Congress of the United States
Washington, DC 20515

January 29, 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 – Streamlining Probationary and Trial Period Appeals [OPM-2025-0013]. The proposed rule seeks to restructure the process by which certain employees who are terminated during their probationary periods appeal these decisions. Probationary employees, mostly in the competitive service, long had narrow, but critical, appeal rights to the Merit Systems Protection Board (MSPB). These protections covering discrimination based on partisan political reasons or marital status, and terminations based on conditions arising prior to federal employment were already limited in scope and difficult to prove. However, the proposed rule would harm probationary employees by replacing an independent MSPB review with an internal OPM process overseen by a political appointee, eliminating judicial review, eroding civil service protections and merit system principles, and impacting the recruiting of top talent for the federal workforce.

The Civil Service Reform Act of 1978 split the former Civil Service Commission into distinct agencies with distinct missions. Relevant here, it assigned personnel policy making to OPM and adjudication of workforce appeals to the MSPB. Congress intentionally sought to prevent precisely the outcome where the agency that sets personnel policy also adjudicates claims that those policies are being applied incorrectly or unlawfully. This proposed rule runs directly contrary to that framework, effectively recreating parts of a discredited system that Congress intentionally abandoned.

The rule seeks to move the appeals adjudication to OPM's Merit System Accountability and Compliance (MSAC). However, the MSPB has the experience, precedents, and procedures to review these probationary employee appeals that MSAC does not have. MSAC lacks the balanced governing board of the MSPB, reports directly to the OPM Director, and has no demonstrated capacity to handle a surge in these types of appeals. Through MSPB review, there is a prudent separation between the agency setting personnel policy and the agency deciding if these policies are being applied lawfully. Under this proposed rule, OPM could direct agencies to make probationary terminations and then adjudicate those same actions, eliminating any meaningful independence.

This conflict of interest is not hypothetical. While federal civil servants across the country give their talent, expertise, and dedication to serve the American public by providing critical services, the Trump administration has already demonstrated its desire to politicize the federal workforce, even taking illegal actions against probationary employees. As part of their dismantling of the federal workforce, the administration sent letters to probationary employees that cruelly and wrongly claimed they were fired for subpar performance at the direction of OPM.[1] Recognizing the unlawfulness of these actions, a federal court ruled that the Trump administration illegally fired roughly 25,000 federal probationary employees.[2] These actions underscore how probationary status has been abused in practice by an administration willing to weaponize personnel processes for political ends.[3]

In light of this demonstrated pattern of unjust and illegal treatment of probationary employees, this proposed rule is especially dangerous to civil service protections, as it eliminates requirements for hearings and discovery during the appeals process that would be typical at the MSPB. Partisan political discrimination cases frequently rely on nuanced motive, credibility, and informal communications. This evidence cannot be meaningfully assessed without discovery or witness testimony. Without access to evidence or a neutral factfinder, the burden placed on employees becomes effectively insurmountable. Under this proposal, appeals would be limited to a paper-only, agency-controlled record, with hearings provided only if OPM deems them "necessary." As a result, this structure makes such claims nearly impossible to prove and, in practice, could amount to a sham review process. In a worst-case scenario, an administration could rely on external indicators—such as voter registration data or political activity—to justify removals, while denying employees any meaningful opportunity to challenge those decisions so long as discriminatory motives or reasons for termination were not explicit.

Additionally, the American public deserves a merit-based, nonpartisan civil service that recruits and retains the best talent across the nation. The administration has called for the recruitment of top scientific and technical expertise in the federal government. However, talented prospective employees become less likely to join a workforce where political influence and diminished due process create instability and risk. Recent mass firings including highly skilled employees in AI and technical fields with strong performance records have already caused significant reputational harm to the federal government's brand as an employer, signaling to prospective recruits that even excellent performance offers no protection. The proposed rule and the administration's attack on the civil service undermines its ability to keep and hire top talent by building uncertainty for new employees and creating less flexibility for managers.

[1] Katz, Eric. "Trump's Mass Probationary Firings Were Illegal, Judge Concludes, but He Won't Order Re-Hirings." *Government Executive*, Government Executive, 15 Sept. 2025, www.govexec.com/workforce/2025/09/trumps-mass-probationary-firings-were-illegal-judge-concludes-he-wont-order-re-hirings/408111/.
[2] American Federation of Government Employees, AFL-CIO, et al. v. United States Office Of Personnel Management, et al. United States District Court Northern District of California.
[3] "OPM Directs Federal Agencies to Fire Recently Hired (Probationary) Employees." *Economic Policy Institute*, 2025, www.epi.org/policywatch/opm-directs-federal-agencies-to-fire-recently-hired-probationary-employees/.

As members of Congress, we have seen the critical services that the nonpartisan, highly skilled federal workforce provides to the American public. We must ensure that the civil service is insulated from political retaliation and has a right to due process all while hiring and retaining top talent. This rule is antithetical to those aims. We urge OPM to reject this proposed rule and work with Congress to effectively manage workforce operations.
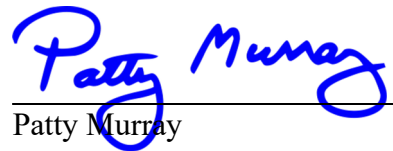
Sincerely,

Chris Van Hollen
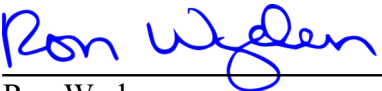United States Senator

Angela D. Alsobrooks
United States Senator

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

Patty Murray
United States Senator

Ron Wyden
United States Senator

Mark R. Warner
United States Senator

Michael F. Bennet
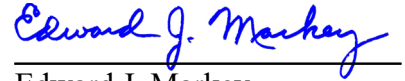United States Senator

Richard Blumenthal
United States Senator

Tim Kaine
United States Senator

Edward J. Markey
United States Senator

Alex Padilla
United States Senator

Andy Kim
United States Senator