

NGuidance

The template comment below contains suggested language and themes for organizations to use as a foundation for comments concerning the Office of Personnel Management's proposed rules concerning civil service protections. It includes some portions, set off with {braces}, where we recommend some ideas for personalization. Organizations should feel free to further edit this template to fit their own experiences, perspectives, or preferred tone, and treat this template as a modular product (e.g., if certain themes below don't fit your organization well, feel free to omit those sections entirely).

Comments are due by November 17, 2023, and can be filed at:
<https://www.regulations.gov/document/OPM-2023-0013-0001>

Thank you for your work to support a healthy and independent civil service!

By electronic submission via www.regulations.gov

U.S. Office of Personnel Management
1900 E St NW
Washington, DC 20415

**Re: Comment on Proposed Rule concerning Upholding Civil Service Protections
and Merit System Principles | Docket ID: OPM-2023-0013**

Dear

I am writing on behalf of {organization} in response to the Office of Personnel Management's (OPM) proposed revisions to and clarifications of civil service protections and the application of merit system principles to career federal employees.

{Describe your organization's mission and provide a brief summary of the ways that it partners with the federal government to achieve its mission.}

As described more fully below, {org name} strongly supports OPM's proposal, which would clarify the protections afforded to career federal employees and ensure those protections can't be arbitrarily withdrawn to suit the political desires of any given presidential administration. We further encourage OPM to clarify that the protections afforded to civil servants throughout its proposals also reach career employees in the Senior Executive Service wherever applicable.

The federal government relies on experienced and qualified civil servants who are shielded from the pressures of a political spoils system, who ensure that its programs are managed in the public interest, and who advance the goals of legislation passed by Congress.

Recent calls to weaken the independence of the civil service to make it more responsive to swings in political leadership, by empowering political leadership to hire and fire career staff at will, are misguided. During the last presidential administration, President Trump began the process of creating a new excepted service schedule, Schedule F, that would have allowed thousands of senior civil servants to be converted into political appointees by another name.¹ This change never fully went into effect,² but the threat of further future politicization of the civil service remains.

Such changes would be devastating to public trust, government capacity, and the efficacy of federal programs. We are pleased that OPM has proposed to clarify and strengthen protections for career civil servants. Our organization's experience working with the federal government strongly reinforces the value of a professional civil service protected from political interference.

{Below are some "modules" that your organization can choose to adapt for a comment if they match your perspective and experiences well:}

I. A professional civil service ensures that the federal government has the experience and expertise necessary manage complex federal programs

OPM correctly emphasizes that the federal government depends on a huge number of "dedicated and talented professionals who provide the continuity of expertise and experience necessary for the Federal Government to function optimally across Presidents and their administrations."³

Congress directly "create[s] agencies," "detail[s] agency authority, and set[s] policy goals for the agency to achieve using its authority," and "may choose to grant an agency the authority to issue legislative rules, enforce provisions of law, or adjudicate claims."⁴ While leaders in the executive branch may shape implementation of agency programs, the agencies (and their staff) are themselves supposed to be stewards of programs created, funded, and given direction by acts of Congress.

Protecting the expertise and experience of agency staff ensures that agencies can fulfill this role. Many federal programs and projects are complex and longstanding, and are not designed to be subject to major shifts in staffing or approach every four years. Carrying out these programs effectively, efficiently, and consistent with Congress's intent requires thorough understanding of the particular statutory and regulatory schemes, institutional knowledge of the history of the programs, familiarity with relevant stakeholders inside and outside government, and substantial technical expertise.

¹ See Exec. Order No. 13957, 85 Fed. Reg. 67,631 (2020).

² U.S. Gov't Accountability Off., GAO-22-105504, *Civil Service: Agency Responses and Perspectives on Former Executive Order to Create a New Schedule F Category of Federal Positions*10 (Sep. 2022) ("GAO Schedule F Report"), <https://www.gao.gov/assets/gao-22-105504.pdf>.

³ 88 Fed. Reg. at 63,862, 63,862.

⁴ Todd Garvey & Sean M. Stiff, Cong. Rsch. Serv., R45442, *Congress's Authority to Influence and Control Executive Branch Agencies*10 (Mar. 2023), <https://crsreports.congress.gov/product/pdf/R/R45442>.

Managing these programs, including work with program partners and grantees, requires personnel with the experience and capabilities necessary to balance competing (and shifting) operational, legal, and political needs.⁵ And federal agencies already face challenges hiring and retaining employees in positions that require highly-specialized technical expertise.⁶

{Describe your organization’s experience working on federal programs on long time-frames or that are technically complex, and the value of experienced staff on the other end who understand the history or complexity of the project. If you are aware of other examples of crucial career staff contributions that cut against the anti-civil-service narrative, those could be shared here as well, for example:

- Instances in which senior career staff formed an important bulwark against political appointees seeking to do something illegal or extremely damaging
- Instances in which career staff were able to keep basic programs operating effectively despite chaos among political leadership (e.g., sending out social security checks, monitoring food safety, workplace safety investigations and enforcement)
- Instances in which career staff worked diligently to implement the Trump administration’s policy priorities, regardless of the staff’s political views, but sought to do so consistent with legal requirements and good government principles}

II. Our organization knows from experience how disruptive the loss of experienced senior leaders can be

Despite President Trump’s Schedule F proposal never fully going into effect, other significant disruptions to civil service staffing occurred during the prior administration. After the Bureau of Land Management announced its headquarters relocation to Grand Junction, Colorado, 77 percent of relocated staff chose to be separated from their positions rather than move with the agency.⁷ Similarly, USDA’s Economic Research Service and National Institute of Food and Agriculture lost roughly half of their staff after the agencies were relocated to Kansas City, and

⁵ See, e.g., Brink Lindsey, Niskanen Center, *State Capacity: What Is It, How We Lost It, And How to Get It Back* 10 (2021), <https://www.niskanencenter.org/wp-content/uploads/2021/11/brinkpaper.pdf> (career staff must have the “experience and clear authority to cut through red tape and work around the inconsistencies among directives that accrete over time.”).

⁶ See, e.g., U.S. Gov’t Accountability Off., GAO-21-461T, *Testimony by Candice N. Wright, Acting Director, Science, Technology Assessment, and Analytics Before the House Subcommittee on Investigations and Oversight, Committee on Science, Space, and Technology, Strengthening and Sustaining the Federal Science and Technology Workforce* 6 (2021), <https://www.gao.gov/assets/gao-21-461t.pdf> (“agencies may experience challenges recruiting and retaining a diverse, highly-qualified scientific

and technical workforce due to differences in pay compared to private sector employers and challenges related to the hiring process”).

⁷ U.S. Gov’t Accountability Off., GAO-22-104247, *Better Workforce Planning and Data Would Help Mitigate the Effects of Recent Staff Vacancies* 15 (2021), <https://www.gao.gov/assets/gao-22-104247.pdf>.

new staff are substantially less experienced than the prior staff.⁸ And data has shown that federal employees across the government quit government at a rate 14.1% higher under President Trump than under President Obama's second term.⁹

{If your organization was affected by an exodus of key senior staff counterparts in the federal government during the last administration, it would be valuable to explain in your view and experience how those departures have set back the important work of those agencies, or how those agencies have become less effective or reliable partners to you in your work}

III. A professional civil service provides valuable regulatory certainty

Regulatory certainty provides a stable framework for regulated entities, partners, and federal grantees to understand their regulatory obligations and plan for the future, including across presidential administrations. Predictability provides the certainty that these entities need to make investments, ensure compliance with legal requirements, 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 experts who have been managing federal programs for decades. When regulatory changes are necessary, experienced career staff are best positioned to ensure that those changes are implemented in ways that minimize disruption and legal uncertainty.

By contrast, substantial turnover in federal staff in service of whipsaw changes to federal regulations can cause turmoil for partners and regulated entities. These changes can be particularly costly for smaller entities who may lack the resources to effectively navigate confusing, onerous, and uncertain regulatory changes.

{Describe why your organization prefers regulatory certainty to substantial whiplash from administration to administration. If you have specific experiences or programs to highlight to illustrate the point, those would be strong additions here as well.}

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 at federal agencies are hugely important for a functioning government, and excessive churn and loss of institutional memory can be devastating to institutional capacity.¹⁰ Political purges of agency staff are a

⁸ U.S. Gov't Accountability Off., GAO-22-105504, *Following Leading Practices Will Better Position USDA to Mitigate the Ongoing Impacts on its Workforce* 13, 16, 57 (2022), <https://www.gao.gov/assets/gao-23-104709.pdf>.

⁹ Partnership for Public Service, *The Federal Workforce and the Trump Administration*, , <https://ourpublicservice.org/fed-figures/the-federal-workforce-and-the-trump-administration>.

¹⁰ See, e.g., Rodney Scott et al., *Public sector institutional memory through storytelling* 14-15 (2019) <https://tinyurl.com/2hsryh3s>; Heidi Hardt, *NATO's Lessons in Crisis: Institutional Memory in International Organizations* 8 (2018).

poorly-tailored and excessively blunt tool for policy change, handicapping agencies' ability to actually develop and implement new policies while also potentially misdiagnosing barriers to policy change as personnel-related rather than legal, political, or practical. Regulated entities have less destructive tools at their disposal to directly push for policy changes, including lobbying Congress, advocating before agencies, electioneering, or litigation.

{If your organization's experience has been that senior civil servants have been valuable partners, who you wouldn't want to see purged in the name of achieving favorable policy changes, that would be a strong contribution here.}

* * *

For these reasons, we support OPM's proposals to clarify the protections afforded to civil servants, ensure merit system protections for employees currently serving in career staff roles, and protect senior civil servants from further exposure to political pressures. And we encourage OPM to ensure that its final rule clarify that similar protections attach to career staff serving in Senior Executive Service positions.

Thank you for taking the time to consider our views, and for OPM's efforts to ensure that the American people are served by highly-qualified, experienced, and dedicated civil servants in the management of important federal programs.

Sincerely,