



## 2022 Legislative Priority: Restore and Protect Clean Record Settlement Agreements

**Background:** For many years, employees and their unions would collaborate with agencies to resolve employment-related claims against the agency by negotiating a clean record agreement (CRA) – a contract between a Federal agency and a past or current employee in which the agency agrees to remove potentially negative information from the employee’s record in exchange for the resolution of the claim or the disciplinary action. In 2017, former President Trump instructed OPM to write a regulation prohibiting CRAs in the Federal service. OPM did so, with regulations effective in November 2020. While President Biden ordered OPM to rescind the regulation, the Administrative Procedure Act rulemaking process has not yet concluded.

**Current Status:** Some agencies are entering CRAs again pursuant to the intent in E.O. 14003 and OPM’s proposed rule, but many are not since the OPM regulation at 5 CFR 432.108 is still in effect.

**Impact:** The Federal Government is still incurring increased costs to resolve issues in fora such as MSPB and EEOC appeals and litigation, that could have been resolved with a CRA or other settlement agreement containing a clean record clause. Agencies and employees alike have fewer tools to reach a resolution that allows the agency and the employee to avoid admitting wrongdoing – which is especially difficult in situations where both the employee and the supervisor contribute to the conditions that led to the claim.

### **Requested Action:**

- Introduce a bill (proposed language enclosed) to explicitly protect the ability of agencies and employees to reach a CRA.

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To ensure that Federal Government agencies and Federal employees are able to reach Clean Record Agreements when settling employment-related claims, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

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## A BILL

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

### **SECTION 1. SHORT TITLE.**

This Act may be cited as the “Effective Negotiations in Government Employment Relations Act of ----”.

### **SEC. 2. PROHIBITION OF LIMITS ON CLEAN RECORD AGREEMENTS.**

(a) Prohibition on Issuance of Regulations. Section 2951 of Title 5, United States Code, is amended—

(1) in paragraph (2) by striking the period at the end, and inserting “; however”; and

(2) by inserting “(3) no rules or regulations shall be promulgated or allowed to remain in effect that restrict the ability of an agency to erase, remove, alter, or withhold from another agency any information about a civilian employee's performance or conduct in that employee's official personnel records, including an employee's Official Personnel Folder and Employee Performance File, as part of, or as a condition to, resolving a formal or informal complaint by the employee or settling an administrative challenge to an adverse action.”