



January 29, 2026

Mr. Scott Kupor
Director, Office of Personnel Management
1900 E St. NW
Washington, D.C. 20415-1000

Re: RIN 3206-AO96, "Streamlining Probationary and Trial Appeals"

Dear Mr. Kupor:

The Partnership for Public Service submits these comments on the rule proposed by the Office of Personnel Management entitled "Streamlining Probationary and Trial Appeals," RIN 3206-AO96, published in the Federal Register on December 30, 2025.¹ The Partnership believes that the probationary period is a key component of both the performance management and hiring processes. When used appropriately, the probationary period can allow agencies to more easily remove underperforming employees early in their employment in a way that is fair to both the employee and the agency.

However, we have serious concerns that the proposed regulation would move the appeals process out of a neutral body for misguided reasons and give this and future administrations greater leeway to politicize removal decisions for probationary and trial period employees. Moreover, the regulation as written would undermine merit system principles by further politicizing workforce decisions and weakening due process protections for federal employees.

The Probationary Period for Federal Employees, When Used Appropriately, Is a Key Management Tool

The probationary period is a critical final step in the federal hiring process and, when used appropriately, can be an important performance management tool. It is designed to give agencies adequate time to assess whether a new employee is a good fit for the role before they earn adverse action and appeals protections. The Partnership has long supported use

¹ 90 Fed. Reg. 61070.

of the probationary period as a means of ensuring high performance and accountability within federal agencies.²

Last year, we commended the Trump administration for components of its “Strengthening Probationary Periods in the Federal Service” Executive Order that now require agencies to make affirmative decisions to retain employees at the end of their probationary or trial period.³ The approach laid out by the E.O. reinforces the probationary period’s intended purpose to empower supervisors to make informed judgements about their employees’ work before the employee’s appointment to federal service is finalized.

At the same time, the effectiveness of the probationary period depends on how it is used. A probationary employee’s ability to perform their role at the standard required to meet the agency’s need is an important consideration which their frontline supervisor is best positioned to make. Therefore, a constructive reform would be for OPM to emphasize meaningful supervisor involvement throughout the probationary period, including clear expectation-setting, mutual development of performance goals, developmental training and support and continuous feedback, as well as workforce planning to provide clarity on agency needs. Together, these management practices make probationary periods useful and provide clarity to employees on supervisory decisions at the end of their trial period.

For this reason, the Partnership cautions against formalizing certain provisions of E.O. 14824 within this rule. Locking these policies into regulation would reduce the flexibility of agencies to tailor probationary period practices to their missions and workforce needs. Preserving managerial flexibility while maintaining appropriate safeguards is essential to ensuring the probationary period remains a constructive workforce management tool. Regulations are an inflexible management tool, and further cementing these directives may inadvertently prevent agencies from developing top performance management practices and adjusting them as needed.

OPM Lacks the Capacity and Political Independence Necessary to Effectively Adjudicate Appeals

² <https://ourpublicservice.org/publications/vision-for-a-better-government/>

³ <https://www.whitehouse.gov/presidential-actions/2025/04/strengthening-probationary-periods-in-the-federal-service/>

The proposed rule would shift responsibility for adjudicating appeals by probationary and trial period employees to OPM despite the agency's lack of institutional capacity and structural independence. Adjudicating appeals, particularly those alleging political discrimination or other prohibited personnel practices, is a quasi-judicial activity that requires neutrality, procedural rigor and insulation from political interference.

Under the Civil Service Reform Act of 1978, OPM was deliberately structured to be responsive to the president, while adjudicatory functions were assigned to the Merit Systems Protection Board as an independent, bipartisan body⁴. This institutional design was intentional since placing adjudicatory authority within an agency closely aligned with the White House would undermine impartial decision-making.

Placing even limited appeal procedures for probationary and trial employees within OPM will create an inherent conflict of interest, particularly when OPM is simultaneously responsible for issuing workforce policy guidance and executing administration-wide personnel actions. In 2025, OPM played a central role in carrying out the large-scale removal of probationary period employees, underscoring the inability of the agency to serve as a neutral adjudicator of appeals.

The proposed rule would also assign appeal adjudication to the Merit System Accountability and Compliance (MSAC) office, despite clear evidence that MSAC is resource constrained. Between 2017 and 2022, MSAC adjudicated only a few dozen cases annually.⁵ MSAC's adjudication work has historically been centered on federal employee classification appeals as well as evaluating compensation and leave claims.⁶ Importantly, these rulings are regarding an agency's application of policy and procedure, they are not related to an individual's employment status with the federal government.

Most notably, the proposed process would concentrate extraordinary discretion in the hands of the OPM director, who would be the sole official authorized to reopen appeal

⁴ <https://www.congress.gov/crs-product/R45630>

⁵ <https://www.oversight.gov/sites/default/files/documents/reports/2022-12/Final-Report-2021-OEI-001.pdf>

⁶ <https://www.opm.gov/compliance/adjudications/>

determinations. This structure would introduce unnecessary administrative bottlenecks while further politicizing decisions.

Removing MSPB from the Appeals Process will Further Politicize Workforce Decisions and Remove Important Due Process Protections for Federal Employees

As stated above, adjudicating employee appeals is a quasi-judicial function that was assigned to MSPB to ensure neutrality, consistency and fairness. Since its creation under the Civil Service Reform Act, MSPB has handled appeals through transparent, precedent-based processes led by qualified experts. This structure has long provided agencies and employees with clear expectations and confidence that disputes will be resolved based on facts and law rather than political considerations. MSPB also has more than enough capacity to handle its current caseload of probationary period and trial appeal⁷. In 2024, there were a total of 622 appeals submitted for probationary period employees. Of those 589 (94.7 percent) were dismissed outright, 28 (4.5 percent) were settled between the appellant and the agency, and only 5 were adjudicated on the merits.

Removing MSPB from the probationary and trial appeals process will erode meaningful due process protections for federal employees. Curtailing protections for these employees, which are already purposefully narrow, will set a troubling precedent. Preserving MSPB's role in the appeals process is essential to maintaining trust in the merit system and ensuring that workforce decisions remain grounded in law and documented procedure.

OPM's justification for reassigning these responsibilities, citing MSPB's past lack of a quorum and resource constraints, is also misleading and risks obscuring the root cause of these challenges. The most recent extended quorum lapse at MSPB was an avoidable development caused in part by this administration's removal of board member Cathy Harris and subsequent congressional delays during the confirmation process, not from any inherent flaw in the agency's design. The appropriate response to solve this issue would be for the executive branch to work with Congress to ensure that the Board is properly staffed and resourced to efficiently carry out its mission as intended.

⁷ https://www.mspb.gov/about/annual_reports/MSPB_FY_2024_Annual_Report.pdf

Recent Attacks on Probationary Period Workers Endanger our Government's Ability to Recruit and Retain Top Talent

An effective probationary period should reinforce accountability while fostering trust between employees, supervisors and their agencies. Unfortunately, throughout 2025 the Trump administration conducted broad, workforce-wide removals of probationary period employees without a clear strategy that tied these workforce changes to agency performance. Employees impacted by this decision were informed that their removals were due to poor performance, often without supporting evidence and, at times, in direct contradiction of past supervisory evaluations.⁸ The approach used by the administration undermined the intended purpose of the probationary period and transformed it from a performance management tool into a blunt instrument for rapid workforce reduction.

These actions will have significant, long-term consequences for the federal government's ability to attract and retain top talent. Because of the administration's actions, qualified candidates may become reluctant to apply for and accept federal positions. Already, less than 8% of federal employees were under the age of 30, as compared to 20% of the overall U.S.⁹ labor force.⁷ High performers within government may be disincentivized to move to different agencies or accept new roles if doing so resets their probationary status, exposing them to heightened political risk and the loss of basic civil service protections. Over time, this dynamic would discourage mobility and skill-matching across agencies, and it would ultimately weaken the capacity of federal agencies to fulfill their missions.

While the Partnership agrees that changes to the probationary and trial period are needed, we encourage the administration to rethink how this regulation, plus recent attacks on federal employees, may do more harm than good. To push forward impactful reforms, OPM should work toward broader changes to performance management and hiring processes and focus more on strategic workforce planning.

Thank you for the opportunity to submit these comments.

⁸ <https://www.washingtonpost.com/dc-md-va/2025/02/13/trump-administration-fires-probationary-federal-workers/>

⁹ <https://ourpublicservice.org/publications/a-government-in-chaos-trumps-first-year-back-in-office/>



Sincerely,

A handwritten signature in black ink, appearing to read "Max Stier".

Max Stier
President & CEO
Partnership for Public Service