

Via Online Portal

Re: Comment of Citizens for Responsibility and Ethics in Washington in response to Notice of Proposed Rule: Improving Performance, Accountability and Responsiveness in the Civil Service, RIN 3206-AO80, 90 Fed. Reg. 17182 (April 23, 2025).

Citizens for Responsibility and Ethics in Washington (“CREW”) is a nonpartisan nonprofit organization focused on ethics, transparency and accountability in government. VoteVets Action Fund is a nonprofit organization whose primary purpose is to advocate for issues that impact troops, veterans, and their families. We respectfully submit this joint comment in response to the notice of proposed rulemaking (“NPRM”) that the U.S. Office of Personnel Management (“OPM”) issued on April 23, 2025, regarding its proposal to create a new “Schedule Policy/Career” category for employees in “policy-influencing roles,” and thereby remove civil service protections from thousands of civil servants. CREW and VoteVets Action Fund strongly oppose OPM’s proposal. If implemented, OPM’s rule would create a government more prone to corruption. The proposed rule would have negative effects on the American public, and disproportionately impact our nation’s veterans.

Background

OPM’s proposed rule is an attempt to revive President Trump’s Executive Order 13957, often referred to as “Schedule F,” issued during the final months of the President’s first term. Like that order, the proposed rule would strip employment protections away from thousands of career civil servants. As explained in the summary of the OPM’s April 2024 rule entitled “Upholding Civil Service Protections and Merit System Principles” which strengthened then-existing protections for federal employees,¹ and which the April 2025 NPRM would now rescind if finalized:

Congress has dictated a well-established way in which agencies can control their workforces. If a Federal employee refuses to implement lawful direction from leadership, there are mechanisms for agencies to respond through discipline, up to and including removal, as appropriate, under chapter 75 of title 5, U.S. Code. If a Federal employee’s performance has been determined to be unacceptable, the agency may respond...or pursue a performance-based action ...at the agency’s discretion. Under the law, however, a mere difference of opinion with leadership does not qualify as misconduct or unacceptable performance or otherwise implicate the efficiency of the service in a manner that would warrant an adverse action.²

¹ CREW comment on OPM’s proposed rule: Upholding Civil Service Protections and Merit System Principles, 88 Fed. Reg. 63862 (Sept. 18, 2023), <https://www.citizensforethics.org/wp-content/uploads/2023/11/OPM-Schedule-F-Rulemaking-CREW-Comment.pdf>.

² Office of Personnel Management Final Rule entitled “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>.

As OPM highlights on its website, “the Civil Service Reform Act of 1978, which incorporated the merit system principles into the law at section 2301 of title 5, United States Code, stated as national policy that ‘...to provide the people of the United States with a competent, honest, and productive workforce...and to improve the quality of public service, Federal personnel management should be implemented consistent with merit system principles.’”³ The current proposed rule would erode that.

The merit-based civil service system was created by Congress to replace its predecessor, the spoils system, under which, politicians would put in place political cronies⁴ who often lacked the knowledge or expertise to fulfill their jobs in positions of power. Federal employment was based on party loyalty and patronage rather than merit and expertise — a system that was so corrupt and anti-democratic that Congress abolished it in 1883 with the passage of the Pendleton Act.⁵

The spoils system, which flourished under Presidents Andrew Jackson and Martin Van Buren, is a government structure that allows the president and party leaders to buy and reward people’s loyalty through employment in the federal government.⁶ This structure helped foster a political system based on patronage and kickbacks rather than popular sovereignty: in order to be elected, aspiring politicians would buy endorsements and reward loyalty with promises to put important party bosses’ political cronies in positions of power in their administration.⁷ Rather than qualified employees, who are required to do their jobs without regard to political affiliation, the spoils system allowed the president to hire political servants with an overriding loyalty to the party but often without knowledge or expertise in the jobs they were filling. It is not surprising that the spoils system was directly linked to a rise in corruption.

The spoils system didn’t just create a government prone to corruption and filled with unqualified and unfit employees, it also resulted in distorted policy making. After all, “party loyalists are also more likely to be insensitive to the limitations and potential harmful effects of their party’s policies” while “partisan bureaucrats are likely to sabotage established federal policies and legal statutes to please political leaders.”⁸ This quid pro quo system of politics and federal employment undermined Americans’ constitutional right to equal

³ Office of Personnel Management, *Merit System Principles and Performance Management* (accessed May 20, 2025),

<https://www.opm.gov/policy-data-oversight/performance-management/reference-materials/more-topics/merit-system-principles-and-performance-management/>.

⁴ See “Spoils System,” Encyclopedia.com; Machine Politics, PBS,

<https://www.pbs.org/wgbh/americalexperience/features/presidents-unity-gariel/>; Gabe Lezra and Diamond Brown, *FAQ: The conservative attack on the merit-based civil service*, CREW (Jan. 25, 2024),

<https://www.citizensforethics.org/news/analysis/faq-the-conservative-attack-on-the-merit-based-civil-service/>.

⁵ Pendleton Civil Service Reform Act, 22 Stat. 403 (1883),

<https://govtrackus.s3.amazonaws.com/legislink/pdf/stat/22/STATUTE-22-Pg403a.pdf>.

⁶ See “Spoils System,” Encyclopedia.com,

<https://www.encyclopedia.com/history/united-states-and-canada/us-history/spoils-system>; “Spoils System,”

Encyclopedia Britannica, <https://www.britannica.com/topic/spoils-system>; Jonathan Rauch, *How American Politics Went Insane*, The Atlantic (Jul/Aug 2016),

<https://www.theatlantic.com/magazine/archive/2016/07/how-american-politics-went-insane/485570/>.

⁷ William ‘Boss’ Tweed and Political Machines, *Bill of Rights Institute*,

<https://billofrightsinstitute.org/essays/william-boss-tweed-and-political-machines>.

⁸ Jack K. Knott, “A Return to Spoils: The Wrong Solution for the Right Problem,” 29 J. of Admin. & Society, 6 (1998), <https://rb.gy/c0w1dm>.

protection of the laws by deploying the federal government to reward those who agreed with the party in power and punish those who disagreed.⁹ In sum: not only did the spoils system fill the government with corruption and inefficiency, it undermined American democracy itself.

The development of the federal merit system — and the end of the spoils system — was a significant turning point in the history of our government. By requiring that federal agencies hire candidates based on their expertise, experience and ability to do their job — as opposed to the amount of money they or their friends contributed to a campaign — Congress slashed corruption and mismanagement in all federal agencies.

This rule will harm the public, and in particular, our nation's veterans

The above background provides historical context demonstrating the importance of the merit-based civil service in preventing corruption. However, recent history also underscores the negative consequences of dismantling civil service protections. The proposed rule, which uses the term “Schedule Policy/Career” in place of “Schedule F,” would facilitate the further mass firings of civil servants.¹⁰ To date, the current administration has cut at least 58,000 federal employees¹¹ across the government with significant effect on government programs and services.¹²

The Department of Veterans Affairs (“VA”) offers a case study in what happens when civil service protections are stripped away under the guise of “accountability.” During President Trump’s first term in office, the VA was specifically targeted by efforts to upend the civil service. Between June 2017 and March 2018, 1,700 low level VA employees were removed from their positions, including housekeepers and food service workers, many of whom may have been veterans themselves.¹³ An investigation by ProPublica found that whistleblowers and people who had filed discrimination complaints were among those fired.¹⁴ In 2018, the VA Office of Inspector General reported significant staff shortages in the Veterans Health

⁹ For instance, William Tweed, the infamous “boss” of Tammany Hall in New York City, would dole out thousands of jobs to friends who had little to no experience with the expectation that he would receive kickbacks -- he would, for example, distribute money to judges in exchange for favorable rulings. See William ‘Boss’ Tweed and Political Machines, Bill of Rights Institute, <https://billofrightsinstitute.org/essays/william-boss-tweed-and-political-machines>.

¹⁰ CREW comment on OPM’s proposed rule: Upholding Civil Service Protections and Merit System Principles, 88 Fed. Reg. 63862 (Sept. 18, 2023), <https://www.citizensforethics.org/wp-content/uploads/2023/11/OPM-Schedule-F-Rulemaking-CREW-Comment.pdf>.

¹¹ Elena Shao and Ashley Wu, *The Federal Work Force Cuts So Far, Agency by Agency*, New York Times, (updated May 12, 2025), <https://www.nytimes.com/interactive/2025/03/28/us/politics/trump-doge-federal-job-cuts.html>.

¹² Center for American Progress, *DOGE Cuts by City, State, and Congressional District* (Apr. 9, 2025), <https://www.americanprogress.org/article/doge-cuts-by-city-state-and-congressional-district/>.

¹³ Jory Heckman, *VA reinstated 100 employees fired under widely challenged law, paid \$134M to hundreds more*, Federal News Network (Oct. 29, 2024), <https://federalnewsnetwork.com/workforce/2024/10/va-reinstated-100-employees-fired-under-widely-challenged-law-paid-134m-to-hundreds-more/>.

¹⁴ Isaac Arnsdorf, *The Trump Administration’s Campaign to Weaken Civil Service Ramps Up at the VA*, ProPublica (Mar. 12, 2018), <https://www.propublica.org/article/veterans-affairs-the-trump-administration-campaign-to-weaken-civil-service-ramps-up>.

Administration, with high staff turnover being one of the top causes of the shortages.¹⁵ Those firings were so egregious that the VA paid roughly \$134 million to the 1,700 former VA employees who had been wrongfully fired as part of a settlement it reached with the American Federation of Government Employees.¹⁶ While those firings during the first Trump administration were pursuant to a VA-specific statute¹⁷ and not “Schedule F,” they demonstrate the implications of this proposed rule.

These mass firings of civil servants, often without cause or recourse, was a costly failure that harmed both the federal employees at the VA and the veterans who relied on their work. Critical to the mission of providing excellent care for our nation’s veterans is the support of a strong, well-trained and experienced civil service to carry out the important mission of the department. Supporting veterans through the implementation of federal programs requires agencies to be staffed by individuals with a thorough understanding of statutory and regulatory schemes, institutional knowledge of the history of the programs, familiarity with relevant stakeholders inside and outside government, and substantial technical expertise. That is what the career civil service provides and is what was put under threat at the VA.

Sometimes lost in the discussion about the civil service is that veterans make up 30 percent of the federal civilian workforce,¹⁸ 53 percent of whom are disabled.¹⁹ Efforts to reduce, destabilize, or undermine the federal workforce as a whole, including through this proposed rule, will disproportionately impact veterans.²⁰ Right now, veteran unemployment stands at 3.8 percent, a percentage point higher than it was at the end of 2024.²¹ That number could rise with efforts to weaken civil service protections and reduce the size of the federal workforce.

Our merit-based system is not simply a good government ideal. It is critical to the government’s ability to function effectively and is essential to fulfilling our obligation to protect the health and welfare of America’s veterans and the general public.

Conclusion

CREW and VoteVets Action Fund strongly oppose the proposed rule, which threatens to undo decades of progress in building a professional, nonpartisan civil service. As recent history from the VA makes clear, stripping civil service protections under the guise of

¹⁵ Department of Veterans Affairs Office of Inspector General, *OIG Determination of Veterans Health Administration’s Occupational Staffing Shortages* (FY2018), <https://www.vaog.gov/sites/default/files/reports/2018-06/VAOIG-18-01693-196.pdf>.

¹⁶ Jory Heckman, *VA reinstated 100 employees fired under widely challenged law*, paid \$134M to hundreds more, *Federal News Network* (Oct. 29, 2024), <https://federalnewsnetwork.com/workforce/2024/10/va-reinstated-100-employees-fired-under-widely-challenged-law-paid-134m-to-hundreds-more/>.

¹⁷ S.1094, 115th Cong. (2017), <https://www.congress.gov/bill/115th-congress/senate-bill/1094>.

¹⁸ Office of Personnel Management, *Employment of Veterans in the Federal Executive Branch* (Fiscal Year 2021), <https://www.opm.gov/fedshirevets/hiring-officials/ved-fy21.pdf>.

¹⁹ *Id.*

²⁰ Jamie Rowen, *5 reasons federal cuts are hitting veterans especially hard*, PBS (Mar. 16, 2025), <https://www.pbs.org/newshour/politics/5-reasons-federal-cuts-are-hitting-veterans-especially-hard>.

²¹ Department of Labor, *Databases, Tables & Calculators by Subject* (May 19, 2025), https://data.bls.gov/timeseries/LNS14049526&series_id=LNS14049601.

accountability is likely to lead to mass firings, retaliation against whistleblowers, costly legal challenges, and diminished capacity to serve the public. When the federal workforce is attacked, it is the American public—especially our veterans—who suffer the consequences. We urge OPM to withdraw this rule and reaffirm its commitment to a nonpartisan, merit-based federal workforce. The effectiveness of our government and its ability to meet the needs of those who rely on it, including our veterans, depend on it.