gold Standard Executive Order

President Trump’s Executive Order on Restoring Gold Standard Science¹⁸ provides that “except as prohibited by law, and consistent with relevant policies that protect national security or sensitive personal or confidential business information” that virtually all information about federally funded scientific research be made public. His Order applies to any “factual inputs, data, models, analyses, technical information, or scientific assessments related to such disciplines

¹⁶ <https://www.epa.gov/system/files/documents/2024-12/2012-scientific-integrity-policy.pdf>

¹⁷ [Ruckelshaus Takes Steps to Improve Flow of Agency Information \[Fishbowl Policy\] | About EPA | US EPA](#)

¹⁸ Exec. Order No. 14303, 90 Fed. Reg. 22601 (May 23, 2025).

as the behavioral and social sciences, public health and medical sciences, life and earth sciences, engineering, physical sciences, or probability and statistics. This includes any communication or representation of knowledge such as facts or data, in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual forms.”

The stated reason for President Trump’s insistence on scientific transparency is that it is “critical to maintaining the trust of the American people and ensuring confidence in government decisions informed by science.”

By contrast, OPM contends that disclosures of internal information “disrupt agency operations and erode public trust” – a position directly opposite from that articulated by President Trump.

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Attachment B: OPM’s Framing Is Incorrect and Misleading

Central Contradiction

The central contradiction which runs through OPM’s case for applying government-wide-NDAS is encapsulated by this sentence in the *Federal Register* Notice:

“The proposed NDA does not create new substantive restrictions on employee speech or disclosure rights.”

If that were the case, then it is unclear why this proposal is needed.

In its Notice, OPM suggests the purpose of the NDA is administrative convenience, that is by providing “agencies with a standardized mechanism for employees to acknowledge and agree to comply with obligations that already exist under law and regulation.” It is unclear why a “standardized mechanism” is needed, especially as each agency is supposed to customize OPM’s draft NDA form to meet its own needs.

The Notice further states “OPM believes that a governmentwide NDA form will promote consistency across Government, better protect confidential information, and better inform Federal employees of their rights and obligations regarding confidential information.” However, OPM does not articulate the basis for this belief. The Notice did not cite any instance of interagency inconsistency. Nor did it point out loopholes exposing confidential information. As noted above, rather than “better inform” employees, the broad wording employed by OPM risks generating even greater confusion and uncertainty.

No Evidence of Disruption

The Notice cites “several recent instances in which internal agency communications related to rulemaking and policy development were disclosed without authorization. Such disclosures risk chilling candid interagency feedback, disrupting orderly decision-making, and weakening trust

within and among Federal agencies.” It provides citations to two media articles. However, it does not articulate what if any real damage was done in these cases. Nor does it explain why fears of “chilling candid interagency feedback” are reasonable and how those fears would be allayed, if not magnified, by the existence of an NDA.

Classified Information Already Protected

The Notice also cites incidents involving the Federal Bureau of Investigation, the Department of Homeland Security, and the Department of Defense in which classified material was disclosed. However, unauthorized disclosure of classified information already carries serious penalties, including the possibility of criminal prosecution.

It is unclear how the existence of an NDA would have altered the course of events in these examples.

Supreme Court Example Inapposite

The Notice also states that “The problem is so widespread that the Supreme Court itself has instituted the use of nondisclosure agreements to attempt to dissuade staff from the harmful practice of disclosing Confidential Government Information and as a means to hold individuals accountable for such behavior. The Supreme Court took this step after a shocking incident where an individual, likely a law clerk, disclosed (without authorization) a copy of a draft decision in a controversial abortion case to a reporter.” (Emphasis added).

OPM’s conclusion that the source of the leak was “likely a law clerk” is not supported by a shred of evidence and suggests that OPM reasoning on this topic is simply not fact-based.