



Docket ID: OPM-2023-0013

Office of Personnel Management

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Opportunity Solutions Project (OSP) is a non-profit organization that advocates for federal and state policies that promote government accountability and protect individual liberty. OSP opposes the Office of Personnel Management's (OPM) proposed rule because it weakens political accountability of executive agencies, further cementing the immense control unelected bureaucrats in D.C. wield over the every-day lives of Americans across the country.

OPM's stated purpose of the proposal is to "reinforce and clarify" the law. The actual purpose of the proposed rule is to thwart future presidents from implementing Schedule F, a policy the Left has been on a years-long campaign to ban.¹⁻²

Executive Order 13957 created a new Schedule F category in the excepted service for career bureaucrats in "confidential, policy-determining, policy-making, and policy-advocating positions."³ It was never implemented, though it would have made it easier to remove career staff in policy-influencing roles who block the president's agenda.⁴ President Biden revoked the order within days of taking office, effectively leaving the merit system unchanged.⁵ Now, OPM is proposing a rule to preemptively interfere with any future executive order to implement Schedule F.

Regulations are supposed to be responsive to specific problems. OPM's proposal is not an attempt to address an ongoing, active problem. Instead, it is a blatant defensive play by the Biden administration.

OPM claims the proposed rule will prevent "needlessly politicizing our nation's nonpartisan career civil service," yet there is no doubt that the proposal is a politically motivated attempt to impede future presidents from implementing Schedule F. The proposed rule is ostensibly designed to "reduce the risks associated with misapplying" the law. However, these so-called "risks" did not exist until a political opponent issued a lawful executive order that the Left did not agree with.

OPM's press release for the proposed rule even brags, "President Biden revoked the Schedule F executive order on the third day of his Administration, making clear that career civil servants are the backbone of the federal workforce."⁶

Key provisions of the proposal are clearly beyond the bounds of the stated purpose of the rule, to "reinforce and clarify" the law. The proposal would redefine "confidential, policy-determining, policy-making, and policy-advocating positions" to exclusively mean political appointees. In other words, OPM bizarrely claims that career bureaucrats who determine and advocate for policy should not be classified as "policy-making" employees.

The proposed rule would also “clarify” that federal employees moved from competitive to excepted service would retain their removal protections. The president or OPM may determine positions excepted from removal protections, but OPM does not have the authority to permanently attach removal protections.⁷ Moreover, worker classifications exist to tie different levels of protection to different types of jobs. Allowing a worker to carry over a protection to a new classification undercuts the purpose of worker classifications. This provision is a significant change in law, not a mere clarification, and it is clear the goal is to impede future presidents from exercising their lawful authority to initiate policies similar to Schedule F via executive order.

Public trust in our government is near record lows.⁸ And under the current merit system, it can take more than a year to fire a federal bureaucrat.⁹ Despite this, OPM proposes to make it even more difficult to remove policy-influencing career staff who undermine the president’s priorities.

Federal bureaucrats skew left compared to the public.¹⁰⁻¹¹ OPM claims the proposed rule will enhance efficiency and “promote good administration,” but removal protections for policy-influencing bureaucrats will prevent voters from realizing the policy priorities of the president they elected.

Opportunity Solutions Project opposes OPM’s proposed rule because it is an abuse of regulatory power, designed to entrench career bureaucrats and undermine the political will of the American people.

References

¹ Erich Wagner, “Regulations aimed at derailing a Schedule F revival proposed by OPM,” Government Executive (2023), <https://www.govexec.com/workforce/2023/09/regulations-aimed-derailing-schedule-f-revival-proposed-opm/390346/>.

² Molly Weisner, “Which federal agencies moved to implement Trump’s Schedule F?,” Federal Times (2022), <https://www.federaltimes.com/federal-oversight/congress/2022/09/30/did-my-federal-agency-plan-to-implement-trumps-schedule-f/>.

³ Executive Order 13957, <https://www.federalregister.gov/documents/2020/10/26/2020-23780/creating-schedule-f-in-the-excepted-service>.

⁴ U.S. Government Accountability Office, “Agency responses and perspectives on former executive order to create a new Schedule F category of federal positions” (2022), <https://www.gao.gov/assets/gao-22-105504.pdf>.

⁵ Executive Order 14003, <https://www.federalregister.gov/documents/2021/01/27/2021-01924/protecting-the-federal-workforce>.

⁶ Office of Personnel Management, “Biden-Harris Administration issues proposed rule to reinforce and clarify protections for the nonpartisan career civil service” (2023), <https://www.opm.gov/news/releases/2023/09/release-biden-harris-administration-issues-proposed-rule-to-reinforce-and-clarify-protections-for-the-nonpartisan-career-civil-service/>.

⁷ 5 U.S.C § 7511(b)(2).

⁸ Pew Research Center, “Public trust in government: 1958-2023,” Pew Research Center (2023), <https://www.pewresearch.org/politics/2023/09/19/public-trust-in-government-1958-2023>.

⁹ U.S. Government Accountability Office, “Federal workforce: Improved supervision and better use of probationary periods are needed to address substandard employee performance” (2015), <https://www.gao.gov/products/gao-15-191>.

¹⁰ Jorg L. Spenkuch et al., “Ideology and performance in public organizations,” *Econometrica* (2023), http://guoxu.org/docs/IdeologyPerformance_Apr2021.pdf.

¹¹ Brian D. Feinstein and Abby K. Wood, “Divided agencies,” *Southern California Law Review* (2021), <https://southern.californialawreview.com/2022/12/21/divided-agencies/>.