



June 6, 2025

By electronic submission via www.regulations.gov

Charles Ezell
Acting Director, U.S. Office of Personnel Management
1900 E Street, N.W.
Washington, D.C. 20415

Re: Comment on Proposed Rule, “Improving Performance, Accountability and Responsiveness in the Civil Service” | Docket ID: OPM-2025-0004, RIN: 3206-AO80

Dear Acting Director Ezell,

The nation’s professional career federal civil servants—who live in every state and serve the American people regardless of the President’s political affiliation—are foundational to our democracy and prosperity. We, the undersigned organizations, write in strong opposition to the Office of Personnel Management’s (OPM) Proposed Rule titled, “Improving Performance, Accountability and Responsiveness in the Civil Service.”¹ Contrary to its name, the proposed rule would severely undermine the career civil service that Congress has sought to protect and preserve for more than 140 years, beginning with the Pendleton Act of 1883 and as reaffirmed through the Civil Service Reform Act of 1978 (CSRA) and subsequent amendments.

The proposal would revoke OPM’s April 2024 rule, “Upholding Civil Service Protections and Merit System Principles” and renew the controversial Schedule F directive from the first Trump Administration. It proposes to re-classify career civil servants identified by their agencies as having “confidential, policy-determining, policy-making, or policy-advocating” responsibilities into a new excepted service schedule, this time named “Schedule Policy/Career” (“Schedule P/C”).² The explicit purpose of this action is to strip employees’ earned statutory procedural rights, making them at-will employees who serve at the pleasure of the President. Accountability and performance will now be judged by the whims of one person based on perceived loyalty to that person rather than on service to the American people and the Constitution. This will have a devastating impact on the efficacy of federal programs, public trust in our government, and regulatory certainty. It will ultimately harm not just civil servants, but the American people.

¹ Improving Performance, Accountability and Responsiveness in the Civil Service, 90 Fed. Reg. 17182 (proposed Apr. 23, 2025) (to be codified at 5 C.F.R. pts. 210, 212, 213, 302, 432, 451, and 752).

² *Id.* at 17201.

I. Maintaining a nonpartisan career civil service ensures the federal government has the experience and expertise necessary to manage complex programs and services for the American people.

The American people depend on a professional federal government workforce that puts the public interest first and has the experience and expertise to manage complex programs and services across the country. Civil servants play a critical role in keeping our food, medicine, transportation, and water safe; securing public safety and national security; delivering our mail; supporting our education and health care systems; ensuring the financial system operates smoothly, and that small businesses have access to credit; and working in our courthouses, airports, national parks, and beyond.³ They perform these duties regardless of the President's political affiliation.

Before 1883, the federal government largely operated under what was known as the “spoils system.” Presidents could freely remove and replace federal workers to reward political allies with government positions. As federal government jobs “became more specialized and required special and specific skills due to industrialization,” Congress saw the need to reform the spoils system and replace it with a merit-based federal workforce.⁴ Congress enacted the Pendleton Act of 1883 to require “federal government jobs be awarded on the basis of merit and that government employees be selected through competitive exams.”⁵ The Act also made it unlawful to fire or demote employees who were covered by the law for not making political contributions.⁶

The Pendleton Act transformed our federal government, creating the modern civil service that the American people have relied on for more than 140 years. Subsequent statutes, including, among others, the Lloyd-La Follette Act of 1912, the Veterans' Preference Act of 1944, and the CSRA of 1978 extended and updated these civil service provisions to give federal workers greater removal protections so that they are not working in fear of political retribution.⁷ Today, by law, most non-probationary federal workers are guaranteed due process rights, including notice, the opportunity to respond, and to appeal adverse actions.⁸

The CSRA in particular was the result of years of bipartisan deliberation and deep concern about the functioning of the federal government. Through the CSRA, Congress created a unified statutory framework for federal employee rights and agency personnel actions, carefully balancing management flexibility with critical protections for the career workforce.

³ See, e.g., P'ship for Pub. Serv., *Safeguarding the Civil Service: Who are Civil Servants?*, <https://ourpublicservice.org/protecting-democracy/-who-are-civil-servants> (last visited May 9, 2025).

⁴ Nat'l Archive, *Milestone Documents: Pendleton Act (1883)*, <https://www.archives.gov/milestone-documents/pendleton-act> (last updated Feb. 8, 2022).

⁵ *Id.*

⁶ *Id.*

⁷ Upholding Civil Service Protections and Merit System Principles, 89 Fed. Reg. 24982 (Apr. 9, 2024), <https://www.federalregister.gov/documents/2024/04/09/2024-06815/upholding-civil-service-protections-and-merit-system-principles>.

⁸ See 5 U.S.C. §§ 7511, 7513.

The CSRA replaced a patchwork of statutes, executive orders, and common law doctrines, and expressly codified principles that included protections against arbitrary or politically motivated personnel actions; procedural safeguards requiring cause for adverse actions; and rights of appeal to an independent, expert body—the Merit Systems Protection Board (MSPB).

Congress specifically intended to ensure that adverse actions against career employees would be governed by fair processes. In particular, Chapters 43 and 75 of Title 5 of the U.S. Code establish the procedures for performance-based and misconduct-based removals, ensuring that such actions are justified, evidence-based, and reviewable.

Congress included a narrow set of exceptions to these adverse action procedures in 5 U.S.C. § 7511(b), including at Section 7511(b)(2), for positions of a “confidential, policy-determining, policy-making, or policy-advocating” character. As Congress described during the 1990 Amendments to the CSRA, the “key to the distinction” between those civil servants on whom appeal rights are conferred and those to whom such rights are not conferred is the “expectation of continuing employment with the Federal Government.”⁹ This means that the exception should not be applied broadly to career civil servants who, unlike political appointees, do have an expectation of continued employment. The better reading of the exception at section 7511(b)(2), as described thoroughly in OPM’s 2024 rule, is that it applies only to political appointees without an expectation of continued employment beyond the administration in which they were appointed.

Nowhere in the CSRA did Congress contemplate that career federal employees—especially those in what OPM terms “policy-influencing” roles—could be categorically deprived of these rights simply through administrative reclassification. The proposed rule suggests that the President and OPM have effectively found an “elephant in a mousehole,” a statutory construction disfavored by the Supreme Court.¹⁰ In fact, the CSRA’s clear text and structure reflect Congress’s intent to safeguard merit-based employment across the career civil service, including positions that touch on important policy areas.

The CSRA—and indeed the entire American civil service tradition following the Pendleton Act of 1883—was built on the rejection of the “spoils system” that allowed employment decisions to be driven by partisanship, favoritism, or personal loyalty. Congress recognized that a professionalized civil service is indispensable to democratic governance and the rule of law and that providing civil servants with removal protections was essential to ensuring such competency and avoiding the harms of the “spoils system”. By rendering a swath of career employees at-will and stripping them of their rights merely based on an agency’s post hoc judgment about the positions they hold and duties they perform, the Proposed Rule would fundamentally undermine this Congressional determination. It would allow administrations to purge disfavored employees even while paying lip service to merit-based employment

⁹ H.R. Rep. No. 101-328, at 4–5 (1990), *as reprinted in* 1990 U.S.C.C.A.N. 695, 698–99.

¹⁰ See *Nat’l Fed’n of Indep. Bus. v. Occupational Safety & Health Admin.*, 595 U.S. 109, 125 (2022) (“Congress does not usually ‘hide elephants in mouseholes.’” (Gorsuch, J., concurring) (quoting *Whitman v. Am. Trucking Ass’ns*, 531 U.S. 457, 468 (2001))).

decisions, as this proposal attempts, because no evidentiary showing would be required before making these employment decisions. Career employees would be incentivized to conform politically rather than exercise professional independence and expert judgment, which would erode the stability and institutional memory necessary for effective governance. The practical consequences of this Proposed Rule would be a return to the very pathologies the Pendleton Act, the CSRA, and other statutes Congress enacted were intended to cure.

II. The Proposed Rule would not increase accountability or performance in the civil service.

OPM's Proposed Rule attempts to justify stripping career civil servants of their Chapter 43 and 75 procedural protections by claiming it will strengthen "accountability" within the civil service. However, empirical evidence and decades of administrative experience show that gutting procedural protections does not create true accountability—it fosters fear, suppresses expertise, and invites political favoritism.¹¹ True accountability in a merit-based system is grounded in transparent, lawful processes that reward performance and correct misconduct according to established, evidence-based standards.

There are several specific problems with the Proposed Rule's concept of "accountability." One is that accountability already exists. Career civil servants perform their duties within management structures ultimately responsible to political leadership. Policy directives filter down from these managers to career staff. Another problem is the lack of fairness. Without procedural protections, removals would not require any evidence of poor performance or misconduct. This shift undermines fairness—the cornerstone of true accountability—and allows arbitrary or politically motivated actions. Another is the suppression of professional judgment. Employees who fear dismissal for political reasons are far less likely to offer candid analyses, technical expertise, and warnings about legal or operational risks. Accountability to the mission, the law, and the American people would be replaced with sycophancy to political leadership.

The Proposed Rule is not about improving performance or making it easier to remove poor performers—it is about stripping away the rights and processes that have ensured a merit system and making it easier for the Administration to hire people more aligned with its politics. Prior to the last election, the Vice President expressed that his advice for the President would be to "Fire every single midlevel bureaucrat, every civil servant in the administrative state, replace them with our people."¹² This Proposed Rule is the next step towards this plan.

OPM was correct in its 2024 rule when it explained:

¹¹ See Daniel Moynihan, *The Risks of Schedule F for Administrative Capacity and Government Accountability*, Brookings Inst. (Dec. 12, 2023), <https://www.brookings.edu/articles/the-risks-of-schedule-f-for-administrative-capacity-and-government-accountability/>.

¹² Andrew Prokop, *J.D. Vance's Radical Plan to Build a Government of Trump Loyalists*, Vox (July 18, 2024), <https://www.vox.com/politics/361455/jd-vance-trump-vice-president-rnc-speech>.

OPM agrees that Schedule F was poorly designed as an effort to meaningfully improve performance management or allow managers to more effectively address performance issues. Agencies were directed to move employees occupying “confidential, policy-determining, policy-making, or policy-advocating” positions into Schedule F, thereby purportedly making them at-will employees who could be terminated without any adverse action procedures. But the characteristics of an employee’s job—including whether the employee works on policy—has nothing to do with an employee’s performance. Schedule F sought to streamline terminations based on the type of work that an employee performs, not based on how well the employee performs. It is therefore difficult to understand how Schedule F can be reconciled with its purported aim of addressing poor performance.¹³

This analysis applies equally to Schedule P/C. And OPM’s weak justifications to drastically pivot from this analysis cannot justify the Proposed Rule.

III. Filling the ranks of the civil service with ideologically-aligned employees could increase corruption and undermine public trust in government.

According to a report by the Partnership for Public Service, 95% of Americans across the political spectrum believe civil servants should “be hired based on merit, not partisan loyalty, and serve the people more than any individual president.”¹⁴ While the Proposed Rule offers corruption in the civil service as a reason for its implementation, studies have shown countries that hire government employees based on political loyalty rather than non-partisan merit are more prone to corruption and favoritism. One review of 96 peer-reviewed studies on government performance across more than 150 countries concluded that “factors such as meritocratic appointments/recruitment, tenure protection, impartiality, and professionalism are strongly associated with higher government performance and lower corruption.”¹⁵

In the late 1800s, Congress believed that dismantling the “spoils system” would not only strengthen the civil service, but also amplify political appointees’ commitment to the public interest. When discussing the importance of civil service reform, the Joint Select Committee of Congress’ 1866 report on the civil service said the following about eliminating the “dangerous and improper prerogatives” to hire or fire employees at will:

“Stripped of these dangerous and improper prerogatives, they would be the better able to devote themselves exclusively to their official duties, without using them, as at

¹³ 83 Fed. Reg. 24982, 24995.

¹⁴ P’ship for Pub. Serv., *The State of Public Trust in Government 2024* (June 11, 2024), <https://ourpublicservice.org/publications/state-of-trust-in-government-2024/>.

¹⁵ Eloy Oliveira et al., *What Does the Evidence Tell Us About Merit Principles and Government Performance?*, 102 Pub. Admin. 668, 668–89 (2023), <https://onlinelibrary.wiley.com/doi/10.1111/padm.12945>.

present, as a cloak for ulterior personal or party purposes, or for otherwise selfish and unpatriotic designs.”¹⁶

By protecting civil servants from arbitrary firings and terminations, administrations are less able to use their positions for personal or political gain. As OPM stated in its 2024 rule, “[. . .] civil servants’ ability to offer their objective analyses and educated views when carrying out their duties, without fear of reprisal or loss of employment, contribute to the reasoned consideration of policy options and thus the successful functioning of incoming administrations and our democracy.”¹⁷

Conversely, eliminating removal protections for tens or even hundreds of thousands of federal workers allows administrations to quash expertise and stifle transparency, turning back the clock to the spoils system. By removing the ability for civil servants to channel their expertise into objective analysis and counsel without fear of reprisal, our government’s performance will suffer, along with public trust in our government.

IV. The Proposed Rule would hurt retention and recruitment for crucial federal positions.

The federal government already faces substantial challenges in attracting and retaining top talent. In fields such as cybersecurity, scientific research, healthcare, and financial regulation, for example, the private sector offers higher salaries and now greater flexibility regarding remote and virtual work arrangements. What has historically distinguished federal service is the promise of meaningful mission-driven work, job security based on merit, and protection from political retaliation.

By making a swath of career positions effectively at-will, this Proposed Rule would end that promise. Prospective employees—especially highly skilled professionals—would have strong disincentives to join the civil service. Without predictable procedural protections, prospective employees would view federal service as unstable and politically contingent, rather than a reliable career. This would repel highly capable candidates, particularly in scientific, technical, and legal fields. And in a labor market where private employers offer higher pay and flexible conditions, federal agencies would lose one of their few competitive advantages: the stability and fairness of merit-based civil service.¹⁸

OPM stated in its Fiscal Year 2019 Human Capital Review Summary Report that “[a]gencies face different challenges depending on their mission and the current state of their organizations;

¹⁶J. Select Comm., Civil Service of the United States, J. Rep. No. 8, 39th Cong. (1866), *reprinted in* Thomas Allen Jenckes, *Civil Service of the United States*, Ticknor & Fields, at 6 (1867), https://www.google.com/books/edition/_/UQ0vAAAYAAJ?hl=en&gbpv=1&pg=PA1{JSC.

¹⁷ 89 Fed. Reg. 24982, at 24982.

¹⁸ *Id.* at 25043–44 (“‘A vast body of research’ shows ‘public service motivation as a central factor in public employment’ and that civil servants ‘invest effort and develop expertise precisely because a stable public job provides an environment where they can pursue their motivation to make a difference.’” (internal citation omitted)).

but there is little debate that effectively managing human capital is at the forefront of leadership's greatest priorities.”¹⁹ As OPM explained in the 2024 rule, “[a]mong the top trends that surfaced during OPM's review were (1) identifying and closing skills gaps and (2) recruiting and retaining employees.”²⁰ Agencies raised concerns around attrition rates for scientific and technical positions as well as an inability to hire fast enough to meet demands. “The ongoing challenge with recruitment and retention for IT and cyber positions,” OPM explained, “is due to the ever-changing landscape, competition with the private sector and other Federal agencies, and difficulty retaining talent.”²¹

Evidence already shows that perceptions of instability and politicization deter applicants. Following the issuance of Executive Order 13957 (creating the original Schedule F) in October 2020, many career federal employees expressed serious concerns about their future, and potential applicants reconsidered federal careers.²²

Beyond recruitment, the federal government faces persistent struggles with retention, particularly among early career talent and mid-career professionals. The Proposed Rule would significantly worsen these dynamics. Career employees who perceive that their professional standing can be upended arbitrarily will leave federal service (as is already happening in certain critical positions, like lawyers at the Department of Justice or healthcare professionals throughout government), taking decades of accumulated expertise with them. Job insecurity leads to lower employee engagement, reduced performance, and higher turnover. Fear of politically motivated firings would cripple morale across agencies. Skilled personnel would rationally conclude that their long-term prospects are better elsewhere, where job evaluations are more predictable and less politicized.

Federal agencies already compete for talent with the private sector, state and local governments, and nonprofit organizations. By injecting instability and political risk into civil service careers, this proposal would devastate the government's ability to compete effectively for the best and brightest.

V. Congress relies on a nonpartisan civil service to carry out its programs.

This Proposed Rule seeks to circumvent the CSRA's framework established by Congress for ensuring that its programs are carried out by a skilled and professional workforce. The federal government is vast and complex. Congress legislates with the expectation that career civil servants will carry out the day-to-day work of implementing these statutes, guided by expertise and faithful execution rather than political expediency. Professionalism, continuity, and expertise are not luxuries in a modern administrative state—they are prerequisites for success.

¹⁹ U.S. Off. of Pers. Mgmt., *Fiscal Year 2019 Human Capital Reviews Report*, at 1 (2020), <https://www.chcoc.gov/sites/default/files/2019%20Human%20Capital%20Review%20Summary%20Report.pdf>.

²⁰ 89 Fed. Reg. 24982, 25043.

²¹ *Id.*

²² *Id.* at 25040-41 (citing various public comments expressing these concerns).

The Proposed Rule, if implemented as written, would expose an untold number of career employees to at-will dismissal without meaningful protections or recourse, directly contravening the CSRA's design and the legislative judgment of Congress. And there are many reasons to believe the number of impacted employees will be extraordinarily significant. This Administration has already taken unprecedented and controversial steps to cull the civil service through reductions in force and other means. The Proposed Rule similarly relies on a maximalist interpretation of the President's Article II powers over the civil service and "policy-influencing" positions that will be used contrary to Congressional intent and federal court and MSPB precedent. It would capture scores of employees who only marginally touch on policy. These positions are currently held by career civil servants, many of whom have served across multiple administrations.

This is not an efficient or effective way to run any organization, much less federal government agencies that Americans rely on every day. Federal agencies exist to carry out programs created and authorized by Congress that last much longer than any single administration. Carrying out these programs effectively, efficiently, and consistent with Congress's intent requires thorough understanding of the statutory and regulatory schemes, institutional knowledge of the programs, familiarity with relevant stakeholders inside and outside government, and substantial technical expertise.

If the Proposed Rule were finalized, critical programs could grind to a halt as key personnel are removed based on perceived political disloyalty rather than performance. Institutional knowledge would be lost, undermining government efficiency and continuity. And public trust in government institutions—already fragile—would deteriorate further. Far from improving "responsiveness," this rule would breed chaos, short-term thinking, and instability across the executive branch.

VI. A professional civil service provides valuable regulatory certainty.

A stable regulatory framework allows regulated entities and the public to plan for the future, including across presidential administrations. This predictability enables entities to make investments, ensure compliance with legal requirements, develop programs, and focus on delivering impact in their work rather than navigating uncertain and ever-changing legal frameworks. And stable regulatory frameworks advance values of uniformity and fairness.

A professional and stable civil service bolsters regulatory certainty by preserving agency expertise and institutional capacity, and by ensuring that political appointees seeking to change regulatory policy can do so with the counsel of subject matter experts who have been managing federal programs for decades without fear of retribution. As OPM explained in its 2024 rule, "[c]areer civil servants have a level of institutional experience, subject matter expertise, and technical knowledge that incoming political appointees have found to be useful and may lack themselves."²³ When regulatory changes are necessary, experienced career staff are best

²³ 89 Fed. Reg. 24982, at 24982.

positioned to ensure that those changes are implemented in ways that minimize disruption and legal uncertainty while accomplishing the goals of political leadership.

A stable civil service benefits even those partners and regulated entities who might prefer to see some policy changes. As described above, expertise and experience in regulatory and policy positions at federal agencies are hugely important for a well-functioning government, and excessive churn and loss of institutional memory can be devastating to institutional capacity, including for appropriate and legal pivots in policy.

Political purges of agency staff are a poorly tailored and excessively blunt tool for policy change, handicapping agencies' ability to develop and implement new policies effectively while also potentially misdiagnosing barriers to policy change as personnel-related rather than legal or practical.

VII. The American people would be the ultimate losers of this Proposed Rule.

The civil service ultimately exists to serve the American people—not the political interests of any particular administration. Their work is critical to the safety, health, and prosperity of the nation.

By weakening civil service protections and making career staff vulnerable to political purges, this Proposed Rule would hurt the American people in profound ways. It would politicize essential government functions, making them less reliable, less impartial, and more subject to political manipulation. It would discourage talented individuals from entering or staying in public service, hollowing out the government's expertise over time. And it would leave vital public programs and services at the mercy of short-term political interests rather than steady, expert stewardship. At a time when public confidence in government is under strain, further politicizing the federal workforce would only accelerate institutional decay and dysfunction.

For these reasons, the undersigned organizations oppose OPM's Proposed Rule. Since the late 1800s, Congress established and continually fortified a stable, professional, nonpartisan civil service. Today's civil service embodies the values of integrity, expertise, and nonpartisanship and serves as the backbone of our government.

We call on the Administration to protect civil servants and allow them to properly apply their expertise for the benefit of the American people.

Sincerely,

Democracy Forward

Protect Democracy

A la bonte advisors (Alba)
 Alden Law Group
 American Federation of Teachers
 American Geophysical Union
 American Oversight
 American Public Health Association
 Arab American Institute
 Autistic Self Advocacy Network
 Bazelon Center for Mental Health Law
 Branch4
 Campaign Legal Center
 Center for Economic Integrity
 Center for Environmental Health
 Center for Gender & Refugee Studies
 Center for Law and Social Policy (CLASP)
 Center for Progressive Reform
 Chicago Women in Trades
 Chicago Women Take Action
 Citizens for Responsibility and Ethics in
 Washington (CREW)
 Clean Elections Texas
 Clearinghouse on Women's Issues
 Climate Science Legal Defense Fund
 Color of Change
 Coming Clean Network
 Dayenu: A Jewish Call to Climate Action
 Democracy Defenders Fund
 Disability Policy Consortium
 Disability Rights Education and Defense
 Fund (DREDF)
 Doctors for America
 Earthjustice
 Economic Action Maryland Fund
 EdTrust
 Environmental Justice Health Alliance for
 Chemical Policy Reform (EJHA)
 Environmental Protection Network
 Equal Justice Society
 Equal Rights Advocates
 Equality California
 Face the Music Collective
 Family Values@Work Action
 Federal Managers Association (FMA)

Feminist Majority Foundation
 Food & Water Watch
 Free DC
 Freedom Writers Collaborative
 Government Accountability Project
 Government Information Watch
 Greenpeace USA
 Health Care Without Harm
 Avondale ACTion-an Indivisible Group
 Illinois Accountability Initiative
 The Institute for Health Research & Policy
 at Whitman-Walker
 Indivisible Marin
 Interfaith Alliance
 Interfaith Center on Corporate
 Responsibility
 International Federation of Professional and
 Technical Engineers (IFPTE)
 International Union, United Automobile,
 Aerospace and Agricultural Implement
 Workers of America (UAW)
 Japanese American Citizens League
 Just Solutions
 Justice Connection
 Justice in Aging
 Law Office of Shaye Larkin
 Lawyers for Good Government
 The Leadership Conference on Civil and
 Human Rights
 League of Conservation Voters
 MACS 2030
 Metropolitan Washington Employment
 Lawyers Association
 Missouri River Bird Observatory
 Movement Advancement Project
 NALEO Educational Fund
 National Active and Retired Federal
 Employees Association (NARFE)
 National Association of Assistant United
 States Attorneys (NAAUSA)
 National Association of Consumer
 Advocates

National Association of Government
Employees, SEIU Local 5000
National Association of Social Workers
National Committee to Preserve Social
Security and Medicare
National Council of Jewish Women
National Fair Housing Alliance
National Federation of Federal Employees
National Health Law Program
National Labor Relations Board Union
National Partnership for Women & Families
National Wildlife Federation
National Women's Law Center
Natural Resources Defense Council
NETWORK Lobby for Catholic Social
Justice
Oregon Consumer League
Oxfam America
Partnership for Public Service
Patent Office Professional Association
People Power United
Pesticide Action and Agroecology Network
Pride At Work, AFL-CIO
Public Citizen
Public Employees for Environmental
Responsibility
Public Good Law Center

Public Justice
Race Forward
Robert F. Kennedy Human Rights
Senior Executive Association (SEA)
Seventh Generation Interfaith Coalition for
Responsible Investment
Silver State Equality
Sugar Law Center for Economic & Social
Justice
Technologists for the Public Good
Union of Concerned Scientists
The Workers Circle
The Workplace Justice Lab
United Church of Christ Media Justice
Ministry
Upper West Side Action Group
Voices for Progress
We Own It
Women Employed
Women Lawyers On Guard Action Network,
Inc.
Working IDEAL
20/20 Vision