

Ms. Jennifer Everling
Deputy Clerk of the Board
U.S. Merit Systems Protection Board
1615 M Street NW
Washington, DC 20419

March 7, 2024

Re: Proposed Rule—Appellate Jurisdiction, 89 Fed. Reg. 8083 (Feb. 6, 2024)

Dear Ms. Everling,

Protect Democracy and Walter M. Shaub, Jr., former director of the U.S. Office of Government Ethics, strongly support the U.S. Merit Systems Protection Board’s proposed rule, 89 Fed. Reg. 8083 (Feb. 6, 2024), updating its appellate jurisdiction to include the appeal right that the U.S. Office of Personnel Management (OPM) has proposed codifying at 5 C.F.R. § 302.603. As we showed in our comment supporting OPM’s proposed rule, the appeal right would reinforce OPM’s longstanding view that “employees who are moved from the competitive to the excepted service, or from one excepted service schedule to another, retain the status and civil service protections they had already accrued,” 88 Fed. Reg. 63,862, 63,870 (Sept. 18, 2023). Employees’ retention of accrued status and protections upon involuntary movement to an excepted service schedule is firmly rooted in prior regulations, practice, and case law. *See* Comment of Protect Democracy & Walter Shaub at 33-44, <https://www.regulations.gov/comment/OPM-2023-0013-2134>.

Sincerely,

/s/ Erica Newland

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/s/ William Ford

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/s/ Walter M. Shaub, Jr.

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