

I submit this comment in response to OPM's proposed rule to create "Schedule Policy/Career" within the excepted service. I urge OPM to withdraw or substantially revise the proposal due to the significant legal, operational, and equity concerns it raises.

## **1. "Policy-Influencing" Must Be More Clearly and Narrowly Defined**

The proposed rule does not clearly define what constitutes a "policy-influencing" position. This ambiguity invites inconsistent application and risks politicizing a wide range of career roles that are fundamentally nonpartisan and subject to supervisory oversight. Career civil servants implement policy, but do not set it. They are required to follow the lawful orders of their agency leadership and are structurally and legally constrained from independently driving policy decisions.

OPM should revise the rule to limit "policy-influencing" designations to positions already classified as political appointments, such as Schedule C or noncareer SES positions, where policymaking authority is explicit and aligned with Presidential direction. Expanding this designation to cover regular career positions fundamentally misunderstands their role and undermines the merit system principles enshrined in 5 U.S.C. § 2301.

## **2. The Existing Performance System Works**

Contrary to the rationale for the proposed rule, agencies already have effective tools to address poor performance through existing processes under chapters 43 and 75 of Title 5. Performance Improvement Plans (PIPs), disciplinary actions, and the probationary period provide sufficient means to remove employees who cannot or will not meet required standards.

OPM's own data shows thousands of employees are removed annually for performance or conduct—demonstrating that the system works when applied appropriately. Eliminating these safeguards would increase the risk of arbitrary removals and discourage talented individuals from pursuing or remaining in public service.

## **3. The Proposal Imposes Disproportionate Risk Without Additional Compensation**

The proposed rule effectively reclassifies career employees as at-will, akin to political appointees or Senior Executive Service (SES) members, by removing their adverse action and appeal rights. However, it does so without providing any of the benefits typically afforded to such positions, including:

- Higher salaries associated with the SES pay scale;
- Increased annual leave accrual rates;
- Greater agency mobility and career advancement incentives.

If OPM intends to impose SES-like accountability standards on career employees, it must also recognize that doing so without commensurate compensation or benefits is fundamentally inequitable and demoralizing. The rule strips career employees of their protections while providing none of the advantages that justify those tradeoffs for SES or political personnel.

#### **4. The Proposal Risks Politicization and Legal Challenges**

By designating career employees as policy-influencing and removing their due process rights, the rule creates a chilling effect and opens the door to politicized dismissals. This threatens the neutrality of the civil service and exposes the government to significant legal risk, including constitutional challenges under the Due Process Clause and potential First Amendment claims if dismissals are motivated by perceived political views.

Additionally, this rule circumvents the congressional framework of the Civil Service Reform Act of 1978, which was enacted to protect against these exact risks. Major changes to the balance between executive flexibility and employee protections should be made by Congress—not through executive action alone.

#### **5. Recommendations**

To preserve the integrity of the federal workforce and ensure a fair, legally sound approach to accountability, I respectfully request that OPM:

- Narrowly define “policy-influencing” roles to cover only political appointees and noncareer SES;
- Preserve chapter 43 and 75 protections for all career employees;
- Recognize that increased accountability must come with appropriate compensation and benefits;
- Extend the comment period to a minimum of 60 days, in accordance with Executive Order 12866, to allow full public participation.

#### **Conclusion**

The proposed rule mischaracterizes the role of career civil servants, undermines long-standing merit system principles, and imposes inequitable burdens on public employees without justification. These changes would weaken the federal workforce, not strengthen it. I strongly urge OPM to withdraw this proposal and consider more targeted, collaborative reforms that respect the statutory framework and honor the contributions of the career civil service.