



June 11, 2025

Acting Special Counsel Jamieson Greer  
U.S. Office of Special Counsel  
1730 M Street, N.W., Suite 218  
Washington, D.C., 20036-4505

**RE: Request for Advisory Opinion -- Threatened prohibited Prohibited Personnel Practice**

Dear Acting Special Counsel Jamieson Greer:

I am contacting you on behalf of Public Employees for Environmental Responsibility (PEER) to seek your Office's guidance on the application of a new federal hiring policy announced jointly by the White House and the Office of Personnel Management on May 29, 2025 [Attached]. Although this document is entitled "Merit Hiring Plan." However, a plain reading of it suggests that this plan violates merit principles.

In particular, the plan provides that "each job application graded GS-05 or above" must respond to "four short, free-response essay questions" including the following:

"How would you help advance the President's Executive Orders and policy priorities in this role? Identify one or two relevant Executive Orders or policy initiatives that are significant to you, and explain how you would help implement them if hired?"

This question is not merely asking for the applicant's awareness of President Trump's "Executive Orders and policy priorities." It asks the applicant how they would "help advance" the President's political agenda and "how you would help implement them if hired."

This query of federal job applicants appears to be a blatant prohibited personnel practice for the following reasons:

**A. Discrimination in hiring on the basis of non-performance-related factors in violation of 5 U.S.C. 2302 §(b)(10)**

Under 5 U.S.C. § 2302(b)(10), an agency official shall not discriminate due to conduct that does not adversely affect job performance. This statute prohibits agency officials from discriminating against employees or job applicants for reasons that have no adverse impact on their job performance or on the ability of others to perform their jobs.

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Under the OPM Hiring Plan, job applicants who do not know about or support President Trump's welter of Executive Orders and almost daily policy pronouncements are now placed at a distinct disadvantage in hiring decisions. Yet, these factors have nothing to do with the ability to perform well in the vast majority of federal job openings.

Appended to the so-called OPM Merit Hiring Plan is a list of 135 job series now with validated assignments on the USA Hire website. These job listings include positions such as park ranger, forestry technician, logistics manager, and veterans claims examiner. These positions have no discernible connection to Trump's Executive Orders. Under the law, it should not matter whether an air traffic controller or a hydrological technician has knowledge of or an opinion about (one way or another) presidential policies or priorities.

Moreover, most of these available jobs are entry-level positions with no policy application whatsoever. These positions do not concern presidential-level directives or priorities but carry the same duties regardless of who is president,

#### **B. Discrimination in hiring on the basis of political affiliation in violation of 5 U.S.C. § 2302(b)(1)**

Under 5 U.S.C. § 2302(b)(1), an agency official shall not discriminate against an employee or applicant based on race, color, religion, sex, national origin, age, disability (or handicapping condition), marital status, or political affiliation.

In this instance, the identified question clearly appears designed to advantage Trump loyalists and disadvantage, or even disqualify, federal job applicants who are indifferent to or do not care for President Trump and his priorities. In short, this required question functions as an illegal litmus test for federal job applicants.

Notably, one of the other required questions of applicants reads as follows:

“How has your commitment to the Constitution and the founding principles of the United States inspired you to pursue this role within the Federal government?”

Yet, several Trump Executive Orders and other directives have been struck down (or are in the process of being overruled) by federal courts on the grounds that President Trump's actions are unconstitutional and violate basic principles on which the country is founded. However, an applicant who feels that his or her fealty to the Constitution is quite reasonably at odds with a desire to “advance” Trump actions that are unconstitutional presumably has no place in federal service under OPM's plan.

#### **C. Hiring practices contrary to merit system principles in violation of 5 U.S.C. § 2302 (b)(12)**

Under 5 U.S.C. § 2302 (b) (12), agency officials are prohibited from taking or failing “to take any other personnel action if the taking of or failure to take such action violates any law, rule, or regulation implementing, or directly concerning, the merit system principles contained in

section 2301 of this title.” Section 2301, which lays out the merit principles, provides, *inter alia*, that --

- “selection and advancement should be determined ***solely on the basis of relative ability, knowledge, and skills***, after fair and open competition which assures that all receive equal opportunity” (emphasis added)
- “Employees should be protected against arbitrary action, personal favoritism, or coercion for partisan political purposes.”

In this instance, the OPM Hiring Plan inserts factors affecting hiring that are not a reflection of the applicant’s “ability, knowledge, and skills” but which reflect enthusiasm for President Trump’s agenda.

Similarly, the Hiring Plan is a thinly veiled attempt to advance President Trump’s “partisan political purposes.”

The principal point of the civil service system is to have a workforce insulated from political influences, which can serve presidents of different parties with different priorities equally well. The OMB Hiring Plan obviously undermines this foundation of a non-partisan federal civil service.

#### **Office of Special Counsel Role and Responsibility**

The OSC website describes the legal responsibilities of a federal agency to prevent prohibited personnel practices and to comply with and enforce civil service laws, rules, and regulations. It is the job of OSC to ensure that federal agencies faithfully execute these legal responsibilities.

To that end, PEER urges OSC to advise federal hiring officials of these legal obligations affirmatively. Further, we urge OSC to issue a formal advisory opinion that OPM should withdraw and rewrite the Hiring Plan to conform with the legal requirements of the Civil Service Reform Act.

Sincerely,



Timothy Whitehouse