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Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
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February 6, 2017

Mr. Norris Cochran
Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Dear Acting Secretary Cochran:

We are writing to request information about your agency's use of nondisclosure agreements. Recently there have been news reports that guidance in some agencies raised concerns regarding the implications for federal employees' personal communications including, in some instances, communications with Congress.

Starting in 1988, Senator Chuck Grassley introduced an amendment known as the "anti-gag" provision to the Treasury, Postal Service and General Government Appropriations Act.[1] This provision has been included in appropriations laws since 1988, most recently in the Consolidated Appropriations Act of 2016.[2] In 2012, Congress unanimously passed the Whistleblower Protection Enhancement Act (WPEA), which codified the requirement and made its violation a prohibited personnel practice.[3]

That Act requires every executive branch nondisclosure policy, form, or agreement to contain the following explicit 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.[4]

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[1] Pub. L. No. 100-440.

[2] Pub. L. No. 114-113, as continued by Pub. L. No. 114-254.

[3] 5 U.S.C. § 2302(b)(13).

[4] *Id.*

The law also requires any agency using a nondisclosure policy, form, or agreement to post the statement on the agency website along with relevant Executive Orders and statutes.

We want to ensure that this law is fully implemented. Accordingly, please provide the following information by February 20, 2017:

(1) all forms, policies, instructions, or agreements provided to employees or otherwise implemented since January 1, 2016 through the present, that reference communications with Congress, including those with either non-disclosure or non-disparagement provisions, and including all modifications, rescissions, or other changes;

(2) all forms, policies, instructions, or agreements that purport to limit the ability of current or former employees to communicate with Congress, whether explicitly or as a part of a general restriction on communications; and

(3) a detailed statement of all efforts that your department has taken to post the "anti-gag" provision on its website, as well as relevant Executive Orders and statutes.

Please contact Tristan Leavitt with the Committee majority staff at (202) 225-5074 or Courtney French with the Committee minority staff at (202) 225-5051 with any questions about this matter. Thank you for your prompt attention to this request.

Sincerely,

Gerald E. Connolly
Ranking Member
Subcommittee on Government Operations

Mark Meadows
Chairman
Subcommittee on Government Operations