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Honorable Deborah Lee James
Chairwoman, Defense Business Board
1155 Defense Pentagon
Room 5B1088A
Washington, DC 20301-1155

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Re: Defense Business Board Meeting, February 1 - 2, 2023

Dear Chairwoman James:

On behalf of the American Federation of Government Employees, AFL-CIO (AFGE) which represents more than 750,000 federal and District of Columbia employees who serve the American people in 70 different agencies, including approximately 250,000 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 servicemen and women.

The most recent iteration of the DBB study on “Upgrading DoD Civilian Talent Management,” posted on your website for the February 2, 2023 public meeting seems to have moved in the direction of greater ambiguity than the initial draft in two key areas we earlier commented on, where our comments seem to have been not taken sufficiently into account:

Inventorying Competencies. We earlier applauded your recognition of the need to manage by competencies rather than jobs tailored to specific individuals through the use of objective assessment tools that would measure what you aptly referred to as “learning agility.” However, the latest iteration of the DBB study lacks clarity on the importance of accurately and fairly inventorying the “learning agility” and skills, or competencies, of the workforce or applicants for jobs in the Department and the federal government. The study makes vague allusions to artificial intelligence or automation tools, something the Department has been utilizing for some time, unsuccessfully we might add. The adage, “garbage in-garbage out” has all too often pervaded prior “reform” efforts that imprecisely use such terms. Indeed, the National Security Commission on Artificial Intelligence rightfully criticized the Department’s broken hiring processes’ use of automated screening tools for job candidates that created incentives for job applicants to simply tailor their resumes to job announcements that were then automatically screened as highly qualified simply because they matched words in resumes to words on the job announcement.

Letter of Everett Kelley, President, American Federation of Government Employees,
Washington, DC



There is no substitute for meeting the benchmarks for “objective skills assessments” identified in the bi-partisan H.R. 159, “Chance to Compete Act,” that just passed the House, which crucially would re-establish competitive hiring as the preferred method for staffing the civil service.¹ Specifically it would ensure that vacancies are open to the public and to qualified federal workers, bringing needed talent and diversity to the candidate pool. The bill would make the system for assessing applicants fairer and more objective by providing for panels of knowledgeable subject-matter experts to assist with screening applicants, rather than automated word matches and other crude AI tools. Importantly, agencies could share certificates, so that once applicants are determined to be qualified for certain kinds of work, they can be considered for multiple jobs across the federal government without having to identify and reapply for each one separately.²

According to information received from the Office of Personnel Management (OPM), under the current automated system of AI, included so-called “self assessment” and word matches between resumes and job announcements, over 50% of certificates of supposedly highly qualified candidates are returned as “non-selects.” The suggestion in your latest iteration of the study that merely “automating” or outsourcing the credentialing and skills assessments in “partnerships” with private contactors would somehow lead to better inventorying of “competencies” is too vague to be actionable. Rather, the statutory benchmarks in “Chance to Compete” for objective skills assessments provide the needed substance and detail lacking from the final work product being briefed on February 2, 2023.

Blurring military and civilian workforce competencies. We earlier cautioned against a “one size fits all” approach to human resources management of your active and reserve military and civilian workforces. The latest iteration of the DBB study ignores our concerns with a vague allusion of the need to “bridge” military and civilian human resources systems. Military are generally assessed with fixed terms of enlistment whereas civilian employees are free to leave at any time they want. With some exceptions, military are generally recruited and accessed into the Department with a massive investment in a largely organic training structure of basic training, advanced individual training, professional military education sometimes augmented with education provided by private sector institutions. Active military are periodically subjected to mandatory moves, which can be very stressful to families, and require additional investments in

¹ The companion Senate bill is superior to the House bill because the House bill would allow agencies some waiver authorities. We hope that as the bill continues to advance through discussions with the Senate, provisions allowing for limited agency waivers of H.R. 159’s requirements are either eliminated or required to sunset after a few years. We appreciate the Committee’s efforts to establish guardrails and extensive reporting requirements around any use of waivers. Nonetheless, we believe that all agencies, with reasonable effort, should be able to establish measurable objective standards for assessing job candidates. In some rare circumstance where that cannot be achieved, the Office of Personnel Management already has authority under existing law to allow agencies to use direct or excepted hiring.

² Even if a job applicant applies for a job where they are not the best fit, the advantage of using both subject matter expert panels augmented with objective skills assessments, is that DoD and other federal agencies can reuse lists of qualified job candidates who were not initially selected and refer them to other job openings where they may be a better fit. DoD could benefit under this approach even from applicants to other federal agencies who never applied to DoD. Finally, by strengthening the competitive service, the bill supports longstanding Congressional policy that qualified veterans have an advantage – but not a guarantee – when applying for federal jobs.

family support structures to reduce the stresses from those moves. Recruiting and retaining military, given these stresses, is the most expensive form of labor and over time these costs have been repeatedly documented by RAND, the Congressional Budget Office, Institute for Defense Analysis and the Center for Naval Analysis, and the CBO has documented in detail how at some point the cost of inefficiently using military for civilian functions will become major opportunity costs diminishing what can be spent on modernization and readiness. Starting to manage the civilian workforce as if it is to be as expeditionary as military would have the same effect. We documented those studies in our earlier submissions which we are incorporating by reference here.

Finally, aside from the expense, there are clearly well documented recruitment and retention problems to exclusively preferring accessing military to perform functions that civilians can perform, and inefficiently using military for civilian functions can lead to more stress on the force when there are high demand low density military occupational specialties resulting from reduced accessions in the face of increasing operational demands. In sum, “bridging” the way civilians and military are managed from an HR perspective could lead to greater skills gaps, as civilians being compelled to move or participate in training in order to keep their jobs could lead to retention problems, particularly in labor markets where employees have better options in the private sector or other government agencies. “Bridging” the way military and civilian workforce are managed would potentially rapidly increase the size of the civilian expeditionary workforce, and at a certain point make the civilian workforce as costly as military because of the churn occasioned by periodic duty station moves and deployments, or separations from families in mandated training. If the Department is having a hard time meeting its recruitment and retention goals for military in today’s competitive labor markets, why would it want to export those methods to civilian recruitment and retention? The DBB study is vague on just precisely what it means by “bridging” military and civilian HR systems, but such ambiguity is dangerous when the overall culture of the Department is one that tends to favor the military over the civilian workforce, and the policies underlying these distinctions have been marginalized.

Most importantly from a union perspective in representing civilian employees, “bridging” the human resources management between military and civilians could hinder compliance with the very different civil rights laws, and in particular with the Americans with Disabilities Act, applicable to civilian employees and private sector contractors but not to military. Also blurring the lines between the Uniform Code of Military Justice and representation by unions under Chapter 71 of title 5 could hinder leveraging the benefits of union representation of the workforce. The enforcement of military law over civilian employees would seem to come into conflict with some foundational principles undergirding the American legal system.³ If anything, as part of diversity and inclusion training, in addition to the standard segments devoted to protected groups under the civil rights laws, some attention should be paid to recognizing the value of DoD civilians and that there are sound reasons from both a mission, labor economics, and Constitutional and legal standpoint for having different human resources management frameworks. Vague references to “bridging” military and civilian employee HR systems are dangerous and unmindful of these very serious concerns.

³ See, e.g., Congressional Research Service, “The Posse Comitatus Act and Related Matters: The Use of the Military to Execute Civilian Law (Updated Nov. 6, 2018) at <https://sgp.fas.org/crs/natsec/R42659.pdf>. Letter of Everett Kelley, President, American Federation of Government Employees, Washington, DC

Process for improving clarity. The Defense Business Board, as a Federal Advisory Committee might achieve greater clarity in its work products if it were to follow the more rigorous processes used under the Administrative Procedure Act of specifically commenting on the input received from various sources and why in its final study work product it was accepting, modifying or rejecting that input. Simply listing the names of a subset of individuals consulted, with incomplete transparency on what they actually said, is what leads to such imprecision and vagueness in the use of concepts, which can be taken to mean almost anything in the absence of such documentation. Also, the idea that the private sector is the best source for modeling best practices in public sector institutions which rightfully have different accountability mechanisms than for profit making companies should also be factored in to any assessment of the relevance of case studies. To ensure we are following our own recommendation here, we attach for the record our earlier input provided in November 2022 to specific Defense Business Board questions that have not been included in the record, together with our responses.

Sincerely,


Everett B. Kelley
National President

Enclosure:
November 2022 Input Provided to DBB Survey Questions

Letter of Everett Kelley, President, American Federation of Government Employees,
Washington, DC

1. What could DoD do to improve its branding to attract DoD civilians (or all federal civilians for that matter).

AFGE ANSWER: Branding is very much affected by how employees are treated and how their work is characterized relative to the Department's missions. When the Department testifies to Congress and gives exclusive attention to active component military, secondarily to reserve component military, a discussion of weapon system platforms, and only as an after-thought discusses the civilian workforce contribution, that messaging adversely affects the "branding" for the civilian workforce. When some members of Congress disparage the civil service as the "deep state" or when the civilian workforce's contributions to mission are mischaracterized as overhead and appropriate targets for reduction in the budget process, the instability in funding the civilian workforce creates a massive disincentive to using civilians where appropriate. The total force management function is broken and the value of the civilian workforce with respect to optimizing military force structure, lethality, readiness, reducing stress on the military force and the number of high demand low density military occupational specialties, and the opportunity costs from inefficient uses of military for functions that can more efficiently be performed by civilian employees are all issues that will not be recognized when civilian manpower program and budget issues, contract services requirements and the use of military are performed in a separate silos. This non-holistic analysis of the total force results in massive disincentives for human capital planning for the civilian workforce.

Branding efforts should not fall into the trap of suggesting that the civilian workforce is only valuable if they are managed like military. There are good reasons, as we have documented in the past, from a recruitment and retention perspective, of not taking a "one size fits all" approach and fully implementing the Americans with Disabilities Act and other civil rights laws in the way one recruits and develops federal government employees.

Successful branding is very much affected by transparent and predictable compensation; stability in retaining employment reflected by short and not lengthy probationary periods; and a commitment to developing the talents of the workforce, something that extended probationary periods and unstable appointments undermine. No one should ever disparage the federal workforce as "bureaucrats." These are the mixed messages in current public discussion of the DoD civilian workforce and every effort should be made to make sure that the civilian DoD workforce is supported and acknowledged in a positive way.

2. What ideas do the unions have to improve the recruiting process and reduce bureaucracy and time to hire?

AFGE ANSWER: The first idea is to recruit for competencies rather than tailoring to jobs linked to specific individuals. This ***requires*** adhering to objective assessment tools that examine "learning agility," which was a term the DBB itself used in an earlier draft study. Objective assessment tools have the potential to expand the pool of diverse and

highly qualified candidates in the most efficient way, far more so than targeted visits to specific locations. The Department has been focused exclusively on time to hire and not on increasing the numbers of candidates or candidate quality. They claim to be focused on diversity, but because DoD often simply hires (using direct hire or excepted appointing authorities) the first candidates in a specific category they happen to encounter rather than seeking the broadest possible pool of candidates, diversity is undermined.

While the speed of hiring may be important, placing blame for delays on title 5 processes is entirely misguided and inaccurate. Even accounting for the time spent on personnel-related competitive examination processes, well over 50% of the calculated “time to hire” is spent on security-related background checks. Regardless of the hiring process or authorities used, security background checks are necessary, time-consuming and delay the ability of DoD (and other agencies) to make offers. Suggesting that “hiring delays” primarily relate to personnel processes when DoD’s own data show that security backlogs are the actual culprit in “hiring delays” is quite misleading. No one can fix a problem when the diagnosis of the cause of the problem is inaccurate, and the cause of this “problem” is not something that can or should be abandoned or relaxed.

3. Are there any steps in the process that you feel are essential to safeguard the rights of current/future employee rights in the recruitment process?

AFGE ANSWER: An open, transparent, and competitive hiring process that considers all qualified candidates is the key to protecting all employees’ rights. Use of excepted or direct hire authorities (which are typically used in a closed environment) is contrary to maintenance of a highly-qualified, diverse and dynamic workforce. It not only undermines employee rights, it undermines the apolitical, professional civil service. Open competition, transparent competition, not direct hire or excepted service -- these are the “steps” that are “essential” to safeguarding employees and the public interest in a civil service free from corruption.

4. Are there any key metrics the unions believe may help steer the DoD toward civil service recruitment/talent pipeline improvements?

AFGE ANSWER: While “time to hire” is an important metric, it should stop being the exclusive or even the most important metric used by the Department. The “size of the candidate” pool and the distribution of candidates relative to various objective metrics using objective assessment tools that rank the density of candidates over time relative to various competencies similar to the way the Armed Forces have used the ASVAB would be a step in the right direction.

This distribution could also be used to account for the diversity of candidates. None of these metrics should be used to unfairly alter or bias objective assessment tools but rather to objectively assess how the Department is doing and how this country is doing in investing in the future of its workforce. Retention and promotion data should also be included as metrics. Up or out policies as applied to the military should not be used for civilians, but instead talents in the workforce that might not have been the initial focus of

hiring should be identified, particularly as workplace requirements change and persons hired for one skill develop other skills that are also important in meeting the Department's missions. The absence of objective assessment tools is a key impediment to inventorying those talents.

5. What results have initiatives like the Career Skills Program yielded? From your analysis, have the programs produced a high number of quality government employees? Are transitioning Vets aware programs like CSP and other DOD civilian opportunities?

We are not able to answer this question, as we do not have the relevant information.

6. Are there any regulations/legal changes that you would suggest to improve/streamline the hiring process?

AFGE ANSWER: Existing provisions in title 5 and the implementing regulations are more than sufficient and reasonable. Title 10 exceptions to title 5 should be repealed, such as:

- a. Section 1595 of title 10 which is being implemented through renewable term appointments of faculty at Defense language schools without any RIF protections. Hiring a temporary workforce is very different than hiring a workforce with a long-term commitment to developing their talents. This provision is being implemented by jettisoning Farsi and Arabic speakers for Russian, without consideration of long term risks or how language skills in one language can translate to the acquisition of language skills in other languages. It treats faculty like disposable widgets rather than valuable employees.
- b. The Secretary of Defense has had authority to deviate from title 5 in a so-called "pay for performance" demonstration project for the acquisition workforce since 2011 (section 1762 of title 10). RAND studies found Acq Demo to be discriminatory with respect to women and minorities. Employees and managers found Acq Demo to be disruptive to missions and involve excessive record keeping.
- c. The cyber excepted service which is essentially exempt from oversight by the Office of Personnel Management, is also exempt from the Classification Act in a way that does not necessarily result in more competitive salaries—just more discretion for management to play favorites. At some DoD agencies, it only allows veterans to appeal to the Merit Systems Protection Board, and it is subject to a very demoralizing 3 year trial, i.e., probationary period (see 10 U.S.C. 1599f);
- d. Various direct hire authorities as exceptions to competitive hiring are authorized for the Secretary of Defense in section 9905 of title 10, including depot maintenance and repair, 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. Direct hire shortens the process of hiring at the expense of consideration of broader candidate pools, adversely affecting transparency, obtaining the best qualified candidates, and diversity.

- e. Since 2016, a two-year probationary period (in contrast to the government-wide one year period) applies to most of the DoD workforce (excluding the 3 year cyber trial period). A long and expanded probationary period is contradictory to a long-term commitment to developing employees. Some of the Department's explanations of the supposed benefits of an expanded probationary period can only be plausibly explained by confusing the way military are accessed with terms of enlistment and assuming that an expanded probationary period affords flexibility for the civilian workforce when, in fact, unlike military, they are free to leave at any time they want. The idea that an expanded probationary period would somehow be an inducement for a person to want to work for the federal government where they could be arbitrarily terminated is truly an odd way to look at this.

7. If you were king for a day, what would you change?

AFGE ANSWER: We would ensure that all hiring is done in an open, transparent, competitive, merit-based objective environment that considers all qualified candidates. This is key to a strong and highly motivated civil service. Protecting employee rights through reasonable probationary periods (no more than one year) and robust due process protections are also key. We would limit excepted and/or direct hire as these authorities are contrary to maintenance of a highly-qualified, diverse and dynamic workforce.

Rather than treat civilian employees as fungible and/or disposal, DoD needs to value its civilian workforce as something other than as an inferior/adjunct to the military.