

January 29, 2026

The Honorable Scott Kupor
Director
U.S. Office of Personnel Management
1900 E Street, NW
Washington, DC 20415

**RE: Streamlining Probationary and Trial Period Appeals
Docket No. OPM-2025-0013**

Director Kupor:

On behalf of the Transportation Trades Department, AFL-CIO (TTD), I am pleased to respond to the Office of Personnel Management's (OPM) notice regarding its proposal to change the circumstances and procedures for adjudicating appeals from employees covered by these provisions and terminated during their probationary or trial periods and supervisors and managers who fail to complete their probationary periods. TTD represents 40 affiliate unions across all modes of transportation, including several who represent federal workers at the Federal Aviation Administration, Federal Railroad Administration, and Transportation Security Administration.¹ We therefore have a vested interest in this proposed rulemaking. Additionally, we endorse the comments of our affiliate the American Federation of Government Employees (AFGE). For the reasons enumerated below, we oppose this rulemaking and respectfully request that the OPM take these and the comments of our affiliates into due and serious consideration.

The OPM states that it proposes this rule to establish streamlined appeal procedures for employees terminated during their probationary or trial periods, and supervisors and managers who fail to complete their probationary periods. As proposed, employees would file appeals limited to: discrimination based on partisan political reasons or marital status; and failure to follow procedures for terminations based upon pre-appointment reasons. The OPM would replace the Merit Systems Protection Board (MSPB) as the adjudicative agency for all appeals. Employees who wish to pursue claims of discrimination under statutes administered by the Equal Employment Opportunity Commission (EEOC) would not be allowed to raise these claims with the OPM.

At its core, this proposal is based on the false premise that large swaths of federal employees are poor performers that the current system is incapable of removing. However, much of the evidence

¹ Attached is a complete list of the unions affiliated with TTD.

cited in support of this claim is more than a decade old. The more recent evidence the NPRM includes is based on opinions, perceptions, and personal viewpoints, rather than actual performance data.² In reality, the federal workforce is made up of tens of thousands of dedicated public servants who work diligently to ensure the federal government delivers on its obligations. In fact, these workers made the choice to serve their country, their communities, and their fellow citizens in exchange for fewer workplace rights than are afforded to many private sector employees.

The OPM argues in the supplementary information section of the NPRM that the proposed “limited grounds of appeal for probationary terminations reflect the historical principle that probationary periods serve as a critical evaluation phase for new Federal employees, and thus that agencies should enjoy great flexibility in separating employees serving probationary or trial periods.” This is misleading given that the system the OPM proposes to replace had already afforded significantly fewer rights to probationary federal employees than those made available to non-probationary employees. Indeed, previous regulations under 5 C.F.R. Part 315 did not allow probationary employees to appeal terminations based on performance alone. Specifically, probationary employees in the competitive service who were terminated for performance reasons under 5 C.F.R. § 315.804 were permitted to appeal their termination only if they alleged that it “was based on partisan political reasons or marital status.”³ The probationary period has long operated as a deliberate carve-out from the broader civil service protections, designed to permit agencies to evaluate an employee’s performance and suitability for federal service. The OPM’s assertion that regulatory change is necessary to preserve the historical function of the probationary period mischaracterizes the extent of discretion agencies have long possessed.

Additionally, in replacing the MSPB with the Merit System Accountability (MSAC) office, the OPM is eroding trust in the appeals process. A system designed to protect merit principles depends on neutral adjudication. When the rule-maker becomes the adjudicator, as the OPM proposes in this rulemaking, motives must be questioned. The OPM states that it “believes that tasking its MSAC office with adjudication of probationer appeals will provide much needed clarity and efficiency.” The OPM further claims that it will maintain appropriate administrative separation between its policy and adjudicative arms and the MSAC office will “offer federal employees an independent review of agency personnel decisions.” It is difficult to trust claims that these reviews will be independent given that they will occur within the OPM, especially when considering the MSPB was created to be independent of the OPM.⁴ The concentration of rulemaking, policy enforcement, and adjudicatory authority within a single agency undermines confidence in the

² <https://www.opm.gov/fevs/reports/governmentwide-reports/governmentwide-reports/governmentwide-management-report/2024/2024-governmentwide-management-report.pdf>

³ See former 5 C.F.R. § 315.806(b)

⁴ Public Law No. 95-454

fairness of the process and weakens the structural protections that have historically served as a cornerstone of the merit system.

Again, we strongly encourage the Administration to reconsider their approach for the good of the country and for the sake of the millions of Americans who rely on the essential services provided by the dedicated federal workforce. We appreciate the opportunity to comment on this matter and look forward to working with the OPM in the future.

Sincerely,

A small, square image containing a handwritten signature in black ink. The signature appears to be 'Greg Regan' written in a cursive style.

Greg Regan
President