

116TH CONGRESS  
2D SESSION

# H. R. 8711

To amend title 5, United States Code, to codify Executive Order 13957 entitled “Executive Order on Creating Schedule F In The Excepted Service”, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

OCTOBER 30, 2020

Mr. KELLER introduced the following bill; which was referred to the  
Committee on Oversight and Reform

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## A BILL

To amend title 5, United States Code, to codify Executive Order 13957 entitled “Executive Order on Creating Schedule F In The Excepted Service”, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Federal Workforce Ac-  
5 countability and Modernization Act”.

1 **SEC. 2. ESTABLISHING SCHEDULE F OF THE EXCEPTED**  
2 **SERVICE.**

3 (a) IN GENERAL.—Subchapter I of chapter 33 of title  
4 5, United States Codes, is amended by adding at the end  
5 the following:

6 **“§ 3330f. Schedule F of the excepted service**

7 “(a) There is established in the excepted service a  
8 Schedule F consisting of any position that is of a confiden-  
9 tial, policy-determining, policy-making, or policy-advo-  
10 cating character and that is not normally subject to  
11 change as a result of a Presidential transition.

12 “(b) Not later than 210 days after the date of enact-  
13 ment of this section, and annually thereafter, the head of  
14 each Executive agency shall review each position at the  
15 agency covered by subchapter II of chapter 75.

16 “(c) Following any review under subsection (b), the  
17 head shall—

18 “(1) with respect to positions not excepted from  
19 the competitive service by statute, petition the Direc-  
20 tor of the Office of Personnel Management to place  
21 in Schedule F any competitive service or excepted  
22 service position under schedule A, B, or D positions  
23 within the agency that the head determines to be of  
24 a confidential, policy-determining, policy-making, or  
25 policy-advocating character and that are not nor-

1 mally subject to change as a result of a Presidential  
2 transition; and

3 “(2) for positions excepted from the competitive  
4 service by statute, determine which such positions  
5 are of a confidential, policy-determining, policy-mak-  
6 ing, or policy-advocating character and are not nor-  
7 mally subject to change as a result of a Presidential  
8 transition.

9 “(d) Any petition under subsection (c)(1) shall in-  
10 clude a written explanation for the basis for the agency  
11 head’s determination that such position should be placed  
12 in Schedule F, and the agency head shall publish such de-  
13 termination in the Federal Register.

14 “(e) When conducting the review required by sub-  
15 section (b), each agency head should consider the appro-  
16 priateness of either petitioning the Director to place in  
17 Schedule F or including in the determination published  
18 in the Federal Register, as applicable, positions whose du-  
19 ties include any of the following:

20 “(1) Substantive participation in the advocacy  
21 for or development or formulation of policy, espe-  
22 cially—

23 “(A) substantive participation in the devel-  
24 opment or drafting of regulations and guidance;  
25 or

1           “(B) substantive policy-related work in an  
2           agency or agency component that primarily fo-  
3           cuses on policy.

4           “(2) The supervision of attorneys.

5           “(3) Substantial discretion to determine the  
6           manner in which the Executive agency exercises  
7           functions committed to the agency by law.

8           “(4) Viewing, circulating, or otherwise working  
9           with proposed regulations, guidance, executive or-  
10          ders, or other non-public policy proposals or deliber-  
11          ations generally covered by deliberative process  
12          privilege and either—

13               “(A) directly reporting to, or regularly  
14               working with, an individual appointed by the  
15               President or an Executive agency head who is  
16               paid at a rate not less than that earned by em-  
17               ployees at GS–13 of the General Schedule; or

18               “(B) working in the agency or agency com-  
19               ponent executive secretariat (or equivalent).

20           “(5) Conducting, on the Executive agency’s be-  
21           half, collective bargaining negotiations under chapter  
22           71.

23           “(f) The Director shall determine whether to grant  
24           any petition under subsection (c) to place a position in  
25           Schedule F. Not later than December 31 of each year,

1 the Director shall report to the President, through the Di-  
2 rector of the Office of Management and Budget and the  
3 Assistant to the President for Domestic Policy, concerning  
4 the number of petitions granted and denied for that year  
5 for each Executive agency.

6 “(g) Each Executive agency head shall, as necessary  
7 and appropriate, expeditiously petition the Federal Labor  
8 Relations Authority to determine whether any Schedule F  
9 position must be excluded from a collective bargaining unit  
10 under section 7112(b), paying particular attention to the  
11 question of whether incumbents in such positions are re-  
12 quired or authorized to formulate, determine, or influence  
13 the policies of the agency.

14 “(h) In appointing an individual to a position in  
15 Schedule F, each Executive agency shall follow the prin-  
16 ciple of veteran preference as far as administratively fea-  
17 sible.

18 “(i) Each Executive agency shall establish rules to  
19 prohibit the same personnel practices prohibited by section  
20 2302(b) with respect to any employee or applicant for em-  
21 ployment in Schedule F of the excepted service.

22 “(j) The Director of the Office of Personnel Manage-  
23 ment may prescribe such regulations as are necessary to  
24 carry out this section.

25 “(k) In this section—

1           “(1) the term ‘Director’ means the Director of  
2           the Office of Personnel Management; and

3           “(2) the term ‘Executive agency’ has the mean-  
4           ing given that term in section 105, but does not in-  
5           clude the Government Accountability Office.”.

6           (b) CLERICAL AMENDMENT.—The table of sections  
7           of subchapter I of chapter 33 of title 5, United States  
8           Codes, is amended by adding after the item relating to  
9           section 3330e the following:

          “3330f. Schedule F of the excepted service.”.

