

HUMAN RESOURCES

What Federal Employees Should Know About the Latest Moves in the OPM NDA Fight

OPM's proposed federal employee NDA is not yet final, but a related suitability rule is in effect and four unions have sued. A new bill has now joined the fight.

By Ian Smith

Sep 4, 2026 8:50 AM 5 min read

Two Democratic House members introduced legislation on August 31, 2026, that would sharply limit the ability of federal agencies to require employees to sign nondisclosure agreements (NDAs), including the standardized NDA proposed earlier this year by the Office of Personnel Management (OPM). Representatives Eugene Vindman (D-VA-07) and Suhas Subramanyam (D-VA-10) filed the *Federal Worker Protection Act* (H.R. 10198 (<https://www.congress.gov/bill/119th-congress/house-bill/10198>)), which was referred to the House Committee on Oversight and Government Reform.

The bill has no Republican cosponsors and faces long odds in the current Congress. Its introduction is nevertheless a useful marker for where the broader NDA fight stands. Since FedSmith's [July 10 recap of the public comment period](https://www.fedsmith.com/2026/07/10/nearly-300-00-comments-pour-in-on-opms-proposed-nda-but-most-are-form-letters/) (<https://www.fedsmith.com/2026/07/10/nearly-300-00-comments-pour-in-on-opms-proposed-nda-but-most-are-form-letters/>), the related *Suitability and Fitness* final rule has taken effect, four federal unions have sued to block it, and now this bill has landed on top of both.

Where the NDA Proposal Stood in July

OPM's proposed governmentwide NDA drew nearly 30,000 public comments by the June 26 deadline, with opposition running near-unanimous. Formal comments from federal employee unions, watchdog groups, press-freedom organizations, and federal employment law firms opposed the proposal, with several calling for its withdrawal. Southworth PC, a firm specializing in federal employment matters, [argued that the draft form omits statutory language](https://www.attorneysforfederalemployees.com/blog/2026/06/opms-proposed-federal-employee-nda-is-missing-words-the-law-requires-we-filed-a-formal-comment-asking-opm-to-withdraw-it/) (<https://www.attorneysforfederalemployees.com/blog/2026/06/opms-proposed-federal-employee-nda-is-missing-words-the-law-requires-we-filed-a-formal-comment-asking-opm-to-withdraw-it/>) the Whistleblower Protection Enhancement Act of 2012 (WPEA) requires, word for word, in every federal NDA.

The Suitability Rule Took Effect July 30

OPM's *Suitability and Fitness* final rule (<https://www.federalregister.gov/documents/2026/06/30/2026-13154/suitability-and-fitness>) took effect July 30, 2026, 30 days after publication in the Federal Register.

FedSmith previously covered [what the rule allows agencies to do \(https://www.fedsmith.com/2026/06/30/new-opm-rule-fire-federal-employees-misconduct/\)](https://www.fedsmith.com/2026/06/30/new-opm-rule-fire-federal-employees-misconduct/) with respect to on-the-job employee misconduct.

The rule expands the suitability process, historically used mainly for pre-employment vetting, into a mechanism agencies can use to remove current federal employees. Among the specific factors OPM identified as grounds for a suitability action is refusing to certify compliance with nondisclosure obligations tied to handling government information.

That connection is central to understanding the NDA fight. On its own, the proposed OPM NDA would remain a voluntary form that agencies could adopt or ignore. Paired with the suitability rule, refusal to sign an agency-adopted NDA becomes a potential fitness-for-service question that can support removal.

Four Unions Sued Over the Suitability Rule

Four federal unions [filed suit against OPM \(https://www.fedsmith.com/2026/08/26/unions-sue-opm-over-new-suitability-and-performance-appraisal-rules/\)](https://www.fedsmith.com/2026/08/26/unions-sue-opm-over-new-suitability-and-performance-appraisal-rules/) on August 26, 2026, challenging both the Suitability and Fitness final rule and a separate performance-appraisal rule finalized in July. The suit argues that OPM exceeded its statutory authority and that the rules violate the intent of the Civil Service Reform Act, along with claims that OPM's rulemaking was arbitrary and capricious under the Administrative Procedure Act.

The suitability rule is therefore already in active federal litigation. The proposed NDA, by contrast, has not yet been finalized as a rule and is not itself in court. Any future litigation over the NDA would begin after OPM issues a final rule and publishes it in the Federal Register.

What Would the Bill Do?

The *Federal Worker Protection Act* would impose several new requirements on federal NDAs and their enforcement, most of them tracking objections critics raised during the comment period. Its key provisions include:

- A required plain-language notice on every covered NDA advising employees of their protected disclosure rights, including the right to communicate with Congress, Inspectors General (IGs), the Office of Special Counsel (OSC), and the Merit Systems Protection Board (MSPB)
- A statutory-supremacy rule declaring any NDA provision that restricts a protected disclosure "void ab initio," with OPM required to incorporate that rule in every NDA template it distributes
- Pre-clearance by OSC of any NDA template before an agency may use it, with a 60-day review window and a public registry of submitted templates

- Independent IG certification of proposed NDAs before an agency may impose them, with negative certifications required to be published on the agency's website within five business days
- A private right of action allowing employees to sue in federal court over threatened or actual retaliatory NDA enforcement, with the burden shifting to the agency to show by clear and convincing evidence that the action was independent of any protected disclosure
- Restrictions on the removal of an IG for two years after that IG issues a negative NDA certification, along with civil penalties of at least \$5,000 per violation for noncompliant NDAs

Several of these provisions map directly onto specific concerns raised during the comment period. The plain-language rider requirement in Section 3 codifies the WPEA notice language that Southworth PC argued was missing from OPM's draft.

The statutory-supremacy rule in Section 6 addresses the concern that agency policy could effectively narrow whistleblower rights conferred by statute. The bill's use of "void ab initio," a Latin legal term meaning invalid from the moment of signing, would prevent an agency from retroactively enforcing an NDA provision that restricts protected disclosures, even for disclosures made before any court ruled the provision invalid.

Have Concerns Been Bipartisan?

While no Republican has cosponsored H.R. 10198, some of the underlying concerns about the NDA proposal have drawn cross-party attention. Senator Charles Grassley (R-IA), a longtime whistleblower advocate, sent a [letter to OPM](https://www.grassley.senate.gov/imo/media/doc/grassley_to_opm_-_government_wide_nda.pdf) (https://www.grassley.senate.gov/imo/media/doc/grassley_to_opm_-_government_wide_nda.pdf) during the comment period warning that the proposed NDA "would result in a chilling effect on employees and former employees from reporting misconduct."

A group of 44 House members had earlier sent a [similar letter to OPM](https://krishnamoorthi.house.gov/sites/evo-subsites/krishnamoorthi-evo.house.gov/files/evo-media-document/krishnamoorthi-landsman-letter-to-opm-re-ndas-for-federal-employees.pdf) (<https://krishnamoorthi.house.gov/sites/evo-subsites/krishnamoorthi-evo.house.gov/files/evo-media-document/krishnamoorthi-landsman-letter-to-opm-re-ndas-for-federal-employees.pdf>) warning that mandatory governmentwide NDAs would "block lawful whistleblowing and disclosures, undermine government transparency and accountability, and erode the independence and integrity of the nonpartisan civil service."

[Video — view the full article online at FedSmith.com to watch]

What Federal Employees Should Know Now

The proposed OPM NDA is not yet a final rule. No federal employee is currently required to sign the standardized OPM form, and any final rule will be preceded by another opportunity for public

review before it takes effect. Existing law already requires the WPEA notice language in any federal NDA an employee is asked to sign today.

The Suitability and Fitness rule is in effect and is now the subject of union litigation. Federal employees who face an adverse suitability determination retain the right to appeal to the Merit Systems Protection Board.

For a full breakdown of the comment-period response and the organizational opposition to the proposed NDA, see FedSmith's [July 10 analysis of the public comments](https://www.fedsmith.com/2026/07/10/nearly-30000-comments-pour-in-on-opms-proposed-nda-but-most-are-form-letters/) (<https://www.fedsmith.com/2026/07/10/nearly-30000-comments-pour-in-on-opms-proposed-nda-but-most-are-form-letters/>).

Tags:

NDA

OPM

Proposed Legislation

SEE ALSO

- [New OPM Rule Lets Agencies Fire Federal Employees for On-the-Job Misconduct](#)
- [Nearly 30,000 Comments Pour In on OPM's Proposed NDA, But Most Are Form Letters](#)
- [Unions Sue OPM Over New Suitability and Performance Appraisal Rules](#)
- [How OPM's Proposed Non-Disclosure Agreements Could Impact Federal Employee Rights, Whistleblower Protections and Collective Bargaining Rights](#)
- [Scott Kupor's Defense of NDAs for Federal Employees—and What Is Missing](#)

© 2026 Ian Smith. All rights reserved. This article may not be reproduced without express written consent from Ian Smith.



ABOUT THE AUTHOR

Ian Smith

Ian Smith is one of the co-founders of FedSmith.com. He has over 30 years of combined experience in media and government services, having worked at two government contracting firms and an online news and web development company prior to his current role at FedSmith.

[View all 3,163 articles →](#)

Source: <https://www.fedsmith.com/2026/09/04/opm-nda-fight-latest-updates/> · Printed from FedSmith.com