August 3, 2026

Scott Kupor, Director
U.S. Office of Personnel Management
1900 E Street NW
Washington, D.C. 20415

Henry J. Kerner, Acting Chairman
U.S. Merit Systems Protection Board
1615 M Street NW
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Re: OPM-2025-0012-0001; Promoting Employee Accountability

Messrs. Kupor and Kerner,

The Freedom Foundation ("Foundation") is a nonprofit organization organized under 26 U.S.C. § 501(c)(3) that works to advance the principles of individual liberty, free enterprise, and limited, accountable government through policy research and advocacy, educational outreach, and public interest litigation. Founded in 1991 in Olympia, Wash., the Foundation now operates nationwide with staff and offices around the country and, for the past decade, has devoted its energies to advocating for state and federal reforms to make labor unions representing government employees more accountable to their members and taxpayers.

Through its work, the Foundation has developed considerable expertise on the operations and activities of labor unions and the effects of public-sector collective bargaining on government accountability. Whether lobbying for more government spending, seeking to secure taxpayer funding for union activities in bargaining, unduly shaping agency policies, or shielding underperforming or recalcitrant public employees from discipline, there are a myriad of ways in which labor unions' interests often align with, and directly benefit from, a permanent federal bureaucracy that is insulated from the types of accountability measures that President Trump has sought to implement in both his first and second terms.

The Foundation applauds the Trump administration's already successful efforts to increase federal employee accountability and responsiveness to the American people, including by implementing a Schedule Policy/Career category for policy-influencing career employees,[1] and is pleased to have supported such previous rulemaking by the Office of Personnel Management (OPM).[2]

[1] Improving Performance, Accountability and Responsiveness in the Civil Service. 91 FR 5580 (February 6, 2026). https://www.federalregister.gov/documents/2026/02/06/2026-02375/improving-performance-accountability-and-responsiveness-in-the-civil-service
[2] Comment 34007 to OPM's notice of proposed rulemaking, "Improving Performance, Accountability and Responsiveness in the Civil Service." April 23, 2025. Available at: https://www.regulations.gov/comment/OPM-2025-0004-34007

To that same end, the Foundation now appreciates the opportunity to offer its below comments and suggestions in support of the proposed regulations[3] by OPM and the Merit Systems Protection Board (MSPB) to further promote performance, accountability and responsiveness in the federal workforce by amending 5 C.F.R. §§ 412, 432, 715, 752 and 1201 to make performance-based and adverse actions and appeals more efficient and effective.

How Union Contracts Impede Accountability in the Federal Workforce

As OPM and MSPB explain in their joint Notice of Proposed Rulemaking (NPRM), one of the key goals of the proposed regulatory changes is to "remove extra-statutory processes that impede accountability" in the federal workforce.[4]

Consequently, the proposed rule includes amendments to the procedures governing performance-based and adverse actions under 5 C.F.R. §§ 432 and 752 meant to "firmly and completely limit the flexibility of agencies to provide processes not contemplated by this rule, including by agreeing to conflicting provisions in collective bargaining agreements."[5]

Though labor unions representing federal employees will no doubt oppose these reforms, the Foundation believes there is strong evidence to support OPM's conclusion that such changes "are necessary to free supervisors and managers from administrative burdens placed upon them by agency policy or collective bargaining agreements that prevent them from quickly addressing misconduct in the workplace."[6]

For starters, there is no question that federal employee unions seek to impose requirements on performance-based and adverse action procedures beyond what federal civil service laws require or envision.

When President Biden took office in 2021, he promptly ordered the recission of a final rule adopted during the first Trump administration that contained many of the same employee accountability reforms now proposed by OPM.[7] OPM has done well to point out in its current rulemaking that, according to the Biden administration officials, a key reason for reversing the Trump-era regulations was that it viewed such reforms as "inconsistent with… [President Biden's] current policy to encourage employee organizing and collective bargaining."[8]

In other words, President Biden's promise to be the "most pro-union president in American history" came with his administration's recognition of — and support for — the fact that the existing language in §§ 432 and 752 gives unions significant latitude to exercise control over agencies' disciplinary and adverse action procedures through collective bargaining. OPM would be right to clarify these procedures if for no other reason than that previous presidential administrations have clearly viewed the current regulations as advancing the purported higher

[3] Promoting Employee Accountability. FR Doc. 2026-13445 (July 2, 2026). https://www.regulations.gov/document/OPM-2025-0012-0001
[4] *Id*.
[5] *Id*.
[6] *Id*.
[7] *Id*.
[8] *Id*.

purpose of promoting unions, rather than faithfully interpreting and effectuating U.S. civil service laws.

However, as OPM notes, there are also a number of specific, identifiable ways in which federal employee collective bargaining agreements impede federal agencies' ability to take performance-based and adverse actions under §§ 432 and 752, and which the Trump administration now seeks to rectify.

As explained in greater detail below, the Foundation's review of current and recent federal employee union contracts further confirms OPM's findings and illustrates the need for the proposed rule.

Federal Employee Collective Bargaining Agreements Illustrate the Need for Reform

Addressing Unacceptable Performance Under 5 C.F.R. §§ 432.104 and 432.105

First, OPM explains that, because the current language in 5 C.F.R. § 432.104 does not define the term "reasonable opportunity" with respect to an employee's right to demonstrate acceptable performance prior to facing a disciplinary or adverse action, unions commonly bargain for "extensive time periods" before any such action may be taken.[9]

Additionally, some collective bargaining agreements require agencies to provide underperforming employees with informal "performance assistance periods" before initiating the formal, statutorily required opportunity periods regulated by § 432.104.[10]

In both cases, such provisions "significantly extend the amount of time necessary to remove an underperforming employee,"[11] with OPM pointing out that some collective bargaining agreements require federal agencies to observe a "45-day [opportunity period] prior to effectuating performance-based removals," regardless of any assistance the agency has already provided to the employee.

However, according to the Foundation's review of federal employee union contracts, many drag out the accountability process even longer.

For instance, the contract between the U.S. Department of Veterans Affairs and the American Federation of Government Employees (AFGE) provides that, in addition to ongoing assistance provided to employees during their performance appraisal periods, the agency must grant underperforming employees an opportunity period of "<u>at least 90 calendar days</u>," which "<u>may be extended</u>," before it can take any reduction-in-grade or removal actions to address unacceptable performance pursuant to § 432.105.[12] (Emphasis added).

[9] *Id.*
[10] *Id.*
[11] *Id.*
[12] Collective bargaining agreement between the Department of Veterans Affairs and AFGE. Article 27, Sections 2 and 9-10. https://www.opm.gov/cba/api/documents/cb2c7ad6-5b64-48c2-b30c-591e8413610f/attachments/VA-AFGE-2023-Master-Agreement.pdf

Similarly, the collective bargaining agreement between the Federal Aviation Administration and the National Association of Government Employees (NAGE) stipulates that these opportunity periods must "in no case [be] less than ninety (90) days."[13]

Meanwhile, AFGE's union contract with the U.S. Department of Labor covering the agency's field office staff provides that "any time… an employee's performance is determined to be unacceptable… the supervisor <u>must initiate an informal opportunity period</u> to assist an employee in improving performance."[14] (Emphasis added). The contract further specifies that employees whose performance "remains at the unacceptable level" after their "informal opportunity period" are then guaranteed a minimum 90-day *formal* opportunity period, during which "[n]o performance-based action under 5 CFR 432 will be proposed."[15]

Given the prevalence of these and similar provisions throughout federal employee collective bargaining agreements, there is ample evidence supporting OPM's proposal to prohibit informal assistance periods, limit formal opportunity periods under § 432.104 to 30 calendar days, and make corresponding amendments to § 752 to prevent federal agencies and unions from supplementing these procedures through collective bargaining.

Procedures for Short-Term Suspensions Under 5 C.F.R. § 752.203

OPM also proposes to amend § 752.203(f) to prohibit the use of grievance procedures negotiated through collective bargaining to contest suspensions of 14 days or less "unless the agency and OPM agree that the negotiated grievance procedure does not impair the effective use" of the regulatory action."[16]

As OPM explains, these reforms seek to "prevent negotiated grievance procedures from creating significant delays and imposing significant expenses when agencies utilize short-term suspensions" because "Congress intended suspensions of 14 days or less to be less administratively burdensome than adverse actions."[17]

Here, too, current provisions found in federal employee collective bargaining agreements show OPM's concerns to be justified.

For example, the union contract between the Social Security Administration and the National Treasury Employees Union (NTEU) specifically permits employees to challenge suspensions of

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[13] Collective bargaining agreement between the Federal Aviation Administration and NAGE. Article 20, Section 4. https://www.opm.gov/cba/api/documents/a72c4d23-1086-4f6e-b0a3-fa9ea127bba0/attachments/R3-10DOTFAANAGECBA01-15-%202030.pdf

[14] Collective bargaining agreement between the U.S. Department of Labor and AFGE. Article 43, Section 8. https://www.opm.gov/cba/api/documents/e5b42530-2bbf-4590-94a6-be48d69a026f/attachments/NewDOLandNCFLLAFGEAFLCIOCBAEffective7November2024Final.pdf

[15] *Id*.

[16] Promoting Employee Accountability. FR Doc. 2026-13445 (July 2, 2026). https://www.regulations.gov/document/OPM-2025-0012-0001

[17] *Id*.

14 days or less via a negotiated grievance procedure that can add more than a month of delays to the process, after which the dispute can be subjected to further arbitration.[18]

And even when routed through "expedited" grievance and arbitration proceedings, as is the case for short-term suspensions under some union contracts, these procedures invariably result in longer timelines than what Congress intended. For instance, the collective bargaining agreement between the Federal Mediation and Conciliation Service (FMCS) and NAGE reveals that even expedited arbitration is subject to an arbitrator selection and scheduling process that can potentially drag on for up to six months.[19]

In either case, the use of grievance procedures to contest short-term suspensions not only makes for a longer and more cumbersome process but also results in unnecessary costs to agencies and taxpayers.[20] Limiting the use of union-negotiated grievance procedures in such matters is an important and common-sense step toward helping federal agencies "eliminate waste and find efficiencies to deliver on their missions."[21]

Other Collective Bargaining Provisions Addressed by the Proposed Rule

In addition to the types of collective bargaining provisions specifically discussed in the NPRM, the Foundation has identified several other ways in which federal employee union contracts commonly impose extra-statutory requirements on the procedures that OPM and MSPB seek to amend in 5 C.F.R. §§ 432, 752 and 1201.

From extending timelines for agency and employee communications in performance-based and adverse action proceedings,[22] to requiring the use progressive discipline,[23] removing records of disciplinary or adverse actions from employee records,[24] and enforcing a rigid application of the

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[18] Collective bargaining agreement between the Social Security Administration and NTEU. Articles 26, 28 and 30. https://www.opm.gov/cba/api/documents/1b46417a-9d10-4032-991b-c06d37624c4f/attachments/2019%20SSA-NTEU%20National%20AgreementFull%20CBA%20w%20Changes%20Eff%20110622Final%20Remediated.pdf

[19] Collective bargaining agreement between the Federal Mediation and Conciliation Service and NAGE. Articles 43 and 47-48. https://www.opm.gov/cba/api/documents/d8f5da78-c101-4cf2-9244-7bfb1a305df5/attachments/508%20Complete%20FMCS%20NAGE%20CBA%20February%2011%202022%20OPM.pdf

[20] Promoting Employee Accountability. FR Doc. 2026-13445 (July 2, 2026). https://www.regulations.gov/document/OPM-2025-0012-0001

[21] *Id*.

[22] *See* Article 25, Section 7 of the collective bargaining agreement between the U.S. Department of Agriculture and AFGE Local 1331 (providing that employees are "entitled to a 30 calendar day written notice, prior to the effective date of the action" and "is entitled to a response period of 15 business days."). https://www.opm.gov/cba/api/documents/582cd529-6b5f-46ab-a25d-9bd848dcd39a/attachments/1572USDAERRCAFGE%201331CBA02-04-2026.pdf

[23] *See* Article 43, Section 3 and Article 44, Section 3 of the collective bargaining agreement between the Department of Health and Human Services and NTEU ("In effecting disciplinary [or adverse] actions, the Employer shall endorse the use of… progressive discipline."). https://www.opm.gov/cba/api/documents/65887026-4a55-4a95-a253-5fef436c2e85/attachments/3591%20HHS%20NTEU2023CBA%207-2-2028.pdf

[24] *See* Article 18, Section 8 of the collective bargaining agreement between the U.S. Chemical Safety & Hazard Investigation Board and AFGE ("A suspension of more than fourteen (14) days shall be removed from all files after two (2) years…"). https://www.opm.gov/cba/api/documents/4c82adbd-3bba-4b95-a52a-9832472ca748/attachments/Agency%20Union%20CBA%202024%20CSB.pdf

Douglas factors influencing MSPB's review of adverse actions,[25] there are almost no aspects of the proposed rule that are not significantly influenced by the role of labor unions in impeding federal employee accountability.

Accordingly, the Foundation strongly supports the proposal to preclude federal agencies from agreeing to any "requirements, process, standards, or allowances not contemplated, in whole or in part, by this rule" by specifically amending §§ 432 and 752 to "supersede any conflicting provisions found in agency policies or collective bargaining agreements."[26]

Ending Taxpayer-Funded Union Time in Disciplinary and Adverse Action Proceedings

In addition to streamlining employee accountability procedures, OPM declares that "the proposed rule also prohibits the use of taxpayer-funded union time… for a Federal employee serving as a [union] representative of an employee during the procedures established under subparts B and D of [5 C.F.R. § 752]."[27]

As the name implies, taxpayer-funded union time — called "official time" in the statutory and regulatory text — refers to the practice of federal employees engaging in union activities instead of their assigned duties while on the clock and without loss of pay.

The Foundation is proud to support OPM's initiative to limit the use of taxpayer-funded union time in any amount, having previously investigated and exposed the Biden administration's efforts to shield such information from public view[28] before working with the Trump administration and congressional lawmakers to encourage OPM to reimplement a requirement that federal agencies report the amount of union work performed by their employees at taxpayer expense.[29]

Those efforts resulted in a 2025 directive by OPM requiring federal agencies to submit information about the use of "taxpayer-funded union time information for Fiscal Year 2024,"[30] providing valuable data which now supports the proposed rulemaking.

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[25] For example, the Federal Labor Relations Authority's decision in *U.S. Dep't of Energy and Am. Fed'n of Gov't Emps.*, 73 FLRA No. 100 (2023), cited in the NPRM as an example of how progressive discipline or "tables of penalties" undermine accountability, was predicated on the fact that the union contract mandated a strict weighing of the *Douglas* factors (affirming that "the Arbitrator concluded that the Agency did not properly analyze the Douglas factors, which violated Section 1.02A of the parties' [collective bargaining agreement] agreement."). https://www.flra.gov/system/files/decisions/v73_100.pdf

[26] Promoting Employee Accountability. FR Doc. 2026-13445 (July 2, 2026). https://www.regulations.gov/document/OPM-2025-0012-0001

[27] *Id*.

[28] Maxford Nelsen. "Biden administration covering up taxpayer-funded union activities in the federal workforce.' Freedom Foundation. November 27, 2023. https://www.freedomfoundation.com/labor/biden-administration-covering-up-taxpayer-funded-union-activities-in-the-federal-workforce/

[29] Maxford Nelsen. "Freedom Foundation Applauds OPM Directive to Report on Government Union Work." March 3, 2025. https://www.freedomfoundation.com/labor/freedom-foundation-applauds-opm-directive-to-report-on-government-union-work/

[30] U.S. Office of Personnel Management. "Agency Reporting to OPM for Fiscal Year 2024 Taxpayer-Funded Union Time Use." February 27, 2025. https://www.opm.gov/chcoc/latest-memos/agency-reporting-to-opm-for-fiscal-year-2024-taxpayer-funded-union-time-use.pdf

According to OPM's summary of the final report, "taxpayers subsidize labor union representatives at a total compensation rate of $64.05 per hour to represent bargaining unit employees… at a total annual compensation cost of more than $207 million."[31]

The total cost of union activities undertaken at taxpayers' expense is, indeed, staggering. And there is no doubt that even those costs incurred in disciplinary and adverse action proceedings alone are significant. The Foundation commends OPM's proposal to put an end to taxpayer-funded union time in proceedings governed by 5 C.F.R. §§ 432 and 752 and agrees that "American taxpayers should not pay for the representation of Federal employees charged with conduct detrimental to the efficiency of the service."[32]

Ending taxpayer-funded union time in disciplinary and adverse action proceedings is a small but important step toward fulfilling the Trump administration's broader vision of ensuring that federal agencies administer the Federal Service Labor-Management Relations Statute "in a manner consistent with the requirements of an effective and efficient government" and that agencies "authorize taxpayer-funded union time only in amounts that are reasonable, necessary, and in the public interest [and] monitor its use to see that it is used efficiently."[33]

Possible Improvements to the Proposed Rule

Though OPM rightly proposes to end taxpayer-funded union time for union representatives in actions governed by 5 C.F.R. §§ 432 and 752, the proposed regulatory text in §§ 432.105(d)(3) and 752.203(d) appears to apply only to federal employees representing *other* employees in their capacity as union representatives.

However, the Foundation's review of federal employee union contracts has uncovered that some go even further by also providing taxpayer-funded union time ("official time") to employees subject to the disciplinary or adverse action.

To name just one example, the collective bargaining agreement between the U.S. Chemical Safety & Hazard Investigation Board and AFGE specifies that employees shall have the "right to request <u>up to eight (8) hours of official time</u> to review the evidence and prepare their answer [to the agency's proposed disciplinary or adverse action]. Additional time may be granted…"[34] (Emphasis added).

Just as American taxpayers should not be required to pay for union representatives' time, neither should they have to foot the bill for underperforming or malfeasant employees to mount their own defense. After all, OPM has expressed that it "finds it entirely appropriate and necessary to reduce [the] growing costs [of taxpayer-funded union time] <u>by ending the general subsidization of</u>

[31] Promoting Employee Accountability. FR Doc. 2026-13445 (July 2, 2026). https://www.regulations.gov/document/OPM-2025-0012-0001
[32] *Id*.
[33] U.S. Office of Personnel Management. "Agency Reporting to OPM for Fiscal Year 2024 Taxpayer-Funded Union Time Use." February 27, 2025. https://www.opm.gov/chcoc/latest-memos/agency-reporting-to-opm-for-fiscal-year-2024-taxpayer-funded-union-time-use.pdf
[34] Collective bargaining agreement between the U.S. Chemical Safety & Hazard Investigation Board and AFGE. Article 18, Section 3. https://www.opm.gov/cba/api/documents/4c82adbd-3bba-4b95-a52a-9832472ca748/attachments/Agency%20Union%20CBA%202024%20CSB.pdf

employee opposition to proposed removals. Employees may represent themselves in such proceedings or bring in outside counsel. But agencies should not be required to subsidize employee opposition to removal actions."[35] (Emphasis added).

The Foundation encourages OPM to review and, if necessary, further amend the regulatory text to fully effectuate this policy by prohibiting the use of any and all forms of taxpayer-funded union time during such proceedings.

Additionally, the proposed amendments to 5 C.F.R. § 752.404, which governs procedures for removals, suspensions for more than 14 days, reductions in grade or pay, or furloughs for 30 days or less, do not appear to include any language comparable to that proposed in §§ 432.105(d)(3) and 752.203(d) prohibiting taxpayer-funded union time.

OPM declares in the NPRM that "[t]he proposed rule… prohibits the use of taxpayer-funded union time… during the procedures established under subparts B and D of part 752."[36] (Emphasis added). This indicates that OPM does, indeed, intend for this prohibition to also apply to the removal and suspension procedures in § 752.404, under which § 752.404(e) currently pertains to employee representation.

The Foundation encourages OPM to review its proposed amendments to 5 C.F.R. § 752.404 and ensure that the final rule prohibits taxpayer-funded union time in adverse action proceedings governed by subpart D of § 752.

Conclusion

The Foundation strongly supports the proposed rulemaking by OPM and MSPB and commends the Trump administration for recognizing the significant role that union contracts play in impeding federal employee accountability.

Having worked tirelessly to advance reforms ending taxpayer funding for labor unions, the Foundation is also extremely pleased to see OPM take the next step towards limiting taxpayer-funded union time in the federal government by prohibiting unions from defending employees in disciplinary and adverse action proceedings at taxpayers' expense.

We hope the foregoing comments and suggestions are helpful in the administration's efforts to advance this important and worthwhile proposal. Please do not hesitate to contact us if we can be of any further assistance in this matter.

Sincerely,

Ben Straka
Research & Government Affairs

[35] Promoting Employee Accountability. FR Doc. 2026-13445 (July 2, 2026). https://www.regulations.gov/document/OPM-2025-0012-0001
[36] *Id*.

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