

October 27, 2022

The Honorable Nancy Pelosi
Speaker
United States House of Representatives

The Honorable Charles Schumer
Majority Leader
United States Senate

The Honorable Kevin McCarthy
Minority Leader
United States House of Representatives

The Honorable Mitch McConnell
Minority Leader
United States Senate

Sent via e-mail

Dear Speaker Pelosi, Leader McCarthy, Leader Schumer, and Leader McConnell,

The undersigned organizations are united in our commitment to ensuring excellence and integrity in the federal government for the betterment of the American people. We urge you to pass legislation that protects America’s civil service system from future attempts to create broad exceptions to the competitive civil service, whether as standalone legislation or through the annual National Defense Authorization Act, as has been done in the House, as part of appropriations, as is under consideration in the Senate, or otherwise.

Our nation relies on the work of a professional and nonpartisan civil service. The merit-based civil service framework provides continuity of government through changing administrations, preserves institutional knowledge and expertise, and safeguards the rule of law and adherence to the Constitution.

This framework is threatened by the exploitation of a statutory loophole. The previous administration issued an executive order creating a broad new exception (Schedule F) to the merit-based civil service at the end of its term. Civil service rules ensuring merit-based hiring and firing would not apply to positions reclassified into this new excepted service schedule. While this exception was not fully implemented prior to the transition of power, early steps taken by agencies suggest it could apply broadly, potentially affecting tens of thousands of positions – or more. In its report on Schedule F, the Government Accountability Office indicated 68 percent of employees within the Office of Management and Budget were reclassified into the new excepted service schedule, even as other agencies did not submit petitions prior to the revocation of the order.¹ The size of the exception threatened to eviscerate the basic rule, expanding well beyond the purpose of limited statutory exceptions.

If Schedule F returns, positions considered “of a confidential, policy-determining, policymaking or policy advocating character” could be reclassified, allowing employees in newly converted positions to be removed at any time. Normal due process safeguards ensuring termination for cause would no longer apply and these positions could be filled with handpicked and potentially unqualified individuals. These hirings and firings, even on a small scale, would cause substantial

¹ GAO-22-105504, CIVIL SERVICE: Agency Response and Perspectives on Former Executive Order to Create a New Schedule F Category of Federal Positions, available at: <https://www.gao.gov/assets/gao-22-105504.pdf>.

disruption of government operations, forcing each new administration to spend additional weeks, if not months, dealing with the aftereffects of their predecessor's decisions.

If such a broad exception to the merit-based system were fully implemented, it could radically change how our government operates. Lack of competitive service protections could allow an administration to enact a wholesale change in government personnel. While the first step in this direction may be taken by opponents of the merit system, it is not difficult to imagine it becoming the norm for all future administrations.

Every administration holds the authority to exercise its executive power appropriately. But those powers are limited by the Constitution and laws of the United States. If government employees owe their jobs more to personal or political allegiance rather than merit, they will be more beholden to the party in power instead of the law of the land. That erodes safeguards for the rule of law within the institution of the executive branch, which could undermine the power of Congress and set the stage for greater inter-branch conflict.

More substantial employee turnover from one administration to the next would also lead to loss of institutional knowledge and expertise within government. This would increase dysfunction and uncertainty in the disposition of the government's responsibilities, including national security, health and safety, economic policy and the stewardship of trillions of dollars in annual federal spending. Staff shortages due to turnover and delays hiring and training each incoming administration's new set of employees could cause further problems. Whatever functional challenges exist now could be increased exponentially if the professional civil service as we know it came to an end.

It is critical that Congress act this year to prevent future threats to this system. Proponents of Schedule F are [still at work](#), crafting plans that would jeopardize America's professional civil service system. That is why we urge you to take this threat seriously, so no future administration can wield this abuse of power. Once enacted, Schedule F would quickly cause turmoil that is not easily remedied. The cycle would further erode trust in government and have devastating effects on our country.

We would like to commend efforts taken thus far to protect the civil service, and we are heartened by House passage of the Preventing a Patronage System Act, H.R. 302, and inclusion of the bill's language in the House-passed 2023 National Defense Authorization Act. Specifically, H.R. 302 would prohibit the reclassification of any position in the competitive service to an excepted service schedule that was created after September 30, 2020, and limit federal employee reclassifications to the five excepted service schedules in use prior to fiscal year 2021. We also support language included in the Senate's draft Financial Services and General Government appropriations bill to the same effect.

However, more is needed by Congress to ensure that future attempts to destroy the merit system are thwarted. Specifically, we urge you to include the language to prevent a return of Schedule F, or other similar efforts, in year-end legislation passed by both chambers. Doing so would provide a congressional check on abuse of executive powers from any administration by limiting the

ability of the executive branch to bypass the entire framework of the merit-based civil service through the creation of broad new exceptions to the application of merit-based rules.

For these reasons, the undersigned organizations urge you to include language blocking Schedule F and similar attempts to create broad exceptions to the competitive civil service in year-end legislation.

Thank you for your consideration of our views. Should you have any questions or wish to discuss further, please contact John Hatton, Staff Vice President of Policy and Programs, with the National Active and Retired Federal Employees Association (NARFE), at jhatton@narfe.org, or Gabe Lezra, Counsel with Citizens for Responsibility and Ethics in Washington, at glezra@citizensforethics.org.

Sincerely,

American Federation of Government Employees, AFL-CIO
American Federation of Teachers
American Foreign Service Association
American Society for Public Administration (ASPA)
Americans for Democratic Action (ADA)
Center for Auto Safety
Center for Progressive Reform
Citizens for Responsibility and Ethics in Washington (CREW)
Civic Leadership Education and Research (CLEAR) Initiative, USC
Demand Progress Action
Democracy Fund Voice
Environmental Protection Network
FAA Managers Association
Federal Education Association
Federal Managers Association (FMA)
Federal Workers Alliance (FWA)
Field Team 6
Friends of the Earth U.S.
Government Accountability Project
International Association of Fire Fighters
International Brotherhood of Teamsters (IBT)
International Federation of Professional and Technical Engineers (IFPTE)
International Marine Mammal Project of Earth Island Institute
Jacobs Institute of Women's Health
Laborers' International Union of North America (LIUNA)
National Active and Retired Federal Employees Association (NARFE)
National Air Traffic Controllers Association (NATCA)
National Association of Assistant U.S. Attorneys (NAAUSA)
National Center for Health Research
National Council of Social Security Management Associations (NCSSMA)
National Education Association

National Employment Law Project
National Federation of Federal Employees
National Treasury Employees Union
National Weather Service Employees Organization
Ocean Conservation Research
Partnership for Public Service
Patent Office Professional Association
Professional Managers Association (PMA)
Project On Government Oversight (POGO)
Protect Democracy
Public Employees for Environmental Responsibility
Revolving Door Project
Senior Executives Association (SEA)
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