The Office of Personnel Management (OPM) has proposed a rule that would allow the President, upon OPM's recommendation, to reclassify certain career civil servants into a new "Schedule Policy/Career." These employees would be stripped of statutory adverse action protections and placed in at-will positions. The proposed rule is unsupported by rigorous data, lacks a credible cost-benefit analysis, and fails to consider less extreme alternatives that could achieve accountability while preserving constitutional and statutory safeguards.

I. Deficient Empirical Justification

OPM's justification for the proposed rule rests on anecdotal supervisor perceptions and isolated historical references. It asserts, without providing systematic evidence, that adverse action procedures under 5 U.S.C. §§ 4303 and 7513 "make it very difficult" to remove poor performers or those who "subvert Presidential directives" (90 FR at 17182–17183). However, the existing record contradicts these claims.

- A 2015 GAO report found that agencies removed over 10,000 employees for performance or misconduct in FY2013 using existing Chapter 43 and Chapter 75 procedures. The primary obstacle cited was not legal constraint but insufficient management support and training (GAO-15-191).
- The Merit Systems Protection Board (MSPB) similarly reported in 2016 that 77% of supervisors believed removals for poor performance were possible if managers were properly trained (*MSPB, Addressing Poor Performance and Misconduct*, 2016).

In short, the problem is not the legal framework—it is implementation.

II. Inadequate and Unsupported Cost-Benefit Analysis

The rule's cost-benefit analysis does not satisfy the standards of Executive Order 12866 or OMB Circular A-4. It omits quantifiable harms, fails to estimate long-term impacts, and offers no data-driven rationale for its benefits.

Costs OPM failed to quantify include:

- **Employee turnover costs**: Studies estimate that replacing a government employee can cost up to 90–200% of their salary when accounting for recruitment, onboarding, lost productivity, and training (Cascio, 2006; Boushey & Glynn, 2012).
- **Legal and reputational risk**: An increase in removals without due process will likely increase wrongful termination claims and whistleblower retaliation complaints, creating litigation risk.

- **Recruitment deterrence**: The April 2024 rule rightly noted that reducing job security deters skilled applicants, particularly those seeking mission-driven public service roles (89 FR 24982).
- **Loss of institutional knowledge**: OPM has not valued the lost human capital when at-will removals are used against subject-matter experts in sensitive, technical, or policy roles.

Chilling effects on whistleblowing and dissenting policy analysis are also omitted. Empirical literature confirms that job insecurity suppresses ethical dissent, impairs innovation, and reduces morale (Miceli, Near, & Dworkin, 2008; Kim, 2002).

Further research reinforcing these concerns includes:

- Greenberg (1990) and Colquitt (2001) found that organizational justice and fair processes significantly predict employee engagement and discretionary effort.
- Moynihan & Pandey (2007) demonstrated that fairness and merit-based systems increase public service motivation and agency performance.
- Pfeffer (1998) showed that job security and employee investment correlate with superior organizational outcomes across sectors.
- Ingraham & Ban (1998) argued that politicized or insecure work environments diminish performance in public agencies.
- Leventhal (1980) emphasized that procedural fairness is vital to legitimacy and compliance in organizational contexts.

By ignoring these findings, OPM undercuts its claim that the proposed rule would improve "accountability" or "efficiency."

III. Failure to Consider Reasonable Alternatives

The proposed rule fails to explore less disruptive approaches. It assumes that due process protections and performance accountability are incompatible, but this is a false dichotomy.

Reasonable alternatives OPM should have analyzed include:

- Streamlining internal MSPB processes for faster adjudication of adverse actions;
- Expanded supervisory training and mentoring, as recommended by GAO and MSPB;
- Continued implementation of the 2024 rule (89 FR 24982), which clarified procedures for moving positions while preserving appeal rights;
- Narrow exceptions or expedited processes for bona fide national security or confidential roles, rather than a sweeping new Schedule.

The 2024 final rule was adopted after a comprehensive review of public comment, precedent, and legal authority. It achieved reform *within* the merit system framework and should remain the operative policy.

IV. Conclusion

The 2025 proposed rule is inconsistent with administrative law principles, civil service history, and best practices in personnel management. It lacks evidence, economic rigor, and respect for the statutory merit system. OPM should withdraw the proposal and preserve the integrity of the career civil service as envisioned by Congress, reinforced by decades of bipartisan legislation, and affirmed by the American public.