



Schedule Policy/Career: 2026 Final Rule, Legal Challenges, and Issues for Lawmakers

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On February 6, 2026, the Office of Personnel Management (OPM) published a [final rule](#) and [memorandum](#) for the implementation of Schedule Policy/Career, an appointment classification in the excepted service of the federal civil service. As discussed in more detail below, employees in Schedule Policy/Career positions have different notice and appeal rights for personnel actions, including removals and suspensions, from other federal civil service employees. Schedule Policy/Career includes career positions of a “confidential, policy-determining, policy-making, or policy-advocating character not normally subject to change as a result of a Presidential transition.” The schedule was first conceived in 2020 as “Schedule F” in [Executive Order \(EO\) 13957](#). After President Biden revoked EO 13957 in 2021, President Trump issued [EO 14171](#), “Restoring Accountability to Policy-Influencing Positions Within the Federal Workforce,” which reinstated EO 13957 and redesignated Schedule F as “Schedule Policy/Career.”

This Legal Sidebar examines the 2026 final rule, referencing content from a [previous CRS product](#) on Schedule Policy/Career, it analyzes potential and current legal challenges, and it provides considerations for Congress. For further analysis of the rescheduling executive orders and prior rulemaking, consult [A New Civil Service “Policy/Career” Schedule: Issues for Lawmakers](#).

Background

Positions in the executive branch are categorized into three types of service: the [competitive service](#); the [excepted service](#); and the [Senior Executive Service \(SES\)](#). The excepted service currently has seven [schedules](#) or categories of appointment authority—Schedules A to G—organized based on the duties or training required for their relevant positions. A position is included in Schedules A to D following a [determination](#) that appointment through competitive examination is not practicable or that the recruitment of certain types of individuals would be better achieved through alternate recruitment and assessment processes. (Schedule G, also created by a [2025 executive order](#), covers excepted non-career positions of “policy-making or policy-advocating” character, [distinguished](#) from Schedule C’s “confidential or policy-determining” positions.)

Before an agency takes certain adverse actions like removals against federal employees, [Subchapter II of Chapter 75, Title 5, U.S. Code](#), prescribes the right to [notice](#) of such actions and the right to appeal such

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actions to the [Merit Systems Protection Board \(MSPB\)](#), an “independent, quasi-judicial agency” that reviews and adjudicates specified personnel actions taken against qualifying federal employees. These rights are generally available to competitive service and some excepted service employees who satisfy specified durational requirements, but are not available to employees in [positions](#) that have a “confidential, policy-determining, policy-making or policy-advocating character,” such as those in Schedule C or G.

[Subchapter I of Chapter 43, Title 5, U.S. Code](#), governs personnel actions related to unacceptable performance, and—in contrast to Chapter 75—does not exclude positions having a confidential, policy-determining, policy-making or policy-advocating character. However, the statute [authorizes](#) OPM to do so by regulation. Similar in [some respects](#) to Chapter 75, Chapter 43 provides notice and appeal rights that agencies must follow in demoting or removing personnel for performance-based reasons.

[Section 2302 of Title 5, U.S. Code](#), generally provides protections for executive branch employees in covered positions from “prohibited personnel practices”—such as employment discrimination, retaliation, nepotism, whistleblower retaliation, and other misconduct—which are investigated by the [Office of Special Counsel \(OSC\)](#). [Covered positions](#) include those in the competitive service, career appointee positions in the SES, and certain positions in the excepted service—but positions having a “confidential, policy-determining, policy-making, or policy-advocating character” are expressly excluded.

The 2026 Final Rule

On January 20, 2025, the second Trump Administration [reinstated](#) EO 13957 with some amendments and rescinded the Biden Administration’s EO 14003, which had revoked Schedule F. In issuing the original EO 13957 and the 2025 amendments, President Trump cited his authority under Sections [3301](#), [3302](#), and [7511](#) of Title 5 of the U.S. Code to regulate the civil service. The amended EO 13957 and accompanying [memorandum](#) direct each agency head to identify federal government career positions appropriately categorized as having a “confidential, policy-determining, policy-making, or policy-advocating character that are not normally subject to change as a result of a Presidential transition” and provide processes for placing those positions in Schedule Policy/Career.

In February 2026, OPM published a final [rule](#) and [memorandum](#) implementing Schedule Policy/Career, in which OPM adopted a “[shorthand](#)” of “policy-influencing” positions to describe such employees eligible for the new schedule. The rule included several changes from the prior orders and guidance. For example, the rule [designates](#) the President, rather than OPM, as responsible for moving positions into Schedule Policy/Career. The final rule also [states](#) that policy-influencing positions will be excluded from statutory protections for performance-based removals under Chapter 43, Title 5, U.S. Code. The 2026 rule also formally [rescinds](#) the 2024 OPM regulations adopted during the Biden Administration that guaranteed involuntarily reclassified employees the right to appeal to the MSPB.

While appointments to excepted service positions are generally not subject to the same requirements as appointments to competitive service positions, the 2026 rule [provides](#) that agencies must comply generally with competitive appointment standards when making appointments to Schedule Policy/Career positions. The rule also [indicates](#) that individuals appointed to Schedule Policy/Career positions are subject to the trial periods prescribed by [5 C.F.R. part 11](#) and acquire competitive status after completing two years of continuous service in the same or similar positions.

Potential and Current Legal Challenges to the Final Rule and Implementation

Congress has [expressly provided](#) the President with substantial statutory authority to regulate the executive branch civil service, including in Sections [3301](#), [3302](#), and [7511](#) of Title 5 (all cited in EO

13957). In particular, Section 3302 gives the President authority to “prescribe rules governing the competitive service,” including providing for “necessary exceptions of positions from the competitive service.” The President also has rulemaking authority similar to that of executive agencies, albeit with an important difference. Current [case law](#) suggests that, unlike agencies, the President is not subject to notice-and-comment rulemaking requirements or the APA’s [judicial review provisions](#) “because the President is not an ‘agency’ within the meaning of the [APA].” At the same time, final agency actions [implementing](#) a presidential directive *would* likely be [subject](#) to those [procedural requirements](#). The nature, timing, and viability of any legal challenges to Schedule Policy/Career could thus depend on how OPM and other agencies choose to implement it. The 2026 [final rule](#) states that the President, rather than OPM, will place positions in Schedule Policy/Career via executive order, and further states that “the President is not an agency for purposes of the Administrative Procedure Act, and President Trump did not need to undertake notice and comment procedures to directly invoke Presidential power through executive order.” For this proposition, the final rule cites the U.S. Court of Appeals for the Federal Circuit’s 2006 decision in *Motions Systems Corporation v. Bush*, which observed that the President is not an “agency” subject to statutory review under the APA.

Three potential categories of legal challenges are (1) those arguing that EO 13957 itself is facially unlawful, (2) those bringing facial challenges to OPM’s or an agency’s implementation of the EO, and (3) those claiming that the EO or its implementation actually harmed specified individuals (such as persons fired after reclassification). In the first category, federal employee unions have filed judicial challenges to the reissued EO. In 2020, for example, the National Treasury Employees Union (NTEU) [filed a lawsuit](#) in federal court challenging EO 13957 days after it was issued. NTEU [argued](#) that EO 13957 exceeded the President’s authority (in legal terms, that the EO was *ultra vires*). Central to NTEU’s challenge were questions of statutory interpretation implicating the separation of powers (e.g., whether, when Congress delegated the ability to make “necessary” exceptions to the competitive service regime, “necessity” became a judicially reviewable precondition for exercising the delegated authority). Following the original EO 13957’s repeal, NTEU voluntarily dismissed the case, so the court did not issue a decision. NTEU filed a [new complaint](#) challenging the amended EO 13957 on the same day it was reinstated, but the U.S. District Court for the District of Columbia [stayed](#) the case pending OPM’s promulgation of the Schedule Policy/Career rule. On March 17, 2026, the court accepted the NTEU’s [proposal](#) to file an amended complaint within 14 days of the President issuing an executive order that places positions in Schedule Policy/Career. Public Employees for Environmental Responsibility and four other unions have filed a separate [lawsuit](#) challenging EO 13957 and the final rule in the U.S. District Court for the District of Maryland.

The 2026 final rule appears to address anticipated arguments regarding the constitutionality of Schedule Policy/Career in part by citing the Supreme Court’s decision in *Seila Law LLC v. CFPB*. The [final rule](#) reads *Seila Law* to say that, “Congress has little power to insulate constitutional officers (as opposed to employees) from accountability to the President,” and that current statutory civil service protections “cover[] some inferior officers with substantive policymaking or administrative authority” and conflict with the President’s Article II authority to remove them.

In the second category, challenges to OPM or other agency actions may be raised under the APA. Within the APA, Congress authorized individuals to challenge final agency [actions that are](#) arbitrary, capricious, not in accordance with law, “contrary to constitutional right, power or privilege,” or “in excess of statutory jurisdiction, authority, or limitation.” In subjecting agency decisions to such review, the APA also [requires](#) that agencies sufficiently explain their decisions. EO 13957 stated that certain federal positions “wield significant influence over Government operations and effectiveness” and argued that “[a]gencies need the flexibility to expeditiously remove poorly performing employees from these positions without facing extensive delays or litigation.” As a statement *in an EO*, that language likely could not be challenged under the APA, but if *agencies* echo that rationale for reclassifying positions, the sufficiency of that reasoning could be challenged in court. Efforts to reclassify competitive service

positions have been challenged in the past. In *NTEU v. Horner*, for example, the U.S. Court of Appeals for the D.C. Circuit determined that a reclassification of certain competitive service positions to Schedule B was arbitrary and capricious because OPM failed to support its claim that the cost of developing new competitive examinations was prohibitive and unwarranted. The court [indicated](#) that several provisions of Title 5, including Section 3302, require courts to conduct a meaningful review of reclassification decisions and that OPM may except positions from the competitive service “only when ‘necessary’ for ‘conditions of good administration.’” In the 2026 final rule, OPM [distinguished](#) the facts in *Horner*, contending that the “situation is clearly inapposite here” because the agency “has explained at length its decision to implement Schedule Policy/Career.” As previously noted, the 2026 final rule’s [statement](#) that the President will reclassify positions via Executive Order may raise questions as to whether such rescheduling is subject to APA review.

In the third category of potential litigation, employees who are removed from their positions after being reclassified to Schedule Policy/Career could argue that they were entitled to some form of due process before such an action. By generally permitting removal only for cause or unacceptable performance, the Civil Service Reform Act has arguably bestowed a property [interest](#) in continued employment for federal employees. However, if EO 13957 and related agency actions survive facial challenges as discussed above, the existence of such a property interest seems less clear. It appears that Schedule Policy/Career employees, like Schedule C employees, would not be entitled to procedural requirements like notice or a meaningful opportunity to be heard before removal. Similarly, if a property interest was afforded to an employee through a [collective bargaining agreement](#), due process pursuant to the agreement may not be available if the employee’s position is excluded from a bargaining unit.

Adding another layer of legal complexity to any of these categories of legal challenge, the Supreme Court in 2024 [overruled](#) the Chevron doctrine. The Chevron doctrine—named for [the case](#) that articulated it—required federal courts to defer to a federal agency’s reasonable interpretation of ambiguous statutory provisions the agency administers. In *Loper Bright Enterprises v. Raimondo*, the Court held that the Chevron framework violated the [APA](#), which requires courts to “decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action.” EO 13957 uses the terminology “confidential, policy-determining, policy-making, or policy-advocating character” from [5 U.S.C. § 7511\(b\)\(2\)](#) and [5 U.S.C. § 2302\(a\)\(2\)\(B\)\(i\)](#)—laws exempting such positions from merit-based hiring and removal protections and prohibited personnel practices. The Supreme Court has [recognized](#) the exception in Section 7511 from adverse action rights for senior or policymaking positions, but it did not further define “confidential, policy-determining, policy-making, or policy-advocating.” The EO and subsequent [implementing instructions](#) from OPM interpret such terms more broadly than past executive actions. For example, [their interpretation](#) covers positions involving “viewing, circulating, or otherwise working with proposed regulations, guidance, executive orders, or other non-public policy proposals,” although the 2026 final rule does not define “confidential, policy-determining, policy-making, or policy-advocating character.” How *Loper*’s holding might be applied to presidential interpretations in an EO—an issue that was not addressed by the Court, which grounded its *Loper* analysis in the APA—is not entirely certain. Additional analysis on *Loper* may be found in another [CRS report](#).

Considerations for Congress

While the second Trump Administration has issued an executive order reestablishing Schedule Policy/Career as an additional excepted schedule to the competitive service, Congress may act if it so chooses. Congress has delegated a substantial amount of authority to the executive branch to regulate the civil service, but it may withdraw those delegations or substitute its own judgment in such matters through the legislative process. If Congress chooses to address civil service reforms in statute, those

reforms may have a more lasting effect [when compared to an executive order](#) that may be repealed by future administrations.

Congress always has the option of refraining from action. Alternatively, Congress could consider any of several options to legislate its preferences regarding the civil service, including

- creating its own new schedule through the legislative process, or prohibiting or setting additional guidelines for the creation of any new schedules;
- defining terminology used in statute or in EO 13957 (such as “confidential, policy-determining, policy-making, or policy-advocating”), whether by adopting the definitions in [5 C.F.R. § 210.102](#) or substituting other definitions;
- explicitly authorizing the President to remove, or prohibiting the President from removing, an individual federal employee’s civil service protections by reclassifying their position to a different schedule (for example, in the 119th Congress, the Saving the Civil Service Act ([H.R. 492/S.134](#)) would limit executive branch authority to change the classification of civil service positions, among other reforms);
- prohibiting the use of appropriations to reclassify positions (for example, Congress [annually prohibits](#) the Internal Revenue Service in appropriations from promulgating regulations for nonprofit qualification compliance);
- requiring the President to abide by certain restrictions (such as APA-style reasonableness and explanation requirements) when exercising civil service-related authorities; or
- enshrining the 2024 OPM rule, or the 2026 final rule, in statute, or statutorily reversing such rules.

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