

# NARFE

## MAGAZINE

A NARFE PUBLICATION  
FOR FEDERAL EMPLOYEES  
AND RETIREES

OCTOBER 2024  
VOLUME 100 ★ NUMBER 8

---

P. 28

## Overcoming Loneliness in Retirement

---

P. 38

## The Truth About Schedule F

---

P. 58

## Scorecard for the 118th Congress

---

P. 48

## Open Season Report



# The Truth About SCHEDULE





BY DAVID TOBENKIN

Everything you need to know about proposed changes to the merit-based civil service, including legislative efforts, and legal implications if Schedule F is revived under a future administration.

**W**ill potential reforms to federal employment regulations allow federal career civil servants to be fired at will? Events unfolding in the next few months could soon provide the answer.



### **The Short Life of Schedule F and Its Potential Revival**

In October 2020, just months before he left office, former President Donald Trump issued an executive order (E.O. 13957) that created a new Schedule F excepted service category for federal employees like the one used for political appointees. The reform directed federal agencies to classify civil service positions related to policy as “excepted service” positions. As a result, this subjected those employees to more rapid appointment or termination without many of the due process protections afforded “regular” civil servants. Many experts argued that such a move could politicize an impartial, politically-neutral federal civil service. Still, its authors stated that the reforms were necessary to hold civil servants, especially senior leadership, more accountable for implementing democratically-supported policies.

The executive order directed the Office of Personnel Management (OPM) and federal agency heads to set procedures to prepare lists of career positions of a “confidential, policy-determining, policymaking, or policy-advocating character” and

to create exceptions from competitive civil service rules for them and share with OPM for review and approval. Many agencies prepared lists, but only two arrived at the point of sharing the lists with OPM before the Trump’s administration tenure ended on January 19, 2021. None of the lists reclassified positions, according to a September 2022 U.S. Government Accountability Office (GAO) report that analyzed the implementation of Schedule F.

During the week following President Joseph Biden’s inauguration, among the new administration’s first acts was repealing the Schedule F executive order. Two successive attempts at enacting a legislative bar to any future Schedule F failed in the U.S. Congress. In response, earlier this year, OPM adopted a new rule that would impede but not bar any future administration’s efforts to impose a new Schedule F.

A future administration that supports Schedule F could direct OPM to revoke that rule and reinstate Schedule F. That would allow Schedule F-related measures, including reclassification of large numbers of positions into the far more flexible “excepted service,” to go into effect within six



months of the January 20, 2025, presidential inauguration and likely sooner, according to several sources. Whether existing competitive service employees could be reclassified as excepted service employees against their will remains to be seen, though many interviewed said it would be challenging to stop such reclassifications.

Some influential think tank supporters of Trump, and former government executives in Trump's earlier administration involved in the implementation of Schedule F are calling for Schedule F's revival.

"This [Schedule F] needs to be a day-one initiative; [former president Trump's] very supportive of it; he's done it before," said former Office of Management and Budget Director Russ Vought in a September 23, 2022, edition of *The Charlie Kirk Show*. "If he's given that opportunity, and I hope he is, this would be one of those first things that I would imagine that he would do."

The conservative Heritage Foundation think tank's blueprint for a second Trump presidency,

Project 2025, also calls for reinstitution of Schedule F. However, in July, Trump disavowed support for that document.

A reelection agenda on Trump's website, Agenda47, appears to call for reinstituting Schedule F: "On Day One, re-issue 2020 executive order restoring the president's authority to fire rogue bureaucrats."

"I think, at the latest, by June 2025 and possibly much sooner, if there is no legislation to prevent it, a new Trump administration could begin populating the bureaucracy with people who are political loyalists, who will write policy the way they want, and who won't question things that are just factually wrong, like a Sharpie change to a hurricane map," says Ronald Sanders, a retired civil service executive appointed by Trump to lead the Federal Salary Council. He resigned in protest after issuance of the Schedule F executive order.

## The What and Why of Schedule F

Executive Order 13957 said Schedule F was necessary to provide agencies "greater ability and discretion" to assess critical qualities in applicants to fill these positions than is provided by the competitive service process. The executive order also stated the government's performance system was inadequate, and employees' poor performance in policy-relevant roles resulted in delays and substandard work within agencies. This resulted in federal agencies needing to "expeditiously remove poorly performing employees from these positions without facing extensive delays or litigation."

Unions vehemently opposed the executive order, and many federal governance experts, NARFE, and other employee advocates said it could allow federal employees to be fired based upon failure to tow party lines and to make way for jobs dispensed as rewards for party loyalists, rather than to competent professionals. This regularly occurred prior to congressional enactment of the Pendleton Act in 1883, which created the current merit-based federal civil service system.

## The Range of Agency Responses to Schedule F

The GAO report noted there is no evidence of any federal agency actually reclassifying positions into Schedule F, much less using reclassification to remove any civil servant, by the time the executive order was revoked.

However, two small federal agencies came close to implementing Schedule F reclassifications. The GAO stated that both the OMB under Vought and the U.S. International Boundary and Water Commission submitted written requests to OPM



to place agency positions into Schedule F. OPM approved the OMB's request to place 136 positions into Schedule F. According to GAO analysis, this could have affected 415 employees, or 68% of OMB's workforce at the time who were in those positions.

On January 8, 2021, OPM approved all but four of the 140 positions proposed by OMB for placement into Schedule F.

“OMB was in the process of reclassifying affected employees as Schedule F employees and converting them from competitive service to excepted service under Schedule F when time ran out in early 2021,” says Alissa Czyz, then GAO’s acting director of strategic issues who signed off on its report to Congress.

The other 13 federal agencies that responded to OPM with Schedule F implementation updates told

GAO they took preliminary steps to comply. *See chart below from the report.*

### Legislative Efforts

Over the past few years, parties concerned that a future administration could seek to reinstitute Schedule F have introduced various legislation and legislative amendments targeted at removing executive branch discretion to impose a Schedule F, or allow a similar removal of civil service protections. However as of August 2024, these efforts failed to pass in a highly divided Congress and one in which there is strong support for Schedule F or equivalent measures among many Republicans.

“We continue to push for legislation, whether that’s standalone legislation or inclusion of language in the National Defense Authorization Act (NDAA)

**Figure 1: Summary of All Agency Schedule F Responses to the Office of Personnel Management during Executive Order 1357'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		●	
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

or inclusion in another bill, to prevent a return of Schedule F,” says NARFE Staff Vice President of Policy and Programs John Hatton. “It’s unclear to me that the NDAA will even be passed through both chambers prior to the election. Unfortunately, the legislative calendar is not friendly to our efforts in terms of getting something across the finish line prior to the election.”

Like the legislative efforts led by Sanders, Don Kettl, former dean of the University of Maryland’s School of Public Policy, and some other former federal military, intelligence, and national security leaders, are attempting to counterbalance Schedule F preventative measures with civil service reforms. These are designed to establish simpler, more expedited measures for firing poor performers and hiring new employees to address the demands of Schedule F advocates for more accountability and efficiency.

Hatton and Sanders agree there is less chance of legislation preventing Schedule F’s implementation after the election.

“Once the presidential election occurs, no matter who wins, all of this will be moot,” Sanders says. “If it’s Harris, it’ll be status quo. If it’s Trump, it’ll be Schedule F and Project 2025 and a middle ground will probably be a non-starter.”

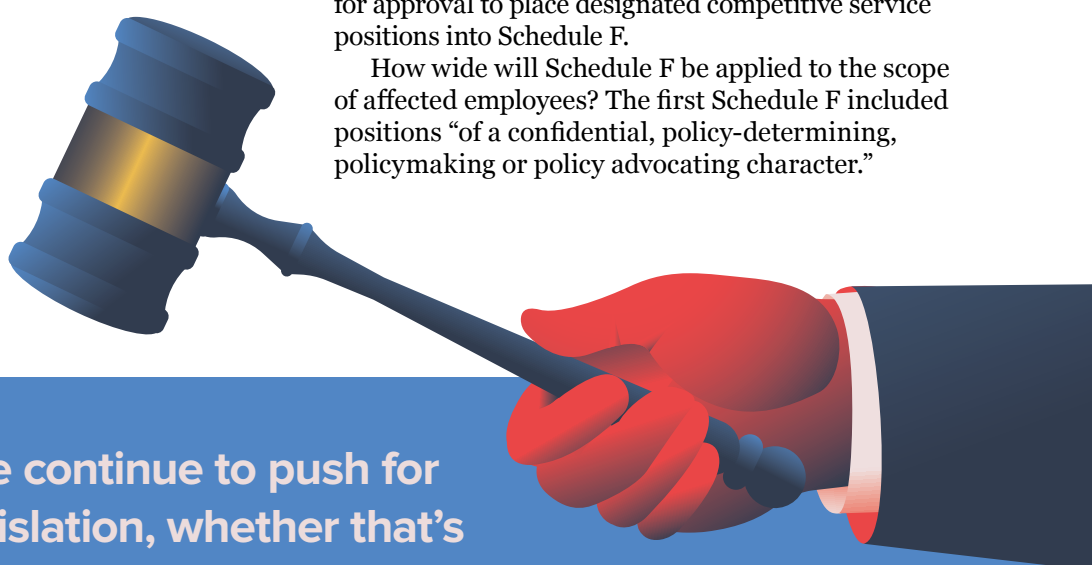
### How Things Could Unfold

If Trump wins the election, many expect his new administration to revive Schedule F or something like it—and do so early in his administration rather than at the end, allowing time for implementation.

As noted, new OPM rules would block reinstitution of Schedule F, but a future presidential administration could undo those rules. OPM would need to conduct notice-and-comment rulemaking to repeal the OPM rules, which could occur in two to six months. Then a new Schedule F executive order could be issued.

Another key factor may be how long it takes agencies to determine which positions should be reclassified, get approval from OPM, and implement the reclassifications. The original executive order gave agencies seven months to determine which of their positions were in policy and send a petition to OPM for approval to place designated competitive service positions into Schedule F.

How wide will Schedule F be applied to the scope of affected employees? The first Schedule F included positions “of a confidential, policy-determining, policymaking or policy advocating character.”



**“We continue to push for legislation, whether that’s standalone legislation or inclusion of language in the National Defense Authorization Act or inclusion in another bill, to prevent a return of Schedule F.”**

— John Hatton, NARFE Staff Vice President of Policy and Programs





“Many 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,” the GAO report said.

Once positions were reclassified and filled, incumbents could immediately be terminated as de facto “at will” employees, says Stephanie Rapp-Tully, a partner at Tully Rinckey PLLC federal employment law firm, while noting there are some ways they could challenge such adverse actions.

## Heading to the Courts

There will likely be court challenges to implementing a future Schedule F.

Hatton says a challenge might contest whether it is too sweeping and undermines Congress’s intent when it enacted its civil service statutes. That could be an uphill battle. Anti-Schedule F legislation made Congress aware of the issue. Congress had the chance to address it but chose not to take action. Schedule F also takes advantage of an existing statutory loophole allowing executive branch discretion in administering the civil service laws.

A U.S. Merit Systems Protection Board (MSPB) leader told the GAO that if Schedule F was implemented, MSPB would have expected increased appeals and challenges related to the schedule. According to the GAO inquiry, the MSPB leader said

employees in positions placed into Schedule F could argue that the terms of their employment were changed so much that they suffered harm, citing loss of due process rights associated with Schedule F positions, especially if they were involuntarily moved from a position with appeal rights to one without appeal rights.

There is no express statutory provision that would prevent the reclassification of existing civil service positions into excepted service positions, says Steve Lenkart, executive director of the National Federation of Federal Employees, a federal employee union with 110,000 members. He is also a former executive director of the MSPB, a federal agency that serves as the guardian of federal merit systems principles. Lenkart adds that the Civil Service Reform Act of 1978 (CSRA) allows employees who feel they’ve been unfairly reassigned to file with the MSPB.

There is a good chance challenges to Schedule F could end up at the Supreme Court, many interviewed said.

“Attorneys from multiple unions have been looking at different legal options, but we do not have a very friendly Supreme Court,” says Lenkart.

A court injunction preventing the implementation of new Schedule F rules would be high on the list of objectives for a Schedule F challenger.

## Adverse Actions Against Employees

A whole other set of challenges could arise from using Schedule F-like reforms to take adverse actions against reclassified individual employees to remove them from the federal government. Agencies are generally required to follow certain procedures when seeking to remove an employee for misconduct or poor performance.

Rapp-Tully notes much could depend on the interpretation of federal employment law by MSPB during removal proceedings. MSPB appeal rights in adverse action cases after completing two years of employment are embodied within 5 U.S.C. § 7511, notes John Mahoney of the Washington, D.C.-based law firm of John Mahoney, Attorneys at Law.

“While employees could challenge the action through the MSPB or the courts, they would do so while unemployed and likely footing their own legal bill,” Rapp-Tully said.

## The Effect on Employees

Employee advocates worry about the effect a revived Schedule F could have on federal employees’ efforts to uphold federal law, take action against corruption, and adhere to their job duties and observed facts.



**“My conscience would not permit me to stay on, given the real reason—not the ostensible reason, but the real reason—behind Schedule F was to put loyalists in senior civil servant positions, not to enhance their accountability, but to substitute political fealty for that accountability. And that’s just plain wrong.”**

— Ronald Sanders, a retired civil service executive appointed by Trump to lead the Federal Salary Council

“Schedule F would, to quote a colleague of mine, Robert Shea, a former senior OMB official, potentially provide for an army of suck-ups who won’t speak truth to power, who will just say ‘yes,’ and salute smartly,” Sanders says. “The Iraq weapons of mass destruction debacle [where federal employees and senior U.S. leaders used alleged WMDs in Iraq as a pretext for the Iraq invasion despite a lack of evidence] is a perfect example of that. You don’t want people telling policymakers what you think they want to hear. You have to tell them what you really think, right? And then let them decide.”

They could still decide to invade Iraq, Sanders adds.

“But at the end of the day, you can’t be accused of muddling your advice,” he said. “Civil servants should not be thinking, ‘Well, if I tell this appointee what I really think, I could lose my job.’”

The reinstitution of Schedule F could increase the number of cases where federal employees find themselves compelled to resign if agency leaders make policy choices that contravene the facts, says Sanders. Employees no longer able to work consistently with their consciences may feel compelled to resign as Sanders did when he left federal service after the institution of Schedule F.

“My conscience would not permit me to stay on, given the real reason—not the ostensible reason, but the real reason—behind Schedule F was to put loyalists in senior civil servant positions,” Sanders says. “Not to enhance their accountability, but to substitute political fealty for that accountability. And that’s just plain wrong. But if you speak truth to power and the political appointee or the elected

official says, ‘I hear you. But here’s a lawful

order. I want you to implement what I want to do, and it’s something for which the American people have given me a mandate,’ then that senior civil servant has an obligation, duty-sworn to follow that order if that order is lawful. They can’t go underground and become a guerrilla government. That’s where I draw the line.” ■

—DAVID TOBENKIN IS A FREELANCE WRITER IN THE GREATER WASHINGTON, D.C., AREA.

