



September 2022

# CIVIL SERVICE

## Agency Responses and Perspectives on Former Executive Order to Create a New Schedule F Category of Federal Positions

Accessible Version

# GAO Highlights

Highlights of [GAO-22-105504](#), a report to congressional requesters

## Why GAO Did This Study

On October 21, 2020, the President issued E.O. 13957, *Creating Schedule F in the Excepted Service*, which created a new category of federal positions. The stated intent was to expedite the hiring and removal of “employees in confidential, policy-determining, policy-making, or policy-advocating positions.” The incoming administration revoked the E.O. on January 22, 2021.

GAO was asked to review the implementation of Schedule F. This report describes (1) agencies’ implementation of E.O. 13957 prior to its revocation in January 2021; and (2) selected stakeholders’ perspectives on the implications of a Schedule F category of federal positions.

GAO interviewed officials from OPM and selected agencies identified as having submitted a response to OPM related to Schedule F or having conducted preliminary analysis to identify Schedule F positions. GAO also interviewed other agencies that oversee federal workforce issues, and reviewed OPM Schedule F-related guidance. GAO reviewed agency requests to place positions into Schedule F, as well as documents containing preliminary analysis from other selected agencies.

GAO also interviewed 14 stakeholders, including former agency officials with relevant experience, and others from academia, federal labor unions, and nonprofit organizations for their views on the implications of Schedule F.

View [GAO-22-105504](#). For more information, contact Alissa H. Czyz at (202) 512-6806 or [czyza@gao.gov](mailto:czyza@gao.gov).

September 2022

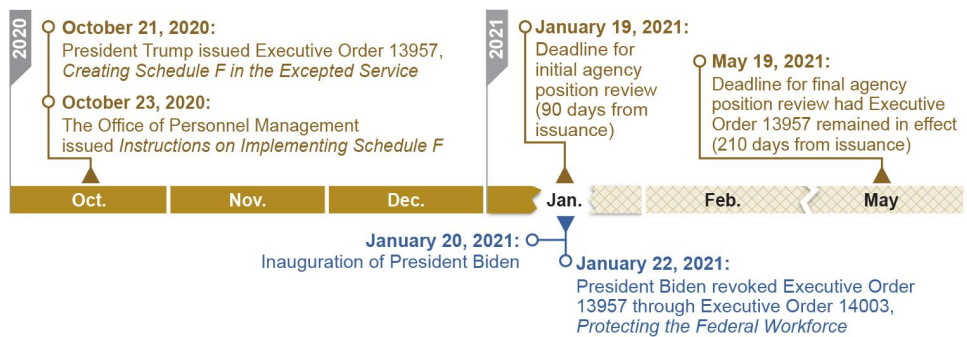
## CIVIL SERVICE

# Agency Responses and Perspectives on Former Executive Order to Create a New Schedule F Category of Federal Positions

## What GAO Found

Executive Order 13957 (E.O.), which was issued in October 2020, required federal agencies to conduct a preliminary review to determine which of their workforces’ positions met criteria for placement into a newly created Schedule F category of federal positions (see figure). These positions would have had a streamlined hiring process. In addition, certain due process rights, such as notice of removal and the right to appeal removals to the Merit Systems Protection Board, would be unavailable to individuals in these positions.

Figure: Executive Order 13957 Key Dates



Source: GAO analysis of Executive Order 13957, *Creating Schedule F in the Excepted Service* (October 21, 2020), and Executive Order 14003, *Protecting the Federal Workforce* (January 22, 2021). | GAO-22-105504

Text of Figure: Executive Order 13957 Key Dates

October 2020	January 2021	May 2021
<p><b>October 21, 2020:</b> President Trump issued Executive Order 13957, <i>Creating Schedule F in the Excepted Service</i></p> <p><b>October 23, 2020:</b> The Office of Personnel Management issued <i>Instructions on Implementing Schedule F</i></p>	<p><b>January 19, 2021:</b> Deadline for initial agency position review (90 days from issuance)</p> <p><b>January 20, 2021:</b> Inauguration of President Biden</p> <p><b>January 22, 2021:</b> President Biden revoked Executive Order 13957 through Executive Order 14003, <i>Protecting the Federal Workforce</i></p>	<p><b>May 19, 2021:</b> Deadline for final agency position review had Executive Order 13957 remained in effect (210 days from issuance)</p>

Source: GAO analysis of Executive Order 13957, *Creating Schedule F in the Excepted Service* (October 21, 2020), and Executive Order 14003, *Protecting the Federal Workforce* (January 22, 2021). | GAO-22-105504

GAO found no agencies had placed positions into Schedule F by the time of the E.O.’s revocation on January 22, 2021. Two agencies submitted written requests to the Office of Personnel Management (OPM) to place positions into Schedule F. OPM approved the Office of Management and Budget’s (OMB) request to place 136 positions into Schedule F. According to GAO analysis, this affected

415 employees, or 68 percent of OMB's workforce at the time. OMB officials said agency leadership halted the implementation of Schedule F on January 20, 2021. The U.S. International Boundary and Water Commission requested approval to place five positions (out of its total workforce of 234 at the time) into Schedule F. However, the E.O. was revoked before OPM completed its review.

Thirteen other agencies communicated with OPM leadership before the E.O. was revoked to describe their implementation status. Seven agencies reported that they needed additional time to finalize their analysis. Six reported that they would not request positions be placed into Schedule F for various reasons.

Future administrations could seek to re-establish Schedule F, or a category of federal positions with similar attributes, according to several stakeholders GAO interviewed. Some stakeholders said this is, in part, because Schedule F could be used to expedite hiring of federal employees committed to advancing the President's policy agenda, and removing those who were not. Several stakeholders stated that agencies would need to consider important tradeoffs when using Schedule F. These included possible effects to recruiting, retaining experienced staff, and risks such as employees in Schedule F positions being subject to removal for partisan political reasons.

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**Abbreviations**

CHCO	Chief Human Capital Officer
EEOC	Equal Employment Opportunity Commission
EPA	Environmental Protection Agency
E.O.	Executive Order
FERC	Federal Energy Regulatory Commission
FLRA	Federal Labor Relations Authority
FTC	Federal Trade Commission
GSA	General Services Administration
MSPB	Merit Systems Protection Board
OMB	Office of Management and Budget
OPM	Office of Personnel Management
OSC	Office of Special Counsel
USIBWC	U.S. International Boundary and Water Commission

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September 28, 2022

The Honorable Carolyn B. Maloney  
Chairwoman  
Committee on Oversight and Reform  
House of Representatives

The Honorable Gerald E. Connolly  
Chairman  
Subcommittee on Government Operations  
Committee on Oversight and Reform  
House of Representatives

Federal agencies' ability to address the nation's social, economic, and security challenges relies upon a workforce that can respond effectively to executive policy priorities. Federal employees who have the skills, knowledge, and abilities to address both long-standing and emerging issues can better serve the public interest. Civil service requirements and merit system principles help to ensure that employees are treated fairly in all aspects of their employment.

Much has changed since the Civil Service Act of 1883 (Pendleton Act) first laid the foundation for the federal personnel system, which has continued to develop through the passage of subsequent laws, including the Civil Service Reform Act of 1978.<sup>1</sup> Agencies' missions have evolved and employees' expectations of work and the workplace are changing. We have previously reported that agencies have faced challenges maintaining a workforce that can meet agencies' obligations.<sup>2</sup> In response to these challenges, Congress and the President have established a category of positions that are not generally required to meet certain competitive service requirements—known as excepted service positions.

In October 2020, President Trump issued Executive Order (E.O.) 13957 that created a new "Schedule F" category of excepted service positions.<sup>3</sup>

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<sup>1</sup>Civil Service Act of 1883, Pub. L. No. 47-27, 22 Stat. 403; Civil Service Reform Act of 1978, Pub. L. No. 95-454, 92 Stat. 1111.

<sup>2</sup>GAO, *Federal Workforce: Key Talent Management Strategies for Agencies to Better Meet Their Missions*, [GAO-19-181](#) (Washington, D.C.: Mar. 28, 2019).

<sup>3</sup>Exec. Order No. 13957, *Creating Schedule F in the Excepted Service*, 85 Fed. Reg. 67631 (Oct. 26, 2020).

This E.O. provided an exception to the competitive hiring rules and examinations for career positions of “a confidential, policy-determining, policy-making, or policy-advocating character.” It stated that agencies should have “greater ability and discretion” to assess critical qualities in applicants to fill these positions than is provided by the competitive service process. See appendix I for the full text of the E.O. Hiring for Schedule F positions would have been streamlined. For example, Schedule F positions would not have required a competitive examination, and agencies would not have been required to follow established processes for veterans’ preference in hiring.

E.O. 13957 also stated that the government’s performance system is inadequate, and that poor performance by employees in policy-relevant roles had resulted in delays and substandard work within agencies. Given that employees in these positions “wield significant influence over Government operations and effectiveness,” the E.O. stated that agencies needed “the flexibility to expeditiously remove poorly performing employees from these positions without facing extensive delays or litigation.” Generally, an employee in the competitive service or excepted service is entitled to notice of a removal, an opportunity to reply, representation by an attorney or other representative, and a written decision. An employee may appeal the removal to the Merit Systems Protection Board (MSPB) or file a grievance under the terms of a collective bargaining agreement. However, these procedural protections generally would have been unavailable to employees classified under Schedule F.

President Biden subsequently revoked E.O. 13957 in January 2021 through E.O. 14003.<sup>4</sup> E.O. 14003 stated “[Schedule F] not only was unnecessary to the conditions of good administration but also undermined the foundations of the civil service and its merit system principles, which were essential to the [Pendleton Act’s] repudiation of the spoils system.”

You asked us to review the implementation of E.O. 13957. This report describes (1) agencies’ implementation of E.O. 13957 prior to its revocation in January 2021 and (2) selected stakeholders’ perspectives on the implications of a Schedule F category of federal positions.

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<sup>4</sup>Exec. Order No. 14003, *Protecting the Federal Workforce*, 86 Fed. Reg. 7231 (Jan. 27, 2021).



To describe agencies' implementation of E.O. 13957 prior to its revocation, we interviewed officials from agencies responsible for oversight of federal workforce issues. These agencies included the Office of Personnel Management (OPM), the Federal Labor Relations Authority, MSPB, and the Office of Special Counsel. We analyzed OPM's Schedule F guidance as well as agency documentation and correspondence related to Schedule F between OPM and agencies. We reviewed OPM documentation and interviewed OPM officials to identify agencies that submitted petitions (written requests from the agency head) to OPM to place positions into Schedule F. We also conducted a literature search to identify agencies that media sources reported as having submitted petitions to OPM.

We collected and analyzed documentation related to Schedule F from OPM regarding the overall response to E.O. 13957. OPM provided us with documentation from all 15 agencies that responded to the E.O., including information regarding OPM's internal response. These agencies sent OPM one of the following prior to the E.O.'s revocation: (1) a petition to place positions into Schedule F, (2) a letter (or internal communication with agency leadership in OPM's case) showing they were in the process of developing a petition, or 3) a letter stating they would not be submitting a petition. We interviewed 11 agencies to gain additional information about their respective responses to the E.O., including OPM, the Office of Management and Budget, the U.S. International Boundary and Water Commission, Environmental Protection Agency, Federal Energy Regulatory Commission, General Services Administration, Equal Employment Opportunity Commission, Department of the Treasury, National Labor Relations Board, National Transportation Safety Board, and Federal Trade Commission.

To describe stakeholders' perspectives on the implications of Schedule F, we selected and interviewed 14 stakeholders from a variety of backgrounds. These stakeholders included noncareer officials with a role in implementing Schedule F who served in the Trump administration, as well as officials with experience in federal workforce policymaking from prior administrations. We also spoke to researchers from academia, federal labor union officials, representatives from non-profit organizations, and authors who had published work relevant to Schedule F. We selected this sample by identifying former officials with relevant experience, as well as witnesses at congressional hearings related to federal workforce management. We also identified stakeholders by reviewing related scholarly work and news articles from October 2020 through January 2022. To characterize stakeholder perspectives, we use the terms "nearly

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all” to represent 13 to 14 stakeholders; “most” for 11 to 12 stakeholders; “many” for seven to 10 stakeholders; “several” for four to six stakeholders; and “some” for two to three stakeholders. Selected stakeholders do not represent all Schedule F stakeholders, and their perspectives are not generalizable. Appendix II provides a detailed description of our scope and methodology.

We conducted this performance audit from October 2021 to September 2022 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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## Background

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### Federal Hiring and the Excepted Service

Civil service personnel laws found under Title 5 of the U.S. Code include the rules agencies must follow to hire employees. Agencies may hire through the competitive service process, which generally requires applicants to pass a competitive examination and requires agencies to identify the most qualified applicants by (1) notifying the public that the government will accept job applications for a position, (2) screening applications against minimum qualification standards, (3) applying selection priorities such as veterans’ preference, and (4) assessing applicants’ relative competencies—knowledge, skills, and abilities—against job-related criteria.<sup>5</sup>

The President has delegated authority to OPM to make excepted service appointments for when it is neither feasible nor practical to use the competitive examination process.<sup>6</sup> The excepted service includes five categories of positions, contained in Schedules A, B, C, D and E, as described in figure 1. The schedules allow agencies to hire positions outside of the usual competitive process for various purposes, including:

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<sup>5</sup>Federal civil service employees, other than those in the Senior Executive Service, are employed in either the competitive service, 5 U.S.C. §2102, or the excepted service, 5 U.S.C. § 2103.

<sup>6</sup>See 5 U.S.C. §§ 1104, 3301, 3302; 5 C.F.R. § 6.1.

(1) when it is not practicable to use competitive service qualification standards or to rate applicants using traditional competitive examining procedures, (2) when recruiting students attending certain educational institutions (or others who have recently completed certain educational programs), or (3) to fill certain positions of a confidential or policy-determining nature.

**Figure 1: Schedules of Excepted Service Positions**

Category	Description
<b>Schedule A</b>	Schedule A allows agencies to make appointments to positions for which it is "impracticable to examine." The schedule can be used for a variety of purposes, subject to Office of Personnel Management (OPM) approval, such as for temporary positions for which there are critical hiring needs, and for the hiring of individuals with certain disabilities. Schedule A is also used for hiring of such positions as chaplains and attorneys, among others.
<b>Schedule B</b>	Schedule B allows agencies to make appointments when it is "not practicable to hold a competitive examination." This schedule can be used for a variety of types of positions, subject to OPM approval, such as special executive development positions, among others.
<b>Schedule C</b>	Schedule C allows agencies to hire political appointees who are involved in determining policy or which involve a close, confidential relationship with the agency head or other key officials of the agency. Schedule C appointees serve at the pleasure of the department or agency head.
<b>Schedule D</b>	Schedule D allows agencies to make appointments when competitive service requirements "make impracticable the adequate recruitment of sufficient numbers" of students who attend qualifying educational institutions or who have recently completed qualifying educational programs. Schedule D covers programs for student interns, recent graduates, and Presidential Management Fellows.
<b>Schedule E</b>	Schedule E provides agency heads with additional flexibility to assess prospective appointees for administrative law judge positions.

Source: GAO analysis of Title 5 of the U.S. Code. | GAO-22-105504.

**Text of Figure 1: Schedules of Excepted Service Positions**

Category	Description
Schedule A	Schedule A allows agencies to make appointments to positions for which it is "impracticable to examine." The schedule can be used for a variety of purposes, subject to Office of Personnel Management (OPM) approval, such as for temporary positions for which there are critical hiring needs, and for the hiring of individuals with certain disabilities. Schedule A is also used for hiring of such positions as chaplains and attorneys, among others.
Schedule B	Schedule B allows agencies to make appointments when it is "not practicable to hold a competitive examination." This schedule can be used for a variety of types of positions, subject to OPM approval, such as special executive development positions, among others.

Category	Description
Schedule C	Schedule C allows agencies to hire political appointees who are involved in determining policy or which involve a close, confidential relationship with the agency head or other key officials of the agency. Schedule C appointees serve at the pleasure of the department or agency head.
Schedule D	Schedule D allows agencies to make appointments when competitive service requirements “make impracticable the adequate recruitment of sufficient numbers” of students who attend qualifying educational institutions or who have recently completed qualifying educational programs. Schedule D covers programs for student interns, recent graduates, and Presidential Management Fellows.
Schedule E	Schedule E provides agency heads with additional flexibility to assess prospective appointees for administrative law judge positions.

Source: GAO analysis of Title 5 of the U.S. Code. | GAO-22-105504

Schedule C allows for hiring for positions that are policy determining or which involve a close and confidential working relationship with the head of an agency or other key appointed officials. Schedule C appointees serve at the pleasure of the department or agency head. They typically resign at the request of an incoming administration or before a new agency head takes office. Schedule C generally includes fewer steps to hire these appointees than if they were to go through the hiring process for the competitive service. While Schedule C employees may be appointed to career positions, the appointment process must be in accordance with merit system principles.<sup>7</sup> Because Schedule F positions would not normally be subject to change as a result of a Presidential transition, Schedule F positions are distinct from Schedule C positions. The criteria for placement into Schedule F were also broader than Schedule C, to include those involved in policy-making and policy-advocating matters.

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### Creation of Schedule F through E.O. 13957

President Trump issued E.O. 13957 on October 21, 2020, to establish a sixth schedule—Schedule F—of excepted service positions. See figure 2 for a summary of the E.O.

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<sup>7</sup>For more information, see GAO, *Personnel Practices: Actions Needed to Improve Documentation of OPM Decisions on Conversion Requests*, [GAO-17-674](#) (Washington, D.C.: Aug. 28, 2017).

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**Figure 2: Summary of Executive Order 13957, “Creating a Schedule F in the Excepted Service”**


### What is Schedule F?

- Executive Order 13957, *Creating Schedule F in the Excepted Service*, was issued on October 21, 2020, by President Donald Trump and revoked on January 22, 2021, by President Joseph Biden.
- The Executive Order established a new category, Schedule F, of excepted service positions for federal employees.
- Hiring for Schedule F positions would have been streamlined. Agencies would not have been required to follow established processes for veterans’ preference in hiring. Similar to other positions under the excepted service, Schedule F positions would not have required a competitive examination.
- Employees classified under Schedule F would not generally receive certain due process protections, such as notice of removal, opportunity for representation by an attorney or other representative, and the right to appeal removals to the Merit Systems Protection Board.



### Why was Schedule F established?

- Executive Order 13957 stated that Schedule F was necessary because agencies need (1) greater flexibility to assess prospective appointees for critical qualities, and (2) to be able to expeditiously remove poorly performing employees from these positions.



### What types of positions were eligible for Schedule F?

- Schedule F positions in the career federal civil service had the following characteristics: confidential, policy-determining, policy-making, or policy-advocating.
- Duties of Schedule F positions may have included:
  - Substantive participation in developing or drafting of regulations and guidance.
  - Supervising of attorneys.
  - Substantial discretion to determine how agency exercises functions required of the agency by law.
  - Working with proposed regulations or other nonpublic policy proposals or deliberations covered by deliberative process privilege.
  - Conducting collective bargaining negotiations on behalf of agency.



### What was required of agencies?

- Agencies were to:
  - Conduct an initial review of career competitive and excepted service positions for placement into Schedule F within 90 days of the Executive Order’s issuance, and finalize their review within 210 days of the date of the Executive Order.
  - Obtain approval from the Office of Personnel Management (OPM) to place positions into Schedule F, except for positions already excepted from the competitive service by statute. These positions would instead be published by the agencies in the *Federal Register*.
  - Petition the Federal Labor Relations Authority to determine whether positions in bargaining units identified for placement into Schedule F should be excluded from collective bargaining.
  - Establish rules against prohibited personnel practices. While Schedule F employees would not be covered by statutory protections against prohibited personnel practices (such as discrimination and retaliation), the Executive Order required agencies to establish their own rules to prohibit these same practices.
- OPM was to issue regulations implementing the Executive Order and guidance on transitioning from the existing appointment process to the new Schedule F process established by the Executive Order.

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Source: GAO analysis of Executive Order 13957, *Creating Schedule F in the Excepted Service* (October 21, 2020). | GAO-22-105504

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**Text of Figure 2: Summary of Executive Order 13957, “Creating a Schedule F in the Excepted Service”**

**What is Schedule F?**

- Executive Order 13957, *Creating Schedule F in the Excepted Service*, was issued on October 21, 2020, by President Donald Trump and revoked on January 22, 2021, by President Joseph Biden.
- The Executive Order established a new category, Schedule F, of excepted service positions for federal employees.
- Hiring for Schedule positions would have been streamlined. Agencies would not have been required to follow established processes for veterans’ preference in hiring. Like other positions under the excepted service, Schedule F positions would not have required a competitive examination.
- Employees classified under Schedule F would not generally receive certain due process protections, such as notice of removal, opportunity for representation by an attorney or other representative, and the right to appeal removals to the Merit Systems Protection Board.

**Why was Schedule F established??**

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**What types of positions were eligible for Schedule F?**

- Schedule F positions in the career federal civil service had the following characteristics: confidential, policy-determining, policy-making, or policy-advocating.
- Duties of Schedule F positions may have included:
  - Substantive participation in developing or drafting regulations and guidance
  - Supervising attorneys
  - Substantial discretion to determine how agency functions required by law
  - Working with proposed regulations or other nonpublic policy proposals or deliberations covered by deliberative process privilege

- Conducting collective bargaining negotiations on behalf of agency

### **What was required of agencies?**

- Agencies were to:
  - Conduct an initial review of career competitive and excepted service positions for placement into Schedule F within 90 days of the Executive Order's issuance, and finalize their review within 210 days of the date of the Executive Order.
  - Obtain approval from the Office of Personnel Management (OPM) to place positions into Schedule F, except for positions already excepted from the competitive service by statute. These positions would instead be published by the agencies in the *Federal Register*
  - Petition the Federal Labor Relations Authority to determine whether positions in bargaining units identified for placement into Schedule F should be excluded from collective bargaining.
  - Establish rules against prohibited personnel practices. While Schedule F employees would not be covered by statutory protections against prohibited personnel practices (such as discrimination and retaliation), the Executive Order required agencies to establish their own rules to prohibit these same practices.
- OPM was to issue regulations implementing the Executive Order and guidance on transitioning from the existing appointment process to the new Schedule F process established by the Executive Order.

GAO analysis of Executive Order No. 13957, *Creating Schedule F in the Excepted Service* (October 21, 2020). | GAO-22-105504

According to the E.O., agencies were to conduct a preliminary review to determine which positions met the criteria by the deadline of January 19, 2021. By the final deadline of May 19, 2021, agencies would have been required to send a petition (a written request from the head of the agency) to OPM for approval to place designated competitive service positions into Schedule F. OPM instructed agencies to include:

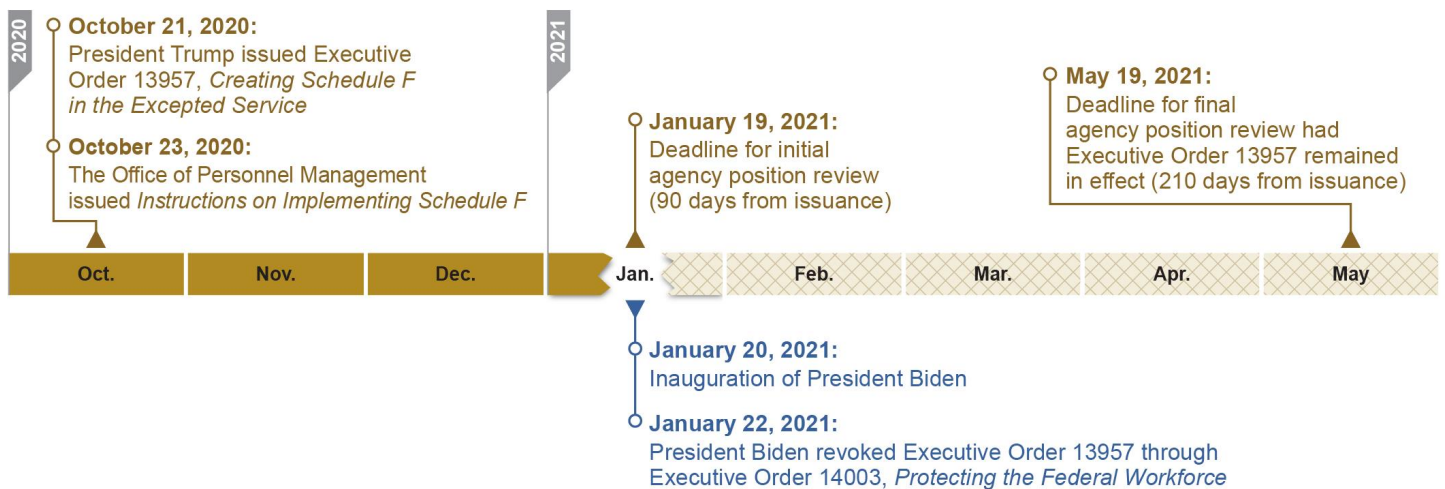
- position title,
- occupational series,
- pay plan and grade level,
- geographic location,
- relevant Schedule F criteria,

- number of positions, and
- a brief description of the factors used to determine the position was eligible to be placed into Schedule F.

For positions designated as excepted service positions by statute, agencies were to publish their determination in the Federal Register.

E.O. 13957 was in effect for 3 months before it was revoked, as shown in figure 3.

**Figure 3: Executive Order 13957 Key Dates**



Source: GAO analysis of Executive Order 13957, *Creating Schedule F in the Excepted Service* (October 21, 2020), and Executive Order 14003, *Protecting the Federal Workforce* (January 22, 2021). | GAO-22-105504

**Text of Figure 3: Executive Order 13957 Key Dates**

October 2020	January 2021	May 2021
<p>October 21, 2020: President Trump issued Executive Order 13957, <i>Creating Schedule F in the Excepted Service</i></p> <p>October 23, 2020: The Office of Personnel Management issued <i>Instructions on Implementing Schedule F</i></p>	<p>January 19, 2021: Deadline for initial agency position review (90 days from issuance)</p> <p>January 20, 2021: Inauguration of President Biden</p> <p>January 22, 2021: President Biden revoked Executive Order 13957 through Executive Order 14003, <i>Protecting the Federal Workforce</i></p>	<p>May 19, 2021: Deadline for final agency position review had Executive Order 13957 remained in effect (210 days from issuance)</p>

Source: GAO analysis of Executive Order 13957, *Creating Schedule F in the Excepted Service* (October 21, 2020), and Executive Order 14003, *Protecting the Federal Workforce* (January 22, 2021). | GAO-22-105504



## Schedule F Coordination and Oversight Roles

E.O. 13957 required OPM to (1) adopt regulations to implement the E.O. and to issue guidance to support agencies' transition to the Schedule F appointment process and (2) receive, review, and determine whether to approve of agency petitions for placement of positions into Schedule F.

OPM issued guidance for implementing Schedule F on October 23, 2020.<sup>8</sup> The guidance cited the statutory provisions from which the terms "confidential," "policy-determining," "policy-making," and "policy-advocating" were drawn. It also stated that Schedule F positions were (1) excepted from competitive examining processes, and (2) exempt from procedural protections for adverse actions, including removals. In November 2020, OPM issued a template for agencies' use in their review of position descriptions, as shown in figure 4.

Figure 4: Office of Personnel Management, Schedule F Template

SCHEDULE F REQUEST						
Agency/Component						
Official Position Title	Occupational Series	Pay Plan and Grade Level	Geographic Location	Number of positions	Schedule F Criteria, indicate as many as may apply (i.e. policy-determining, policy-making, policy-advocating, confidential)	Brief description of factors demonstrating confidential policy-determining, policy-making, or policy-advocating character

Source: Office of Personnel Management. | GAO-22-105504

<sup>8</sup>Office of Personnel Management, *Instructions on Implementing Schedule F* (Washington, D.C.: Oct. 23, 2020).

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**Text of Figure 4: Office of Personnel Management, Schedule F Template**

**SCHEDULE F REQUEST**

Agency/Component Occupational

- Official Position Title
- Occupational Series
- Pay Plan and Grade Level
- Geographic Location
- Number of positions
- Schedule F Criteria, indicate as many as may apply (i.e. policy-determining, policy-making, policy-advocating, confidential)
- Brief description of factors demonstrating confidential policy-determining, policy-making, or policy-advocating character

Source: Office of Personnel Management. | GAO-22-105504

According to the E.O., the Federal Labor Relations Authority (FLRA) was responsible for receiving and reviewing petitions from agencies to determine whether positions proposed for placement into Schedule F would need to be excluded from collective bargaining. FLRA administers the labor-management relations program for 2.1 million non-Postal federal employees worldwide. The agency is charged with providing leadership in establishing policies and guidance related to federal sector labor-management relations.

Various statutory provisions have also established protections for federal employees over the years. For example, the Civil Service Reform Act of 1978 created two oversight entities, the Merit Systems Protection Board (MSPB) and the Office of Special Counsel (OSC).

- MSPB is an independent, quasi-judicial agency with a mission to protect merit system principles and promote an effective federal workforce free of prohibited personnel practices. MSPB adjudicates individual employee appeals and conducts merit systems studies.
- OSC is an independent federal investigative and prosecutorial agency. OSC reviews disclosures of wrongdoing within the federal government from current federal employees, former employees, and applicants for federal employment. Its primary mission is to safeguard the merit system in federal employment by protecting employees and

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applicants for federal employment from prohibited personnel practices, especially reprisal for whistleblowing.

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## Agencies Varied in Their Approaches to Implementing E.O. 13957's Requirements during the Preliminary Review Period

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### Fifteen Agencies Submitted Responses to OPM about Their Implementation of Schedule F during Preliminary Review Period

Government-wide, we found no agencies placed positions into Schedule F, and no agencies published their determination regarding statutorily-designated excepted service positions in the *Federal Register* by the time of E.O. 13957's revocation on January 22, 2021. We found 15 agencies submitted information to OPM leadership about their efforts to implement the E.O. during the preliminary review period (October 21, 2020, through January 19, 2021), as shown in figure 5:

- Two agencies—the Office of Management and Budget (OMB), and the U.S. International Boundary and Water Commission (USIBWC)—submitted petitions to OPM to place positions into Schedule F.
- Thirteen agencies communicated with OPM leadership to describe their implementation status. These agencies did not submit a petition. Seven of these agencies reported that they needed additional time to finalize their analysis. Six other agencies reported that they did not have a need for the hiring and removal exceptions provided by Schedule F, or did not have positions that met the criteria for placement into Schedule F.

We also spoke to the General Services Administration (GSA) as part of our review. Contrary to a media report we reviewed, GSA officials told us the agency neither submitted a petition nor conducted a preliminary review to identify positions potentially eligible for placement into Schedule F.

**Figure 5: Summary of All Agency Schedule F Responses to the Office of Personnel Management during Executive Order 13957's Preliminary Review Period (October 21, 2020 - January 19, 2021)**

Agency	Agency action		
	Submitted petition for placement in Schedule F	Responded but petition not completed	Responded that it would not submit a petition
Office of Management and Budget	●		
International Boundary and Water Commission	●		
Equal Employment Opportunity Commission		●	
Environmental Protection Agency		●	
Department of the Treasury		●	
Federal Energy Regulatory Commission		●	
Federal Trade Commission		●	
National Endowment for the Humanities		●	
Office of Personnel Management <sup>a</sup>		●	
Corporation for National and Community Service			●
Federal Maritime Commission			●
Federal Retirement Thrift Investment Board			●
National Archives and Records Administration			●
National Transportation Safety Board			●
National Labor Relations Board			●

Source: GAO analysis of documents received from the Office of Personnel Management. | GAO-22-105504

**Text of Figure 5: Summary of All Agency Schedule F Responses to the Office of Personnel Management during Executive Order 13957's Preliminary Review Period (October 21, 2020 - January 19, 2021)**

Agency name	Agency action		
	Submitted petition for placement in Schedule F	Responded but petition not completed	Responded that it would not submit a petition
Office of Management and Budget	YES	NO	NO
U.S. International Boundary and Water Commission	YES	NO	NO
Equal Employment Opportunity Commission	NO	YES	NO
Environmental Protection Agency	NO	YES	NO
Department of the Treasury	NO	YES	NO
Federal Energy Regulatory Commission	NO	YES	NO
Federal Trade Commission	NO	YES	NO
National Endowment for the Humanities	NO	YES	NO
Office of Personnel Management <sup>a</sup>	NO	YES	NO
Corporation for National and Community Service	NO	NO	YES
Federal Maritime Commission	NO	NO	YES
Federal Retirement Thrift Investment Board	NO	NO	YES
National Archives and Records Administration	NO	NO	YES
National Transportation Safety Board	NO	NO	YES
National Labor Relations Board	NO	NO	YES

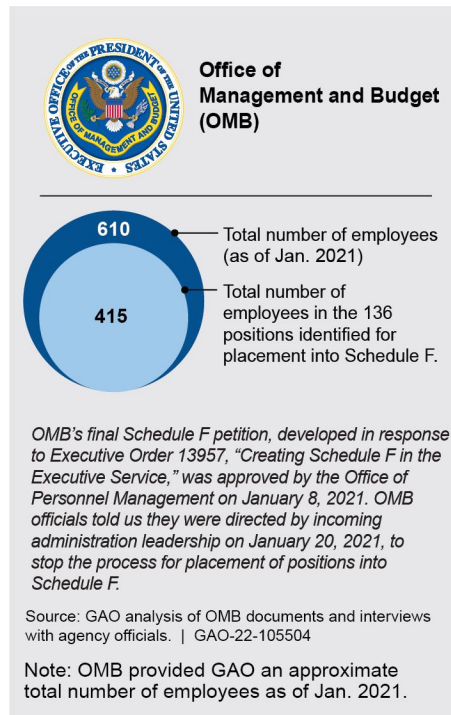
Source: GAO analysis of documents received from the Office of Personnel Management. | GAO-22-105504

Notes: Agencies that responded to OPM reported they would either submit a petition at a later time, did not need the hiring and removal exceptions provided by Schedule F, or did not have positions that met the criteria for placement into Schedule F.

<sup>a</sup>The Office of Personnel Management reviewed its positions to determine those eligible for placement into Schedule F. Officials said that they submitted a draft petition to agency leadership, but it was not approved before the E.O. was revoked.

## Two Agencies Submitted Petitions to OPM to Place Positions into Schedule F

### Office of Management and Budget



- Total number of employees (as of Jan. 2021) = 610
- Total number of employees in the 136 positions identified for placement into Schedule F. = 415
- *OMB's final Schedule F petition, developed in response to Executive Order 13957, "Creating Schedule F in the Executive Service," was approved by the Office of Personnel Management on January 8, 2021. OMB officials told us they were directed by incoming administration leadership on January 20, 2021, to stop the process for placement of positions into Schedule F.*

Source: GAO analysis of OMB documents and interviews with agency officials. | GAO-22-105504

Note: OMB provided GAO an approximate total number of employees as of Jan. 2021.

According to OMB officials, the then OMB Director instructed the agency's Office of General Counsel to lead the overall response to

implementing E.O. 13957.<sup>9</sup> The officials said that they compared agency position descriptions with the criteria outlined in the E.O. and associated OPM guidance. They then submitted the proposed list of Schedule F positions to the Director for approval. OMB officials told us that the agency also developed rules related to prohibited personnel practices for Schedule F employees, as required by Section 6 of the E.O.

OMB submitted two petitions to place positions into Schedule F:

- OMB first submitted a petition to OPM on November 20, 2020, which contained 129 positions for placement into Schedule F. OPM responded to OMB on December 3, 2020, with a request for correction of clerical errors in the submission (e.g., position titles not matching position descriptions and incorrect position identifier numbers). OMB made the corrections, and submitted a revised petition on December 4, 2020.
- OMB submitted a second petition on January 5, 2021, for an additional 11 positions (for a total of 140 positions) from a variety of grades and functional areas. OMB officials said they identified these positions after conducting further review.

OPM approved all but four of the 140 positions proposed by OMB for placement into Schedule F on January 8, 2021. OPM determined four Presidential Management Fellow positions were ineligible for placement into Schedule F due to their status as trainees.<sup>10</sup>

OMB's final approved petition included 136 positions. According to our analysis, this would have applied to 415 employees, or approximately 68 percent of its workforce at the time. The positions OMB proposed and OPM approved for placement into Schedule F spanned functional areas within the agency. The largest categories of affected employees were those in positions related to program examination, digital services, and policy analysis. According to our analysis, these positions made up 75

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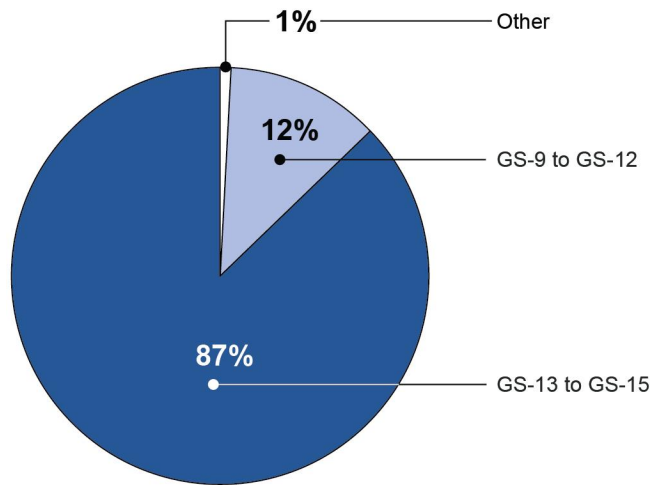
<sup>9</sup>OMB oversees the implementation of presidential policy across the federal government through five main functions: (1) budget development and execution, (2) management, (3) coordination of information and regulatory policies, (4) clearance and coordination of legislation and other materials, and (5) clearance of presidential E.O.s and memorandums.

<sup>10</sup>The Presidential Management Fellows Program is a paid 2-year training and leadership development fellowship at a U.S. government agency for U.S. citizens with advanced degrees, administered by OPM.

percent of employees in positions approved for placement into Schedule F.

Around 87 percent of employees in positions approved for placement into Schedule F were at the GS-13 level or above—levels generally associated with high levels of responsibility in the federal government, and requiring specialized experience. About 1 percent of the positions were Senior Level (SL) non-executive positions and intermittent consultants.<sup>11</sup> The grade levels of employees approved for placement into Schedule F are shown in figure 6. According to our analysis, the positions excluded from OMB’s petition ranged in grade level and function. These positions were excluded because the position descriptions did not contain duties that met the criteria for placement into Schedule F, according to OMB officials.

**Figure 6: Employees Serving in Positions Included in the Office of Management and Budget’s Schedule F Petition, Percentage of Total by Position Grade**



Source: GAO analysis of Office of Management and Budget documentation. | GAO-22-105504

<sup>11</sup>The SL category of federal service positions generally covers non-executive positions with broad and complex duties that classify them above the GS-15 level. SL positions are in the competitive service unless excepted from the competitive service by statute, E.O., or OPM. OPM, “Senior Level and Scientific Positions,” accessed July 3, 2022. <https://www.opm.gov/policy-data-oversight/senior-executive-service/scientific-senior-level-positions/>.



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**Data for Figure 6: Employees Serving in Positions Included in the Office of Management and Budget's Schedule F Petition, Percentage of Total by Position Grade**

- Other = 1%
- GS-9 to GS-12 = 12%
- GS-13 to GS-15 = 87%

GAO analysis of Office of Management and Budget documentation. | GAO-22-105504

Note: This figure represents grade levels of positions submitted for placement in Schedule F as part of OMB's response to Executive Order No. 13957, Creating Schedule F in the Excepted Service (October 21, 2020).

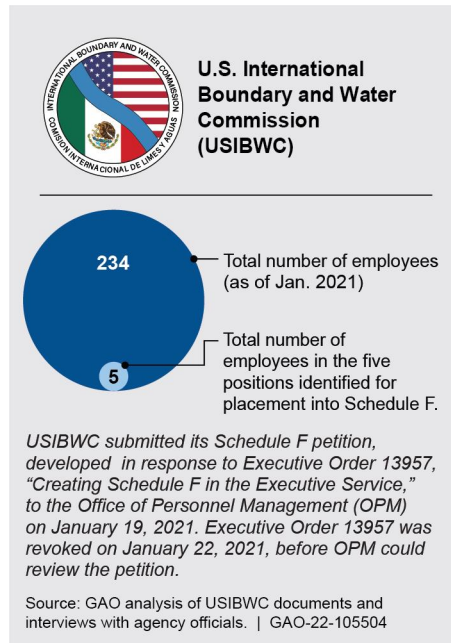
Other: includes Senior Level positions and intermittent consultants.

According to OMB officials, after OPM approved OMB's petition on January 8, 2021, OMB's Management and Operations Division disseminated the approved position descriptions to the relevant human capital teams within the Office of Administration to place the positions into Schedule F. However, OMB officials told us the Office of Administration had competing priorities associated with preparing for the incoming administration, and did not complete the necessary human resource processing steps prior to the change in administration on January 20, 2021. These steps included sending individual notices to supervisors that positions for which they were responsible were placed into Schedule F, and updating files in its personnel database for affected employees. The officials also told us that the new administration leadership directed them to stop the process of placing positions into Schedule F after the inauguration was complete on January 20, 2021. Thus, no further action was taken.

Career OMB officials with whom we spoke said that it was their understanding that agency leadership sought a petition to place positions into Schedule F because they wanted to comply with E.O. 13957's requirements. A former OPM official involved with the strategy for government-wide E.O. implementation told us the reason OMB submitted a petition first was because then-administration officials wanted OMB to serve as an example for other agencies to follow.

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## U.S. International Boundary and Water Commission



- Total number of employees (as of Jan. 2021) = 234
- Total number of employees in the five positions identified for placement into Schedule F = 6
- USIBWC submitted its Schedule F petition, developed in response to Executive Order 13957, "Creating Schedule F in the Executive Service," to the Office of Personnel Management (OPM) on January 19, 2021. Executive Order 13957 was revoked on January 22, 2021, before OPM could review the petition.

Source: GAO analysis of USIBWC documents and interviews with agency officials. | GAO-22-105504

According to USIBWC officials, the then Commissioner of USIBWC tasked the agency's Human Resources Director and Chief Legal Counsel to identify positions that met the criteria for placement into Schedule F.<sup>12</sup> These officials compared written position descriptions against the Schedule F criteria and informed their decision making with their own understanding of the actual duties performed by employees in these positions. USIBWC did not draft rules against prohibited personnel

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<sup>12</sup>USIBWC applies boundary and water treaties of the United States and Mexico, and settles differences that may arise in their application. The President appoints the USIBWC Commissioner.

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practices as required by E.O. 13957, but officials told us they would have if OPM had approved their petition.

USIBWC identified five positions for placement into Schedule F, which were held by five employees. This represented 2 percent of USIBWC's total workforce at the time, according to our analysis. The positions were all equivalent to the GS-15 level. According to agency officials, the identified positions were not difficult to identify because all the employees occupying those positions performed "policy-determining" work. The positions were in functions related to administration, engineering, human resources, and legal counsel. USIBWC did not consider positions covered by a collective bargaining agreement and thus did not need to petition the FLRA. USIBWC submitted its petition to OPM for approval on January 19, 2021, but USIBWC officials told us that the E.O. was revoked before they received a response from OPM.

USIBWC told us the agency sought placement of positions into Schedule F for a number of reasons. For example, they said that expedited hiring provided by Schedule F could be advantageous when competing for qualified candidates, particularly in remote border offices where it is challenging to recruit and retain key personnel. Another factor officials noted was the desire to have employees who the Commissioner trusted to expeditiously carry out policy decisions. Finally, they said that there was a desire to have the flexibility to quickly remove poorly performing employees rather than wait for them to retire, leave, or go through the removal process, which they said was lengthy.

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### Seven Agencies Stated that They Needed More Time to Finalize Their Review of Positions

Seven agencies, including OPM, reported to OPM leadership that they needed additional time to finalize their analysis of positions to determine which met the criteria for placement into Schedule F. The Department of the Treasury and the National Endowment for the Humanities reported to OPM that they had not identified positions after a preliminary review of positions. They stated in their letters to OPM that they would confirm whether or not they would send a petition to place positions into Schedule F by the deadline established in E.O. 13957 for final review. The remaining five agencies identified positions potentially eligible for placement into Schedule F, but were still finalizing their review:

- Equal Employment Opportunity Commission (EEOC),

- Environmental Protection Agency (EPA),
- Federal Energy Regulatory Commission (FERC),
- Federal Trade Commission (FTC), and
- OPM.

These agencies varied in the percentage of positions they identified as potentially being eligible for placement into Schedule F. For example, our analysis of FERC documents found the agency determined more than half of its positions met the criteria for placement into Schedule F. The other four agencies determined around 10 percent or less of their positions met Schedule F criteria.

Officials from each of these agencies told us that agency leadership tasked their human resources offices, or other offices tasked with matters related to staffing and employment, with reviewing position descriptions to identify those that met the Schedule F criteria. Officials from some of these agencies told us that they considered both the documented position descriptions and their knowledge of the actual duties of employees in those positions when deciding if the position met Schedule F criteria. OPM officials, for example, said they considered actual duties because they determined position descriptions alone could be insufficient to determine if a position met Schedule F criteria.

In some cases, there were differences of understanding within agencies about how they should apply Schedule F criteria. For example, one agency's Chief Human Capital Officer (CHCO) told us they led an initial analysis to identify positions eligible for placement into Schedule F, and determined that only senior-level manager positions met the criteria. However, agency leadership considered Schedule F criteria to apply more broadly, and instructed the CHCO to re-review positions. This resulted in expanding the number of positions for potential placement in Schedule F to include those at lower grades.

The five agencies varied in the reasons why they did not ultimately submit a petition to OPM leadership:<sup>13</sup>

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<sup>13</sup>EPA, FERC, and OPM submitted the results of their initial analyses to OPM leadership, but did not finalize their petitions before the preliminary review deadline. EEOC and FTC officials told us that they developed an internal list of positions but never submitted the lists to OPM for review.

- EPA officials stated that they did not have time to do the extensive work required to finalize their petition, and did not know if the E.O. would be applicable under the new administration. They also said their employees would be upset if they learned that EPA was submitting a petition.
- EEOC and FTC officials told us that they were in the preliminary stages of their review at the time the E.O. was revoked. They said they needed additional time to complete their analysis.
- FERC officials said they submitted a first draft of their petition for OPM's review and comment. They said that OPM officials had made it clear in Small Agency Council meetings they attended that agencies would receive feedback on the results of their preliminary analysis. FERC officials said they were waiting for OPM's reaction to their draft before finalizing the petition. E.O. 13957 was revoked before FERC officials received a response from OPM.
- OPM officials told us that they sent the results of their own preliminary review of positions to agency leadership for approval. The positions were not approved for placement into Schedule F before E.O. 13957 was revoked.

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### Six Agencies in Our Review Determined They Would Not Submit Petitions to Place Positions into Schedule F

Six agencies that submitted information to OPM about their efforts to implement E.O. 13957 during the preliminary review period decided not to submit a petition to OPM to place positions into Schedule F. Most of these agencies told OPM that they had determined that they did not have positions that met the Schedule F criteria. These agencies included the Federal Maritime Commission, Federal Retirement Thrift Investment Board, National Archives and Records Administration, National Transportation Safety Board, and National Labor Relations Board. The Corporation for National and Community Service (also known as AmeriCorps) said it did not need the hiring or removal exceptions provided under Schedule F.

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### OPM Reviewed Petitions, Responded to Agency Questions, but Waited to Issue Regulations for Implementing Schedule F

OPM oversaw Schedule F implementation by issuing guidance, reviewing agency petitions, and answering agency questions. However, it did not

issue regulations before E.O. 13957 was revoked. As discussed earlier, OPM issued guidance to agency CHCOs for implementing Schedule F on October 23, 2020, and a template to guide agencies' review the following month.

Senior leadership from OPM's General Counsel and Employee Services program offices oversaw the review and approval of the Schedule F petitions received from OMB and USIBWC. A former OPM official involved in the approval process told us that the grade level and the amount of discretion that employees in those positions had to develop or implement policy were part of OPM's considerations when reviewing and approving positions proposed for placement into Schedule F.<sup>14</sup>

OPM received various questions from agencies about aspects of Schedule F implementation. OPM officials told us they attended standing meetings with the CHCO Council, the Small Agency Council, and the Interagency Labor Relations Group where they answered agency questions about Schedule F. According to documents we reviewed, OPM responded to questions about where relevant guidance could be located, the total number of positions approved for placement into Schedule F (based on OMB and USIBWC petitions), and how employees could find out if their position was placed into Schedule F (through their agency CHCO), among others. We found in our review of OPM documents that the responses to some questions were "under consideration." Examples of these questions included:

- If an employee's position is placed into Schedule F, will they retain their competitive service career status as long as they remain in their current position?
- What will be the requirement for completion of a new probationary period upon conversion to the excepted service?
- Which definition of supervisor should agencies use for interpreting the "supervision of attorneys" criterion set forth in Section 5 of the E.O.?

OPM did not issue regulations related to Schedule F before E.O. 13957 was revoked. OPM officials told us they wanted to observe how agencies implemented Schedule F. This would allow them to understand the

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<sup>14</sup>As an example, the official said that positions above GS-11 were generally included. OMB's approved petition, though it included a majority of positions at the GS-11 and above, also included positions at the GS-9 and GS-10 levels.

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common issues agencies faced in implementation before issuing regulations.

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## Workforce Oversight Agencies Received No Schedule F Inquiries during the Preliminary Review Period

Three agencies responsible for oversight of federal workforce matters did not receive any inquiries related to Schedule F while E.O. 13957 was in effect. In addition, the agencies did not report any associated changes in agency workload. FLRA officials told us they were not contacted by any agencies to determine whether any Schedule F positions must be excluded from a collective bargaining unit. The agencies that submitted petitions to OPM for placement of positions into Schedule F may not have required FLRA input. Our analysis found that the two agencies that submitted petitions had career staff that were either (1) not represented by unions (OMB) or (2) the positions proposed were not covered by collective bargaining (USIBWC).

Merit Systems Protection Board (MSPB) officials told us they did not receive any appeals related to Schedule F. They said that, had Schedule F been implemented, it was likely MSPB would have seen a rise in appeals related to the placement of positions into Schedule F. Employees in positions placed into Schedule F could argue that the terms of their employment were changed in such a way that they suffered harm, given the loss of due process rights associated with Schedule F positions.<sup>15</sup>

Office of Special Counsel (OSC) officials said they did not receive any requests for consultation or assistance from outside agencies related to Schedule F. They also said that they expected to receive related cases, had the E.O. remained in place, given the shortened process for removal of employees under Schedule F. OSC officials told us that, despite the E.O.'s removal of due process rights for Schedule F positions, and the requirement that agencies establish their own rules against prohibited personnel practices, they expected to receive at least some additional cases related to the removal of Schedule F employees. These officials said they would have processed these cases in the same manner as all others received.

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<sup>15</sup>In particular, MSPB noted that there could have been constitutional due process claims if an employee were involuntarily moved from a position with appeal rights to one without appeal rights.

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## Stakeholder Perspectives on Schedule F

Several stakeholders told us that future administrations could seek to re-establish Schedule F, or a category of federal positions with similar attributes. Some stakeholders said this was, in part, because Schedule F could be used to expedite the hiring and removal of federal workers. Specifically, some stakeholders said Schedule F could be used to expedite hiring of federal employees committed to advancing the President's policy agenda, and removing those who were not. Several stakeholders discussed important tradeoffs, however, that agencies would need to consider when given more discretion to move quickly on hiring and removals. For example, some stakeholders said that Schedule F was designed with fewer due process protections compared with the competitive service and other excepted service schedules. Many stakeholders said there was risk that employees in Schedule F positions could be subject to removal for partisan political reasons. Stakeholders also varied in their estimates of the potential number of positions that could ultimately be placed into Schedule F, given the discretion agencies had to make that determination.

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### Federal Hiring

Many stakeholders said that, in general, the speed of federal hiring needs to be improved. Schedule F would have streamlined the hiring process, potentially resulting in a faster time-to-hire than the competitive service process.<sup>16</sup> E.O. 13957 stated that agencies would have had greater appointment flexibility for Schedule F employees than that provided by the existing competitive service process. Under the competitive service process agencies need to follow several steps to hire an employee, including screening and examination of applicants, and application of veterans' preference, among others. As shown in table 1, Schedule F positions would have neither required competitive examination nor the application of veterans' preference in the same manner as it would have been applied under Title 5 of the U.S. Code (Title 5).

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<sup>16</sup>In March 2019, we reported that the average government-wide time-to-hire in 2017 was 106 days—26 days longer than OPM's government-wide goal of 80 days. [GAO-19-181](#).



**Table 1: Comparison of Current Title 5 Federal Hiring Requirements and Schedule F Criteria**

	<b>Current Requirement</b>	<b>Sought under Schedule F</b>
Competitive examination	In the competitive service, agencies must assess applicants to determine whether and to what extent an applicant meets the Government-wide or OPM-approved qualification standard for the position being filled.	Schedule F positions would not have required a competitive examination.
Veterans' preference	In the competitive service and some excepted service positions, veterans, including those who are disabled (and certain family members of 100% disabled or deceased veterans) who served during certain time periods or in certain campaigns, and who meet other statutory criteria, are entitled to preference over others in the selection process.	Schedule F would have required that agencies "follow the principle of veterans' preference as far as administratively feasible." <sup>a</sup>

Source: GAO analysis of hiring requirements under Title 5 of the U.S. Code and Executive Order 13957, Creating Schedule F in the Excepted Service (October 21, 2020). | GAO-22-105504

Note: This table compares two elements of the hiring process under Schedule F, one of which addresses distinctions between the competitive service and excepted service. Other differences exist between competitive and excepted service hiring that are not covered here.

<sup>a</sup>Some excepted service positions are also subject to these same standards. See 5 C.F.R. §302.101(c) which exempts certain positions (e.g., positions of a confidential or policy determining character under Schedule C and attorneys) from the excepted service appointment procedures but requires the agency to follow the principle of veteran preference as far as administratively feasible. The Schedule C category of excepted service allows for the hiring of positions that are policy-determining or which involve a close and confidential working relationship with the head of an agency or other key appointed officials.

Though many stakeholders spoke about the need for improved speed in federal hiring, there were diverging perspectives related to the effect of implementing Schedule F on hiring and retention:

- Some stakeholders noted that a Schedule F category could create a second, and potentially larger, contingent of political appointees hired for their responsiveness to the President rather than their qualifications. One stakeholder said a Schedule F category would be a positive development, as employees in Schedule F positions should be committed to Presidential priorities and therefore more motivated to quickly and effectively implement the President's policy agenda. Some stakeholders, however, stated that this could cause federal employees to be hired for their commitment to the President rather than their competence.
- Several stakeholders said Schedule F could make it more difficult to recruit federal employees, as potential applicants interested in a federal career could be deterred from taking a Schedule F position if they believed they could be removed for political reasons after a change in administration.

- Several stakeholders told us that Schedule F could result in increased employee turnover between administrations, leading to a lack of continuity and a potential degradation in the overall subject matter expertise held within the civil service. One stakeholder said that an independent civil service is important for preserving institutional memory, knowledge, and competence across administrations. However, another stakeholder said that, while expert knowledge of how the government functions could and should be used to effectively implement policy, it could also be used to undermine, slow down, and otherwise prevent implementation of the President's agenda.

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## Removals and Performance Accountability

Some stakeholders said that Schedule F could be used to expedite the removal of federal employees who were not committed to the President's policy agenda. Agencies are generally required to follow certain procedures when seeking to remove an employee for reasons such as misconduct or poor performance. These procedures protect due process rights, and entitle the employee to notice of their proposed removal, an opportunity to respond, representation by an attorney or other representative, and a written account of the reasons for the decision.<sup>17</sup> Federal employees also have statutory protections designed to ensure they are not subject to prohibited personnel practices, which include discrimination and retaliation.<sup>18</sup>

E.O. 13957 stated that "the government's current performance management system is inadequate" and that "senior agency officials reported that poor performance by career employees in policy-relevant positions had resulted in long delays and substandard quality work for important agency projects, such as drafting and issuing regulations." Further, the E.O. stated that agencies needed "the flexibility to expeditiously remove poorly performing employees from these positions without facing extensive delays or litigation." The E.O. would have

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<sup>17</sup>See 5 U.S.C. §§ 4303, 7513. Federal employees may appeal dismissal actions to MSPB or file a grievance. If employees are unsatisfied with the MSPB's final decision or that of an arbitrator, they may seek judicial review.

<sup>18</sup>Some federal positions, including those of a confidential or policy-determining character under Schedule C, also are not covered by these statutory rights and protections. The Schedule C category of excepted service allows for the hiring of positions that are policy determining or which involve a close and confidential working relationship with the head of an agency or other key appointed officials. Schedule C appointees serve at the pleasure of the department or agency head. They typically resign at the request of an incoming administration or before a new agency head takes office.

excepted Schedule F positions from Title 5's removal requirements, thereby expediting the removal process.<sup>19</sup> A comparison of current Title 5 protections and those proposed under Schedule F is shown in table 2.

**Table 2: Comparison of Current Title 5 Personnel Protections and Schedule F Criteria**

	<b>Current Requirement</b>	<b>Sought under Schedule F</b>
Due process rights	Generally, an employee in the competitive service or excepted service is entitled to notice of a removal, opportunity to reply, representation by an attorney or other representative, and a written decision. An employee may appeal the removal to the Merit Systems Protection Board (MSPB) or file a grievance under the terms of a collective bargaining agreement.	These rights would not have been available to Schedule F employees.
Prohibited personnel practices	Generally, employees in the competitive service or excepted service are protected against prohibited personnel practices. An employee who believes that they have been subject to a prohibited personnel practice, such as retaliation for whistleblowing, may go to the Office of Special Counsel, and ultimately may obtain an order for corrective action from MSPB.	Schedule F positions would not have been afforded the statutory protections against prohibited personnel practices. Rather, E.O. 13957 required agencies to develop their own rules against prohibited personnel practices for Schedule F positions, which potentially could result in employees having to pursue recourse with their agency.

Source: GAO analysis of hiring requirements under Title 5 of the U.S. Code and Executive Order 13957, Creating Schedule F in the Excepted Service (October 21, 2020). | GAO-22-105504

Some stakeholders said that removals under the current process can be time consuming. There were differences among stakeholders, however, as to whether the possibility of an expedited removal would increase employee accountability and performance. One stakeholder said that career staff must be willing to follow the directions of political staff at agencies or they should face removal, and that the possibility of quick removal would be sufficient to dissuade federal employees from attempting to undermine an administration's priorities. In contrast, some other stakeholders said that the changes made under Schedule F, including changes to the removal process, would not increase the overall accountability of employees for their performance. For example, some stakeholders stated that, without due process rights, Schedule F could reduce the willingness of civil service employees to challenge potentially inefficient, unethical, or illegal requests from political

<sup>19</sup>According to our 2015 analysis, the process for dismissal of personnel for performance reasons can take six months to a year (and sometimes longer), but agencies can take steps to mitigate the possibility of a protracted removal. GAO, *Federal Workforce: Improved Supervision and Better Use of Probationary Periods Are Needed to Address Substandard Employee Performance*, [GAO-15-191](#) (Washington, D.C.: Feb. 6, 2015).

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staff without fear of removal. Further, some stakeholders expressed concern that, under Schedule F, it could be difficult to discern legitimate removal actions for performance or misconduct from those motivated by favoritism or partisan political reasons.

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## Potential Scope of Schedule F

Stakeholders shared varied perspectives on the potential scope of Schedule F implementation. Many stakeholders said that agencies could have identified positions affecting hundreds of thousands of federal employees across government because Schedule F criteria could be broadly interpreted. In contrast, some stakeholders told us they expected Schedule F placement to be limited to a more narrow set of positions. One of these stakeholders said that the approved OMB petition, for example, was not indicative of the overall scope of E.O. 13957. This stakeholder said that the large percentage of employees identified at OMB was due to the unique nature of its policy advising role to the President, which they did not believe applied to most other agencies.

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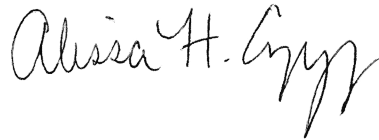
## Agency Comments

We provided a draft of this report for review and comment to the Office of Personnel Management (OPM), the Federal Labor Relations Authority, Merit Systems Protection Board (MSPB), and the Office of Special Counsel (OSC), in addition to the 10 selected agencies: Office of Management and Budget (OMB), U.S. International Boundary and Water Commission, Environmental Protection Agency, Federal Energy Regulatory Commission, General Services Administration, Equal Employment Opportunity Commission, Department of the Treasury, National Labor Relations Board, National Transportation Safety Board, and Federal Trade Commission. We received comments from OPM and OMB regarding Schedule F that are reprinted in appendix III. Additionally, OPM, OMB, MSPB, and OSC provided technical comments, which we incorporated as appropriate. The remaining ten agencies informed us that they had no comments.

We are sending copies to the appropriate congressional committees, the above referenced agencies, as well as stakeholders interviewed for this report. In addition, the report will be available at no charge on the GAO website at <http://www.gao.gov>.

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If you or your staff have any questions about this report, please contact me at (202) 512-6806 or [czyza@gao.gov](mailto:czyza@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff members who made key contributions to this report are listed in appendix IV.



Alissa H. Czyz  
Acting Director, Strategic Issues

# Appendix I: Executive Order 13957, Creating Schedule F in the Excepted Service

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Federal Register Vol. 85, No. 207 Monday, October 26, 2020	<b>Presidential Documents</b>
Title 3— The President	Executive Order 13957 of October 21, 2020 <b>Creating Schedule F in the Excepted Service</b>
	<p>By the authority vested in me as President by the Constitution and the laws of the United States of America, including sections 3301, 3302, and 7511 of title 5, United States Code, it is hereby ordered as follows:</p> <p><b>Section 1. Policy.</b> To effectively carry out the broad array of activities assigned to the executive branch under law, the President and his appointees must rely on men and women in the Federal service employed in positions of a confidential, policy-determining, policy-making, or policy-advocating character. Faithful execution of the law requires that the President have appropriate management oversight regarding this select cadre of professionals. The Federal Government benefits from career professionals in positions that are not normally subject to change as a result of a Presidential transition but who discharge significant duties and exercise significant discretion in formulating and implementing executive branch policy and programs under the laws of the United States. The heads of executive departments and agencies (agencies) and the American people also entrust these career professionals with non-public information that must be kept confidential.</p> <p>With the exception of attorneys in the Federal service who are appointed pursuant to Schedule A of the excepted service and members of the Senior Executive Service, appointments to these positions are generally made through the competitive service. Given the importance of the functions they discharge, employees in such positions must display appropriate temperament, acumen, impartiality, and sound judgment.</p> <p>Due to these requirements, agencies should have a greater degree of appointment flexibility with respect to these employees than is afforded by the existing competitive service process.</p> <p>Further, effective performance management of employees in confidential, policy-determining, policy-making, or policy-advocating positions is of the utmost importance. Unfortunately, the Government's current performance management is inadequate, as recognized by Federal workers themselves. For instance, the 2016 Merit Principles Survey reveals that less than a quarter of Federal employees believe their agency addresses poor performers effectively.</p> <p>Separating employees who cannot or will not meet required performance standards is important, and it is particularly important with regard to employees in confidential, policy-determining, policy-making, or policy-advocating positions. High performance by such employees can meaningfully enhance agency operations, while poor performance can significantly hinder them. Senior agency officials report that poor performance by career employees in policy-relevant positions has resulted in long delays and substandard-quality work for important agency projects, such as drafting and issuing regulations.</p> <p>Pursuant to my authority under section 3302(1) of title 5, United States Code, I find that conditions of good administration make necessary an exception to the competitive hiring rules and examinations for career positions in the Federal service of a confidential, policy-determining, policy-making, or policy-advocating character. These conditions include the need to provide agency heads with additional flexibility to assess prospective appointees without the limitations imposed by competitive service selection procedures.</p>

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Placing these positions in the excepted service will mitigate undue limitations on their selection. This action will also give agencies greater ability and discretion to assess critical qualities in applicants to fill these positions, such as work ethic, judgment, and ability to meet the particular needs of the agency. These are all qualities individuals should have before wielding the authority inherent in their prospective positions, and agencies should be able to assess candidates without proceeding through complicated and elaborate competitive service processes or rating procedures that do not necessarily reflect their particular needs.

Conditions of good administration similarly make necessary excepting such positions from the adverse action procedures set forth in chapter 75 of title 5, United States Code. Chapter 75 of title 5, United States Code, requires agencies to comply with extensive procedures before taking adverse action against an employee. These requirements can make removing poorly performing employees difficult. Only a quarter of Federal supervisors are confident that they could remove a poor performer. Career employees in confidential, policy-determining, policy-making, and policy-advocating positions wield significant influence over Government operations and effectiveness. Agencies need the flexibility to expeditiously remove poorly performing employees from these positions without facing extensive delays or litigation.

**Sec. 2. Definition.** The phrase “normally subject to change as a result of a Presidential transition” refers to positions whose occupants are, as a matter of practice, expected to resign upon a Presidential transition and includes all positions whose appointment requires the assent of the White House Office of Presidential Personnel.

**Sec. 3. Excepted Service.** Appointments of individuals to positions of a confidential, policy-determining, policy-making, or policy-advocating character that are not normally subject to change as a result of a Presidential transition shall be made under Schedule F of the excepted service, as established by section 4 of this order.

**Sec. 4. Schedule F of the Excepted Service.** (a) Civil Service Rule VI is amended as follows:

(i) 5 CFR 6.2 is amended to read:

“OPM shall list positions that it excepts from the competitive service in Schedules A, B, C, D, E, and F, which schedules shall constitute parts of this rule, as follows:

Schedule A. Positions other than those of a confidential or policy-determining character for which it is not practicable to examine shall be listed in Schedule A.

Schedule B. Positions other than those of a confidential or policy-determining character for which it is not practicable to hold a competitive examination shall be listed in Schedule B. Appointments to these positions shall be subject to such noncompetitive examination as may be prescribed by OPM.

Schedule C. Positions of a confidential or policy-determining character normally subject to change as a result of a Presidential transition shall be listed in Schedule C.

Schedule D. Positions other than those of a confidential or policy-determining character for which the competitive service requirements make impracticable the adequate recruitment of sufficient numbers of students attending qualifying educational institutions or individuals who have recently completed qualifying educational programs. These positions, which are temporarily placed in the excepted service to enable more effective recruitment from all segments of society by using means of recruiting and assessing candidates that diverge from the rules generally applicable to the competitive service, shall be listed in Schedule D.

Schedule E. Position of administrative law judge appointed under 5 U.S.C. 3105. Conditions of good administration warrant that the position

of administrative law judge be placed in the excepted service and that appointment to this position not be subject to the requirements of 5 CFR, part 302, including examination and rating requirements, though each agency shall follow the principle of veteran preference as far as administratively feasible.

Schedule F, Positions of a confidential, policy-determining, policy-making, or policy-advocating character not normally subject to change as a result of a Presidential transition shall be listed in Schedule F. In appointing an individual to a position in Schedule F, each agency shall follow the principle of veteran preference as far as administratively feasible.”

(ii) 5 CFR 6.4 is amended to read:

“Except as required by statute, the Civil Service Rules and Regulations shall not apply to removals from positions listed in Schedules A, C, D, E, or F, or from positions excepted from the competitive service by statute. The Civil Service Rules and Regulations shall apply to removals from positions listed in Schedule B of persons who have competitive status.”

(b) The Director of the Office of Personnel Management (Director) shall:

(i) adopt such regulations as the Director determines may be necessary to implement this order, including, as appropriate, amendments to or rescissions of regulations that are inconsistent with, or that would impede the implementation of, this order, giving particular attention to 5 CFR, part 212, subpart D; 5 CFR, part 213, subparts A and C; and 5 CFR 302.101; and

(ii) provide guidance on conducting a swift, orderly transition from existing appointment processes to the Schedule F process established by this order.

**Sec. 5. Agency Actions.** (a) Each head of an executive agency (as defined in section 105 of title 5, United States Code, but excluding the Government Accountability Office) shall conduct, within 90 days of the date of this order, a preliminary review of agency positions covered by subchapter II of chapter 75 of title 5, United States Code, and shall conduct a complete review of such positions within 210 days of the date of this order. Thereafter, each agency head shall conduct a review of agency positions covered by subchapter II of chapter 75 of title 5, United States Code, on at least an annual basis. Following such reviews each agency head shall:

(i) for positions not excepted from the competitive service by statute, petition the Director to place in Schedule F any such competitive service, Schedule A, Schedule B, or Schedule D positions within the agency that the agency head determines to be of a confidential, policy-determining, policy-making, or policy-advocating character and that are not normally subject to change as a result of a Presidential transition. Any such petition shall include a written explanation documenting the basis for the agency head’s determination that such position should be placed in Schedule F; and

(ii) for positions excepted from the competitive service by statute, determine which such positions are of a confidential, policy-determining, policy-making, or policy-advocating character and are not normally subject to change as a result of a Presidential transition. The agency head shall publish this determination in the *Federal Register*. Such positions shall be considered Schedule F positions for the purposes of agency actions under sections 5(d) and 6 of this order.

(b) The requirements set forth in subsection (a) of this section shall apply to currently existing positions and newly created positions.

(c) When conducting the review required by subsection (a) of this section, each agency head should give particular consideration to the appropriateness of either petitioning the Director to place in Schedule F or including in the determination published in the *Federal Register*, as applicable, positions whose duties include the following:



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(i) substantive participation in the advocacy for or development or formulation of policy, especially:

(A) substantive participation in the development or drafting of regulations and guidance; or

(B) substantive policy-related work in an agency or agency component that primarily focuses on policy;

(ii) the supervision of attorneys;

(iii) substantial discretion to determine the manner in which the agency exercises functions committed to the agency by law;

(iv) viewing, circulating, or otherwise working with proposed regulations, guidance, executive orders, or other non-public policy proposals or deliberations generally covered by deliberative process privilege and either:

(A) directly reporting to or regularly working with an individual appointed by either the President or an agency head who is paid at a rate not less than that earned by employees at Grade 13 of the General Schedule; or

(B) working in the agency or agency component executive secretariat (or equivalent); or

(v) conducting, on the agency's behalf, collective bargaining negotiations under chapter 71 of title 5, United States Code.

(d) The Director shall promptly determine whether to grant any petition under subsection (a) of this section. Not later than December 31 of each year, the Director shall report to the President, through the Director of the Office of Management and Budget and the Assistant to the President for Domestic Policy, concerning the number of petitions granted and denied for that year for each agency.

(e) Each agency head shall, as necessary and appropriate, expeditiously petition the Federal Labor Relations Authority to determine whether any Schedule F position must be excluded from a collective bargaining unit under section 7112(b) of title 5, United States Code, paying particular attention to the question of whether incumbents in such positions are required or authorized to formulate, determine, or influence the policies of the agency.

**Sec. 6. Prohibited Personnel Practices Prohibited.** Agencies shall establish rules to prohibit the same personnel practices prohibited by section 2302(b) of title 5, United States Code, with respect to any employee or applicant for employment in Schedule F of the excepted service.

**Sec. 7. General Provisions.** (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

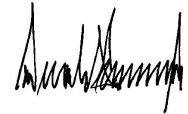
(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(d) If any provision of this order, or the application of any provision to any person or circumstances, is held to be invalid, the remainder of this order and the application of any of its other provisions to any other persons or circumstances shall not be affected thereby.

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(e) Nothing in this order shall be construed to limit or narrow the positions that are or may be listed in Schedule C.



THE WHITE HOUSE,  
October 21, 2020.

[FR Doc. 2020-23780  
Filed 10-23-20; 8:45 am]  
Billing code 3295-F1-P

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## Text of Appendix I: Executive Order 13957, Creating Schedule F in the Excepted Service

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Vol. 85, No. 207  
Monday, October 26, 2020  
Title 3—  
The President  
Presidential Documents

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### Executive Order 13957 of October 21, 2020 Creating Schedule F in the Excepted Service

67631

By the authority vested in me as President by the Constitution and the laws of the United States of America, including sections 3301, 3302, and 7511 of title 5, United States Code, it is hereby ordered as follows:

Section 1. Policy. To effectively carry out the broad array of activities assigned to the executive branch under law, the President and his appointees must rely on men and women in the Federal service employed in positions of a confidential, policy-determining, policy-making, or policy-advocating character. Faithful execution of the law requires that the President have appropriate management oversight regarding this select cadre of professionals.

The Federal Government benefits from career professionals in positions that are not normally subject to change as a result of a Presidential transition but who discharge significant duties and exercise significant discretion in formulating and implementing executive branch policy and programs under the laws of the United States. The heads of executive departments and agencies (agencies) and the American people also entrust these career professionals with non-public information that must be kept confidential.

With the exception of attorneys in the Federal service who are appointed pursuant to Schedule A of the excepted service and members of the Senior Executive Service, appointments to these positions are generally made through the competitive service. Given the importance of the functions they discharge, employees in such positions must display appropriate temperament, acumen, impartiality, and sound judgment.

Due to these requirements, agencies should have a greater degree of appointment flexibility with respect to these employees than is afforded by the existing competitive service process.

Further, effective performance management of employees in confidential, policy-determining, policy-making, or policy-advocating positions is of the utmost importance. Unfortunately, the Government's current performance management is inadequate, as recognized by Federal workers themselves. For instance, the 2016 Merit Principles Survey reveals that less than a quarter of Federal employees believe their agency addresses poor performers effectively.

Separating employees who cannot or will not meet required performance standards is important, and it is particularly important with regard to employees in confidential, policy-determining, policy-making, or policy-advocating positions. High performance by such employees can meaningfully enhance agency operations, while poor performance can significantly hinder them. Senior agency officials report that poor performance by career employees in policy-relevant positions has resulted in long delays and substandard-quality work for important agency projects, such as drafting and issuing regulations.

Pursuant to my authority under section 3302(1) of title 5, United States Code, I find that conditions of good administration make necessary an exception to the competitive hiring rules and examinations for career positions in the Federal service of a confidential, policy-determining, policy-making, or policy-advocating character. These conditions include the need to provide agency heads with additional flexibility to assess prospective appointees without the limitations imposed by competitive service selection procedures.

Placing these positions in the excepted service will mitigate undue limitations on their selection. This action will also give agencies greater ability and discretion to assess critical qualities in applicants to fill these positions, such as work ethic, judgment, and ability to meet the particular needs of the agency. These are all qualities individuals should have before wielding the authority inherent in their prospective positions, and agencies should be able to assess candidates without proceeding through complicated and elaborate competitive service processes or rating procedures that do not necessarily reflect their particular needs.

Conditions of good administration similarly make necessary excepting such positions from the adverse action procedures set forth in chapter 75 of title 5, United States Code. Chapter 75 of title 5, United States Code, requires agencies to comply with extensive procedures before taking adverse action against an employee. These requirements can make removing poorly performing employees difficult. Only a quarter of Federal supervisors are confident that they could remove a poor

performer. Career employees in confidential, policy-determining, policy-making, and policy-advocating positions wield significant influence over Government operations and effectiveness. Agencies need the flexibility to expeditiously remove poorly performing employees from these positions without facing extensive delays or litigation.

Sec. 2. Definition. The phrase “normally subject to change as a result of a Presidential transition” refers to positions whose occupants are, as a matter of practice, expected to resign upon a Presidential transition and includes all positions whose appointment requires the assent of the White House Office of Presidential Personnel.

Sec. 3. Excepted Service. Appointments of individuals to positions of a confidential, policy-determining, policy-making, or policy-advocating character that are not normally subject to change as a result of a Presidential transition shall be made under Schedule F of the excepted service, as established by section 4 of this order.

Sec. 4. Schedule F of the Excepted Service. (a) Civil Service Rule VI is amended as follows:

(i) 5 CFR 6.2 is amended to read:

“OPM shall list positions that it excepts from the competitive service in Schedules A, B, C, D, E, and F, which schedules shall constitute parts of this rule, as follows:

Schedule A. Positions other than those of a confidential or policy-determining character for which it is not practicable to examine shall be listed in Schedule A.

Schedule B. Positions other than those of a confidential or policy-determining character for which it is not practicable to hold a competitive examination shall be listed in Schedule B. Appointments to these positions shall be subject to such noncompetitive examination as may be prescribed by OPM.

Schedule C. Positions of a confidential or policy-determining character normally subject to change as a result of a Presidential transition shall be listed in Schedule C.

Schedule D. Positions other than those of a confidential or policy-determining character for which the competitive service requirements make impracticable the adequate recruitment of sufficient numbers of students attending qualifying educational institutions or individuals who have recently completed qualifying educational programs. These positions, which are temporarily placed in the excepted service to enable more effective recruitment from all segments of society by using

means of recruiting and assessing candidates that diverge from the rules generally applicable to the competitive service, shall be listed in Schedule D.

Schedule E. Position of administrative law judge appointed under 5

U.S.C. 3105. Conditions of good administration warrant that the position of administrative law judge be placed in the excepted service and that appointment to this position not be subject to the requirements of 5 CFR, part 302, including examination and rating requirements, though each agency shall follow the principle of veteran preference as far as administratively feasible.

Schedule F. Positions of a confidential, policy-determining, policy-making, or policy-advocating character not normally subject to change as a result of a Presidential transition shall be listed in Schedule F. In appointing an individual to a position in Schedule F, each agency shall follow the principle of veteran preference as far as administratively feasible.”

(ii) 5 CFR 6.4 is amended to read:

“Except as required by statute, the Civil Service Rules and Regulations shall not apply to removals from positions listed in Schedules A, C, D, E, or F, or from positions excepted from the competitive service by statute. The Civil Service Rules and Regulations shall apply to removals from positions listed in Schedule B of persons who have competitive status.”

(b) The Director of the Office of Personnel Management (Director) shall:

(i) adopt such regulations as the Director determines may be necessary to implement this order, including, as appropriate, amendments to or rescissions of regulations that are inconsistent with, or that would impede the implementation of, this order, giving particular attention to 5 CFR, part 212, subpart D; 5 CFR, part 213, subparts A and C; and 5 CFR 302.101; and

(ii) provide guidance on conducting a swift, orderly transition from existing appointment processes to the Schedule F process established by this order.

Sec. 5. Agency Actions. (a) Each head of an executive agency (as defined in section 105 of title 5, United States Code, but excluding the Government Accountability Office) shall conduct, within 90 days of the date of this order, a preliminary review of agency positions covered by subchapter II of chapter 75 of title 5, United States Code, and shall conduct a complete review of such positions within 210 days of the date of this order. Thereafter, each agency head shall conduct a review of agency

positions covered by subchapter II of chapter 75 of title 5, United States Code, on at least an annual basis. Following such reviews each agency head shall:

(i) for positions not excepted from the competitive service by statute, petition the Director to place in Schedule F any such competitive service, Schedule A, Schedule B, or Schedule D positions within the agency that the agency head determines to be of a confidential, policy-determining, policy-making, or policy-advocating character and that are not normally subject to change as a result of a Presidential transition. Any such petition shall include a written explanation documenting the basis for the agency head's determination that such position should be placed in Schedule F; and

(ii) for positions excepted from the competitive service by statute, determine which such positions are of a confidential, policy-determining, policy-making, or policy-advocating character and are not normally subject to change as a result of a Presidential transition. The agency head shall publish this determination in the Federal Register. Such positions shall be considered Schedule F positions for the purposes of agency actions under sections 5(d) and 6 of this order.

(b) The requirements set forth in subsection (a) of this section shall apply to currently existing positions and newly created positions.

(c) When conducting the review required by subsection (a) of this section, each agency head should give particular consideration to the appropriateness of either petitioning the Director to place in Schedule F or including in the determination published in the Federal Register, as applicable, positions whose duties include the following:

(i) substantive participation in the advocacy for or development or formulation of policy, especially:

(A) substantive participation in the development or drafting of regulations and guidance; or

(B) substantive policy-related work in an agency or agency component that primarily focuses on policy;

(ii) the supervision of attorneys;

(iii) substantial discretion to determine the manner in which the agency exercises functions committed to the agency by law;

(iv) viewing, circulating, or otherwise working with proposed regulations, guidance, executive orders, or other non-public policy proposals or deliberations generally covered by deliberative process privilege and either:

(A) directly reporting to or regularly working with an individual appointed by either the President or an agency head who is paid at a rate not less than that earned by employees at Grade 13 of the General Schedule; or

(B) working in the agency or agency component executive secretariat (or equivalent); or

(v) conducting, on the agency's behalf, collective bargaining negotiations under chapter 71 of title 5, United States Code.

(d) The Director shall promptly determine whether to grant any petition under subsection (a) of this section. Not later than December 31 of each year, the Director shall report to the President, through the Director of the Office of Management and Budget and the Assistant to the President for Domestic Policy, concerning the number of petitions granted and denied for that year for each agency.

(e) Each agency head shall, as necessary and appropriate, expeditiously petition the Federal Labor Relations Authority to determine whether any Schedule F position must be excluded from a collective bargaining unit under section 7112(b) of title 5, United States Code, paying particular attention to the question of whether incumbents in such positions are required or authorized to formulate, determine, or influence the policies of the agency.

Sec. 6. Prohibited Personnel Practices Prohibited. Agencies shall establish rules to prohibit the same personnel practices prohibited by section 2302(b) of title 5, United States Code, with respect to any employee or applicant for employment in Schedule F of the excepted service.

Sec. 7. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.



(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(d) If any provision of this order, or the application of any provision to any person or circumstances, is held to be invalid, the remainder of this order and the application of any of its other provisions to any other persons or circumstances shall not be affected thereby.

(e) Nothing in this order shall be construed to limit or narrow the positions that are or may be listed in Schedule C.

THE WHITE HOUSE,

October 21, 2020.

[FR Doc. 2020–23780

Filed 10–23–20; 8:45 am]

Billing code 3295–F1–P

Source: Exec. Order No. 13957, Creating Schedule F in the Excepted Service, 85 Fed. Reg. 67631 (Oct. 26, 2020). | GAO-22-105504

Note: Executive Order 13957 was revoked on January 22, 2021 by Executive Order 14003, Protecting the Federal Workforce. Exec. Order No. 14003, *Protecting the Federal Workforce*, 86 Fed. Reg. 7231 (Jan. 27, 2021).

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## Appendix II: Objectives, Scope, and Methodology

You asked us to review the implementation of Executive Order (E.O) 13957.<sup>1</sup> This report describes (1) agencies' implementation of Executive Order 13957 prior to its revocation on January 22, 2021 and (2) selected stakeholders' perspectives on the implications of a Schedule F category of federal positions.

To address our first objective, we reviewed and analyzed the Office of Personnel Management's (OPM) October 23, 2020 "Instructions on Implementing Schedule F" guidance, agency petitions to place positions into Schedule F, agency correspondence with OPM related to Schedule F, and draft agency documents of efforts to determine which positions could be placed in Schedule F. We reviewed OPM documentation and interviewed OPM officials to identify agencies that submitted petitions (written requests from the agency head) to OPM to place positions into Schedule F. We also conducted a literature search to identify agencies that were reported in media sources, such as articles from journals, newspapers, and online news sources, as having submitted petitions to OPM to place positions into Schedule F.

In addition to OPM, we interviewed officials from the following agencies:

- The Federal Labor Relations Authority, which is responsible for receiving and reviewing petitions from agencies to determine whether positions proposed for placement into Schedule F would need to be excluded from collective bargaining.
- The Merit Systems Protection Board, which is responsible for adjudicating employee appeals and conducting merit systems studies to ensure the protection of merit system principles.
- The Office of Special Counsel, an independent federal investigative and prosecutorial agency responsible for reviewing disclosures of wrongdoing within the federal government from current federal employees, former employees, and applicants for federal employment.

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<sup>1</sup>Exec. Order No. 13957, *Creating Schedule F in the Excepted Service*, 85 Fed. Reg. 67631 (Oct. 26, 2020).

To document how agencies implemented Schedule F, we collected and analyzed documentation related to Schedule F from OPM regarding the overall response to E.O. 13957. OPM provided us with documentation from all 15 agencies that responded to the E.O., including information regarding OPM's internal response. The agencies sent OPM one of the following prior to the E.O.'s revocation: (1) a petition to place positions into Schedule F, (2) a letter (or internal communication with agency leadership in OPM's case) showing they were in the process of developing a petition, or (3) a letter stating they would not be submitting a petition. In addition, we selected 11 agencies for interview to gain additional information about their response to the E.O. We selected OPM, after learning in initial conversations with OPM officials that they had developed a draft petition. We also selected the following five agencies because OPM told us they submitted a petition, or our literature search found they might have been developing a petition to place positions into Schedule F.

1. Office of Management and Budget
2. U.S. International Boundary and Water Commission
3. Environmental Protection Agency
4. Federal Energy Regulatory Commission
5. General Services Administration<sup>2</sup>

We selected the following two agencies because OPM officials told us the agencies sent letters stating they might submit a petition after E.O. 13957's preliminary review period.

6. Equal Employment Opportunity Commission
7. Department of the Treasury

We also randomly selected three of the eight agencies that OPM officials said had sent letters to OPM stating that they would not submit a petition during the E.O.'s preliminary review period.

8. National Labor Relations Board
9. National Transportation Safety Board
10. Federal Trade Commission

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<sup>2</sup>Contrary to a media report we reviewed, GSA officials told us the agency was not developing a petition to place positions into Schedule F.

To address our second objective, we selected and conducted semi-structured interviews with 14 relevant stakeholders from a variety of backgrounds about their views on the implications of Schedule F. We selected this sample by identifying current and former officials and witnesses at Congressional hearings related to federal workforce management, as well as by reviewing related scholarly work and news articles from October 2020 through January 2022. Selected stakeholders included non-career officials with a role in implementing Schedule F who served in the Trump administration, as well as officials with experience in federal workforce policymaking from prior administrations. We also spoke to officials from academia, federal labor union officials, representatives from non-profit organizations, and authors who had published work relevant to Schedule F.

To characterize stakeholder perspectives, we defined modifiers as:

- nearly all: 13-14 stakeholders,
- most: 11-12 stakeholders,
- many: 7-10 stakeholders,
- several: 4-6 stakeholders, and
- some: 2-3 stakeholders.

Selected stakeholders do not represent all Schedule F stakeholders, and their perspectives are not generalizable.

We conducted this performance audit from October 2021 to September 2022 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

# Appendix III: Comments from the Office of Management and Budget and the Office of Personnel Management



Executive Office of the President  
Office of Management and Budget



Office of Personnel Management

September 19, 2022

Ms. Alissa Czyz  
Acting Director, Strategic Issues  
U.S. Government Accountability Office  
441 G Street, N.W.  
Washington, DC 20548

Dear Ms. Czyz,

Thank you for the opportunity to review GAO's draft report entitled *Civil Service: Agency Responses and Perspectives on Former Executive Order to Create a New Schedule F Category of Federal Positions* (GAO-22-105504), which concludes GAO's work performed under engagement number 105504. We write to reaffirm the Biden-Harris Administration's steadfast opposition to Schedule F, and to reiterate our support for the dedicated members of the Federal civil service who have devoted their careers to serving the American people across multiple Administrations.

As President Biden stated in Executive Order 14003 repealing Schedule F, "[t]he creation of a new Schedule F . . . not only was unnecessary to the conditions of good administration, but also undermined the foundations of the civil service and its merit system principles." Indeed, Schedule F rested on false and harmful assumptions regarding the effectiveness and merit of the career civil service. And far from promoting merit-based personnel hiring, we now know that the prior administration sought to use Schedule F as a vehicle for replacing non-partisan civil servants with individuals hired solely based on their ideological and political beliefs. The American people long ago rejected such a patronage system of Federal hiring.

As President Biden observed in repealing Schedule F, "career civil servants are the backbone of the Federal workforce, providing the expertise and experience necessary for the critical functioning of the Federal Government." Nowhere is that truer than at our agencies, OMB and OPM. The members of our career workforces provide critical expertise, continuity, and stability in helping our agencies and the entire Federal Government meet the needs of the American people. It is essential that our career employees remain empowered to execute our important missions, free from political interference or intimidation.

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Personnel Management**

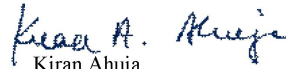
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We thank GAO for its engagement on this subject. We appreciate the opportunity to review the draft report and to submit these comments for your consideration.

Sincerely,



Shalanda Young  
Director, Office of Management and Budget



Kiran Ahuja  
Director, Office of Personnel Management

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## Text of Appendix III: Comments from the Office of Management and Budget and the Office of Personnel Management

September 19, 2022

Ms. Alissa Czyz

Acting Director, Strategic Issues

U.S. Government Accountability Office 441 G Street, N.W.

Washington, DC 20548

Dear Ms. Czyz,

Thank you for the opportunity to review GAO’s draft report entitled Civil Service: Agency Responses and Perspectives on Former Executive Order to Create a New Schedule F Category of Federal Positions (GAO-22-105504), which concludes GAO’s work performed under engagement number 105504. We write to reaffirm the Biden-Harris Administration’s steadfast opposition to Schedule F, and to reiterate our support for the dedicated members of the Federal civil service who have devoted their careers to serving the American people across multiple Administrations.

As President Biden stated in Executive Order 14003 repealing Schedule F, “[t]he creation of a new Schedule F . . . not only was unnecessary to the conditions of good administration, but also undermined the foundations of the civil service and its merit system principles.” Indeed, Schedule F rested on false and harmful assumptions regarding the effectiveness and merit of the career civil service. And far from promoting merit-based personnel hiring, we now know that the prior administration sought to use Schedule F as a vehicle for replacing non-partisan civil servants with individuals hired solely based on their ideological and political beliefs. The American people long ago rejected such a patronage system of Federal hiring.

As President Biden observed in repealing Schedule F, “career civil servants are the backbone of the Federal workforce, providing the expertise and experience necessary for the critical functioning of the Federal Government.” Nowhere is that truer than at our agencies, OMB and OPM. The members of our career workforces provide critical expertise, continuity, and stability in helping our agencies and the entire Federal Government meet the needs of the American people. It is essential

that our career employees remain empowered to execute our important missions, free from political interference or intimidation.

We thank GAO for its engagement on this subject. We appreciate the opportunity to review the draft report and to submit these comments for your consideration.

Sincerely,

Shalanda Young

Director, Office of Management and Budget

Kiran Ahuja

Director, Office of Personnel Management



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## Appendix IV: GAO Contact and Staff Acknowledgments

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### GAO Contact

Alissa H. Czyz at (202) 512-6806 or [czyza@gao.gov](mailto:czyza@gao.gov)

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### Staff Acknowledgments

In addition to the contact named above, key contributors to this report were Shea Bader (Assistant Director), Karen L. Cassidy (Analyst in Charge), Crystal Bernard, and Samantha Piercy. In addition, Michael Bechetti, Jacqueline Chapin, Karin Fangman, Steven Putansu, and Clarette Yen made significant contributions to this report.

## Appendix V: Selected GAO Reports on Federal Workforce Issues

*Human Capital: Improving Federal Recruiting and Hiring Efforts*  
[GAO-19-696T](#). Washington, D.C.: July 30, 2019.

*Federal Workforce: Key Talent Management Strategies for Agencies to  
Better Meet Their Missions* [GAO-19-181](#). Washington, D.C.: March 28,  
2019.

*Federal Employee Misconduct: Actions Needed to Ensure Agencies Have  
Tools to Effectively Address Misconduct* [GAO-18-48](#). Washington, D.C.:  
July 16, 2018.

*Personnel Practices: Actions Needed to Improve Documentation of OPM  
Decisions on Conversion Requests* [GAO-17-674](#). Washington, D.C.:  
August 28, 2017.

*Federal Hiring: OPM Needs to Improve Management and Oversight of  
Hiring Authorities* [GAO-16-521](#). Washington, D.C.: August 2, 2016.

*Federal Workforce: Improved Supervision and Better Use of Probationary  
Periods Are Needed to Address Substandard Employee Performance*  
[GAO-15-191](#). Washington, D.C.: February 6, 2015.

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