



CONGRESSIONAL TESTIMONY

STATEMENT FOR THE RECORD

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO

PROVIDED TO THE

**HOUSE ARMED SERVICES COMMITTEE
SUBCOMMITTEE ON MILITARY PERSONNEL**

**HEARING ON “MILITARY PERSONNEL TALENT MANAGEMENT MODERNIZATION AND THE
EFFECTS OF LEGACY POLICIES**

FEBRUARY 8, 2022

Chairwoman Speier, Ranking Member Gallagher, 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, “Military Talent Management Modernization And The Effects of Legacy Policies.”

Background. While the military personnel subcommittee’s jurisdiction involves the military components, and the topic of this hearing might appear to be limited to talent management of the military component only, the Department of Defense civilian workforce is a crucial contributor to the military’s lethality, readiness, and morale as reflected in various metrics on stress on the force. Moreover, military talent management policies, practices and culture involving the military often seeps into how the Department views its talent management of the civilian workforce. This is true despite the fact that the statutory and regulatory framework governing the civilian workforce is very different, as a matter of economy, efficiency, and continuity of mission performance. “One size fits all” human capital policies involving the Department’s various components of its total force of active and reserve military, its civilian workforce, host nation support and contractors are unaffordable, unsustainable and not linked to labor economics. The Department’s costing directives in Department of Defense Instruction 7041.04 have long recognized active component military, when viewed from a fully-burdened cost perspective as the costliest form of labor; and other studies by the Department using that Instruction have found contractors to be more expensive than the Department’s civilian workforce, particularly when

indirect costs of labor as well as profit are included in the calculation. The military is managed based on end strength levels, and market forces often impede its ability to fully gain access to and retain this form of labor which requires mandated terms of enlistment. On the other hand, the civilian workforce and contract employees are free to leave their employers, and are subject to some overlapping as well as differing civil rights laws, such as the Americans with Disabilities Act, which does not apply to the military. One commonality shared between the Department's civilian workforce and the military is the oath of allegiance to the laws and Constitution of the United States, rather than the duty to maximize shareholder profit that applies to the private sector. Finally, effective talent management of the Department's civilian workforce cannot be collapsed into the same cultural preferences, practices and laws applicable to the military without affecting fully burdened costs and the ability to recruit and retain a quality workforce. Again, a "one size fits all" approach does not work very well. At the same time, it would be a mistake to primarily focus on military talent management without considering the important contributions of the civilian workforce to achieving effective and efficient use of military talents and capabilities, and the need for a separate "talent management" framework for the civilian workforce and the federal government as a whole. The cultural tendency of the Armed Services Committees and the Department of Defense is to blur these distinctions and seek separate title 10 systems outside the oversight and management of the Office of Personnel Management (OPM).

We previously provided the Committee on April 5, 2021, our views on the effects of the Department's obtaining various exceptions to title 5 within title 10. We summarize our main points below with respect to talent management, sometimes called "up-skilling" of the workforce by the Department's leadership.

The Department too often tailors its jobs to individuals rather than competencies with redundant career programs in each military department and defense component for the same set of skills. This is at the root of the problem.¹ These separate career programs create artificial barriers to promotion by imposing distinct certification and training requirements and do not sufficiently use existing OPM flexibility to substitute experience for training. Some of these bad practices are encouraged by Congress in response to Departmental lobbying, such as the various developmental roadblocks associated with Acquisition workforce training requirements as well as the Cyber Excepted Service. So, if one wants to look for statutory impediments to upskilling, start by looking at title 10 exceptions to title 5 authorities.

Finally, the Department's emphasis on non-competitive hiring practices tends to reduce the pool of candidates -- in this case internal candidates -- considered for a job. Requiring employees to check USAJOBS on a daily basis and hunt for job announcements is a transaction-heavy, burdensome process that tends to discourage candidates unless someone in management

¹ The National Security Commission on Artificial Intelligence, the Government Accountability Office, the Congress, and the Department of Defense have all recognized that the Department has significant skills gaps in various Scientific, Technological, Engineering, Mathematical, and Manufacturing (STEMM) fields as well as acquisition, financial management, cyber, artificial intelligence, and foreign language skills. Recruiting in these fields is critical to meeting 21st century threats to our national security as articulated in President Biden's National Defense Strategy. These skills gaps have persisted after numerous "flexibilities" have been provided to the Department of Defense. Since 1989, the Secretary of Defense has had broad authority to establish hiring levels and compensation for civilian faculty at the National Defense University and Defense Language Center. Since 2011 the Secretary has had authority to deviate from title 5 in a so-called "pay for performance" demonstration project for the acquisition workforce. The Cyber Excepted Service is exempt from OPM oversight and from the Classification Act, does not allow non-veterans to appeal adverse actions to the Merit Systems Protection Board, and has an excessive three-year probationary period. Section 9905 of Title 10 provides the Secretary with various direct hire authorities for depot maintenance and repair; the acquisition workforce; cyber, science, technology and engineering or math positions, medical or health positions, child care positions, financial management, accounting, auditing, actuarial, cost estimation, operational research, and business administration. The perspective of the Department of Defense leadership has consistently been one of seeking and obtaining exemptions from government-wide processes administered by the Office of Personnel Management that are intended to ensure an apolitical civil service. The Department of Defense has sought these authorities purportedly in the quest for greater management flexibility, often to the detriment of the long-term job security of employees being hired into the Department. In fact, the misuse of these authorities arguably has been one of the primary factors leading to persistent skills gaps in the workforce.

tells them about the job posting. Burdensome practices on job applicants tend to favor managers' cherry-picking who they want by informing *preferred* candidates of the job announcement and leaving it posted for a limited time. In many instances qualified persons may never learn that jobs are available before they are filled.

A good practice might be to have employees in various career fields periodically have their qualifications assessed by panels of subject matter experts, and then providing those employees with automatic referrals (and the ability to apply) to vacancies when candidates are considered for jobs throughout the Department. (Note: it would be unfortunate if these assessment panels were to rely on artificial barriers created by "career program managers" analogous to military developmental programs, which do not allow for substituting experience for attending specific in-house training courses. This problem is similar to a finding of the AIC Commission that the Department was not appropriately compensating and giving credit to external hires simply because too much weight was being given to educational credentials.)

To the degree that the certification requirements for some career programs involve an objective examination component, this can be a good practice that emulates the competitive examination requirement for the competitive service in title 5. However, it is important that these certification tests be based on broad competencies and skills and are not, like the job announcements, tailored only to specific individuals or experience having nothing to do with bona fide job requirements.

Accordingly, we support Senator Sinema's "Chance to Compete Act of 2022" (S. 3423). Competitive service appointments are the key to a strong professional apolitical federal workforce that is free of personal or political patronage. Over the years, our highly trained apolitical competitive civil service – representing the best workers the country can produce – has

helped the nation to overcome the Great Depression, put astronauts on the moon, and won the Cold War. But recent decades have witnessed an alarming erosion of the competitive civil service, as the Department of Defense and other agencies have increasingly sought to bypass competitive hiring procedures in favor of less rigorous methods. These methods have in some cases led to less qualified hiring and the recruitment of friends and political allies instead of the best candidates available to serve our country.