We the Doers

Fast but Fair Federal Firing:

Balancing Speed and Due Process when Removing Employees for Cause

August 27, 2026

Preface from We the Doers' Leadership

Ask a manager in the federal government about the quality of the workforce, and you will get an earful. They will tell you about many superstars they have managed over the years, always going above and beyond despite relatively few incentives to do so. With little fanfare or recognition, these employees perform heroics while deployed for months at a time in hurricane-ravaged areas and war zones; work for no pay during government shutdowns; and leverage their expertise to negotiate billions of dollars in savings on the cost of prescription drugs for Medicare; reduce fraud, waste, and abuse in federal payments; create the world's most powerful supercomputer to safeguard the nation's nuclear stockpile; and sequence and identify food-borne illnesses to quickly remove infected products from grocery shelves.

Most managers have also had at least one employee with serious performance or conduct issues. Sometimes, the manager can coach or train the employee back to being a productive team member. Other times, the manager is able to transfer the employee to a position that is a better fit for the employee's skill set.

Removing an employee for cause is a last resort, but it is sometimes a necessary one. Keeping poor performers on a team reduces morale, lowers productivity, and burns out the high performers who are forced to pick up the slack. It also hinders civil servants' ability to deliver results for the American people.

Necessary as it is, the process for removing a federal employee has become incredibly convoluted, expensive, time-consuming, and burdensome.

The current administration has focused on removing civil service protections for certain civil servants, rather than on reforming the system itself. We believe a better way is possible. As former federal managers, we want current and future managers to be able to navigate a process that:

- Is clearly constructed, transparent, and ultimately fair to both employee and manager;
- Allows for the removal of an employee for cause in a reasonable time frame, while respecting due process; and
- Ensures, above all, that government agencies are staffed with the right people with the right skills and attitude to deliver the best possible results to the American people.

We do not take this topic lightly, and we acknowledge that the qualitative data and recommendations in this report are only a portion of the story. But we hope that this report will serve as a starting point for a meaningful nonpartisan discussion of common-sense reforms to build a better civil service.

Maureen Klovers & April Harding, Co-Founders, We the Doers

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Executive Summary

We the Doers convened a diverse group of former senior-level civil servants to answer the question “What would it take to be able to remove true underperformers from federal service within six months while still ensuring due process, adherence to merit system principles, and protecting civil servants from whistleblower retaliation and politically motivated firings?"

In other words, what system would you design if you did not know if you would be (a) a manager saddled with an employee with significant performance or conduct issues that the employee was unable or unwilling to correct, or (b) an employee reporting to an unreasonable, unethical, or arbitrary manager? What system would you design if the goal was to maximize the effectiveness and efficiency of the federal workforce and ensure it remains nonpartisan?

This unique group included former federal human capital executives and attorneys involved in the employee removal process. Most importantly, it included 10 former or current federal managers with a combined 181 years of experience across 10 different agencies who had navigated a gauntlet of bureaucratic obstacles to collectively address 14 serious performance and eight serious conduct issues as either a first- or second-level supervisor.

The qualitative and quantitative data provided by these managers paints a picture of a process that is lengthy, time-consuming, arduous for the manager and expensive for the taxpayer. In the 12 cases for which managers provided a detailed analysis of the time and resources involved, an average of 19 months elapsed between the time the manager initiated the process and the time the employee resigned, retired, transferred to another agency, or was fired. For the 5 cases in which an employee was actually removed from federal service, it took even longer: an average of 21 months.

During this time, the supervisors estimated that, for cases of unacceptable performance, first- and second-line supervisors spent an average of 542 hours, for an average estimated cost to the taxpayer of $53,452 per case. For the conduct cases studied, first- and second-level supervisors spent an estimated average of 292 hours and $28,458 in taxpayer funds. These cost estimates include only the first- and second-level supervisor’s time and do not include the time of legal or human resources (HR) staff; the associated cost of the supervisor’s and HR and legal team’s benefits; the pay and benefits of the employee as he or she continued to collect pay and benefits while the process ground on (and often while the employee was on paid administrative leave); and the cost of the work not being accomplished.

This group of current and former managers identified five key root causes of dysfunction in the current process:

1. **There is no consistent process for employee removal.** It varies by agency, bureau, the employee's Collective Bargaining Unit, and even the agency HR and legal staff assigned to the case.

2. **Underperformers often game the system — and the system makes it easy to do.** Managers described numerous ways employees could leverage processes designed for other laudable goals to delay or avoid removal.

    a. Employees filed Equal Employment Opportunity (EEO) complaints against their manager, alleging discrimination on the basis of race, gender, age, and/or disability in 10 out of 12 cases, and in two of these cases, the employees subsequently took their case to the Equal Employment Opportunity Commission (EEOC). None of these complaints were found to have merit or be valid.

    b. Employees filed grievances against their managers in seven out of 12 cases. In no cases were the grievances upheld.

    c. In six out of 12 cases, employees filed for reasonable accommodation during the performance improvement period or after a disciplinary or adverse action was issued, and in some cases, used the denial of the requested reasonable accommodation to support a claim of discrimination on the basis of disability. None of these claims of discrimination on the basis of disability were substantiated.

    d. Employees requested and received leave under the Family and Medical Leave Act (FMLA) in 3 out of 12 cases, delaying removal.

3. **Managers are encouraged — and often incentivized — to leave poor performers on the job**. In other cases, they are encouraged or incentivized to transfer these employees to other agencies where the unacceptable performance/behavior continues and becomes another manager's problem.

4. **Managers perceive that agency human resources and legal staff are often too risk-averse —** and do not factor in the risks of leaving employees with serious conduct and performance issues on the job.

5. **Many managers feel they have insufficient tools and training** to create the clear and fair performance standards necessary to hold employees accountable for poor performance.

We the Doers then developed specific recommendations to remove these barriers.

Specifically, we urge Congress to address some of the statutory barriers to a more streamlined, faster, fairer, more transparent process by:

- ✓ **Revising 5 U.S.C. § 7513 and 5 U.S.C. § 4303** to prohibit agencies and bureaus from (a) adopting additional procedures for removing employees for cause or conduct, beyond that in the revised code and OPM's implementing regulations/guidance; and (b) entering into Collective Bargaining Agreements (CBAs) that would adopt any additional procedures, waiting periods, or employee protections related to for-cause removal. This process should be streamlined compared to the current process and fully documented so that all parties in all agencies — employees subject to disciplinary action or removal, supervisors, and agency HR staff and attorneys — have a shared understanding of the steps involved and do not need to rely on the tacit knowledge of agency HR staff.

- ✓ **Revising the Civil Service Reform Act of 1978 and 5 U.S.C. Chapters 12 and 77 (which govern the Merit Systems Protection Board and appeals process); Title VII of the 1964 Civil Rights Act, as amended, and the Equal Employment Opportunity Act of 1972 (which governs the Equal Employment Opportunity Commission); and the Civil Service Reform Act, Whistleblower Protection Act, and 5 U.S.C. § 1212 (which govern the Office of Special Counsel)** to consolidate all post-removal appeals and investigative processes for federal employees into a single adjudicatory body. In light of the recent *Trump vs. Slaughter* decision, it will be critical for Congress to explore legal options to ensure the long-term credibility and functionality of the adjudicatory board by making this body truly independent at an operational level. This should include strong requirements for transparent procedures, clear recusal rules, and strong removal protections for Senate-confirmed appointees.

- ✓ **Revising the Equal Employment Opportunity Act of 1972 such that the Equal Employment Opportunity Commission will revise 29 C.F.R. Part 1614** to either (a) raise the threshold for acceptance of complaints to agency Equal Employment Opportunity offices and limit the initial scope of investigation, or (b) eliminate individual agency EEO offices and move all complaints to the single adjudicatory body that we recommend above.

- ✓ **Requiring agencies to track "time to fire" and other key workforce metrics** listed in detail in the body of this report, and to create a centralized case management system (ideally as part of the planned Core Human Capital Management (HCM) platform that OPM kicked off in October 2025).

- ✓ **Requiring GAO to conduct an annual review of a small sample of these data at each of the 24 CFO Act agencies**, to ensure that agencies are following the new process, respecting due process for employees, and accurately reporting data.

Statutory and regulatory changes are necessary but not sufficient, of course. Much of the group's discussion centered on the gap between theory and practice, and the often wide gulf between directives issued by the Office of Personnel Management (OPM) and actual implementation (or lack of implementation) in agency human resources offices and agency legal offices. Culture matters, and changing the culture from a risk-averse, compliance-focused culture to a culture that balances compliance with *timely results* will require hiring supervisors, HR, and legal staff with the right mindset; providing appropriate professional development and coaching; and creating the right incentive structures.

We the Doers therefore also recommends the following changes at the executive branch level to make this culture shift:

- ✓ **Professionalizing employment and labor relations** by ensuring adequate resources and training, aligning performance plans with the goal of balancing speed and due process, and requiring HR staff involved in the discipline and removal process to pass a certification test on the new government-wide process.
- ✓ **Providing documentation resources** so that anyone involved in addressing performance or conduct issues understands their role and the steps in the process, such as checklists, templates, and just-in-time training videos.
- ✓ **Creating a centralized case management system** — ideally within the new HR 2.0 Core HCM under development at OPM — to allow supervisors to see where their employees with performance or conduct issues are in the removal process, and to be able to view their direct reports' electronic Official Personnel File (eOPF) and prior performance appraisals and mid-year reviews.
- ✓ **Requiring agencies to request agency-funded medical second opinions for most Family and Medical Leave Act (FMLA) or Reasonable Accommodation (RA) requests from employees with an active Performance Improvement Plan (PIP)** or who are in the discipline or performance improvement process, as already permitted by the Family and Medical Leave Act (FMLA), the Americans with Disabilities Act (ADA), and 29 CFR 1630.14.
- ✓ **Holding supervisors and HR and OGC ELR staff accountable — and rewarding and incentivizing them —** for addressing performance and conduct issues.
- ✓ **Including an evaluation of how aspirants to the Senior Executive Service (SES) have successfully addressed performance or misconduct issues** in the SES selection process.
- ✓ **Creating a library of sample performance standards by role**, to ensure consistency and accountability and to facilitate the development of a Performance Improvement Plan (PIP) if necessary.

Our Approach

This report combines storytelling, process mapping, and qualitative user experience research. It is based on interviews and working sessions designed to illuminate the first-hand experiences of federal managers who had dealt with serious employee misconduct and performance issues through the employee discipline and removal process. Our interviews and working sessions with these managers focused on:

1. Understanding how the statutory and regulatory rules operate in theory and in practice — and why a gap exists between theory and practice;
2. Identifying pain points in this process; and
3. Analyzing the root causes of these pain points and what would have to change to make the process faster and more predictable while maintaining fairness.

We did not set out to conduct a statistically representative study of all federal removals. In qualitative user experience research, small samples are often sufficient to identify recurring workflow problems, especially when participants have deep experience with the process being studied. Usability research has long found that a small number of participants can reveal many of the most common usability problems. Basic themes emerge within the first several interviews and often stabilize as additional interviews confirm, rather than fundamentally change, the pattern. While our findings are not statistically representative of all federal agencies or all removal actions, they are valid and useful for identifying common failure points, testing whether formal process maps match lived experience, and generating reform recommendations for further validation.

For this report, we interviewed 10 current or former federal managers who had been involved in removing, attempting to remove, and/or protecting employees from unjustified removal or other adverse action. These managers had a combined 181 years of experience across the following agencies: Agriculture, Commerce, Defense, General Services Administration, Health and Human Services, Homeland Security, Interior, Treasury, Office of Management and Budget, and Office of Personnel Management.

These managers had navigated a gauntlet of bureaucratic obstacles to collectively address 14 serious performance and eight serious conduct issues as either a first- or second-level supervisor.

Of the 14 issues handled under 5 U.S.C. § 4303 for poor performance:

- Three resulted in the employee passing his or her Performance Improvement Plan and returning to “fully successful” performance, though in two of these cases, the employee found employment in another agency shortly thereafter.
- Two resulted in the employee’s retirement.
- Two resulted in the employee resigning. One resignation occurred after the employee was confronted with evidence from a police wiretap showing the employee had been making harassing phone calls to the manager’s private residence.
- Two transferred to another agency or bureau. One transfer occurred because the employee was able to find another job before the removal process played out. The other occurred as part of a mediation agreement.
- Five were removed from federal service.

For eight of these 14 cases, the supervisor provided detailed level of effort information about their experience based on their recollection. For this subset of eight performance issues, an average of 19 months elapsed between the time the supervisor first identified the performance issue and the time the employee retired, resigned, transferred, or was fired and removed from federal service.

Of the eight issues handled under 5 U.S.C. § 7513 for misconduct:

- One resulted in the employee's retirement;
- Two became bogged down in the agency's Equal Employment Opportunity (EEO) investigation process and the employees are still on the job (and management is still responding to allegations) despite (in the manager's view) continued failure to perform assigned duties; and
- Five resulted in the employee's removal from federal service.

For four of these eight cases, the supervisor provided detailed level-of-effort estimates based on their recollection. For this subset of four cases, an average of 18 months elapsed between the supervisor initiating the first disciplinary or adverse action for misconduct and the time the employee either retired or was fired and removed from federal service.

For both types of cases, we asked the supervisor to estimate the number of hours spent actively working on the case by the first- and second-level supervisor, and we then translated these hours into a cost to the taxpayer by applying the hourly equivalent of a GS-15 step 5 2026 federal salary with Washington DC locality pay (since all managers were DC-based) when the individual was a GS-15 manager, and an hourly equivalent of the midpoint of the 2026 Senior Executive Service pay band when the individual was a member of the SES.

We acknowledge that this data set is quantitatively small and not necessarily representative of the removal process across all agencies.

We also consulted with process experts who have experience across multiple roles in the federal discipline and removal process, including former senior executives involved in federal human capital policy, an agency attorney, a former Equal Employment Opportunity Office manager, and senior agency HR officials.

While We the Doers typically focuses on the experiences of non-political appointee civil servants, for this report we also interviewed two former Merit Systems Protection Board officials (one Democrat and one Republican) to better understand the post-removal appeal process.

We also created and shared a straw-man diagram showing how the process had played out in our experiences and prompted our participants to share where their own experiences aligned or differed.

We used their detailed feedback to make significant changes to the original draft and produce a comprehensive current-state process diagram, but this approach is more akin to drawing a trend line through a scatterplot than it is to a single source of truth. The formal statutory and regulatory framework provides only the axes on which these former federal officials' experiences are plotted. Where the experiences fall within that grid depends on details of what happens in practice across the various agencies, bureaus, collective bargaining agreements, internal policies, HR offices, legal offices, deciding officials, and the risk tolerances and capacities of the individual people involved. That variation is itself one of the central findings of this report.

We leveraged all this user research to craft the recommendations in this report, and we provided all participants with an opportunity to review the draft and provide comments.

Our Goal: A Streamlined, Fair Removal Process that Supports an Efficient, Effective, Trustworthy Government and Is Codified in Law and Regulation

Our Vision for an Efficient, Effective, Trustworthy Government

In We the Doers' first report, *Former Civil Servants Speak: How to Achieve Real Government Reform in a Post-DOGE World*, we outline our vision for a customer-friendly, cost-effective federal government that delivers outcomes that matter to the American people in an ethical, reliable, trustworthy manner. (See Appendix A for more details on what this vision entails.)

An Effective, Nonpartisan Civil Service is Absolutely Critical to Achieving this Vision

To deliver on the vision of providing services and achieving outcomes that matter in a customer-friendly, cost-effective, and timely manner, we need outstanding civil servants.

These civil servants need the technical skills to do their jobs — whether as frontline workers fighting wildfires, providing healthcare to veterans, or assisting senior citizens with filing for Social Security; slightly more behind-the-scenes work as FEMA employees processing claims for homeowners' assistance in the wake of a natural disaster, reviewing and approving grants to community organizations, or auditors identifying fraud, waste, and abuse; or in support functions, such as HR, IT, and procurement, which allow frontline workers to do their jobs more efficiently and cost-effectively.

They also need soft skills, especially customer service and communication, to effectively serve the public and coordinate with internal and external stakeholders.

And they need not only the skill, but the “will” — the drive to do their best, day in and day out.

This is only one half of the equation, however. The civil service must not only be optimally designed to support excellence; it must also remain rooted in the merit system principles. The system based on these principles was designed to ensure the civil service remained professional, merit-based, and nonpartisan — rather than stuffed with a president’s unqualified political cronies through the “spoils system” that existed prior to the passage of the Pendleton Act in 1883 — and to ensure that employees had appropriate due process when threatened with a disciplinary action or removal from federal service.

An Effective, Nonpartisan Civil Service Requires Balance Between Supporting Managers and Affording Employees Due Process

Because having civil servants with the right skills and will is critical to delivering an effective, efficient, trustworthy government, the federal government needs to be able to remove employees whose performance or conduct falls short of acceptable standards within a reasonable time frame. The process must align managers’ incentives with this goal, enabling them to remove employees without an undue burden of the managers’ time or professional reputation. The process must also align the agency’s senior leadership, HR office, Office of General Counsel, and HR and employment policies with this goal, and should minimize the total time elapsed between the identification of the performance or conduct issue and the removal to avoid further disruption to the effective functioning of the organizational unit.

At the same time, because maintaining a nonpartisan civil service is necessary to deliver an effective, efficient, trustworthy government — and because some managers may act in an arbitrary or capricious fashion, or retaliate against a whistleblower illuminating fraud, waste, or abuse — the need to streamline the process for managers must be balanced against the need for due process for the employee. The system must include appropriate checks and balances by neutral third parties to avoid abuses of power, and to ensure that employees who actually are performing well and add value to the taxpayer are retained.

Achieving a Stable Balance Between Speed and Due Process Requires Codifying the Process in Law and Regulation

Past reform efforts have largely rested on a shaky foundation of Executive Orders (EOs) and Office of Personnel Management (OPM) memoranda. These typically included lofty aspirations but few operational details and *no dedicated resources for implementation*; agencies were “encouraged” to take some vague steps to improve performance appraisals and hold employees accountable but rarely required to do anything specific. Examples include the 2019 OPM memorandum announcing the voluntary Performance Appraisal Assessment Tool and the 2019 OPM memorandum requiring agencies to review their policies for addressing poor performance and misconduct.

More recently, however, the current administration has published much more detailed guidance to federal agencies such as the [June 17, 2025, OPM memo Performance Management for Federal Employees].

Yet even when EOs and OPM memoranda are more specific, they can be easily undone with the stroke of the pen when the next administration takes office or merely ignored until they are rescinded.

As an example, the first Trump administration published E.O. 13839, *Promoting Accountability and Streamlining Removal Procedures Consistent with Merit System Principles,* which was subsequently reversed by President Biden in E.O. 14003, *Protecting the Federal Workforce*. President Trump then reinstated the policies in E.O. 13839 by signing E.O. 14171, *Restoring Accountability to Policy-Influencing Positions Within the Federal Workforce*.

Re-writing OPM regulations is in theory a better way to make changes stick, and the current administration has taken this approach by proposing changes to OPM's regulations to formalize the changes set forth in the June 17, 2025 OPM memorandum. Even so, regulations don't always trickle down into actual practitioner behavior and can still be undone through tactics like suspending or requesting judicial abeyance of regulations finalized by a prior administration but not yet in effect, or by adopting new regulations after a public comment process.

Furthermore, in a post-*Loper Bright* era — where courts no longer defer to a federal agency's reasonable interpretation of ambiguous statues — even a change in regulations can be easily challenged if it governs activities that Congress has not clearly placed in OPM's authority.

Codifying these changes in statute is therefore the best way to provide continuity from one administration to another. It also increases the odds that the changes will enjoy some level of bipartisan support. Finally, a statutory fix presents the opportunity to create a single, transparent source of truth so that all parties understand the process.

Why Removals Have Historically Been So Difficult — and So Rare

Between 2019 and 2023, between 10,000 and 13,000 federal employees were removed from federal service for performance per year, out of a workforce of nearly 2.3 million employees — a rate of about 0.5%.

This statistic would suggest a high-performing workforce, but many managers will tell you that for every removal, there are many more employees with serious performance or conduct issues. Some of these managers are able to successfully coach, rehabilitate, or reassign the employee to a position better suited to their skills, interests, or temperament. Other employees spend years underperforming — going on and off Performance Improvement Plans (PIP) or cycling through various levels of progressive discipline — only to transfer to another agency (where they become another manager's problem), be reassigned to another role (where they also may become another manager's problem), or be permitted to retire (often without a blemish on their record and sometimes even with a legal settlement from the agency) while the process drags on.[1] And other employees are simply allowed to remain and "pass" because managers do not wish to commit the time or resources necessary to pursue removal.

Root Cause #1: There is No Consistent Process for Employee Removal — It Varies by Agency, Bureau, Collective Bargaining Unit, and Even Individual HR and OGC Staff

We the Doers started this project by mapping the federal removal process, as defined in statute and regulation *and* as actually experienced by managers who had successfully removed employees — and quickly discovered no single source of truth exists. If one looks at the statutes governing federal removals — 5 U.S.C. § 7513 and 5 U.S.C. § 4303 — and the implementing regulations developed by the Office of Personnel Management (OPM), the federal removal process appears relatively linear, straightforward, and relatively simple. In fact, OPM's Performance Improvement Plan - A Quick Guide depicts the Performance Improvement Plan (PIP) process under 5 U.S.C. § 4303 as a four-step, one-way process that involves identifying performance deficiencies, putting the employee on a PIP, monitoring their performance, documenting their failure to improve on the PIP, and evaluating the employee; if the employee's performance is still unacceptable, the quick guide states that the supervisor may then "propose removal." The Merit Systems Protection Board website actually shows the *entire* adverse action process — up to and including removals — as a four-step, one-way process.

But very few of the 10 managers we interviewed had experienced anything resembling the process depicted on OPM's website.

Why?

Because the reality is that managers must not only comply with the statute and OPM regulations, but with their own agency's regulations, policies, and procedures, *as well as* their bureau's own regulations, policies, and procedures, and — *on top of that* — the removal procedures in the underperforming employee's Collective Bargaining Agreement (CBA), if applicable.

To add confusion and complexity, many bureaus have multiple — sometimes even dozens — of CBAs, each with their own individually negotiated set of additional protections for employees. Some Collective Bargaining Units (CBUs) could be as small as a single state or regional office with a dozen employees, such that an employee in the Montana state office could be treated completely differently than an employee with the exact same job and performance issues in the Arkansas office.

[1] The draft regulations released by OPM on July 2, 2026 (Proposed Rule 2026-13445) include a provision to prohibit settlement agreements that remove documentation of poor performance or misconduct from an employee's personnel file.

And even when two employees have the same performance issue in the same agency, the same bureau, and the same CBU, they are often treated differently depending on the expertise, workload, and risk tolerance of the employees' first- and second-line supervisors and HR staff and attorneys assigned to their case. Even when the supervisor believes he or she has clear and convincing documentation of a performance issue meeting the standard of proof in 5 U.S.C. § 4303 or a conduct issue meeting the standard of proof in 5 U.S.C. § 7513, HR or OGC staff may push back and insist on additional evidence or (sometimes multiple) re-writes of the justification for removal. Some staff interviewed for this report noted that this process often significantly extended the time frame for removal, and sometimes many weeks or months went by when they did not hear from HR or OGC staff.

While the supervisor often perceives these documentation requirements as a lack of support or sense of urgency from HR/OGC, an agency attorney interviewed for this report noted that the back-and-forth is often necessary to make the action legally defensible, given the high evidentiary standards. As she noted, HR and legal staff members often see the bigger picture of how disciplinary and performance actions are being applied agency-wide. With that context, and relying on their experience, HR and legal professionals often will not take a manager at their word, but instead seek to review sufficient supporting documentation to support the proposed action. In some instances, agency attorneys find that the supervisor has unwittingly taken actions that undermine the removal case, such as approving an employee for a within-grade pay increase. While approving these annual pay increases is often seen as pro forma, doing so implies that the employee is performing at a fully satisfactory level.

In other cases, staff are overworked and do not have the time to see the case through numerous appeals. And perhaps most importantly, we believe, many federal HR and OGC offices tend to attract, retain, reward, and incentivize risk aversion, though, as noted previously, individual agency cultures and individual experiences vary widely. (See root cause #5 for a deeper discussion of this topic.)

In essence, the rules are different for every employee with an alleged performance or conduct issue — the antithesis of a fair process.

To get a sense of the actual process experienced by managers — in all its variations — see Appendix B or this We the Doers' video tutorial.

Solution: Create a Single, Transparent, Government-Wide Process — and Require Agencies, Bureaus, CBUs, and Staff to Follow It

The current system is the antithesis of a fair and transparent process. As detailed above, two similarly-situated employees with the same performance issues in the same agency may be treated very differently — because they are covered by different CBAs; their supervisors have different tolerances for grievances and mediations; or simply because their cases are assigned to two different HR professionals or agency attorneys.[2] Similarly, two managers in the same agency overseeing employees with similar performance issues may have very different experiences, and receive different guidance from HR and OGC. One may end up bedeviled by poor performers for years to come, while another may be successful in removing them.

How would we create a single, transparent process — regardless of agency, bureau, or CBA?

First, Congress should revise 5 U.S.C. § 7513 and 5 U.S.C. § 4303 to prohibit agencies and bureaus from (a) adopting additional procedures for removing employees for cause or conduct, beyond that in the revised code and OPM's implementing regulations/guidance; and (b) entering into Collective Bargaining Agreements (CBAs) that would adopt any additional procedures, waiting periods, or employee protections related to for-cause removal.

Congress should also revise 5 U.S.C. § 7513 and 5 U.S.C. § 4303 to:

- Specify the steps in this standardized, streamlined, transparent process; and
- Require all agency HR staff involved in employee discipline or performance improvement to be certified in this new process.[3]

OPM should create related guidance documents and templates, as needed, to effectively implement this new standardized, streamlined, transparent process.

Congress should also revise 5 U.S.C. § 4302 to (a) prohibit any "pre-PIP" notification periods that in effect delay the start of a PIP,[4] and (b) mandate that PIP periods not be less than 30 days nor more than 90 days, unless the agency has requested and received an exception from OPM on a case-by-case basis.

OPM will then need to update its regulations accordingly. The minimum 30-day period will be imposed when the nature of the employee's work in the critical elements listed on the PIP is such that multiple tasks or deliverables under the critical element will be due during the 30-day period. A period exceeding 90 days will only be permitted if (a) the employee's work is such that the employee is not slated to complete a deliverable relevant under the PIP in 90 days (e.g., the employee is a research scientist, and no deliverables are expected in the next 90 days) and (b) the manager requests and

[2] Here, and throughout the document, we are specifically referring to agency attorneys involved in advising managers and HR on the employee discipline and removal process. These attorneys are referred to as Employment and Labor Relations attorneys in some agencies, and Labor and Employment attorneys in others.

[3] We note that the draft regulations released by OPM on July 2 (Proposed Rule 2026-13445) for § 412.202 specify new and additional training on these topics, but do not require a certification nor a revised process. These changes can also easily be undone by a future administration through a revision to the OPM regulations.

[4] We note that the draft regulations released by OPM on July 2 (Proposed Rule 2026-13445) explicitly prohibit "pre-PIP" notification periods that delay the start of a PIP. We endorse this change and recommend that Congress formalize this in statute.

receives permission from the agency's Chief Human Capital Officer (CHCO) to extend the PIP for this *particular employee* based on the nature of his or her duties.[5]

Second, OPM should update its implementing regulations to reflect these statutory changes and provide a comprehensive list of the steps in a streamlined but fair removal process. If additional implementation guidance is necessary, it should be developed by an interagency council such as the Chief Human Capital Officer (CHCO) Council and published by OPM and made widely available to all employees so that it establishes a single government-wide process. No additional agency-specific guidance should be necessary.

Third, this process should be documented on OPM's website as a flowchart, and all HR staff should be required to attend training on the process and pass a certification test.

Solution: Track "Time to Fire" and Other Key Metrics — and Create a Centralized Case Management System

Agencies have long emphasized reducing "time to hire,"[6] but we are unaware of any agencies that track "time to fire," let alone holding staff accountable for expediting removals when warranted.

We are firm proponents of the view that what gets measured gets done — at least, if failing to meet the metric has meaningful consequences.

However, we are also firm believers that metrics can sometimes create perverse incentives if they are not appropriately balanced with other related metrics. Timely removals should not, for instance, come at the expense of reasonable due process or adherence to quality standards.

We believe the metrics that agencies should track and publicly report should include:

- "Time to fire":
    - KPI (Performance): Time from employee receiving an "unacceptable" performance rating of record on a mid-year or end-of-year performance appraisal review — or from when the supervisor notifies HR that an employee's performance has slipped below "minimally acceptable" on a

[5] We note Proposed Rule 2026-13445 includes the following language: "A reasonable opportunity to demonstrate acceptable performance may last no more than 30 calendar days subject to an agency's sole and exclusive discretion to offer a longer period of time as may be necessary to account for situations in which 30 calendar days may be insufficient to evaluate an employee's performance." When our group of experts discussed the appropriate length of PIPs, they generally agreed that, most of the time, PIP periods should be shorter than the current standard. However, the group consensus was that, particularly for higher-graded positions with less routine work and fewer and larger deliverables, 30 days was insufficient for the employee to demonstrate improvement (and for the supervisor to meaningfully evaluate employee performance or lack thereof) and a 90-day standard would be more appropriate.

[6] We note, though, that tracking "time to hire" has not necessarily reduced the time to hire. We believe this is because agencies generally haven't addressed the root causes of excessive times to hire.

critical job element — to the time the employee is removed from the agency's payroll.

    - Goal: To understand the time required to remove an employee who does not resolve performance issues. (Those who do resolve performance issues after an unacceptable rating will be excluded from this measure.)
    - Target: Average of < 6 months for cases initiated in the preceding 5 years.

  - KPI (Conduct): Time from supervisor initiating progressive discipline[7] process (i.e. contacting HR to report employee misconduct) to the time the employee is removed from the agency's payroll. Because progressive discipline can understandably be a very nonlinear process a d substantial time may pass between misconduct incidents, agencies should also track the time elapsed between each time the supervisor initiates a disciplinary action and the time the adverse action letter for that particular disciplinary action is issued to the employee.
    - Goal: To understand the time required to remove an employee who does not resolve conduct issues. (Those who do resolve conduct issues after a disciplinary action will be excluded from this measure.)
    - Target: Average of < 6 months for cases initiated in the preceding 5 years.
- Performance- or conduct-based actions that do not result in removal:
  - KPI (PIP Outcomes): Percentage of PIPs that result in:
      - Employee's performance returning to "fully successful" after end of PIP period
      - Employee retiring without performance returning to "fully successful"
      - Employee being reassigned to another manager without performance under initial manager returning to "fully successful"
      - Employee being downgraded (i.e. to a lower General Schedule pay level)
      - Employee transferring to another agency without performance at initial agency returning to "fully successful"
      - Employee receiving financial settlement from agency
    - Goal: To understand how effective PIPs are at motivating/coaching employees to return to "fully successful" performance, how often PIPs result in alternate actions other than removal or a return to "fully

[7] We note that, technically speaking, progressive discipline is not required in law or OPM regulations; technically, an agency may move straight to removal for a single conduct incident if the severity is sufficient to justify removal under the Douglas factors. However, it is de facto common practice at most agencies, and so we believe it is important to track how agencies use the discipline process, and the extent to which repeat offenders remain on the job.

successful" in the original position, and how many taxpayer dollars are spent on settlements.

- KPI (Adverse Action Outcomes): Percentage of adverse actions taken under 5 U.S.C. § 7513 that:
    - Do not escalate (misconduct does not reoccur) within 2 years
    - Escalate and result in one additional adverse action but no removal
    - Escalate and result in two or more additional adverse actions but no removal
    - Result in the employee retiring before a removal can occur
  - Goal: To understand how effective adverse actions are at addressing conduct issues, and how this approach varies by agency.
- Customer service:
  - KPI (Customer Service): Average post-removal customer service rating from supervisors rating quality of service provided by HR and OGC throughout the process of a removal action
    - Goal: To understand how effective HR and OGC staff are at supporting managers through the process.
    - Target: >80% of resolved cases are rated satisfactory or above, for both HR and OGC service.

These metrics would be pulled from a centralized employee performance and conduct case management system, ideally as part of the planned Core HCM platform that OPM kicked off in October 2025. Congress should appropriate the funds necessary for successful requirements gathering, development, and implementation, and OPM should stand up a technical assistance and quality assurance team to create a data dictionary, ensure HR staff at each agency are adequately trained, and ensure the data is entered consistently and accurately.

This system would also track which step of the process the case was in, the officials assigned to that step (so that managers can contact them with questions), and whether the employee had pursued or was pursuing accommodations or alleging violations of administrative law (e.g. Family and Medical Leave Act, reasonable accommodations for a disability, Equal Employment Opportunity claims, etc.) that could affect the proposed removal.

Such a system would enhance transparency across HR and OGC, and between HR/OGC and the supervisor. It would also reduce duplication of effort by acting as a single source or truth for all claims and evidence, so that different HR/OGC personnel do not need to ask the supervisor for the same information at different times. Finally, it would allow HR and OGC managers to see when a case languishes with a particular HR/OGC staff member, and to use this information to hold HR/OGC staff accountable for completing assigned tasks in a reasonable time frame.

Beyond this system — and to ensure that expediting cases does not come at the cost of due process — we recommend that Congress require GAO to conduct an annual review of a small sample of these cases at each agency to ensure appropriate due process was followed, and that data was accurately reported.

Root Cause #2: Underperformers Often Game the System — and the System Makes It Easy to Do So

As convoluted as the process described above may seem, it still does not represent the full gauntlet that most managers have to run before the employee is removed.

In reality, there are several shadow processes — or, as one workshop participant described it, “offramps from the official process” — that were designed for other purposes but are often exploited by employees to slow removal or avoid it altogether.

These processes are typically handled by different staff operating in different workstreams assigned to different offices within agencies. Therefore, it is rare for any one HR professional to understand the full picture of the situation and see all the levers the employee is pulling to avoid removal.

As a result, supervisors are often asked for the same supporting documentation over and over, sometimes in slightly different formats, to defend their actions related to a single incident (generally, a discussion about the employee’s performance, or the issuance of a PIP or adverse action).

This fragmentation of responsibility produces enormous frustration for managers, and allows some employees to take advantage of the confusion to delay or avoid removal.

Sometimes, even when there is clear, written evidence that an employee’s performance is unacceptable or gross misconduct has occurred — and even when OGC agrees that the legal standard is clearly met — the agency backs down from removal because the employee alleges that the removal is in retaliation for requesting a reasonable accommodation, or is a result of discrimination. Even when there is no evidence of actual retaliation or discrimination, some managers interviewed for this report noted that their agency sometimes determined that it was easier and cheaper (once staff time is accounted for) to allow the employee to resign or retire without a blemish on their record, in some cases also with a negotiated financial settlement paid to the employee.[8]

[8] The draft regulations released by OPM on July 2 (Proposed Rule 2026-13445) include a provision to prohibit settlement agreements that remove documentation of poor performance or misconduct from an employee’s personnel file.

CASE STUDY

The Trouble with Transferring Employees

"I was a GS-15 program director and supervisor of record for a GS-14 program analyst having performance and conduct issues, including failure to follow management direction. From late spring 2020 through March 2023, I navigated my agency's personnel performance and employee disciplinary policies and processes, making steady progress in coordination with the Labor, Management, and Employee Relations (LMER) office. I documented actions and provided or recommended informal counseling, letters of concern, counseling, and reprimand, a 2-day suspension, and an out-of-cycle unacceptable performance rating to delay a scheduled wage-grade-increase. When I tried to place the employee on a PIP, the employee refused to meet with me, leading to further delays and triggering more disciplinary actions.

In response to management's actions, the employee filed grievances, complaints about a hostile work environment, refused to follow management direction, demanded management find her a new position, requested and was approved for periods of Family and Medical Leave Act (FMLA) absences, and filed informal and formal complaints with the agency's Equal Employment Opportunity Office (EEO). These tactics were successful in dragging out the process but not resolving the employee's conduct and performance issues.

My second-line supervisor, an SES, thought he was being helpful when he suggested I place the employee in another program office for a six-month detail. I told him this approach was likely to backfire. It would embolden the employee to continue her poor behavior and conduct, and make it harder for my office to maintain its work and conduct standards. My second-line supervisor ignored my concerns and directly offered the employee a six-month detail to another program office as a "career broadening opportunity," which she accepted.

Unfortunately, my fears were well founded. Once detailed, the employee did not work to improve her performance and behavior issues. Even worse, the office to which she was detailed did not properly utilize or supervise the employee, and failed to properly document her performance — regardless of whether it was good or bad. Without documentation, I was forced to rate the employee's performance while detailed as the default "fully successful" per agency policy, further delaying the rehabilitation or removal of the employee.

When the detail was over, the employee demanded that management find her yet another new position. Management made it clear that it would not detail her again and she would return to her assigned billet and accountability for her performance and behaviors would resume. She took FMLA again. Upon her return, when she realized management would not accede to her demands, the employee resigned from the federal service. The entire process took 33 months. The detail and subsequent complication caused by the 'fully successful' rating accounted for about 18 of the 33 months, significantly extending the timeline."

In these cases, the employee with a history of serious performance and misconduct issues is then free to reapply for a position at another federal agency or to collect generous retirement benefits.

The existence of so many siloed, long, drawn-out processes does more harm than just allowing some employees to avoid consequences. It also requires an enormous investment of time and resources on the part of the supervisor, the agency HR offices, agency attorneys, and the agency Equal Employment Opportunity office. This can have a chilling effect on supervisors' willingness to address poor performance and misconduct, as well as on some HR and OGC staff members' willingness to support managers through the process.

The time-consuming process is also incredibly expensive to the taxpayer because it diverts thousands of hours of staff time away from accomplishing the agency's mission. The supervisors interviewed for this report estimated that an average of 542 hours was spent by the first- and second-line supervisors on cases handled as performance cases, for an average cost to the taxpayer of $53,452. For the conduct cases studied, first- and second-level supervisors spent an average of 292 hours and $28,458 in taxpayer funds.

These cost estimates include only the first- and second-level supervisor's time and do not include the time of legal or HR staff, or the associated cost of benefits. These estimates also do not factor in the cost of agency Equal Employment Opportunity (EEO) staff that investigate the complaints that frequently accompany these cases; the cost of agency lawyers representing the agency before the Merit Systems Protection Board, Equal Employment Opportunity Commission, and/or Office of Special Counsel; or the cost of mediators when a case goes to mediation. Once these costs are factored in, a removal for performance could easily exceed $100,000.

Abuse of the Family and Medical Leave Act

One frequent delay tactic for employees going through the removal or progressive discipline process is to request leave under the Family and Medical Leave Act (FMLA), which puts all actions on hold for the duration of this leave. This tactic occurred in 3 out of 12 cases studied in detail for this report. If, for instance, a Performance Improvement Plan (PIP) period is 4 months and an employee requests and receives 12 weeks of FMLA during the PIP period, the PIP is extended by 3 months, for a total of 7 months.

Some employees also appear to use this tactic to lay the groundwork for a subsequent claim to the agency's EEO Office and subsequently the Equal Employment Opportunity Commission (EEOC) that the removal action was evidence of discrimination on the basis of the (generally temporary) disability underlying the FMLA request.

Under FMLA, employees are entitled to 12 weeks of unpaid leave:

- For the birth and care of the newborn child of an employee;
- For placement with the employee of a child for adoption or foster care;

- To care for an immediate family member (i.e., spouse, child, or parent) with a serious health condition; or
- To take medical leave when the employee is unable to work because of a serious health condition.

This benefit is not unique to federal employees, but applies to all employees of public sector agencies, K-12 schools, and private companies with 50 or more employees. OPM administers FMLA for federal employees, while the U.S. Department of Labor administers FMLA for other employees. FMLA is an important and necessary part of a healthy, sustainable workforce, and provides valuable job security support to millions of families every year. Our concern is not with the FMLA policy itself, or the overall administration thereof; it is only when FMLA claims intersect directly with the removal of a federal civil servant that we find a potential pattern of misuse to be addressed.

The U.S Department of Labor's Employer's Guide to the Family and Medical Leave Act[9] expressly allows employers to "contact the health care provider to clarify and/or authenticate the certification" that the employee is unable to work, "require a second medical opinion at the employer's expense if there are concerns about the validity of the certification," and "require a third medical opinion, at the employer's expense, if the first and second opinions differ."

A few former managers contributing to this study indicated that their HR FMLA offices took these steps to limit fraud and abuse of this well-intentioned and important worker protection. However, most noted that their agencies did not.

Some managers noted that a secondary effect of the high volume of FMLA cases that coincided with disciplinary actions was that it detracted time and focus from legitimate FMLA requests for exemplary employees with serious health conditions.

Solution: Require Agency-Funded Second Opinions for Most FMLA Requests of Employees on PIP / In Discipline Process; Require HR FMLA Staff to Be Certified

Employees who are on a PIP, or are moving through the progressive discipline process, and request FMLA for their own health condition or the health condition of a family member should be required to obtain a second opinion from an agency-funded and agency-approved doctor. This could be a doctor at a federal occupational health clinic on site at agency headquarters or a doctor in private practice. A second opinion should not be required, however, if FMLA is requested for the birth or adoption of a child, or if the medical need is obvious (e.g. recovery time for a joint replacement surgery).

Agency HR staff charged with reviewing FMLA documentation should be required to attend new, more useful training on reviewing and authenticating medical documentation, and on when and how to request a second opinion by an agency-

[9] See chart on page 28 of the guide.

funded, agency-approved medical professional. They should also be required to take and pass an annual certification exam demonstrating mastery of these procedures.

CASE STUDY

FMLA Abuse

"When a manager reporting to me removed an employee for performance under 5 U.S.C. § 4303, the process took two full years. For fully one quarter of that time, the process was frozen because the employee was on Family and Medical Leave (FMLA) — based on documentation that HR, the manager, and I all believed to be fraudulent.

Our FMLA ordeal began one business day after the manager issued a Performance Improvement Plan (PIP) to the employee, when the employee produced a note from a doctor several hundred miles away claiming a health condition that made the employee unable to work for the next 12 weeks.

We could not, of course, actually inspect the documentation ourselves due to privacy concerns. But when we called the HR FMLA coordinator to inquire as to whether we really had to offer 12 weeks of leave — especially given the suspicious circumstances, since she could not produce a note from a local doctor — the HR staff member sighed and said, "The note is very vague, but technically it meets the criteria." She said the manager had no choice but to honor the FMLA request — and pause the PIP.

Three months later, the employee returned to the job. The manager resumed the PIP. When it concluded four months later, the employee had failed the PIP and the manager promptly prepared the paperwork for removal.

The paperwork languished in HR and Office of General Counsel (OGC) for five months, however. Twelve months to the day after submitting her first FMLA request — and just as the manager was finally getting HR and the OGC to be responsive and move ahead with removal — the employee submitted a second FMLA request for a vague health condition certified by the same out-of-state doctor.

When we called the HR FMLA coordinator, she laughed and said, 'Oh, honey, this happens all the time — 365 days after the last FMLA request, the employee submits another one. I can practically set my watch by it.'

But HR said that we were legally required to honor the request — and pause removal — because 'technically the note met the criteria.' The agency did not allow managers to have doctors review the documentation or request a second medical opinion. At the end of the FMLA period, the process restarted — and nine months later, the agency finally removed the employee."

Abuse of the Reasonable Accommodation Process

Title I of the Americans with Disabilities Act of 1990 (the "ADA") requires an employer to provide a “reasonable accommodation” (RA) to qualified individuals with disabilities who are employees or applicants for employment, unless to do so would cause undue hardship to the employer. The employer does not have to necessarily provide the accommodation requested, but may provide an alternate accommodation that allows the employee to perform the essential functions of the position.

Federal agencies are subject to these same requirements. The RA process is typically used to provide employees with tools or services (sign language interpreters, dictation software, etc.), or changes in employment locations or hours (an office near a bathroom, the option to telework or work a later schedule to accommodate doctor appointments, etc.), to allow the employee to perform the essential functions of his or her job.

Sometimes, an employee who fears removal will request an RA in the hopes that the supervisor will deny the RA — and therefore allow the employee to allege that the removal action is retaliation for seeking an RA, or discrimination for the underlying (often temporary) disability that led the employee to file for an RA. Employees can then seek relief through the agency EEO office and the EEOC.

In six out of 12 cases studied in detail for this report, the employee requested a reasonable accommodation after being subject to an adverse action or a PIP. Most managers interviewed indicated that they went out of their way to avoid this issue by agreeing to the requested RA. Other managers approved RAs other than those requested but that addressed the employees’ limitations. For example, one employee with a history of being Absent Without Leave (AWOL) while on telework requested permanent 100% telework as a result of what HR admitted was a very vague health condition that made the employee sensitive to noise and required frequent breaks. The manager denied the request for telework but approved a white-noise machine and allowed the employee to take 15-minute breaks every hour and make up the time outside of normal work hours.

Abuse of the Equal Employment Opportunity (EEO) Process

A frequent tactic to delay removal or disciplinary proceedings — and maybe even receive a monetary settlement from the agency — is to turn the tables on the supervisor and allege that the supervisor’s management actions are a result of the supervisor discriminating based on one of the protected classes in the Equal Employment Opportunity statute:

> *“race, color, religion, sex (including pregnancy, sexual orientation, or transgender status), national origin, age (40 or older), disability and genetic information (including family medical history). Applicants, employees and former employees are also protected from retaliation (punishment) for filing a charge or*

complaint of discrimination, participating in a discrimination investigation or lawsuit, or opposing discrimination (for example, threatening to file a charge or complaint of discrimination).”

Anyone of any race, sex, etc. can allege discrimination on the basis of one of these protected classes — regardless of whether the supervisor shares the employee’s race, sex, etc.

In 10 out of 12 cases studied in detail for this report, the employee alleged discrimination on one or more bases covered by EEO statute, making it the most common delay tactic of all of those identified by managers. In many cases, employees alleged multiple bases for discrimination. One manager noted that for a single case, the employee alleged discrimination on the basis of sex, race, age, and disability; the manager further noted that the manager and employee were of the same sex and exactly the same age.

While from a legal standpoint a removal or adverse action can still proceed even if the employee in question has filed an EEO complaint against the supervisor, in practice some agencies pause the process while the EEO complaint plays out. This is because even when the Equal Employment Opportunity Commission (EEOC) does not find evidence that discrimination occurred, the EEOC can find that the removal was in retaliation for the employee filing an EEO complaint. As a result, some agency lawyers typically allow the EEO complaint process to finish before moving ahead with a removal, so that an administrative judge cannot later find that the removal was motivated by retaliation.

As with FMLA, EEO protections are not unique to federal employees; EEO law — and the jurisdiction of the EEOC — applies to most employers with more than 15 employees.

Most employers, however, do not run their own extensive EEO process to investigate EEO complaints before they even reach the EEOC.

The agency EEO process has evolved into a highly complex, multi-step process, generally as follows (see our video tutorial for a visual depiction of this process and how it intersects with other processes directly or indirectly tied to removal):

1. The employee contacts an agency EEO counselor within 45 days of the alleged incident(s) of discrimination.
2. The agency EEO counselor provides informal counseling about the employee’s options, including Alternate Dispute Resolution (ADR).
3. Provided the employee does not choose ADR, the employee prepares a formal complaint, often with the assistance of his or her union (if covered by a CBA) or, less often, a private attorney.
4. The employee files the complaint with the agency EEO office.
5. The agency EEO office gives the employee the option for Alternative Dispute Resolution (generally mediation) or a formal investigation led by the EEO office.

6. If the employee opts for ADR, the mediation occurs, though there is typically a delay of 60 days or more to retain a mediator. If the supervisor and employee reach an agreement, it can be to transfer the employee to another supervisor and drop the removal/disciplinary action, allow the employee to retire with a clean record, provide additional training to the employee, a monetary settlement, or some other solution acceptable to both the employee and management. If the employee and the supervisor do not reach an agreement, the employee can choose to return to the formal investigative process.
    - The monetary settlements in this process are anecdotally known as “nuisance settlements” and are justified within agency leadership because the relatively small dollar amount they provide to the employee is less than the agency would have to pay in legal fees to continue the lengthy process to defend the agency against even a weak or meritless claim.
    - Managers in our workshop and interviews recounted many stories of their peers or leaders pushing for nuisance settlements in such cases to “just make it go away” — an understandable sentiment when you consider the time and morale costs required from the supervisors who find themselves repeatedly tangled in these types of cases.
7. If the employee opts for the agency EEO office to pursue a formal investigation, the EEO office conducts that investigation — which typically involves sending the supervisor a set of detailed written questions about each alleged incident (which the supervisor is often only given a few days to respond to) and interviewing any potential witnesses. This process can take months and can take a hundred hours or more of the supervisor’s time. In some cases, supervisors are asked to provide documentation about the same incident multiple times by multiple different EEO staff (or contracted investigators) or HR staff. While HR staff do not investigate EO complaints, in many cases a grievance is filed regarding the same incident so HR is asking for information about the same incident (e.g., an informal counseling session or performance review in which the alleged incident took place).
8. At the conclusion of the investigation, the employee can opt to accept a final decision by the agency, or opt for a hearing before the EEOC.
9. When the employee opts for a final agency decision, the agency issues a final agency decision — which is a finding of whether the alleged discrimination occurred. If the finding involves discrimination or misconduct on the part of the agency, the decision would include corrective actions, which could include a determination of damages to be paid. If the employee does not agree with the final agency decision, however, the employee can appeal to the EEOC.
10. When the employee opts for an EEOC hearing, the EEOC issues a finding. If the EEOC finds discrimination or retaliation for filing an EEO complaint, the EEOC orders the agency to take corrective actions. These actions could include reinstating the employee with backpay and/or compensatory damages and attorney’s fees.

The Equal Employment Opportunity statute mandates that an EEO investigation must be concluded within 180 days of the claim being filed. However, in practice, many managers noted that EEO offices did not appear to adhere to these timelines, further dragging out the process. Furthermore, there did not appear to be any consequences for the EEO office failing to adhere to statutory deadlines.

This finding is consistent with GAO's June 2024 report, [Equal Employment Opportunity Commission: Improved Oversight Processes Needed to Help Agencies Address Program Deficiencies], which found that eight agencies did not complete EEO investigations in the required timeframe, and 16 agencies did not issue final agency decisions for complaints in the required timeframe.

Sources interviewed for our We the Doers report noted that the EEO offices' failure to meet statutory deadlines was largely driven by these offices' relatively low staffing vis-a-vis the large number of complaints. We believe that adopting our recommendation to raise the threshold for accepting EEO complaints would significantly reduce these workload pressures and increase the number of investigations completed within the statutory deadline.

Solution: For Federal Workers, Consolidate All Post-Agency Appeal Processes (MSPB, OSC, EEOC) In a Single Adjudicatory Body

Many managers interviewed for this report indicated that the problem was not that employees were afforded multiple avenues for due process — in fact, the majority of our contributors felt strongly that these protections are critical to the integrity and success of a functional civil service — but that these avenues were siloed and the claims were treated in isolation, significantly increasing the total time to removal and the burden on the supervisor and other agency staff. Many managers could recount examples of staff who, for a single removal or other disciplinary action, filed multiple grievance and EEO claims against the supervisor and then, after removal, separately appealed the decision to the MSPB (alleging violation of merit system principles), the OSC (alleging retaliation for whistleblowing or discrimination on the basis of marital status or political affiliation), and the EEOC (alleging discrimination on the basis of an EEO protected class or retaliation for alleging discrimination).

We the Doers recommends that Congress revise the Civil Service Reform Act of 1978 and 5 U.S.C. Chapter 12 and 77 (which govern the Merit Systems Protection Board and appeals process); Title VII of the 1964 Civil Rights Act and the Equal Employment Opportunity Act of 1972 (which governs the Equal Employment Opportunity Commission); and the Civil Service Reform Act, Whistleblower Protection Act, and 5 U.S.C. § 1212 (which governs the Office of Special Counsel) to consolidate all post-removal appeals and investigative processes for federal employees into a new, strengthened, non-political, single adjudicatory body.

Congress should revise these statutes to allow the new adjudicatory body to hear and decide on the full set of related claims (including merit system, whistleblower retaliation, discrimination, and retaliation claims) in a single, integrated process.

In light of the recent *Trump vs. Slaughter* decision, it will be critical for Congress to explore legal options to ensure the long-term credibility and functionality of the adjudicatory board by making this body truly independent at an operational level. This should include strong requirements for transparent procedures, clear recusal rules, and strong removal protections for Senate-confirmed appointees. This approach could also include exploring options to move the body into the legislative or judicial branch.

Congress should also provide the funding, authority, and staff necessary for this body to try appeals cases in 6 months or less. MSPB's FY24 Annual Report indicated that the average initial appeal was handled by MSPB in just 130 days, so funding this adjudicatory body at a level similar to MSPB's FY24 funding, with a "plus up" for the expected increased workload from asking the MSPB to handle EEOC cases and OSC cases for federal employees, as well as the investigative work currently undertaken by OSC and EEOC for cases involving federal employees, should be sufficient to attain this level of efficiency under normal circumstances. This new MSPB should be empowered to hear the full set of related claims (including merit system, whistleblower retaliation, discrimination, and retaliation claims) in a single, integrated process.[10]

We note that this idea is not new and has previously been proposed, in one form or another, by numerous commissions and august bodies. For example, the Coalition for Effective Change's 1995 report, *A Proposal to Streamline Federal Employment Dispute Resolution*, called for the creation of a "Federal Employment Board" that "subsumes the varied responsibilities for the adjudication of Federal employment disputes currently assigned to the U.S. Merit Systems Protection Board (MSPB), the Federal Labor Relations Agency (FLRA), the Equal Employment Opportunity Commission (EEOC), and the U.S. Office of Personnel Management (OPM)."

CASE STUDY

How Some Employees Use Every Venue to Consume Management Resources

"In 2017, I assumed a GS-15 program director position and became the supervisor of a recently promoted GS-15 program analyst with a history of serious performance and conduct issues, including being Absent Without Leave (AWOL) and refusing to perform her assigned duties.

This employee had responded to prior attempts by management to hold her accountable by filing grievances, Inspector General and whistleblower complaints, and informal and formal EEO complaints against the supervisor and other members of the team, myself included. She often filed multiple versions of the same complaint, leading to confusion and adding to management's burden. When investigators attempted to look into her

[10] We note that the Equal Employment Opportunity Commission currently handles EEO related appeals from both public and private sector employees. Even if our recommendation to move public sector employee appeals based on EEO claims to a single adjudicatory body such as the MSPB is adopted, the EEOC would presumably still exist for private sector employees.

grievances and complaints, she was non-responsive to them or did not provide details to substantiate her claims.

Once, when the prior supervisor called while she was AWOL to see if she was ill or incapacitated, the employee responded by getting a restraining order against the supervisor.

When I was assigned as her supervisor, she was still AWOL and had been for 5 or 6 days. She then returned from AWOL, stated she would not work for me, and informed the Contracting Officer and the contractors that she was assigned to work with as a Contracting Officer's Authorized Representative (COR) that she would no longer be serving as the COR. She also informed me that she simply left her sensitive COR records unsecured in my boss's office. She had abandoned her assigned duties.

The next day, in coordination with Labor, Management, and Employee Relations (LMER), I placed her on administrative leave with a detailed letter explaining why and her requirements while on leave. In return, I received a grievance about being put on administrative leave without explanation. After reviewing the employee's documented misconduct, I recommended she be removed from federal service. The letter covered 22 specifications over four charges: inappropriate conduct, failure to follow supervisory instructions, being AWOL, and lack of candor. The deciding official agreed; the employee was notified and responded without any substantive rebuttal.

The employee appealed to the Merit Systems Protection Board (MSPB) and the Equal Opportunity Employment Commission (EEOC), both of which upheld the agency's action. The employee then appealed the MSPB's decision to the U.S. Court of Appeals of the Federal Circuit, challenging the MSPB's administrative judges under the Appointments Clause of the Constitution and other claims. On November 9, 2022, the court affirmed that the judges were properly appointed and upheld the MSPB decision.

The use of multiple venues was not a novel tactic for her. Reviewing the public record, I found a similar EEO case where this employee filed a claim against her prior agency in the United States Court for the District of Maryland. The Court granted the agency's request to dismiss the case as pleaded, citing the employee's pleading was insufficient as a matter of law."

Solution: Raise Threshold for Acceptance of Complaint to Agency EEO Office and Limit Initial Scope of Investigation…or Move All Complaints to the EEOC or a Successor Adjudicatory Body

Because of the political sensitivities involved, we propose two alternative solutions.

Alternative #1: Raise Threshold for Acceptance of Complaint to Agency EEO Office and Limit Initial Scope of Investigation

Congress could revise Section 717 of Title VII of 1964, as amended, 42 U.S.C. § 2000e-16, such that the Equal Employment Opportunity Commission would need to revise 29 C.F.R. § 1614.106-108 to raise the threshold for acceptance of a complaint to the agency EEO office and limit the initial scope of the investigation.

Currently, agency EEO offices accept all complaints that contain the required information fields and initiate an investigation regardless of whether the complainant has provided any evidence of discrimination. This is a much lower threshold for evidence, and a much broader scope, than in similar processes conducted by, for example, the Office of Special Counsel (OSC).

One potential solution would be for the EEO counselor assigned to the initial complaint to a) allow the employee to submit up to 10 pages of written evidence and provide the names of up to three witnesses to the alleged incident and then b) interview the employee and up to three witnesses (if named). At that point, the EEO counselor could determine if there is a "substantial likelihood" (the OSC's standard of proof to accept a complaint) the allegation occurred. If the EEO counselor does not find a "substantial likelihood," the EEO office would not accept the complaint and no further action would be taken. The employee would still retain the right, however, to take his or her case to the EEOC, as would a private sector employee, or to a new adjudicatory body that consolidates MSPB, OSC, and EEOC appeals for federal employees.

Alternative #2: Eliminate Agency EEO Offices and Require Federal Employees to Process Claims through the Equal Employment Opportunity Commission (EEOC) or Successor Body

An alternative would be for Congress to revise Section 717 of Title VII of 1964, as amended, 42 U.S.C. § 2000e-16, to eliminate agency EEO offices and require federal employees to process claims through the Equal Employment Opportunity Commission (EEOC) (or an alternative adjudicatory body taking on these tasks) so that federal employees are treated as any other employee in the United States. We are not aware of any existing evidence that the federal government experiences more discrimination than the average American workplace, which undercuts the rationale for maintaining a parallel system to adjudicate these claims.

As with any private sector employee, the federal employee's claim would be investigated by the EEOC (or replacement adjudicatory board with EEOC duties for federal employees), and then the employee would be provided with a letter stating whether the adjudicator found merit in the employee's claim as a result of the investigation.

In a small subset of cases under current law, the EEOC agrees to actually represent the employee against his or her employer in federal court; in most cases, however, plaintiffs use the EEOC letter to pursue the claim through the court system. Congress could require agencies to settle with employees who receive a letter finding merit in the employee's claim, if Congress believes it is too burdensome for the employee to pursue action through the court system.

If this alternative is pursued, we recommend that Congress appropriate the funds that were going to individual agency EEO offices to the EEOC (or replacement Board), augmenting its budget to take on an increased caseload.

Root Cause #3: Managers Are Incentivized — and Often Encouraged — to Leave Poor Performers on the Job

Most of the managers interviewed for this report said some version of the following: "No rational manager would be willing to spend the effort and frustration necessary to actually remove an employee." One said, only half-jokingly, "I felt like I needed therapy by the end of the process."

Based on the 5 successful removals analyzed for this report, it takes an average of 21 months to remove an employee — measured from the time the supervisor identified the problem to the time the employee was removed from the payroll. This estimate does not include subsequent appeals to the MSPB, EEOC, or a complaint to the OSC alleging that the action was taken as the result of retaliation for whistleblowing or discrimination on the basis of marital status or political affiliation.

But that is just the total amount of calendar time elapsed.

The managers contacted for this report indicated it took an average of hundreds of hours of the manager's time to document the performance or misconduct issue, consult with HR and agency lawyers, draft the Performance Improvement Plan (PIP) or adverse action letter, revise the PIP or adverse action(s) with HR or agency lawyers, issue the PIP or adverse action, participate in mediation as required, and respond to grievances, EEO complaints, and/or FMLA/RA requests of the employee in question. For performance issues, the average amount of time dedicated by first- and second-level supervisors was 542 hours, and for conduct issues it was 292 hours.

The hundreds of hours spent on these actions were hours that the supervisor was unable to spend on their core job responsibilities — the duties on which they were to be evaluated by their supervisor.[11] As a result, many supervisors worked on these removal actions at night and on weekends, without compensation.

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[11] We note that OPM's June 17, 2025, memorandum "*Performance Management for Federal Employees*," directed agencies to add the following performance element to every supervisor's performance plan: "Holding Employees Accountable. Ensures subordinate's commitment to efficient work execution. Models self-accountability and holds subordinates accountable for high-quality results. Recognizes, supports, and rewards excellent work from employees supervised. Timely and efficiently addresses poor and mediocre performance of employees supervised—including seeking appropriate action up to removal from the Federal service. Takes appropriate action when employees report concerns of illegal conduct or waste, fraud, or abuse." Therefore, we expect that in future most GS-15 managers will have acquired the necessary experience with holding employees accountable prior to being considered for the Senior Executive Service.

At best, the effect on the supervisor's own performance appraisal and career progression is neutral: no one acknowledges the supervisor's effect at performance appraisal time, since removing employees with performance or misconduct actions is not generally a critical element on the supervisor's performance plan.

At worst, the supervisor's actions actually hinder his or her advancement. If the supervisor is unable to successfully defend him or herself against 100 percent of the grievances or EEO complaints filed, the supervisor could be seen as not acting in compliance with key labor statutes and suffer career setbacks as a result. In one interview, a manager recounted how he was slated to receive an SES rank award, but it was rescinded at the last minute because of the number of grievances against him. The grievances were a result of him trying to hold poor performers accountable, and he reported that none of the grievances were ultimately upheld. But the damage was already done to his career and his financial bottom line.

Solution: Hold Supervisors Accountable for Addressing Performance and Conduct Issues

Supervisors should have a stand-alone critical performance element related to holding employees accountable for results; addressing performance and conduct issues in a professional, expeditious manner and in accordance with government-wide policy; cooperating with any processes designed to give employees due process when being held accountable; and proactively ensuring that employees receive the training and coaching necessary to improve.

We note that the current administration has instituted similar language for a critical element for all supervisors via its June 17, 2025 OPM memoranda:

> *"Holding Employees Accountable. Ensures subordinate's commitment to efficient work execution. Models self-accountability and holds subordinates accountable for high-quality results. Recognizes, supports, and rewards excellent work from employees supervised. Timely and efficiently addresses poor and mediocre performance of employees supervised — including seeking appropriate action up to removal from the Federal service. Takes appropriate action when employees report concerns of illegal conduct or waste, fraud, or abuse."*

This language will allow supervisors who do take the time to focus on performance issues to receive an 'outstanding' rating on this element, which will boost their overall performance rating. At the same time, it will force supervisors who had put these issues on the back burner to proactively address their team's performance or conduct issues — or risk an "unsatisfactory" rating and eventual removal.

Solution: Emphasize Experience Successfully Addressing Performance or Misconduct Issues in the SES Selection Process

In We the Doers' initial report, *Former Civil Servants Speak: How to Achieve Real Government Reform in a Post-DOGE World*, we called for a revamping of the selection process for the Senior Executive Service (SES).

Specifically, we recommended that candidates "be vetted by a multi-agency panel of *non-political SES's with a track record of results* that will review a portfolio of the candidate's work (with a particular focus on *results*), require the candidate to answer detailed questions about their portfolio (similar to a dissertation defense), and require detailed recommendations from superiors, peers, and subordinates to validate their management and leadership skills. Prioritize candidates who have front-line, 'in the trenches' experience in the relevant area of subject matter expertise, as well as outstanding people management, project management, and program leadership."

We now expand this recommendation to specify that the panel should specifically delve into the candidate's experience holding employees accountable for performance or misconduct issues. We expect that most candidates coming from a federal career should, at a minimum, have placed an employee on a PIP and/or administered discipline and be prepared to talk about the specific steps taken and the outcome.

We recognize that the privacy of individual employees subject to disciplinary or adverse actions, or placed on a PIP, must be respected, but we believe that SES candidates — and their references, who should include an HR or OGC partner involved in a disciplinary/adverse/performance action — can discuss the steps they took to address performance without sharing the name or identifying details of the employee(s) in question. We also note that if a conduct/performance case reaches the MSPB, EEOC, or OSC, the disposition of the case will be a matter of public record.

Most candidates coming from the private sector should also have experience addressing an employee performance issue up to and including removal. In either case, candidate claims about their management experience should be validated through detailed reference checks (with the human resources and/or legal staff who partnered with the SES aspirant on the employee discipline or removal issue) before an employment offer is made.

Root Cause #4: HR and OGC Are Often Risk-Averse — and Don't Always Factor in the Risk of Leaving Underperforming or Misbehaving Employees on the Job

Supervisors are not only disincentivized to take action against employees with performance or misconduct issues. They also sometimes perceive that they are actively discouraged by HR and agency legal staff.

The experiences of the former federal managers interviewed for this report varied. Some indicated that HR was helpful in guiding them toward actionable next steps related to underperforming employees; one remarked, “I had HR and the lawyers on speed dial.” Others indicated that they were often discouraged from taking action. Those managers perceived their HR partners as more interested in avoiding conflict with the union, or avoiding the paperwork involved in handling the inevitable grievances, than in solving the problem. HR would often take many weeks or months to review draft PIPs, documentation for adverse actions, etc., and insist on multiple review rounds before a PIP or adverse action could be issued, dragging out the process and discouraging managers from continuing because these delays suggest that there is no reasonable timeline for resolving the performance issue through the formal process.

Similarly, some managers interviewed for this report perceived OGC as more focused on avoiding litigation or a possible future appeal loss before the MSPB than removing the employee. One manager noted that she was repeatedly told by OGC to drop the case against an underperformer because OGC lawyers were penalized on their performance plans for settlements — and the lawyer feared the case could result in a nuisance settlement — but were not rewarded on their performance plans for successfully partnering with supervisors and HR to remove employees with serious performance or conduct issues.

In some instances, supervisors received conflicting advice from HR and OGC at different points in the process, and sometimes supervisors were unclear whether HR or OGC was the bottleneck in the process. In some agencies, HR seemed to serve as a “gatekeeper” restricting direct access to OGC and, in some instances, this appeared to result in incorrect information being relayed to the supervisor.

Solution: Professionalize Employment and Labor Relations, Flip the Script on Incentives, and Ensure Adequate Resources

Agencies should change the incentives for HR and OGC staff charged with overseeing progressive discipline, PIPs, and removals. Their employee performance plans should require them to complete certain steps in the process in certain time frames and achieve certain levels of customer service satisfaction from the supervisors utilizing their services.

Agencies should also work with HR offices and OGC to analyze the workload and paperwork burden associated with HR’s and OGC’s support for employee discipline and removal cases, and ensure adequate staffing and funding levels, as well as adequate tools and training.

Agencies should ensure that HR does not serve as a “gatekeeper” or “translator” for OGC, and that supervisors are able to consult with OGC employment and labor relations attorneys from the beginning of the process.

As noted above, we also recommend that HR staff involved in employee discipline and removal be required to pass a certification test on the updated, government-wide discipline and removal process. The training and certification should include interactive sessions with OGC labor and employment relations attorneys to ensure HR staff understand how to improve the likelihood that a removal will be upheld by the MSPB or a successor adjudicatory body, and to improve communication between HR and OGC.

Root Cause #5: Many Managers Feel They Have Few Tools and Little Training to Create Clear and Fair Performance Standards

For removals under 5 U.S.C. § 4303, a critical step in the process is for the supervisor to place the employee on a PIP. In order to place an employee on a PIP, however, the supervisor must show that the employee's performance on a critical element in his or her employee performance plan has fallen below the "fully successful" standard.

And therein lies the rub.

It is difficult for a supervisor to rate an employee as less than "fully successful" if the "fully successful" standard is not air-tight. For example, let's say the performance plan stipulates that the employee will complete a particular set of tasks in a timely manner, but doesn't translate "timely" into a specific number of days. The employee takes two months to complete one of these relatively simple tasks, which causes significant delays for downstream customers and is 90 percent longer than the time taken by other employees to do the same task. A reasonable person might say the work is not "timely." But HR will often advise the supervisor that since "timely" was not defined, the employee cannot be rated "unacceptable" and therefore should not be placed on a PIP.

Many, if not most, federal employee performance plans do not contain stringent enough standards to actually put an employee on a PIP. The reasons vary but typically include:

- The manager does not have the expertise to do so (if training is provided, it is very cursory and does not include specific examples relevant to the manager's work unit);
- The manager does not have technical support from knowledgeable professionals in HR to do so;
- The manager believes that the work of his or her unit is such that it can't be reduced to easily quantifiable targets, or that the varying complexity of each task makes it difficult to assign an across-the-board standard;
- The manager believes that the work of his or her unit changes so rapidly — based on the evolving priorities of political leadership, for instance — that it is hard to establish a very specific employee performance plan at the beginning of the year, since the work will be totally different by the end of the year; and/or
- The manager's work unit is covered by a CBA and the union resists any attempt to make the standards more stringent.

For all of these reasons, many managers find it difficult to craft performance standards that cover work quality, accuracy, and timeliness, as well as more process-related qualities like customer service and regulatory compliance, and that balance the need for specificity with the need for flexibility as priorities evolve.

Solution: Create a Library of Sample Performance Standards by Role — and Require Managers to Use These or Justify Alternatives

Managers should not be expected to be experts in HR policy and law, nor should HR staff be expected to understand what success looks like in different roles. However, they should work together to create tools that can be easily disseminated and adapted to create effective, fair employee performance plans.

To do so, We the Doers recommends that OPM leverage Federal Executive Councils and/or other existing or newly formed interagency groups of subject matter experts, integrating HR and OGC employee performance management experts as appropriate, to craft legally defensible, consistent, and fair but stringent performance standards for quality, accuracy, timeliness, and customer service for each job series, with a focus on service delivery for each job series. For instance, the CHCO Council could craft performance standards for HR professionals, and the CIO Council could craft performance standards for different IT roles.

OPM would then upload these curated sample performance standards into an online library for use by managers. For roles that have clearly established performance standards in the library, the manager would need to use these standards as a starting point but could adapt them as necessary with a written justification.

Conclusion

The federal government cannot deliver effectively if managers are unable to remove employees with serious performance or conduct issues in a timely, efficient, and consistent way. But it also cannot remain trustworthy if speed comes at the expense of due process, merit system principles, whistleblower protections, or safeguards against arbitrary and politically-motivated firings.

The solution is to build a system that is fast because it is clear, fair because it is consistent, and durable because it is codified in law and regulation rather than left to shifting administrative preference.

A functional civil service requires a single transparent removal process; meaningful metrics; a centralized case-management system; reforms to reduce bad-faith abuse of worker protections; trained and accountable HR and legal staff; clear performance standards; and a truly independent adjudicatory body capable of resolving appeals quickly and impartially.

These reforms would strengthen the civil service by protecting employees who deserve protection, supporting managers who are trying to do the right thing, removing employees who are standing in the way of mission delivery, and restoring public confidence that the federal workforce is accountable to the people it serves.

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Appendix A: We the Doers' Pillars of Functional Government

What do we hope and expect the federal government of the world's greatest democratic experiment will become?

The functional, value-delivering government we envision is objectively, *measurably*:

Effective

- **Outcome-driven.** It does what it says it's going to do and delivers results that matter to the average American. It communicates those results in a way the average American can easily access and understand.
- **Customer-oriented.** It's intuitive, easy and pleasant (maybe even delightful!) to directly interact with the government as an individual, small business, corporation, grantee, or local or state government. And it's easy for federal agencies to get what they need from sister agencies (e.g., outsourced services, data, technical assistance, etc.).

Efficient

- **Cost-effective.** The government maximizes taxpayers' return on investments, delivering the most bang for the buck. No taxpayer dollars are wasted.
- **Unified.** Bureaucratic complexities are the government's problem, not the people's problem. A single point of entry into the federal government, with a single point of contact, is the only thing an average American will see or interact with even if their need requires action from multiple federal agencies.
- **Proactive.** If one part of the government requires information from another part of the government to meet a citizen's need, it will proactively get and use that information on behalf of the citizen.
- **Timely.** It works as fast as needed for a given situation. Emergencies are resolved within hours or days. Regulatory oversight needs are resolved within weeks or months. Nothing in a functional government takes years.
- **Concise.** Plain language is important, but significantly less language is also necessary on every form, letter, website, and publication.

Trustworthy

- **Ethical.** The people who make up the government act with integrity and ethics.
- **Reliable.** The services delivered are consistent, reliable, and fair. Americans can rely on the accuracy of data and information from government sources.

- **Competent.** The people who make up the government know how to do their jobs, perform those jobs well, and understand how their jobs fit into the bigger picture of service delivery.
- **Right-sized.** The size of an agency or office's workforce (as well as its contractor support) is determined by the size, scope, and complexity of its mission — not by arbitrary targets set by an external body unfamiliar with its work. Some areas will shrink while others may grow (though we expect the overall size of the workforce to reduce as smart, strategic cuts are made).

Appendix B: Detailed Description of the Process for Addressing Employee Misconduct and Performance Issues — and Ultimately Removing Employees

The Actual Process Experienced by Managers — in All Its Variations

Identifying an Issue and Determining Whether to Pursue Under 5 U.S.C. § 4303 or 5 U.S.C. § 7513

The process begins[12] when the supervisor first identifies an issue: the employee's work product is unacceptable or not completed within established deadlines, or the employee engages in misconduct. Misconduct can run the gamut from relatively subjective issues — insubordination, failure to follow instructions — to more serious breaches of ethics or professional decorum, such as being Absent Without Leave (AWOL), timecard or travel card fraud, being charged with a criminal offense, or coming to work drunk.

Frankly, if the supervisor is "lucky," the issue will be a clear-cut conduct case with an easily auditable trail. As one former supervisor told us, "travel card and timecard fraud cases are the best. They are the easiest to prove and don't require witness statements. The written record tells the full story."

The supervisor will usually pull together some initial documentation and then consult with agency HR staff.

If the issue is conduct, HR and OGC will typically advise the supervisor to follow the procedures in 5 U.S.C. § 7513. Under this statute, no requirement exists to place the employee on a Performance Improvement Plan (PIP) since it concerns misconduct; the supervisor only needs to show that an adverse action — which could include removal but also be as mild as a short suspension — promotes "the efficiency of the service" (i.e., the federal government). However, the standard of the burden of proof under 5 U.S.C. § 7513 ("preponderance of evidence") is actually *higher* than under 5 U.S.C. § 4303 ("substantial evidence").

If the issue is performance, HR and OGC may still steer the supervisor towards U.S.C. § 7513 if they feel an "efficiency of the service" argument can be made. They are especially likely to do so if the employee has both performance *and* conduct issues.

However, if it is solely an employee performance issue, HR and OGC may advise the supervisor to follow 5 U.S.C. § 4303, which has a lower burden of proof (only

[12] Our report outlines the process as experienced by most managers in most agencies. However, we would like to note that substantial variation can occur in the process. A good primer on the differences between 5 U.S.C. § 4303 and 5 U.S.C. § 7513 can be found on the U.S. Merit Systems Protection Board website.

“substantial evidence,” instead of “preponderance of evidence”) but does require placing the employee on a Performance Improvement Plan. However, the supervisor can only pursue this option if the employee’s performance is “unacceptable” on a “critical element” on the employee’s performance plan. If the supervisor judges the employee’s work product unacceptable, but the work product in question is not clearly tied to a performance element on the employee’s plan, the supervisor’s attempt to hold the employee accountable under 5 U.S.C. §4303 is at a standstill (though the supervisor could try to work with HR and OGC to pursue removal under 5 U.S.C. § 7513[13] and could and should revise the performance plan to better reflect the full range of possible deliverables in the future). Similarly, if the work product is referenced in the employee’s performance plan, but the performance element is not marked as “critical,” the employee cannot be held accountable under 5 U.S.C. § 4303. And in a similar vein, if issue is missed deadlines or the employee taking an unacceptable amount of time to complete an assigned task, the supervisor can only hold the employee accountable under 5 U.S.C. § 4303 if specific timeliness standards for that type of task or deliverable were included in a critical element in the employee’s performance plan. A lot rides on whether the supervisor had the foresight and ability to anticipate all the possible performance issues that could occur — and to effectively set clear standards for each of these potential issues in the employee’s plan. (See Root Cause #3 for a full discussion of the performance plan pitfalls.)

Once the agency has determined whether to pursue the matter under 5 U.S.C. §4303 or 5 U.S.C. §7513, the process flow splits.

Documenting and Proving Unacceptable Performance Under 5 U.S.C. § 4303

If the issue is to be handled under 5 U.S.C. § 4303, the next step is for the supervisor to draft a Performance Improvement Plan (PIP). The PIP must:

- Document the employee’s “unsatisfactory” performance in one or more critical job elements on the employee’s performance plan. This step may require completing a data analysis to identify specific instances where the employee failed to meet deadlines or exceeded time limits set for completing particular tasks identified in the critical job element. It could also require appending examples of unacceptable work products, with the errors identified and explained;
- Specify the duration of the PIP (i.e. the length of time the employee has to improve his or her performance before being re-evaluated). While 5 U.S.C. § 4303 does not specify the time frame for a PIP, in reality, historically most agencies and bureaus have used PIPs of 90 days, 120 days, or longer. Much more recently, an OPM memorandum issued June 17, 2025, titled “Performance Management for Federal Employees,” states that “A Performance Improvement Plan (PIP) should be limited

[13] One former OPM official consulted for this report noted that his team regularly analyzed data on agency removals under 5 U.S.C. § 4303 vs. 5 U.S.C. § 7513. The official noted that roughly 60 percent of removals for performance were handled under 5 U.S.C. § 7513 (“efficiency of the service”) and did not require the issuance of a Performance Improvement Plan. This varied substantially by agency, however.

to 30 calendar days." CBAs may further extend the timeline or add additional requirements. One federal manager interviewed for this paper reported that his employees' CBA required giving an employee 180 days to improve *prior* to putting an employee on a PIP (which the manager referred to as a "pre-PIP"), followed by an actual PIP lasting 120 days if the employee did not improve during the pre-PIP, so the entire evaluation period was in effect 10 months.

- Specify performance expectations and success criteria.
- Identify the support and assistance to be provided.[14] This could include weekly feedback meetings with the manager, assigning a mentor, and/or enrolling the employee in hard or soft skill training.
- Clarify the consequences for not increasing the employee's performance to at least "minimally acceptable"[15] by the end of the PIP period (e.g., removal from federal service).

The supervisor must then submit the draft PIP to HR, who will route the plan to the agency attorneys to review and edit for legal sufficiency. Some managers interviewed for this report noted that, in their agencies, this review can often take many months and require rounds of edits between the supervisor and OGC. Other managers found HR and OGC more responsive.

OGC and HR then review to determine if the PIP meets all requirements and the prior poor performance is appropriately documented. It is important to note that this review will include whether the agency met the following requirements:

- OPM approved the agency's performance appraisal system and any subsequent changes;
- The agency communicated to the employee the performance standards and critical elements of the position;
- The performance standards are valid under 5 U.S.C. § 4302(c)(1);
- The employee's performance during the appraisal period was unacceptable in one or more critical elements;
- The agency warned the employee of the inadequacies in the employee's performance during the appraisal period and gave the employee an adequate opportunity to demonstrate acceptable performance; and

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[14] OPM's current proposed rules on addressing poor performance change this requirement to allow assistance to poor performers "before" or "during" the PIP. It remains to be seen whether this change will be adopted as part of the final rule and, if so, whether the rule will be successfully challenged in court as inconsistent with the statute.

[15] For the purposes of this section, we assume an agency has a five-tier employee performance rating system (5=outstanding, 4=very good, 3=satisfactory, 2=minimally acceptable, 1=acceptable). However, the rating system has not historically been standardized across agencies, and some agencies have historically had two-tier rating systems (satisfactory/not satisfactory). In those cases, the employee must raise his or her performance on the critical element in question to "satisfactory" by the end of the PIP period.

- After an adequate improvement period, the employee remained unacceptable in at least one critical element.

When OGC and HR are finally satisfied that the PIP meets all requirements and is appropriately documented, the supervisor gets the green light to issue the PIP to the employee.

Some agencies or even individual managers may ask the employee to sign the PIP, but this step is not necessary for it to take effect. Union involvement at this step varies based on the CBA under which the employee is covered.

During the PIP period, the supervisor ensures that all support and assistance specified in the PIP is provided. The supervisor also continues to document whether the success criteria are met, collecting data on deliverable timeliness and quality.

At the conclusion of the PIP period, the supervisor determines whether the success criteria have been met and the employee is now performing at least at the "minimally acceptable" level on the critical job elements covered by the PIP.

If the employee's performance has risen to "minimally acceptable" or "acceptable/satisfactory" on the critical element, the employee is retained and no further action against the employee is taken, provided that the employee maintains at least that rating in the critical element that was the focus of the PIP for at least one year. In a similar vein, if the employee's performance on the critical job element(s) listed on the PIP is now at least "minimally acceptable," but the employee's performance on a different critical element not listed in the PIP is now "unacceptable," the process starts all over again.

If the employee's performance is still "unacceptable" on the critical element, the supervisor consults with HR and OGC and provides them with all relevant documentation of the employee's performance during the PIP period. The supervisor also makes a recommendation on whether to seek a demotion of the employee or to remove the employee from federal service.

Documenting and Proving an Adverse Action Improves the Efficiency of the Service Under 5 U.S.C. § 7513 — and Moving Through Progressive Discipline

If the issue is to be handled under 5 U.S.C. § 7513, the relative leniency (or lack thereof) with which the employee is treated varies greatly by agency.

Most managers reported that their agencies have a de facto "three strikes and you're out" policy for all but the most serious offenses (often referred to as "progressive discipline"): a first "strike" typically results in a written reprimand, a second "strike" typically results in a 14-day suspension without pay, and a third "strike" eventually leads to removal.[16] Sometimes, the employee is given a chance to improve prior to beginning

[16] OPM's current proposed rule on employee accountability emphasizes that the use of "progressive" discipline is not required. In fact, neither the law nor OPM regulations have ever required the use of

the discipline process. For example, one of the individuals interviewed for this report noted that her HR office would not permit her to issue a reprimand for an employee being Absent without Leave (i.e., being completely unreachable all day while on telework status) and insisted the first offense result in a verbal warning only.

Other agencies (e.g., DHS) maintain an advisory table of penalties for conduct infractions (e.g., driving under the influence) and the suggested adverse action to be imposed.

For serious and clear-cut offenses, however — being convicted of a crime, for instance — managers noted that their HR offices did support them in pursuing immediate removal, rather than working through the discipline process.

Regardless of the agency culture and appetite for risk and conflict, however, the first step is for the supervisor to document the misconduct. Managers interviewed for this report provided some specific examples:

- For a timecard fraud case, the documentation could involve creating a spreadsheet showing the hours the employee claimed to work based on his or her timecard, and the actual hours worked per day based on the time the employee was badged into the building or the number of hours logged on to the employee's computer (if the supervisor or HR has requested and received permission to work with IT to track these items).
- For a misuse of a government travel card case, the process is relatively simple and would require collecting the employee's travel credit card statements and identifying which charges were not for official government travel (because the employee was not on official travel at the time, and/or the charge was not for eligible hotel, travel, and per diem expenses).
- For somewhat more subjective charges such as "insubordination" or "failure to follow instructions," the process could involve gathering emails, procedural manuals, or training curricula showing the instructions or training the employee was given about how to do his or her work, and then collecting work samples, emails, or other written documentation that these instructions were not followed. In some cases, it could involve compiling a list of witnesses (when the incident involved a verbal presentation or altercation and written documentation is not available) for HR to interview.

The supervisor then provides this documentation to HR and applies the Douglas factors[17] — the criteria a supervisor and agency must use to, in layman's speak, "ensure the punishment fits the crime" — to recommend an appropriate adverse action. The role of HR in this process appears to vary by agency, but at most agencies, HR will then review the documentation provided, as well as the recommended adverse action in light of the Douglas factors, and, if HR agrees with the supervisor, HR and the

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progressive discipline. However, in practice, most HR offices seem to require progressive discipline for all but the most serious offenses.

[17] We note Proposed Rule 2026-13445, issued on July 2, 2026, would replace the application of the Douglas factors with a "totality-of-the-circumstances standard."

supervisor will work together to draft a letter informing the employee of the proposed adverse action. HR will then route the letter to OGC, who generally will complete their own review of the documentation and proposed adverse action for legal sufficiency and compliance with the Douglas factors.

HR and OGC could concur with the supervisor's recommendation, or they could recommend a lesser disciplinary action (e.g., a reprimand instead of a suspension, or a suspension instead of a removal). In some cases, they may say that they do not support a proposed adverse action at all, urging the supervisor to engage in informal counseling instead. Although technically HR and OGC are not "approvers" in this process, they provide guidance about what the agency can support.

At this point, the adverse action — which could range from a suspension to a removal — is still a *proposed* adverse action, because the employee still has a right to due process and can challenge the adverse action. The employee can then provide, essentially, his or her "side of the story" along with any supporting documentation or witness statements. If the employee is part of a CBU, the union will typically assist in drafting this response. Alternatively, the employee may hire an attorney to assist.

The deciding official — often, but not always, the employee's second-level supervisor — will then review the supervisor's proposed disciplinary or adverse action and the employee's response and make the final determination. The deciding official can only issue the proposed penalty or a lesser penalty. If the proposed action is removal, for instance, the deciding official can either approve the removal or reduce the penalty to, for example, a demotion. Conversely, if the proposed action is a demotion, the deciding official cannot approve removal.

Even if a disciplinary action is taken after this lengthy process, it is often only the opening salvo in a long battle for removal. Often, it is simply a written reprimand that goes in the Employee Official Personnel Folder (eOPF);[18] if the same misconduct reoccurs, the supervisor engages in the process again, working with HR and OGC to escalate to the next step in the progressive discipline process.

Playing Defense in the Grievance Process — and Dealing with Even More Delays

At any point in this process, but typically after the employee has received an "unsatisfactory" year-end or interim performance rating (triggering a PIP) or after the supervisor has issued the employee an adverse or disciplinary action (including a written reprimand), an employee can file a grievance against his or her supervisor, essentially alleging that the supervisor's action was not justified.

Some employees are covered by a CBA with a negotiated grievance process, which includes arbitration.

If the employee is not covered by a CBA requiring a negotiated grievance process, the supervisor and employee must follow the agency's own administrative grievance

[18] Typically, though it may vary by CBA, this reprimand only stays in the OPF for two years.

process, which is documented in their internal policies. Agency administrative grievance processes often exclude adverse actions appealable to the MSPB (i.e., suspension of more than 14 days, removals, and demotions).

Under a typical agency grievance process, when the employee wishes to grieve an action and it is grievable under agency administrative grievance procedures, the employee will produce documentation or verbal or written input that the supervisor acted in an unreasonable, arbitrary, or capricious manner, and the supervisor will essentially have to provide information defending him or herself. For example, if the employee alleges that the supervisor did not hold other employees to the same standard for the same or a similar task, the supervisor would provide documentation that the same or similar tasks were assigned to other employees and that these other employees either (a) satisfactorily completed the task or (b) if they did not complete the task in a satisfactory manner, they were also held accountable.

The documentation will then be provided to the “deciding official.” This individual is a supervisory-level official other than the employee’s supervisor; often it is the employee’s second-level supervisor.

The deciding official reviews the documentation and then can either uphold the supervisor’s decision, mitigate the grieved action (i.e. reduce the length of a suspension, or change an “unsatisfactory” rating to a “minimally acceptable” or “fully successful” rating), or determine no action should be taken by the supervisor.