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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

June 8, 2026

VIA ELECTRONIC TRANSMISSION

The Honorable Scott Kupor
Director
Office of Personnel Management

Re: Docket ID: OPM-2026-0100

Dear Director Kupor:

I am writing regarding the Office of Personnel Management (OPM) notice with request for comment on a draft nondisclosure agreement form for use by federal agencies for both new and existing employees.¹ Please file this letter on the public record as a formal comment submitted by Senator Charles E. Grassley, Chairman of the U.S. Senate Committee on the Judiciary, Co-Founder and Co-Chair, Senate Whistleblower Protection Caucus.

Whistleblowers 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. 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.

For example, in 1987, the Department of Defense tried to silence patriotic whistleblower Ernie Fitzgerald who blew the whistle on fraud, waste and abuse at the Pentagon by forcing him to sign a government-wide nondisclosure agreement.² That specific agreement's terms would have prevented him from giving information to Congress and arguably would have violated the Lloyd-LaFollette Act of 1912 which states that "the right of employees ... to furnish information to... Congress... may not be interfered with or denied."³ To further protect brave whistleblowers like Ernie, I introduced an amendment known as the "anti-gag" provision in the Treasury, Postal Service and General Government Appropriations Act, 1988, and also included it in almost every appropriations bill since then.⁴ My anti-

¹ 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-information-nondisclosure-agreement>.

² See Press Release, *Grassley Talks About the Anniversary of the Whistleblower Protection Act*, (Apr. 10, 2014) <https://www.grassley.senate.gov/news/news-releases/grassley-talks-about-anniversary-whistleblower-protection-act>.

³ See 5 U.S. Code § 7211.

⁴ See Pub. L. No: 118-47.

gag provision was later codified into law through the enactment of the Whistleblower Protection Enhancement Act of 2012 (WPEA).⁵

The anti-gag provision requires federal agencies to include language in their nondisclosure and similar agreements notifying employees that it does not prevent them from exercising their statutory rights to report waste, fraud, and abuse to Congress, OIGs, or the Office of Special Counsel, among other things. Specifically, the anti-gag law prohibits federal agencies from enforcing or implementing, or using appropriated funds to enforce or implement nondisclosure policies, forms, or agreements unless it includes the following explicit statement informing their employees of their whistleblower protection rights:

These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General or the Office of Special Counsel of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive orders and statutory provisions are incorporated into this agreement and are controlling.⁶

Nevertheless, federal agencies have continued to implement unlawful nondisclosure policies and similar agreements.

I have conducted longstanding oversight to shine the light on the federal government for attempting to chill whistleblowers with illegal nondisclosure policies, forms, or agreements and demanded corrective action when they do.⁷ For example, in 2014, I published a report evaluating fifteen

⁵ See 5 USC § 2302(b)(13).

⁶ 5 USC § 2302(b)(13); Pub. L. No: 118-47.

⁷ See Letter from Sen. Charles E. Grassley, Ranking Member, Sen. Comm. on the Budget, and Sen. Ron Johnson, Ranking Member, Permanent Subcomm. on Investigations, to the Hon. Michael Horowitz, Inspector General, Dep. Of Justice, (Apr. 19, 2023), https://www.grassley.senate.gov/imo/media/doc/grassley_johnson_to_justice_deptinspectorgeneralfbiantigagprovision.pdf; Letter from Sen. Charles E. Grassley, Ranking Member, Sen. Comm. on the Budget, and Sen. Ron Johnson, Ranking Member, Permanent Subcomm. on Investigations, to the Hon. Michael Horowitz, Inspector General, Dep. of Justice, and to the Hon. Russell George, Treasury Inspector General for Tax Administration, Dep. of the Treasury, (Jun 6, 2023), https://www.grassley.senate.gov/imo/media/doc/grassley_johnson_to_dojoigtiga_-_whistleblower_retaliation.pdf; Letter from Sen. Charles E. Grassley, Ranking Member, Sen. Comm. on the Budget, and Sen. Ron Johnson, Ranking Member, Permanent Subcomm. on Investigations, to the Hon. Daniel Werfel, Commissioner, Internal Revenue Service, (Jun. 6, 2023), https://www.grassley.senate.gov/imo/media/doc/grassley_johnson_to_irs_-_protected_whistleblower_disclosure.pdf; Letter from Sen. Charles E. Grassley, Ranking Member, Sen. Comm. on the Budget, and Sen. Ron Johnson, Ranking Member, Permanent Subcomm. on Investigations, to the Hon. Henry Kerner, Special Counsel, Office of Special Counsel, (Jul. 5, 2023), https://www.grassley.senate.gov/imo/media/doc/grassley_johnson_comer_jordan_smith_to_osc_-_whistleblower_retaliation.pdf; Letter from Sen. Charles E. Grassley, Ranking Member, Sen. Comm. on the Budget to the Hon. Xavier Becerra, Secretary, Dep. of Health and Human Services, and to the Hon. Jeff Hild, Acting Assistant Secretary, Administration for Children and Families, and to the Hon. Robin Marcos, Director, Office of Refugee Resettlement, (Nov. 21, 2023), https://www.grassley.senate.gov/imo/media/doc/grassley_to_hhs_acf_and_orr_-_whistleblower_protections.pdf; Letter from Sen. Charles E. Grassley, Ranking Member, Sen. Comm. on the Budget to the Hon. Karen Gorman, Acting Special Counsel, Office of Special Counsel, (Nov. 21, 2023), https://www.grassley.senate.gov/imo/media/doc/grassley_to_osc_-_hhs_whistleblower_protections.pdf; Letter Sen.

executive branch departments' implementation of the anti-gag provision as required by the WPEA.⁸ My review revealed that, at the time, only the Treasury Department was able to document full implementation of the anti-gag provision, eight departments documented only partial implementation, two others were unable to show even partial compliance, and four departments, including the Justice Department, failed to even respond.⁹ I forwarded my findings to the Office of Special Counsel. In 2018, they issued updated guidance to all executive branch departments about including the anti-gag provision in their nondisclosure policies and agreements.¹⁰

I have also ensured that government officials are held accountable for enforcing unlawful gag orders prohibiting authorized disclosures. In 2016, following a referral from my office, the Government Accountability Office issued a legal opinion determining that certain amounts of the salaries paid to Housing and Urban Development (HUD) officials who unlawfully prohibited a HUD Regional Director from communicating with Congress violated my anti-gag law.¹¹ In 2017, after I wrote to HUD about these improper payments used to enforce an unlawful nondisclosure agreement, HUD initiated collection efforts to recoup these funds.¹²

In March 2024, I wrote to 76 Inspectors General requesting they conduct a review to ensure their parent agencies were following the law by including the anti-gag provision in their nondisclosure agreements.¹³ My oversight efforts have successfully resulted in federal agencies bringing their unlawful nondisclosure and similar agreements into compliance.¹⁴ My oversight has shown that agencies still don't comply with federal law.

Charles E. Grassley, Ranking Member, Sen. Comm. on the Budget, to the Hon. Michael Horowitz, Inspector General, Dep. of Justice, (Feb. 12, 2024), https://www.grassley.senate.gov/imo/media/doc/grassley_to_doj_oig_-_protected_whistleblower_disclosures.pdf; Letter from Sen. Charles E. Grassley, Ranking Member, Sen. Comm. on the Budget, to the Hon. Steven Dettelbach, Director, Bureau of Alcohol, Tobacco, Firearms, and Explosives, (Feb. 12, 2024), https://www.grassley.senate.gov/imo/media/doc/grassley_to_atf_-_protected_whistleblower_disclosures.pdf; Letter from Sen. Charles E. Grassley, Ranking Member, Sen. Comm. on the Budget, to the Hon. Michael Horowitz, Inspector General, Dep. of Justice, (Mar. 8, 2024), https://www.grassley.senate.gov/imo/media/doc/grassley_to_doj_inspector_general_-_eoir_disclosures_to_congress.pdf; Letter from Sen. Charles E. Grassley to Attorney General Garland, (Mar. 8, 2024), https://www.grassley.senate.gov/imo/media/doc/grassley_to_doj_-_eoir_disclosures_to_congress.pdf; Letter from Sen. Charles E. Grassley, Ranking Member, Sen. Comm. on the Budget, to the Hon. David Neal, Director, Executive Office for Immigration Review, (Mar. 8, 2024), https://www.grassley.senate.gov/imo/media/doc/grassley_to_executive_office_for_immigration_review_-_eoir_disclosures_to_congress.pdf.

⁸ Press Release, Sen. Charles E. Grassley, Chairman, Sen. Comm. on the Judiciary, *Grassley: Federal Agencies Failing to Implement Anti-gag Provision of Whistleblower Law*, (Apr. 2, 2014), <https://www.grassley.senate.gov/news/news-releases/grassley-federal-agencies-failing-implement-anti-gag-provision-whistleblower-law>.

⁹ *Id.*

¹⁰ Office of Special Counsel, *OSC Issues Guidance to Agencies on Implementing New Whistleblower Protections, Updates Prior Guidance on Non-disclosure and Employee Communications Monitoring Policies*, (Feb. 1, 2018) <https://www.osc.gov/news/2018-02-01/osc-issues-guidance-to-agencies-on-implementing-new-whistleblower-protections-updates-prior-guidance-on-non-disclosure-and-employee-communications-monitoring-policies/>.

¹¹ Government Accountability Office, *Department of Housing and Urban Development—Application of Section 713 of the Financial Services and General Government Appropriations Act, 2012 (Reconsideration)*, (Apr. 5, 2016) <https://www.gao.gov/assets/b-325124.2.pdf>.

¹² Letter from Aaron Santa Anna, Acting General Deputy Assistant Secretary for Congressional and Intergovernmental Relations, to Charles E. Grassley, Chairman, Senate Judiciary Committee, (Jun. 19, 2017) https://www.judiciary.senate.gov/imo/media/doc/06-19-17%20Santa%20Anna,%20Aaron%20to%20CEG%20re%20GAO%20Legal%20Opinion%20Financial%20Services%20and%20General%20Government%20Appropriations%20Act_Redacted.pdf.

¹³ Press Release, Sen. Charles E. Grassley, *Grassley Calls on All 74 Federal Inspectors General to Fortify Whistleblower Protections*, (Mar. 12, 2024), <https://www.grassley.senate.gov/news/news-releases/grassley-calls-on-all-74-federal-inspectors-general-to-fortify-whistleblower-protections>.

¹⁴ Press Release, *Grassley Outlines Successful Efforts to Ensure Agency Compliance with Whistleblower Protections*, (Jan. 8, 2026) <https://www.judiciary.senate.gov/press/rep/releases/grassley-outlines-successful-efforts-to-ensure-agency-compliance-with-whistleblower->

With that background, I'd like to address the draft nondisclosure agreement form. The OPM draft nondisclosure agreement form is broad in scope, and each agency would determine whether to require their employees to sign it. According to the notice in the Federal Register, "OPM believes that a standard NDA form will promote consistency across the federal government, better protect confidential information, and better inform federal employees of their rights and obligations regarding confidential information."¹⁵ It also states that recent incidents of "leaks" underscore the need for the nondisclosure agreement.¹⁶ The notice cites to examples of unauthorized disclosures of confidential information to the media such as FBI and Department of Homeland Security personnel engaging in an "unauthorized disclosure on planned immigration enforcement actions" and unauthorized disclosures that divulged the secret U.S. raid on Venezuela prior to it occurring that both put lives at risk.¹⁷ It also says that there have been other recent instances related to unauthorized disclosures of internal agency communications that "risk chilling" the internal agency deliberative process. Unauthorized disclosure of information is unacceptable especially when it puts law enforcement and military personnel at risk. And unauthorized disclosures are not equal to legally protected whistleblower disclosures. In other words, legally protected disclosures are authorized by law and are not "leaks." Federal agencies must aggressively counsel against the use of nondisclosure agreements that are designed to chill legitimate whistleblowers under the guise of protecting against unauthorized disclosures. Sometimes, it will be a fact-specific analysis; however, the balance must always be to the benefit of the patriotic whistleblower.

The OPM draft nondisclosure agreement form includes a partial anti-gag provision, but it is not the exact same as the version required by existing law. While the form does provide that the nondisclosure agreement does not prohibit an employee from making a whistleblower disclosure to Congress and Inspectors General, it fails to include the Office of Special Counsel. Accordingly, OPM must immediately update the draft nondisclosure agreement form to include disclosures to the Office of Special Counsel.

The OPM draft nondisclosure agreement also places the anti-gag provision at the beginning of the form in Section 3 rather than at the end like other government standard form nondisclosure agreements.¹⁸ Nondisclosure agreements by their nature may chill whistleblowers. They seek to prevent the unauthorized disclosure of information but can be subject to abuse. Including the anti-gag provision at the end, where employees put their signature, provides them with the mental assurance they are not signing away their whistleblower rights. Accordingly, OPM should immediately update the draft nondisclosure agreement form by moving the anti-gag provision to the end of the document where employees sign their name.

protections; Press Release, *Grassley Successfully Ensures ATF Employees Know their Whistleblower Rights*, (Apr. 3, 2024) <https://www.grassley.senate.gov/news/news-releases/grassley-successfully-ensures-atf-employees-know-their-whistleblower-rights>.

¹⁵ 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-information-nondisclosure-agreement>.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ See Standard Form-312, *Classified Information Nondisclosure Agreement*, (Dec. 2023) <https://www.gsa.gov/reference/forms/classified-information-nondisclosure-agreement-1>; Standard Form-4144, *Sensitive Compartmented Information Nondisclosure Agreement*, (Dec. 2013) https://www.dni.gov/files/NCSC/documents/Regulations/FORM%204144_Rev_12-2013_fillable.pdf.

It cannot be stated enough how important it is for whistleblowers to know their rights under the law. As I've frequently said, too often whistleblowers are treated like skunks at a picnic when federal agencies ought to encourage and reward whistleblowers who often put their careers, reputation, and livelihoods at risk for disclosing waste, fraud, abuse, and misconduct. If the draft nondisclosure agreement is implemented, Congress must conduct oversight to ensure it is not used inappropriately, as I intend to do.

Thank you for consideration of these comments. If you have any questions, please contact Brian Randolph on my Committee staff at (202) 224-5225.

Sincerely,



Charles E. Grassley
Chairman
Committee on the Judiciary