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Senior Executives Association

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June 26, 2026

Submitted electronically via www.regulations.gov

The Honorable Scott Kupor
Director
U.S. Office of Personnel Management
1900 E Street NW
Washington, DC 20415

RE: Comments on the Confidential Government Information Nondisclosure Agreement (Docket ID OPM-2026-0100; 91 FR 31478; Federal Register document number 2026-10471, published May 27, 2026)

Dear Director Kupor,

The Senior Executives Association (SEA) submits these comments in response to the Office of Personnel Management's request for comment on a draft governmentwide nondisclosure agreement (NDA) for use by federal agencies with new and existing employees. SEA represents career members of the Senior Executive Service (SES), Senior Level (SL), Scientific and Professional (ST), and equivalent positions, along with other senior career leaders across the federal government. SEA's members would be both subject to the NDA requirement, if implemented, and bear responsibility for administering and enforcing such agreements with their staff and be subject to any penalty or potential liability attendant with such responsibility. They also they frequently serve in public-facing roles where questions about the boundaries of permissible information disclosure arise. SEA therefore has a direct interest in the necessity, scope, and legal soundness of any governmentwide NDA.

SEA does not regard confidentiality obligations as inherently inappropriate. Many federal positions already operate under requirements tied to classified, sensitive, or other non-public information, and SEA supports the lawful protection of that information. SEA's comments address whether a single agreement applied across the entire career workforce is necessary and how such an agreement must be made consistent with the statutory protections that govern federal disclosures.

Summary of SEA's Position

Federal employees are already bound by statute, regulation, and agency policy that define what they may and may not disclose, and those obligations are reinforced through mandatory ethics and disclosure training. The notice does not establish a clear need that existing law leaves unaddressed. To the extent OPM proceeds, any governmentwide NDA must comply fully with the statutory requirements that protect lawful disclosures, including the specific statement and incorporation of controlling authorities required by 5 U.S.C. 2302(b)(13) and Section 115 of the Whistleblower Protection Enhancement Act of 2012. SEA also recommends that OPM narrow the agreement's scope to positions with genuine access to protected non-public information and provide implementing guidance for the executives who would administer it.

SEA also is concerned that the broad scope of the draft NDA and ambiguity in the type of disclosures that may constitute "Confidential Government Information" subject to the NDA, will have a chilling effect not only on employee constitutionally-protected First Amendment and whistleblower protection rights, but from a government operational perspective, on the free exchange of ideas, including reporting obstacles and concerns, between employees, employees and senior leaders, regulated entities, agency stakeholders and members of Congress, communication that is critical for the development, implementation, and effective and efficient operation of government programs and policies. The NDA itself is more likely to impede implementing of Administration priorities than to address any specific potential harm to government operations that is not already safeguarded by existing statutory protections.

Information sharing is a critical function in the operation of efficient and effective government, in agencies charged with safety, security and emergency preparedness and response. As the United States approaches the 25th anniversary of the 9/11 terrorist attacks on our nation, it is important to remember the role that failed information sharing and information sharing systems played in the ability of the United States to identify, deter and prevent those catastrophic attacks.

1. Existing Law Already Defines and Enforces Federal Disclosure Obligations

Federal employees take an oath to support the Constitution and are subject to an established body of law, regulation and agency conduct and disciplinary policies governing the handling of government information. Unauthorized disclosure of classified or otherwise protected information is already prohibited and subject to criminal, civil, and administrative consequences. Agencies also administer confidentiality requirements for specific categories of sensitive information through existing forms and position-specific agreements. Against that

background, the notice does not identify a gap in current authority that a new governmentwide agreement is needed to close.

This concern is not theoretical. Some agencies have declined to require their employees to sign general nondisclosure agreements precisely because existing legal restrictions already govern the handling of protected information, and because broad agreements can be difficult to reconcile with the protections afforded to lawful whistleblowers. SEA asks OPM to articulate, with specificity, the deficiency in existing law that the draft agreement is intended to remedy, and to explain why position-specific and information-specific requirements already in use are insufficient.

2. Any Governmentwide NDA Must Comply with the Statutory Protections for Lawful Disclosures

Federal nondisclosure policies, forms, and agreements are governed by statute. Under 5 U.S.C. 2302(b)(13), it is a prohibited personnel practice to implement or enforce any nondisclosure policy, form, or agreement that does not contain a specific statement preserving employee disclosure rights, or that prohibits or restricts an employee from disclosing information to Congress, an Inspector General, or the Office of Special Counsel. Section 115 of the Whistleblower Protection Enhancement Act of 2012 requires that any such agreement contain the following statement:

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 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.

A nondisclosure agreement that omits this statement, or that operates to restrict disclosures protected by law, is unenforceable and exposes the implementing agency to liability for a prohibited personnel practice. OPM's draft NDA currently does not include this statutorily mandated language. SEA recommends that any governmentwide NDA OPM adopts contain this statement verbatim, prominently and on the face of the agreement, and incorporate the controlling statutory and Executive order authorities, including 5 U.S.C. 2302(b)(8) and (b)(9), 5 U.S.C. 7211 governing disclosures to Congress, the Inspector General Act, the Notification and

Federal Employee Antidiscrimination and Retaliation (No FEAR) Act, and Executive Order 13526 governing classified national security information. OPM should also confirm, consistent with the appropriations anti-gag provisions in effect since 1988, that no agency will implement or enforce the agreement absent that language.

OPM's notice and the Director's accompanying materials state that existing protections remain intact. OPM's NDA, however, must say so within the four corners of the NDA itself, including language required by statute, rather than requiring employees to rely on assurances outside the document the employee is being required to sign in order to have access to information necessary for the employee to perform their job. An employee evaluating whether to raise a concern must be able to read the protection in the agreement itself.

3. The Scope of a Governmentwide Agreement Should Match a Demonstrated Need

Applying a single nondisclosure agreement to the entire career workforce, including employees with no access to classified or otherwise protected non-public information, would be a significant departure from longstanding practice. Confidentiality requirements have generally been calibrated to the information and duties of particular positions. A requirement extended to all employees regardless of their access risks imposing an obligation that bears little relationship to the information any given employee actually handles, while raising the concerns about lawful disclosure described above.

OPM should include a clear definition of "Confidential Government Information" within the text of the agreement itself. The notice's description of the term is not sufficient to give employees fair notice of what disclosures are covered, and SEA is concerned that, as currently framed, the definition is so broad and ambiguous that it could be read to prohibit disclosure of information the public is otherwise entitled to obtain under the Freedom of Information Act. An agreement that sweeps in information that is not actually protected from public release risks deterring employees from sharing material they are legally permitted, and in some cases obligated, to disclose. SEA recommends that OPM adopt a precise, narrowly drawn definition that distinguishes genuinely protected non-public information from information subject to disclosure under FOIA or other applicable law.

If OPM proceeds, SEA recommends that the agreement be limited to positions with genuine access to protected non-public information, that agencies retain discretion to determine where such an agreement is warranted, and that OPM document the basis for applying the agreement to any category of positions. A narrower and better-justified application would reduce the risk of unintended interference with protected activity and would be easier for agencies to administer consistently.

4. Implementation Would Fall to Career Executives and Requires Clear Guidance

Career executives would be responsible for presenting, administering, and enforcing any governmentwide NDA with their staff. Without clear guidance, executives across agencies would be left to interpret the agreement's scope and its interaction with whistleblower and other protections on their own, producing inconsistent application of the kind that undermines confidence in the merit system. SEA recommends that OPM issue implementing guidance and training that defines the agreement's scope, explains its relationship to existing disclosure rights, and instructs agencies to pair it with the disclosure training already required so that employees understand both their confidentiality obligations and the protections that remain available to them.

SEA also asks OPM to consider the effect of a governmentwide agreement on candor within agencies. Career executives depend on employees who will report problems, including waste, fraud, abuse, and risks to public health and safety, through lawful channels. A requirement that causes employees to hesitate before raising such concerns would weaken the internal accountability that effective government depends on. Guidance and agreement language that clearly preserve protected disclosures would reduce that risk.

Conclusion

SEA recommends that OPM demonstrate the need for a governmentwide nondisclosure agreement in light of existing law, and that any agreement it adopts contain the statement and controlling authorities required by 5 U.S.C. 2302(b)(13) and Section 115 of the Whistleblower Protection Enhancement Act, be limited in scope to positions with genuine access to protected non-public information and be accompanied by guidance for the executives who would administer it. These measures would allow OPM to protect information that genuinely warrants protection while preserving the lawful disclosure rights that keep government accountable to the American people.

SEA appreciates the opportunity to comment and stands ready to work with OPM, Congress, and other stakeholders as this matter proceeds. Please contact us if SEA can provide further information.

Respectfully submitted,

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Senior Executives Association