AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO

Joseph P. Flynn
National Secretary-Treasurer

J. David Cox, Sr.
National President

Augusta Y. Thomas
NVP for Women & Fair Practices

July 17, 2018

The Honorable Trey Gowdy
Chairman
House Oversight and Government
Reform Committee
Washington, DC 20515

The Honorable Elijah E. Cummings
Ranking Member
House Oversight and Government
Reform Committee
Washington, DC 20515

Dear Chairman Gowdy and Ranking Member Cummings:

On behalf of the American Federation of Government Employees, AFL-CIO (AFGE), which represents more than 700,000 federal and District of Columbia Employees, in more than 70 agencies across the nation, I write to express AFGE's strong opposition to the three bills discussed below that the House Oversight and Government Reform Committee will markup on July 17, 2018. These three pieces of legislation are contrary to the stated mission of this Committee and, if enacted into law, would ultimately decrease the efficiency of federal agencies and penalize federal workers by eliminating their due process rights and workplace protections.

H.R. 5300, the Federal Information Systems Act of 2018

AFGE opposes H.R. 5300, the "Federal Information Systems Act of 2018," introduced by Representative Palmer (R-AL). This legislation would give agencies the authority to "take *any* action to limit, restrict, or prohibit access to a website or to test, deploy, or update a cyber security measure..." In addition to this broad authority given to agency leadership, the bill also states that this authority would not be subject to collective bargaining and may not be limited by a collective bargaining agreement, a memorandum of agreement or any other agreement. As victims of the most recent Office of Personnel Management (OPM) data breaches, AFGE fully understands the need to strengthen information technology (IT) security across the federal government. However, H.R. 5300 does not increase federal IT security. Rather, this legislation would take collective bargaining rights away from federal employees when it comes to issues involving IT.

Collective bargaining allows employees to work with management and agree upon arrangements that allow them to improve working conditions while carrying out their duties. For example, many federal employees, such as Law Enforcement Officers, are not permitted to access any personal mobile or electronic devices while in an official duty

status. These employees need to access agency IT in order to securely communicate with family members or caretakers. Often, arrangements are made between labor and management that allow secure IT access for these employees to communicate with their families during their shifts. This legislation would eliminate this right to bargain.

H.R. 5300, does not increase federal IT security but limits the rights of federal employees by undermining collective bargaining, and sets a dangerous precedent that eliminates the bargaining rights of federal employees on a specific issue. Please oppose H.R. 5300, the "Federal Information Systems Safeguards Act of 2018."

H.R. 559, the Modern Employment Reform, Improvement, and Transformation Act of 2017, the So-called MERIT Act

AFGE strongly opposes H.R. 559, the Modern Employment Reform, Improvement, and Transformation Act of 2017, the so-called MERIT Act. There is no merit to H.R. 559. The bill dismantles over 100 years of protections and over 40 years of federal statute ensures the federal workforce is protected against political cronyism and that the public good is protected against the excesses of a political spoils system. H.R. 559 does nothing to ensure that federal agencies maintain their mission to serve the public with the highest standards of integrity, quality and efficiency.

H.R. 559 is a continued attack on rights of the civil service to collectively bargain and on the due process system that provides federal workers with a meaningful opportunity to defend themselves when treated unfairly. The bill prohibits the use of the grievance procedures negotiated between federal workers' elected exclusive representatives and agencies to appeal adverse actions and unfair reductions in force actions. The provisions of H.R. 559 would allow broad Congressional edict to micromanage agency personnel procedures and limit the ability of the federal workforce to seek justice when treated unfairly by management. The bill does not afford federal workers accused of performance or disciplinary issues adequate time to mount a credible defense and blurs the procedural line between performance-based and disciplinary actions by terminating the authority under Chapter 43 of the U.S. Code that is specifically intended to address performance-based issues. The cumulative effect of H.R. 559 is to game the system to deprive the federal workforce of any procedure or right that would provide a fair hearing and outcome.

H.R. 559 extends disciplinary actions far past removal from a federal position. Federal workers could face reduction of their annuity (which includes both the payments made by the employee, the government match and interest) if they are convicted of a felony. Employees including those at the lowest GS levels, including welders, custodians, and health technicians may lose a source of retirement income they acquired in a legal manner. Another provision of the bill retroactively strips employees of bonuses or awards previously received if the agency determines the employee engaged in misconduct or there was a performance issue before the bonus or award was paid, even if the employee received the amount under the rules in place at the time of payment. These provisions are purely punitive in nature.

H.R. 559 relieves managers of their duty to manage the workforce by extending the probationary period to two years, and eliminating requirements that management work with the employee on a performance improvement plan to address performance issues and management's requirement to prove the performance deficiencies are a critical element of both the position and the agency's mission. The bill raises the standard for mitigation of penalties imposed by the agency from a reasonable standard to substantial evidence, the evidentiary standard of a civil case instead of the appropriate level for review of a penalty.

Merit Systems Protection Board (MSPB, or the Board) Reauthorization Act

The Merit Systems Protection Board (MSPB, or the Board) Reauthorization Act fails to address the lack of ongoing personnel and resources that plague the MSPB and delays justice for federal workers who file appeals and instead launches another salvo of attacks on the federal workforce. The Executive Order issued by the Trump Administration on May 25th limits the ability of federal workers to grieve adverse actions. The MSPB Reauthorization Act further narrows the ability of federal workers to attain an objective hearing by an independent third party before the only venue available to them. The MSPB Reauthorization Act includes a filing fee to be paid by workers when appealing to the Board. The MSPB process is based on the ability of federal employees to represent themselves without filing fees. Workers removed from their positions are not paid, and under the bill's provisions may not have their day before the Board due to financial hardship. The bill's summary judgment authority is borne on the backs of worker claimants. Both the filing fee and summary judgement authority contradict the role of the MSPB.

Like H.R. 559, the MSPB Reauthorization Act grants the Board summary judgment authority. In practice, summary judgment authority would mean that most employees would never receive the hearing to which they are entitled. Additionally, there is no judicial or administrative advantage to the bill's reappointment of MSPB members.

AFGE is very concerned about Section 7 of the MSPB Reauthorization Act limiting VA appeals to the Merit System Protection Board. Under the VA Accountability and Whistleblower Protection Act, appeals filed by VA employees can be heard by the full MSPB Board. With no regulations implementing this section of the VA Accountability and Whistleblower Protection Act it is unclear who can hear a VA case or where an appeal may be filed.

The importance of maintaining a nonpartisan, apolitical civil service in an increasingly partisan environment cannot be overstated. Career employees must be free to perform their work in accordance with objective professional standards. Those standards must remain the only basis for evaluating employee performance or misconduct. AFGE has documented that the loss of due process procedures with the Veteran's Administration has overwhelmingly led to workers at the lowest GS levels making the least money being fired while very few managers are held accountable. Calls to decrease due process rights like those in H.R. 559 and the Merit Systems Protection Board Reauthorization Act are "dog whistles" for making the career service subject to the partisan or personal whims of supervisors and political appointees without real

recourse. In this case federal workers will be inhibited from carrying out their jobs in service to the public.

AFGE strongly urges you to oppose H.R. 5300, the Federal Information Systems Act of 2018; H.R. 559, the Modern Employment Reform, Improvement, and Transformation Act of 2017, the So-called MERIT Act; and the Merit Systems Protection Board Reauthorization Act. AFGE encourages the Committee to advance legislation that will encourage strong labor and management partnerships, increase agencies' productivity and overall mission fulfillment, and improve the services delivered to the American public.

For additional questions please contact Charity Wilson at wilsoc@afge.org, or Alethea Predeoux at alethea.predeoux@afge.org.

Sincerely,

Thomas S. Kahn
Director, Legislative Department