



CONGRESSIONAL TESTIMONY

STATEMENT FOR THE RECORD

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO

PROVIDED TO THE

UNITED STATES HOUSE COMMITTEE ON ARMED SERVICES

**HEARING ON FINAL RECOMMENDATIONS AND REPORT OF THE NATIONAL COMMISSION
ON MILITARY, NATIONAL, AND PUBLIC SERVICE**

MAY 19, 2021

Chairman Smith, Ranking Member Rogers, and Members of the Subcommittee:

On behalf of the American Federation of Government Employees, AFL-CIO (AFGE), which represents more than 700,000 federal and District of Columbia government employees, including 300,000 in the Department of Defense (DoD), we appreciate your support of a strong national defense and your recognition of the importance of a professional, apolitical civil service supporting our uniformed warfighters. We also thank you for the opportunity to provide our views on the hearing entitled, “Final Recommendations and Report of the National Commission on Military, National, and Public Service.”

Background. While we support the notion of reframing the discussion of public service to value all forms of public service (not just military), some of the proposals of the National Commission on Public Service are not specifically tailored to address the problem they seek to address, and in some cases would create unintended consequences that are counter to the goals we all share. AFGE is commenting only on those proposals we oppose or which we believe need to be clarified. The references below are to the sections of the Commission’s report seeking legislative changes.

Issues:

Subtitle C – Modernization of Federal Personnel System

Sec. 344. Noncompetitive eligibility for high-performing civilian employees. “The Commission encourages Congress and the President to promote and facilitate the use of existing noncompetitive hiring authorities that are currently underutilized and that would enhance the Government’s ability to attract and retain talent . . . The Commission

recommends that Congress authorize NCE [Noncompetitive eligibility] for select high-performing and qualified civilian employees who leave the Government, allowing them to return at a higher grade.” Expanded use of noncompetitive hiring authorities perpetuates a closed system of hiring with less diversity and quality in job candidates. The current problems in federal hiring are more attributable to a largely closed system of hiring where managers use direct hire authorities to hire candidates they know rather than competitively selecting from a broad field of qualified candidates. A closed system of non-competitive hiring is not sustainable over the long haul and will only serve to further discourage persons from diverse backgrounds from applying for federal jobs.

Sec. 345. Flexibility for Temporary and Term Appointments. “The Commission recommends that Congress amend existing law to enhance the ability of agencies to use temporary and term appointments to address short term needs. The Commission proposes legislation to amend 5 U.S.C. Chapter 31 to allow agencies to extend temporary and term appointments up to a maximum of three years and six years respectively, and permit noncompetitive temporary and term appointments, limited to 18 months, to meet critical hiring needs.”

We oppose this provision. According to a recent GAO audit, “[D]uring fiscal years 2016 through 2019, DoD increased term personnel by 40 percent and decreased temporary personnel by 3 percent . . . Approximately 35 percent of DoD term and temporary personnel were converted to permanent civilian positions within the federal government . . . DoD modified the procedures for making term appointments in June 2017 and August 2018 and

temporary appointments in June 2017. These modifications extended the duration limit for term appointments from 4 years to 8 years, with further extensions considered on a case-by-case basis, allowed an option for certain term positions to be non-competitively converted to permanent positions, and extended the duration limit for temporary appointments from 2 years to 3 years. However, DoD did not assess employee perceptions of the 2017 modifications and report the results of the assessment to Congress and GAO, as required by statute.” See GAO-20-532, “Defense Workforce: DoD Needs to Assess its Use of Term and Temporary Appointments” (August 2020).

There is already sufficient flexibility for temporary and term appointments which with their more limited term or temporary nature create greater job insecurity for employees, tantamount to “at will” employment. The high rate of conversion of these term positions to permanent positions ought to raise questions about whether these authorities are being over-utilized and mis-used, not under-utilized as suggested by the Commission. Positions with high turnover can adversely affect cost-effective performance of missions and be highly disruptive. The additional transaction costs on managers involved in recruiting and acclimating new workers of short duration can be highly disruptive. Expanding more jobs into temporary employment in the federal government is still another way of politicizing the workforce, not much different in spirit than the Trump Administration proposed Schedule F conversions. The idea that appointments with lesser job security than permanent appointments are somehow inducements for a person to work in an agency is belied by the fact that persons appointed into permanent positions are free to leave their positions whenever they desire.

Sec. 346. Criteria for granting direct hire authority to agencies. “The Commission recommends that Congress amend existing law to change the criteria for granting direct-hire authority to agencies so that agencies may obtain direct hire authority in the case of a shortage of “highly qualified candidates.”” This proposal digs the same hole deeper and deeper by going further down the road of a closed system of non-competitive hires. The answer to not having a sufficient quantity of highly qualified candidates is not a closed system of discriminatory hiring that is “competitive” in name only. Accordingly we strongly oppose this provision and recommend awaiting release of the study required by section 1109 of the FY 2020 NDAA on direct hires and the hiring process in general. When we endorsed passage of section 1109 in the FY 2020 NDAA, we did so in opposition to expanded use of direct hire authorities. Our rationale at that time was that direct hire was an expedient approach to shortening the hiring process when managers already had a candidate in mind for the job, but this very expedience curtailed the hiring of candidates based on merit and limited the diversity of the talent pool. Direct hire also works against hiring or promoting in-house candidates including veterans.

“Cohort hiring” can be a more efficient and effective mechanism for generating standing lists of qualified candidates than the method the Department currently primarily relies upon of requiring job applicants to apply separately for individual jobs through USAJOBS. Requiring applicants to search the entirety of USAJOBS and separately apply for similar positions on a daily basis is highly burdensome on job applicants and a very inefficient way

of generating candidates. Discouraging job applicants with inefficient, burdensome processes generates smaller lists, weakening the diversity and quality of the workforce.

Frustrated managers then turn to direct hire to hire people they know, thereby weakening diversity and the underpinnings of a merit-based system. When merit and diversity are sacrificed for expediency, candidates are often evaluated with inconsistent, crude and subjective assessment tools that screen candidates based on “word matches” between the resume and the job announcement.

Employees trying to get promoted, indeed all job applicants and managers become very discouraged and frustrated with this process and then turn to direct hire or contractors to fill vacancies. Standing registers, which Section 1109 calls “cohort hiring,” can overcome these problems because the standing lists, when the Department has used them, are not feasible in the absence of objective assessment tools that include subject matter expert panels and objective metrics for assessing skills. There is no need for direct hire, indeed direct hire is incompatible with the very idea of relying on standing lists (i.e., cohort hiring).

Sec. 347. Cafeteria Plan for Federal Employees and Sec. 348. Modern Benefits Pilot

Program. “The Commission recommends that the President and Congress create additional flexibility in the benefits packages for Government employees to better compensate and recruit individuals **who do not foresee career-long employment** with the Federal government and furthermore take steps to improve employees’ understanding of the benefits available to them.” (emphasis added). The legislative proposal establishes a “cafeteria plan through which a Federal employee may select certain benefits from a menu

of options, including cash, life insurance, disability-income insurance, flexible spending arrangements for health care, flexible spending arrangements for dependent care, a health savings account, enhanced dental benefits, and enhanced vision benefits.” We strongly oppose any effort to weaken participation in the Federal Employees Retirement System (FERS). Weakening FERS is counter-intuitive to the overarching theme of the "Inspired to Serve" Commission. The movement away from defined benefit plans and encouraging health savings accounts in lieu of employer-provided health care and universal coverage is a central part of the growth of inequality and weakening of supports in our society needed to sustain stable democracies. If the goal is to inspire a broader spectrum of society to serve and retain their service, it is counterproductive to include proposals that reduce compensation and provide a disincentive to continue in public service.

Sec. 349. Demonstration Project Flexibility for Office of Personnel Management and
Sec. 374. Personnel Policy Demonstration Project for Federal Agencies with Employees in STEM
Fields. “The Commission recommends that Congress authorize OPM to pilot a new personnel system, covering hiring, classification, compensation, transfer, and promotion, at agencies with a significant number of STEM employees ... The Commission recommends that Congress authorize and the President direct implementation of a modern talent-management system across the Federal Government ... The Commission recommends that Congress expand OPM’s demonstration authority to test changes to personnel systems, loosening the time and personnel restrictions as well as enabling OPM to expand demonstrated successes without statutory change.” Section 374 would address: “(1) more

flexible job classification; (2) competency-based hiring; (3) market-based pay; (4) promotion based on experience, skill and performance; and (5) streamlined personnel transfers between agencies.”

We strongly oppose this provision which provides broad authority in an open-ended manner to change the terms and conditions of employee job protections and compensation in pilot programs. This lacks guardrails and is a *non sequitur* to the professed problem the Commission purports to be solving, improving the hiring process for federal employees. It is overkill and the problem of hiring is better addressed through a program such as USA Hire and other skills assessments.

Every demonstration project generated since the "pilot" demonstration projects that laid the seeds for the discredited National Security Personnel System have been discriminatory, administratively burdensome, and counter-productive to their stated goals. Per-capita costs increase disproportionately favoring certain groups over others. A RAND review of the Acquisition Demonstration (Acq Demo) program found that “[f]emale and nonwhite employees in Acq Demo experienced fewer promotions, and less rapid salary growth than their counterparts in the GS system.” The virtues of the current system are rarely acknowledged. A December study by the Government Accountability Office (GAO) confirmed that the federal pay system does a far better job of avoiding pay discrimination by gender than private sector pay systems that allow broad discretion in pay-setting and pay adjustments. The GAO study (<https://www.gao.gov/assets/720/711014.pdf>) found that the gender pay gap in the federal government was \$.07 on the dollar as of 2017; similar studies of private sector gender pay gaps that adjusted for occupation and education show

the gap at 61% higher than the federal government's gap: \$.18 on the dollar as of 2018 vs. \$.07. To take this out of the realm of pennies on the dollar: on average, for every \$35,000 earned by males, women in the private sector are paid \$28,700 and in the federal sector are paid \$32,550. Of course, these are broad averages and should not exist at all. But the differential in pay equity between the federal pay system and private sector discretionary pay systems is stark.

This relative advantage in the area of pay equity is not the only systemic virtue of the current pay system. Its structure is designed to create a good balance among several factors: market sensitivity, career mobility, internal equity, flexibility and recognition of excellence. All of these are attributes of a functional pay system if the system receives adequate funding. However, budget politics, "bureaucrat bashing," and lack of understanding of the statistical processes used to measure the federal-non-federal market pay gap combine to deprive a very fair system of the funds it needs to operate at an optimal level. There is no problem with the GS system that adequate funding does not solve. The introduction of The FAIR Act by Rep. Connolly and Senator Schatz would be an extremely welcome step in recognition of the hardships that have been imposed on the federal workforce, financial and otherwise, during the past four years. The bill includes a 3.2 percent pay adjustment for 2022 which will not only restore some of the purchasing power lost during the past years but would send a hugely important message to the federal workforce that their work and well-being is a priority of this Congress and this administration.

Sec. 350. Advanced Assessment Tools for Executive Agency Hiring. The Commission proposes that “[t]he Director of OPM . . . support the distribution to, and use by, Federal agencies in their hiring processes of advanced skills-based assessment technology that the Director of the OPM has validated as effective for the recruitment, qualification, and assessment of candidates.” We support the concept of using objective metrics for assessing skills and note that OPM’s USA Hire Program is a strong positive step in this direction, particularly for people not already employed by the government. We see no need to establish blank check authority for OPM to reinvent the wheel when there are already good models to follow.

Sec. 351. Competency Standards for Human Resources Specialists. “The Commission recommends that Congress direct the Chief Human Capital Officers Council to establish competency standards for HR specialists, including technical knowledge, analytics, and collaborative skills.” We support the concept but part of the problem is attributable to the downsizing of Human Resources (HR) offices that started with reinventing government in the 1990s when HR offices in DoD were regionalized and lost their connection to their customers. This language should also include a requirement to increase staffing levels for downsized HR offices to better service their customers.

Sec. 352. Evaluation of Improvements to the Federal Civil Service Personnel System; and Sec. 353. Proposals for Modern Talent Management System. The Commission proposal would require not later than December 31, 2026, the Director of Office of Personnel Management (OPM) and Comptroller General each submit to Congress a report

evaluating changes to laws, regulations, and policies governing the Federal civil service personnel system that address or reflect recommendations in this Commission's final report. We strongly oppose these provisions as there already are at least two studies underway from the FY 2020 NDAA addressing this very issue. The results of the study led by the National Academy of Public Administration were published in March of this year and make comprehensive and definitive recommendations to improve the status of OPM and the principles of an apolitical civil service upon which it was established: "Elevating Human Capital: Reframing the U.S. Office of Personnel Management's Leadership Imperative." In addition, as discussed above, OPM is already implementing and refining its USA Hire skills assessment program, and we contemplate that further refinements will be made as more experience is obtained.

Sec. 354. Annual Report on Blended Federal Workforce. The Commission proposal requires OPM to collect data on the total number of persons employed directly by each agency, the total number of prime contractor employees and subcontractor employees issued credentials allowing access to agency property or computer systems; grantee employees and cooperative agreement recipient employees. We oppose further sanctioning of the so-called "blended" workforce that ignores the distinctions between the duties and liabilities of federal employees and members of the military who give an oath of allegiance to the Constitution and laws of the U.S. as contrasted with private sector employees whose duty is to shareholders. And there are distinctions between members of the military who are subject to the UCMJ and federal government employees, distinctions

that are crucial to maintain. This is fundamentally anti-democratic and corrupting no matter how it is cloaked. We support contractor inventories that capture the entire contractor workforce and not simply inventories of legally authorized and unlawful personal services contracts.

Subtitle D: Students, Recent Graduates, and Critical Skills

Sec. 361. Federal Fellowship and Scholarship Center; Sec. 362. Public Service Corps. Sec. 363; Public Service Academy Grants; Sec. 364. Public Service Cadet Programs at Military Service Academies; Sec. 366. Establishment of Pathways Program. We oppose sections 361-364 and 366 as unnecessary, and worse, creating a closed personnel system emulating the military model of recruitment. We believe this will result in fewer entrants into the federal government and less diversity than if an assessment tool such as OPM's USA Hire process is used more broadly for new appointments.

Sec. 365. Compensation for Civilian Interns. We support this provision. We oppose uncompensated labor in any form and this is long overdue.

Sec. 368. Aggregate Number of Hires of Recent College Graduates and Post-Secondary Students. We oppose establishing a numerical goal (or floor) but support removing a cap on the number.

Sec. 372. Civilian Cybersecurity Reserve Pilot Project. "The Commission recommends that Congress authorize and appropriate funds to create a Civilian Cybersecurity Reserve pilot program. The Commission proposes ... a demonstration project of a Civilian Cybersecurity Reserve, compelling members to return to full-time civilian employment with the federal Government if the agency head determines that their services are required to

address an emergency that exhausts agency cybersecurity capability.” We oppose the perpetuation of the failed cybersecurity "pilot" that was predicated on emphasizing "term" or "temporary" hires. Creating an at will workforce, with an added twist analogous to a reserve military mobilization authority, is not something that would "inspire" a person to "serve" so the entire concept is counter-intuitive to its stated objective. Additionally, creating still another hybrid civilian-military category of employee is not addressing a need that cannot adequately be addressed with existing military and reserve component categories that already include military technicians. Addressing recruitment shortfalls will not be fixed through expansion of excepted service categories that have not worked and will only serve to create a closed personnel system. Rather, improving the underlying recruitment process with a cohort-based hiring process with standing lists qualified through objective assessments rather than the current process of hiring and recruiting against individual vacancies will more effectively address the problem of filling skills shortages.

Sec. 375. Development of proposal for simplified personnel system for Veterans Health Administration (VHA). This proposal would require the VHA to draft legislation placing all VHA employees under title 38. AFGC opposes this thinly veiled attempt to take away title 5 rights from categories of Department of Veterans Affairs (VA) employees who enjoy these rights. VA employees who are subject to the VA’s own title 38 personnel system - health profession workers – are constantly harassed by management and face severe repercussions for exercising professional judgment. Extension of title 38 provisions to more VA employees would make an already bad situation so much worse.

Conclusion: Thank you for considering the views of the men and women who proudly work for the federal government and are represented by AFGE. The problems we have outlined in the Commission's report could have been avoided if we had been consulted beyond the brief, single meeting we had at the early stages of the Commission's work. While we applaud their recognition of the value of public service in all its forms, a very welcome theme, our substantive concerns with some of their recommendations should be taken into consideration. The National Security Commission on Artificial Intelligence was far more collaborative and accurately noted the following on page 61 of the draft version of their final report: "The government's hiring system's problems are well known. It moves too slowly, struggles to attract experts in a competitive market, and makes it difficult for experts that are young or do not have a degree to be hired, especially at a pay grade matching their level of expertise. These challenges are not caused by a lack of hiring authorities or an inherently slow process. The Commission has been unable to identify a gap in hiring authorities for the digital workforce." We would only add that the root of the problem is cultural and political stemming from the mixed messages and disparagement of public service that the Commission's "Inspired to Serve" final report rightly tries to counter as its primary and very important message.