

Congress of the United States
Washington, DC 20515

March 9, 2026

Mr. Scott Kupor
Director
Office of Personnel Management
1900 E Street NW Washington, DC 20415

Dear Director Kupor,

We write in strong opposition to the Office of Personnel Management's (OPM) proposed rule, *Suitability Action Appeals* ([OPM-2025-0173-0001](#)). While we agree that suitability standards and procedures play a critical role in protecting the federal government, this proposal undermines the statutory framework, independence, and due process protections that ensure those standards are applied fairly and lawfully.

Congress spoke clearly when it enacted the Civil Service Reform Act of 1978. That law reformed the former Civil Service Commission and deliberately created separate entities with distinct missions where personnel policymaking authority was assigned to OPM and independent adjudication of workforce appeals was assigned to the Merit Systems Protection Board (MSPB).

This separation was not accidental. Congress sought to prevent precisely the structure this rule would create, one where the same agency that promulgates personnel policy also adjudicates claims that those policies were applied improperly or unlawfully. By transferring suitability appeals from MSPB to OPM, the proposed rule collapses this intentionally designed safeguard and recreates aspects of the system Congress chose to abandon.

By contrast, the MSPB was structured to provide independent, balanced adjudication. Removing appeals from MSPB eliminates this neutral forum and centralizes authority within the policymaking body of OPM. Under this proposal, OPM would draft suitability policies, implement those policies, and adjudicate appeals arising from them. This consolidation makes OPM the policymaker, the enforcer, and the final arbiter.

OPM contends that internal reporting structures will preserve impartiality, claiming that staff taking suitability actions will operate in separate units and report through different supervisory chains than those deciding appeals. However, in practice, this separation cannot play out when both chains ultimately report to you in your politically appointed role as the Director of OPM as the rule clearly states that the Director of OPM will be the final arbiter of appeals.

Further, the proposal comes alongside multiple rules related to removing authority from the MSPB to OPM, including the appeal process for both probationary employees and reductions in force (RIFs). Transferring all these appeal responsibilities to OPM particularly amid a reduced internal workforce and without demonstrated adjudicatory capacity risks inconsistency, delay,

and diminished confidence in outcomes—the exact consequences OPM claims this rule seeks to remedy.

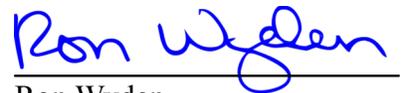
This rule must also be considered in the broader context of recent suitability rulemaking that would further centralize personnel authority within OPM. Taken together, these actions would concentrate extraordinary power in a single agency led by political appointees, enabling OPM to sidestep long-established due process protections that shield federal employees from adverse actions based on political considerations, retaliation for exposing waste, fraud, and abuse, or other conduct protected by the merit system principles. This approach risks undermining merit-based governance while weakening accountability and increasing politization.

For these reasons, we strongly urge OPM to withdraw this proposed rule and instead work collaboratively with Congress and stakeholders to modernize and improve suitability processes while maintaining the independence and merit principles that underpin our civil service system.

Sincerely,



Chris Van Hollen
United States Senator



Ron Wyden
United States Senator



Bernard Sanders
United States Senator



Mark R. Warner
United States Senator



Richard Blumenthal
United States Senator



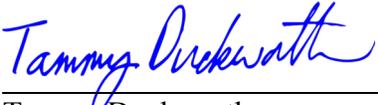
Mazie K. Hirono
United States Senator



Tim Kaine
United States Senator



Gary C. Peters
United States Senator
Ranking Member, Committee
on Homeland Security and
Governmental Affairs



Tammy Duckworth
United States Senator



Andy Kim
United States Senator



Angela D. Alsobrooks
United States Senator