

**ENSURING A TRUSTWORTHY GOVERNMENT:
EXAMINING THE NATIONAL SECURITY RISKS OF
REPLACING NONPARTISAN CIVIL SERVANTS WITH
POLITICAL APPOINTEES**

HEARING

BEFORE THE

COMMITTEE ON
HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE
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TUESDAY, SEPTEMBER 17, 2024

U.S. SENATE,
COMMITTEE ON HOMELAND SECURITY
AND GOVERNMENTAL AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 10 a.m., in room SD-342, Dirksen Senate Office Building, Hon. Gary Peters, Chair of the Committee, presiding.

Present: Senators Peters [presiding], Hassan, and Blumenthal.

OPENING STATEMENT OF SENATOR PETERS¹

Chairman PETERS. The Committee will come to order.

Every day, civil servants across the Federal Government go to work for the American people. They ensure our constituents get their Social Security checks on time. They distribute resources in the wake of natural disasters. They strengthen our national security and they help protect our borders. These people allow us to carry out the critical tasks of governance.

Right now, people are hired for the civil service because of their ability to do the job, not their political connections. They are career civil servants who serve across Presidential administrations, regardless of political party. This ensures that our civil service is highly trained and able to deliver for our citizens.

But some Presidential administration officials and organizations advising Presidential administrations have pursued sweeping changes to this system.

Most recently, the prior administration sought to replace at least 50,000 nonpartisan career civil servants with appointees who followed the former President's politics. This change would not only hinder our government's efficiency, it would be disastrous for the American people. It would drain the Federal Government of institutional knowledge, expertise, and continuity. It would slow down services, make us less prepared when disaster strikes, and erode public trust in government. Perhaps most importantly, it would weaken our national security and make us more vulnerable to serious threats facing our Nation. More than 70 percent of the Federal workforce serves in defense and national security agencies.

¹The prepared statement of Senator Peters appears in the Appendix on page 21.

Proposals that would remove career national security experts in order to increase a President's political influence over agencies would hit hardest where the stakes are the highest.

Regardless of anyone's personal opinion about the U.S. strategy for military engagement, diplomacy, intelligence, or disaster preparedness, we all want to trust that our leaders in these roles are informed with accurate, reliable, and complete information. This is especially true given the gravity of the decisions these leaders make each and every day in any Presidential administration.

We do not have to rely on hypotheticals to imagine what a personnel system under a President's political control would look like. In the 1800s, employment in the civil service was a patronage system, based on rewarding people who followed the same politics. That led to a less effective workforce, one that was unqualified, inept, corrupt, and focused on helping a single party, rather than the best interests of the American public.

Congress finally took action to end this system of cronyism in 1883, two years after President James Garfield was assassinated by a campaign worker who was denied a Federal position he felt entitled to.

A century later, Congress took further action to strengthen hiring and firing protections for nonpartisan civil servants when Watergate documents revealed a Nixon administration blueprint for a plan to fire and replace civil servants across the government who disagreed with his politics.

That is why today Congress must take action to prevent a future President from using a statutory loophole to make thousands of civil servants fire-able based solely on the whims of the President's political leaders. Job security for civil servants would no longer be tied to whether or not they meet objective performance criteria. If their politically appointed boss decides to fire them for whatever reason, they would have no rights to appeal the decision. Civil servants would be exempted from the very protections that make them nonpartisan civil servants.

The vast majority of the American people prefer an independent civil service. There is a reason why civil servants take an oath to defend and protect the Constitution rather than the political will of a President.

Increasing the number of appointments by the President or the President's political leaders is not even in the best interest of the political party in power at that time. Modern Presidential administrations already struggle to fill nearly 4,000 appointments across the government each term. Increasing that number by 50,000 employees would hinder any President's agenda even further and likely lead to vacant jobs and disruptions to government services for much of an administration.

These proposals are short-sighted, misinformed, and put political loyalties above effective service for the American people.

We can and should consider ways to improve and modernize the way the Federal Government operates, including its personnel policies, whether it is making disciplinary procedures more straightforward to navigate or equipping agencies with better skills-based hiring tools.

My colleagues on this Committee, on both sides of aisle, have a deep and shared commitment to making the government more effective and efficient, and eliminating waste, fraud, and abuse. We have a great track record of passing bipartisan legislation and conducting bipartisan oversight to do that.

That is why Congress, working on a bipartisan basis like we do in this Committee, must be involved with any type of reform to the civil service. It is also why we need to step in when a President of any party seeks to interfere with the independence of the Federal workforce.

Today's hearing is one important step in that mission. Our panel of expert witnesses will help us examine how to keep our civil service intact and suggest how Congress can take steps to improve it for future generations, especially when it comes to keeping our nation safe and secure. I thank them for being here today, and look forward to a productive discussion.

It is the practice of the Homeland Security and Governmental Affairs Committee (HSGAC) to swear in witnesses, so if each of you please stand and raise your right hand.

Do you swear the testimony you will give before this Committee will be the truth, the whole truth, and nothing but the truth, so help you, God?

Ms. DUKE. I do.

Mr. LEVINE. I do.

Ms. MATTINGLEY. I do.

Mr. DEVINE. I do.

Chairman PETERS. Thank you. You may be seated.

Our first witness is Elaine Duke. Elaine is the Principal of Elaine Duke and Associates, which provides Federal management and acquisition consulting services. Ms. Duke has nearly three decades of service in the Federal Government. She was the Deputy Secretary of the Department of Homeland Security (DHS) from April 2017 to April 2018, while also serving as the Acting Secretary from July 2017 to December 2017. Ms. Duke also served as the Under Secretary for Management from 2008 to 2010. She was responsible for the Department of Homeland Security's \$47 billion budget and \$12 billion in their acquisition program.

Ms. Duke, you are recognized for your opening remarks.

TESTIMONY OF HON. ELAINE DUKE,¹ FORMER DEPUTY SECRETARY (2017–2018) AND FORMER UNDER SECRETARY FOR MANAGEMENT (2008–2010), U.S. DEPARTMENT OF HOMELAND SECURITY

Ms. DUKE. Thank you, Chair Peters and Members of the Committee. I really appreciate being here today. National security is of the utmost importance, and I am pleased with the Committee's work on this topic.

Today we are not focused on if anything needs to be done to improve our national security policy but how we ensure that that is done. There are so many complex issues facing our country today—the election security and increased threat, fentanyl, human traf-

¹ The prepared statement of Ms. Duke appears in the Appendix on page 23.

ficking, the People's Republic of China (PRC), and supply chain, just to name a few in the national security area.

I am opposed to any decision that has high potential to undermine effective national security policy and operations. I am concerned that Schedule F will do just that. My experience leads me to believe that any up-tempo of producing policy will be far outweighed by its disruptive downside of less effective policy, and that is why I oppose Schedule F.

Here are some of the areas that I would like to address to the Committee today.

First, and maybe least important other than if you are a fiscal conservative like me and will always think about that incremental dollar, it is a tremendous administrative burden. We have not only the designating of the Schedule F workforce but annual review by every single agency in the Executive Branch. I think this diverts needed resources from national security to administrating Schedule F without the benefit of doing so. It could consume all the efforts and stagnate any forward progress.

Second, as you said, Mr. Chair, is it blurs political and career workforce and accepted service schedules. Schedule F creates yet another Title V excepted service. I will argue that the vast majority of civil servants are doing their job, and even Schedule F proponents agree with this. Policy personnel are using their knowledge, skills, abilities, and experience to deliver results. They attempt to influence the policy process to make the outcome better. But once the decision is made, they faithfully implement lawful policy and direction. For the few that that is not the case, the current system allows leaders to appropriately deal with those performance or behavior issues.

It is important to know that as I read through the examples published by the proponents of Schedule F, I noticed that the vast majority were attorneys. Attorneys are already excepted service in Schedule A for most Title V agencies, and I think this is just another example of why we do not want to just do an approach of adding another excepted service.

Another issue is government ethics and responsibilities. Under Title V, employees must endeavor to act at all times in the public's interest, avoid losing impartiality, or appearing to lose impartiality in carrying out official duties. I think this is an important tenet of our Federal system, for the people, for our country, and for national security.

I believe there is too much ambiguity in the scope of Schedule F. When we read most of Schedule F it talks about confidential policymaking, policy determining, or policy advocating. It is important to note a few specifics here, and one is the word "or," which means that anyone that deals with anything confidential could be put under Schedule F at the discretion of the current administration. I think that is really dangerous to have that much ambiguity. You want some level of discretion but not that level of ambiguity.

Additionally, under Section 5 of Schedule F, it introduces an element of operations by saying "substantial discretion to determine the manner in which the agency exercises its functions." With that exception you are going from policymaking to exercising policy, and I think that is an ambiguity that is dangerous.

Another one is “viewing, circulating, or otherwise working with proposed regulations.” Again, this adds an element of the workforce that I do not think those that support Schedule F really think about how big and broad that could be implemented at the discretion of an administration.

Then at the end it throws in conducting collective bargaining agreements. I am not sure why because it is very different than the others, but also to me evidence that we are throwing in so much ambiguity as to be dangerous and, at minimum, not transparent to our people.

My biggest fear is that we will not have the vetting that you talked about, Senator Peters, the input, the coordination of key stakeholders to have effective policy.

I look forward to taking your questions throughout the morning. Thank you.

Chairman PETERS. Thank you.

Our second witness is Peter Levine. He is a Senior Fellow at the Institute for Defense Analysis, where he focuses on defense management, organizational reform, human resource management, and acquisition policy. Mr. Levine was the Acting Under Secretary of Defense for Personnel and Readiness at the Department of Defense (DOD) from April 2016 to January 2017, and the Deputy Chief Management Officer (DCMO) from May 2015 to April 2016. He served on the staff of the Senate Armed Services Committee (SASC) from 1996 to 2015, including two years as Staff Director, and also previously served as Counsel to Senator Carl Levin and as Counsel to this Committee.

Mr. Levine, you are now recognized for your opening remarks.

TESTIMONY OF HON. PETER LEVINE,¹ FORMER ACTING UNDER SECRETARY FOR PERSONNEL AND READINESS (2016–2017) AND FORMER DEPUTY CHIEF MANAGEMENT OFFICER (2015–2016), U.S. DEPARTMENT OF DEFENSE

Mr. LEVINE. Thank you, Chair Peters and thank you Members of the Committee. It is a pleasure to be here this morning, and I appreciate you addressing this incredibly important issue.

When I was appointed Acting Under Secretary of Defense for Personnel and Readiness about a decade ago, Secretary Carter had an ambitious agenda for me. He wanted me to help him revitalize the DOD military and civilian workforces by implementing his Force of the Future program. I could not have made any progress in this effort without the deep expertise of the civilian career employees in my office.

The very first step that I took after being appointed was to meet with my new team and tell them how much I needed their help and looked forward to working with them. They had deep technical knowledge and decades of managerial experience on every issue that would come before me, from military recruiting and civilian hiring to National Guard duty status, from training and education programs to retirement benefits and family assistance programs.

They played two key roles in everything that I did. First, before I made any proposal to the Secretary I consulted with my senior

¹ The prepared statement of Mr. Levine appears in the Appendix on page 29.

managers and gave them a chance to provide input. If they had questions or concerns I wanted to hear them. I did not want to get caught with not understanding what the implications of a proposal were and then having it break later down the road. I was not going to let anybody on the staff dictate policy decisions, but it was important for me to understand the implications of what I was doing before I did it.

I firmly believe that our actions were more effective and more enduring as a result of this consultation. If a leader is not competent enough in himself to consider a range of views before acting, perhaps that person should not be in a leadership position at all.

Second, once the Secretary and I had made a decision, our senior career civilians were essential for carrying it out. They were ones who knew what documents we had to draft, what had to be included in a memo or directive or instruction, how the documents had to be directed and coordinated and approved, who had to take additional steps like issuing component-specific supplemental guidance and initiating training initiatives. Without their expertise, the levers of the Department simply would not move, and a well-intended policy initiative would change nothing.

This two-step approach is consistent with the role that civilians are expected to play in the Federal Government. They owe political leaders their best advice, but once a decision has been made it is their duty to carry out that decision. The ability of career civil servants to provide open and candid advice without losing their jobs enables political appointees like me to benefit from their knowledge and expertise. The knowledge and expertise that they have developed, at government expense, that we paid for, and they have developed over a career, we benefit from that and make better decisions as a result. But at the same time, their duty to follow orders means that our government remains responsive to the political leadership, the political appointees who represent our nation's citizens.

In one case that I am aware of, a new political leadership team became enamored of a contractor's proposal to replace an existing business system with a new Software as a Service model. The senior civil servants who had seen this movie before told them that their belief that this could be done in no time and at minimal expense was completely unrealistic and inconsistent with the Department's experience. As somebody who has viewed this over 20 years, I can tell you that career civil servants are right.

The political appointees went ahead with the decision anyway, and the career civilians did what career civilians do. They implemented the decision. They did their best to make it work. Many years and hundreds of millions of dollars later they are still trying to make the decision work. But the point is, as wrong as they thought the decision was, they knew it was their duty to implement it.

On the other hand, I believe there is very little risk that career civil servants will fail to carry out if directed from political leadership. I am aware of multiple instances in which policy decisions of an outgoing administration have been reversed by an incoming administration. In each case, the career civil servants who carried out

the old policy deferred to the Department's new political leadership, seamlessly carrying out the new policy.

In short, the risks that political appointees will fail to listen to the informed views of career civil servants is far greater than the risks that civil servants will fail to carry out a directive from political appointees once it has been made.

We live in a time of deepening social, political, and cultural divides in American society, but we all have a shared interest in the security of our Nation. Nobody is more committed to this shared interest than the senior civilians who have devoted their careers to the Department of Defense. As one who spent his own career endeavoring to make the Department work better, I appreciate the continuing need for change and for reform. However, I firmly believe that any change agenda will be stronger and more successful in the long run if it treats the dedicated career civil servants in the Department as allies, not enemies.

Thank you for inviting me here today, and I look forward to your questions.

Chairman PETERS. Thank you.

Our third witness, Jenny Mattingley, is the Vice President of Government Affairs for the Partnership for Public Service. She oversees the strategic direction for the Partnership's government affairs and advocacy efforts, focusing on improving and modernizing government management and services for the public. Ms. Mattingley has previously served in the Executive Branch at the Office of Management and Budget (OMB), focusing on hiring reform efforts and the workforce priority of the President's management agenda. She also served as the Executive Director of the Performance Improvement Council and spent many years overseeing policy for the Senior Executives Association (SEA).

Ms. Mattingley, you are now recognized for your opening comments.

**TESTIMONY OF JENNY MATTINGLEY,¹ VICE PRESIDENT OF
GOVERNMENT AFFAIRS, PARTNERSHIP FOR PUBLIC SERVICE**

Ms. MATTINGLEY. Thank you, Chair Peters and thank you Members of the Committee. It is a pleasure to be here with you today.

I am with the Partnership for Public Service, a nonpartisan nonprofit that is focused on making government work better for over 20 years across four administrations. While there are so many things we could discuss today about making government more effective, I am going to focus on three areas: the importance of a nonpartisan, professional national security workforce, public perception of our government and what people want from it, and rebuilding trust by ensuring an effective government through investments in modern management practices in the same way the private sector does.

There are many untold stories of the work that Federal employees do on behalf of our country, from taking down drug traffickers and crime syndicates to combatting terrorism to ensuring our cybersecurity. These stories barely scratch the surface of the critical

¹ The prepared statement of Ms. Mattingley appears in the Appendix on page 34.

work that thousands of Federal employees do to make our country safer and stronger.

Of the approximately two million Federal employees, nearly 71 percent work at defense and security-related agencies, and approximately 30 percent are veterans who choose to continue to serve the country by working for the Federal Government. In many of your States, national security functions, such as the U.S. Air Force (USAF) and the Veterans Affairs (VA), are the largest government facilities and employer constituents.

National security employees are professionals, experts in their field working on complex issues where relationships, built over time, and institutional knowledge are critical. Across administrations they provide continuity and stability, carrying out the laws and policies directed by Congress and administrations. If guardrails preventing hiring and firing career employees for political reasons are removed, this, in effect, creates another category of political appointees at a much larger scale.

Each President can already fill approximately 4,000 political appointments, in positions in agency leadership, to lead implementation of the President's agenda. Already it is tough for a President to fill that many political positions, particularly those that are Senate confirmed. Many of you have heard the Partnership's research on the increasing difficulty of the confirmation process and the performance challenges that leadership vacancies cause for agencies.

Having an increased level of turnover every four years would exacerbate this challenge. It is one we already see during Presidential transitions. Many new administrations face significant national security challenges early into their first year in office. Having nonpartisan career professionals who serve across administrations in place, ready to provide the expertise and deal with these challenges is necessary to our country's safety and security, particularly when a President does not yet have a political team in place.

Just having people in place is not the only ingredient to success. Our trust research shows that Americans overwhelmingly want a government that works for them and that is not beholden to one party or President, but focused on serving the public. According to a nationally representative sample of individuals across the political spectrum, from a survey conducted in 2024, there is a crisis of public trust in government. But people do not want a more partisan Federal workforce. Ninety-five percent agreed that the civil servants should be hired and promoted based on merit rather than their political beliefs, 72 percent disagree with the idea that Presidents should be able to fire any civil servant that they choose, for any reason, and 90 percent agreed that a Federal Government that functions effectively is important for a strong democracy.

This brings us to my point about reform and being laser-focused on making overdue investments to ensure our government is effective in its work. Let's be clear. While the vast majority of employees are doing good work on behalf of their agencies, we are talking about people, and that means there are some who are underperforming, some who engage in misconduct, and some who need to be fired. This happens in every industry across the private sector too.

When we talk about hiring, firing, and employee performance, we are talking about inherently human capital functions that all businesses deal with, and one that comparably large companies invest in, because getting those things right is critical to their bottom line.

For leaders, both career and political, to be successful they must understand and prioritize accountability and strong employee performance. Unfortunately, in the Federal Government, we have not made the same investments in these systems, and the cracks are beginning to show. Many of the laws governing the Federal workforce are from the 1950s and 1970s, with only minor updates over the years. Often the focus is on programs, not mission-enabling functions like human resource (HR) and information technology (IT), that are so desperately in need of prioritization and modernization. This includes the employee performance management process, which needs to be fixed.

There are many other places where smart investments and updates will yield the results we all want—effective services for the public and for our country. I outline several options, such as developing leaders, reforming the hiring process, and focusing on customer experience in my written statement.

I look forward to working with you on these critically important issues and to answering any questions you have today. Thank you.

Chairman PETERS. Thank you.

Our fourth witness is Tom Devine. He is the Legal Director for the Government Accountability Project, a position he has held since 1979. During that time, he has assisted over 8,000 whistleblowers, has been on the front lines for passage and oversight of 37 whistleblower laws, and has spoken in over a dozen countries as the State Department's informal "ambassador of whistleblowing". He is also an adjunct professor at District of Columbia School of Law and has authored numerous books and law journals.

Mr. Devine, you are recognized for your opening comments.

**TESTIMONY OF TOM DEVINE,¹ LEGAL DIRECTOR,
GOVERNMENT ACCOUNTABILITY PROJECT**

Mr. DEVINE. Thank you. My testimony analyzes Schedule F, but I think I have been invited to share a history lesson because history repeats itself. Schedule F is a *déjà vu* structure for the Malek Manual, a comprehensive Nixon administration plan to replace the civil service system with a political spoils system.

For perspective, attempts to engage in political control of the Federal labor force are a timeless, bipartisan tradition. Government Accountability Project has as active a whistleblower docket under President Biden as we did under President Trump. Schedule F, however, stands out. It is a structure to openly do what President Nixon tried to accomplish in secret.

The fundamental question is does the merit system serve or undermine government service? The Malek Manual emphatically answers that question. "There is no merit in the merit system!" This is due to lengthy red tape procedures that cause litigation burdens,

¹ The prepared statement of Mr. Devine appears in the Appendix on page 48.

delays, and bad publicity. Schedule F has a similar justification. These are inadequate excuses for a political spoils system.

Despite its messiness, the merit system has served the public well. Just consider the track record of whistleblower protection, a merit system cornerstone. My written testimony has numerous examples where whistleblower have changed the course of history by overcoming government breakdowns that threaten national security, our freedoms, our public health and safety, over and over again. This could not have occurred if they did not have the merit system freedom to expose the truth.

But Schedule F would turn the Whistleblower Protection Act (WPA) into a bad joke. On paper, the rights would still exist, but for enforcement the independent Merit Systems Protection Board (MSPB) would be replaced by agency self-policing. This means that the same agencies which for 45 years have been defendants in personnel cases now have an honor system as the organizational judge and jury of their own alleged misconduct.

Let's review the Malek Manual. Literally, its goal was a Federal labor force of, "loyal troops." As it explained, "Political disloyalty unfortunately is not grounds for removal or suspension of an employee." It listed two explicit objectives. Overriding goal, "firm political control of the department or agency." Second, "maximum political benefit for the President and the party."

The bottom line, "reasonably guarantee the appointment to positions of candidates who are clean with respect to previous political activity, national security matters, et cetera."

Although labeled for non-career positions, in practice it was used extensively in the competitive service. Agencies had to demonstrate compliance with a political rating system for new hires—"must," "priority," "courtesy," "politically undesirable" or "political problem."

Consider how "must" placements were defined. These were for hiring that would, "bring great political credit to the party and/or the President while conversely failure to place the individual will cause severe political damage to the party and/or the President."

For long-term oversight, every agency had to have an abstract outside of normal personnel records that would track each employee's political activities. In other words, a patronage dossier.

For infrastructure, the Manual created a detailed, step-by-step blueprint for White House political control through personnel actions. Every agency would have a Political Personnel Office, separate from the Personnel Office, staffed by a special assistant reporting to the White House, who would forward politically cleared candidates to the Personnel Office to do the paperwork. As observed in the manual, in this way the deck is essentially stacked before the cards are dealt, and rarely as is a selection disapproved.

The operation had a research and development (R&D) branch charged with determining positions where, "loyal incumbent is necessary to effect control." It would include employees whose jobs included communications with the media, Congress, or those controlling the disbursement of resources. This function could easily be applied to create newly designated confidential policy jobs under Schedule F.

Incumbents had to be removed to make room for political hires. My written testimony has a menu of the dirty tricks to force people out of the government, as well as illustrations of how this has affected public service, and recommendations for how they can improve government service without throwing the baby out with the bath water.

Mr. Chair, the ways to improve accountability is not by replacing the law with no accountability for absolute political power that can be abused.

Chairman PETERS. Thank you.

Certainly nonpartisan civil servants must be hired and they must be retained because of their ability to actually do the job effectively. Based on objective performance standards, and those standards stay in place regardless of who is serving as the President.

My question for you, Ms. Duke, is compared to appointees who serve at the pleasure of the President, what role do civil servants play in helping a Presidential administration secure the border, respond to natural disasters, as well as defend against threats from abroad?

Ms. DUKE. I would say there are two principal roles in regard to the topic of this hearing. One is to inform policy. With years of experience, I think that it is important for civil servants to understand the policy objective and help inform it so it can be tailored to be most effective.

The second role that civil servants have is executing the policy, and I think that is tied to the first because we learn a lot through execution of policy, so what works and what does not work. If we have a policy on constructing a physical barrier, like you said, Senator, how can that be done effectively and what things do we have to consider in doing that?

I think it is an informing and executing role.

Chairman PETERS. Were there national security issues or natural disasters during your time in the Federal Government where you especially relied on career civil servants to help develop a response? Could you give us an example that may come to mind?

Ms. DUKE. Yes. Consistently, both as a Senior Executive Service (SES) career relying on junior people but then also as a two-time political appointee, one example was I was, at the start of President Obama's administration, we had H1N1, which was the first Coronavirus Disease 2019 (COVID-19), if you will. It never came to the extent. And really talking to the civil servants about what can we do to prevent the spread, in Homeland Security, the use of personal protective equipment (PPE), how do we deal with antibiotics. But really having to understand the workforce and how we could stop the spread of this.

Another example, more recently, when I was back in government, is making decisions on temporary protective status. Not only what is the letter of the law in terms of deciding whether to extent temporary protective status but what implications could that have across other areas of government so that we make the right decision but also deploy that decision, if you will, in the most effective way.

Chairman PETERS. Very good. Mr. Levine, what types of risks from the U.S. defense perspective, would be heightened if the Department lost access to the expertise that is unique with career civil servants?

Mr. LEVINE. There is really nothing that the Department does that it does without, other than actual operations on the battlefield, nothing that it does without the direct involvement of civilian employees. Even on the battlefield, you have employees in a supporting role. The logistics systems of the Department, the communications systems of the Department, the acquisition systems of the Department, the personnel systems of the Department all run with substantial input by the expertise of the civilians. If you did not have that expertise, you would be hard pressed to get our servicemembers paid, you would be hard pressed to get their families taken care of, and you would be hard pressed to equip and train our soldiers so they could operate in the field.

There is no aspect of the Department's operations that does not have DOD civilians embedded in it, and that relies on deep expertise. You could put in other people to do it, but without the expertise that you have there now I worry that the functioning would not be as good. It would start with the budget process. Putting together a budget in the Department of Defense, an \$800, \$900 billion budget, is an incredibly complex process. We tend to think, at a political level, of a few major issues that overarch, that have heavy political weight. But there is a lot of detail going down to the \$100,000, \$10,000 level, of putting together the pieces and making sure they fit together. Again, civilians play an absolutely critical role in that process, and without their expertise I do not know that you would be able to fund the Department.

Chairman PETERS. I would just follow up on that. It is important to put in perspective the Department of Defense is the largest Federal agency in the U.S. Government, and it employs 700,000 civilian employees. A massive organization.

My question for you, and you raised this in your opening comments, in your experience in leadership roles at the Department of Defense, including as the principal advisor on personnel policy and management, did you personally experience or observe career civil servants acting in a partisan way to block the President's political goals?

Mr. LEVINE. I never saw that happen. No, sir.

Chairman PETERS. Ms. Duke, the Department of Homeland Security is the third-largest Cabinet department in the U.S. Government, and my question for you is, in your experience as Deputy Secretary and Acting Secretary during a Republican administration, to what extent did you observe insubordination by civilian public servants?

Ms. DUKE. I did not observe that by our civil servants.

Chairman PETERS. Mr. Devine, whistleblowers play an integral role in providing oversight for the Federal Government, ensuring that fraud, waste, and abuse is identified. Certainly I think all of us on this Committee understand the importance of whistleblowers and continually work to protect their status.

My question is to you is to what extent do you think converting civil servants to appointees, serving at the will of a President's po-

litical leadership, would actually impact the willingness of whistleblowers to come forward? I know you talked about this in your opening comments, but I think it is important to really drill down as to what that impact will be.

Mr. DEVINE. Mr. Chair, I think some examples might be helpful to illustrate their impact. The whistleblowers at the Department of Defense stopped the routine purchase of the world's most expensive nuts, bolts, toilet seats, coffeepots, and other items that were purchased. They stopped blanket domestic surveillance, working through the Department of Defense Office of Inspector General (OIG), and stopped passage of the USA Freedom Act.

They forced delivery of mine-resistant vehicles that have been held up due to political obstruction, and reduced the number of fatalities, which were 90 percent in Iraq and Afghanistan, and 60 percent casualties from land mines to 5 percent casualties from land mines. They prevented the Federal Air Marshals, for example, for going absent without official leave (AWOL) during a confirmed, more ambitious al-Qaeda rerun of September 11, 2001 (9/11), back in 2003. They prevented the trillion-dollar, next phase of Star Wars after the Army's chief scientist, a career employee, exposed that that billion-dollar investment would have been irrelevant for the nation's defense.

Over and over again they have changed the course of history, and they could not have done this without the merit system's freedom of speech.

Chairman PETERS. Thank you. Senator Blumenthal, you are recognized for your questions.

OPENING STATEMENT OF SENATOR BLUMENTHAL

Senator BLUMENTHAL. Thank you, Mr. Chair. Thank you to you and to our witnesses for this hearing. I have been a long-standing advocate of protection for whistleblowers, and in the course of my experience here as well as State Attorney General (SAG) in Connecticut and a Federal prosecutor I have seen the importance of whistleblowers to protecting everyday Americans.

I have introduced the Congressional Whistleblower Protection Act, which aims to strengthen the safeguards not only for Federal employees but also for contractors and others. Those safeguards, in my view, need to be strengthened. I would like to hear from you, all of you but perhaps beginning with Mr. Devine, in light of your extensive experience with whistleblowers, where the areas are greatest in terms of need for strengthening those protections.

Mr. DEVINE. Senator, I think the primary improvement is to strengthen the administrative law system by creating a safety valve for the whistleblower cases. These are extremely complex, burdensome disputes that are a major drain on the board's resources, and I think a significant factor in the really inexcusable backlog that has caused multi, multi, multi-year delays in people seeking justice.

The government contractor law, the corporate laws, and all State and local employees have access to court for jury trials when free speech retaliation is the issue.

The civil service employees in the Federal Government are the only ones who do not have that right, and they are probably the

ones who need it the most, because the administrative law judge (ALJ) system is vulnerable to political pressures. We need to get them into court where their freedom of speech rights can be judged by a jury of the citizens whom they are purporting to defend when they risk their professional lives, for the same goals that Schedule F purports to be advancing.

Senator BLUMENTHAL. Any of the other witnesses have perspectives on that topic? Mr. Levine.

Mr. LEVINE. Senator, I worked with Mr. Devine decades ago on an earlier version of the Whistleblower Protection Act, so it is an issue I feel strongly about. But I would like to give a slightly different perspective.

Of course, a right without a remedy is not going to do you any good. But it is important to understand that the laws alone are never going to be enough to protect whistleblowers, that there are a thousand invisible ways that a hostile work environment can make things unpleasant for a whistleblower and reasons why a whistleblower's path will always be difficult.

And so to me the most important thing that can be done for whistleblowers is to set the tone from the top, from the top of the administration, from the top of a Cabinet department, from the leadership of the department, that we are open to views, that we want to hear views, we want to hear problems with programs, that we do not want to shut down conversation, we do not want to shut down debate.

That is the reason, frankly, why the idea of a Schedule F is particularly problematic because it sends the opposite message. I just wanted to make that point.

Ms. DUKE. In addition to what my colleague said, I would like to strengthen the Whistleblower Protection Act by reducing its need. I know that sounds counterintuitive, but having the real cases, strengthening that need to go to the Act but strengthening performance management within the Federal civil service sector so the need for it is a smaller minority of people.

Training and teaching, as I talked about in my written testimony, supervisors to be supervisors, leaders to be leaders, so that the vast majority of cases could be avoided through the meaningful discussion and conversations that Mr. Levine talked about.

Senator BLUMENTHAL. Ms. Mattingley.

Ms. MATTINGLEY. Thank you. I would like to add onto that. One of the things that we see often across Federal agencies is an ad hoc or sometimes often cut training budgets and leadership development budgets. These are not thing that we do in terms of really developing our workforce and our leaders. So to do the things that we talk about, creating good environments, creating a good culture, a strong leadership culture, in the private sector, especially at large companies, you see a lot of investment in that employee piece and that leadership. We would encourage a look at how we can strengthen those things within the government, as well.

Senator BLUMENTHAL. I think all these observations are very well taken. I think the point about leadership and management, encouraging whistleblowers to come forward, is really a measure of how well the Federal Government is doing in terms of those basic management skills, because a good manager should be receptive to

constructive criticism. The top-down encouragement of criticism and open conversation and discussion I think is tremendously important.

But at the same time, the laws do help to set a tone, even if they are difficult to enforce, even if whistleblowers inevitably make sacrifices, even with the best laws, when they come forward. But I think many of our whistleblowers are the heroes of better management, and I think we can better protect and safeguard their rights.

I want to ask, just briefly, in the time I have left, whether any of you have any observations about the issues of surrounding the importance of civil service employees in cases of natural disasters, whether it is Federal Emergency Management Agency (FEMA) or other agencies being involved. We just, in Connecticut, we recently had major flooding in small towns—Seymour, Oxford, Middlebury, and a number of other towns in Connecticut, Litchfield, Fairfield, New Haven Counties—and I was impressed by the civil servants who came from FEMA and other agencies to help us, as they have in other times of natural disaster and I am sure they have in other States, as well. And we are awaiting, hopefully, a declaration of major disaster in our State. Maybe you could comment on the importance of civil service employees in responding to natural disasters.

Ms. DUKE. Yes. In the Department of Homeland Security I had the pleasure of leading FEMA, and I agree with you 100 percent, Senator. The dedication and passion of those men and women in FEMA, from before a disaster is even declared and they stand up the National Response Coordination Center (NRCC), to delivering service, staying wherever they need to stay, in the case of the 2017 hurricanes, when there were not facilities. Staying in people's garages and working 12 hours minimum a day, for months and months on end. It is an amazing workforce, and it is supplemented by a contingent workforce that only comes on when the need arises, that are equally dedicated to health and safety of our people.

Senator BLUMENTHAL. Yes. I have been tremendously impressed over the years by the dedication, whether it is in Puerto Rico after the hurricanes there or in Connecticut or elsewhere in the country, by the dedication of our civil service employees.

Thank you all for being here and for your work on this very important issue. Thank you, Mr. Chair.

Chairman PETERS. Thank you, Senator Blumenthal.

Currently there are nearly 4,000 political appointee positions throughout the Federal Government. Most Presidents have a very difficult time filling a majority of those positions. They are left unfilled.

I am going to ask Ms. Duke, Mr. Levine, and Ms. Mattingley to respond to this—adding at least 50,000 more political positions, as proposed by the advocates of Schedule F, I believe would undoubtedly result in a higher number of vacant positions at these agencies. If each of you could address—we will start with Ms. Duke and work down—what would the impact be of all these massive unfilled positions? What is this going to mean for the American people and the work that needs to get done? Put it in terms that folks will understand what this could mean. Ms. Duke.

Ms. DUKE. I think the impact is, in the Department of Homeland Security specifically, what needs to get done will get done at the minimum levels. But what you do not do is you do not drive forward excellence and you do not drive forward the growth of having a strong Homeland Security Department.

In DHS we have had Senate-confirmed—there are only, I believe 18 or 19 Senate-confirmed. Several of them have been vacant. I think it is important that we will ensure, the civil servants are so dedicated they will ensure that life and safety is taken care of. But what will not happen is excellence, and our country deserves excellence. The vacancies definitely contribute to our ability to drive forward to excellence in homeland security.

Chairman PETERS. Mr. Levine.

Mr. LEVINE. Yes, Mr. Chair. I would guess there are roughly 30,000 or so people working in the Pentagon every day, so I would guess that perhaps 10,000 or so would be covered by the Schedule F proposal. It is just a guess. I do not think the Department did the work or did the analysis to figure out exactly which positions would be covered.

I would like to put that in the context of what happens in a Presidential transition, because the President who first imposed Schedule F would probably figure, I can replace people over time. There is not going to be any great discontinuity. The problem is if one President replaces 2,000 or 3,000 or 5,000 or 10,000, then the next President is going to come in and feel that he or she cannot rely on those 2,000 or 3,000 or 5,000 people.

Right now what happens in a Presidential transition is all the political appointees leave and it takes a long time to bring in new people. It takes six months to a year to bring in the critical core of people that you need at the political level to run the Department of Defense.

During that period of transition, the handful of political people who come into the Department rely on those career civilians who have the experience, who can keep the lights on and keep things running during the period before they can get more political in. So if instead of having to replace a few hundred political employees and being able to rely on the career employees you had to replace 2,000, 3,000, 5,000, 10,000, you would not be able to keep the lights on during that transition. You would not be able to run the building if you fired the people who you felt were political hacks who were brought in by the previous administration, and you would not know who you could turn to, who you could rely on.

That would probably also have an impact on the civil-military relations in the Department and the balance between civilians and military in the Department, because the Department is unique, of course, in having a huge military workforce with senior military. What happens when you have an absence of civilian leadership is the military, just by default, takes on bigger roles. In some ways you would risk really undermining civilian control over the military, at least during this transition period, while you did not have civilians you could rely on to run the Department.

Chairman PETERS. Thank you. Ms. Mattingley, what are your thoughts, governmentwide, what this would mean.

Ms. MATTINGLEY. Yes. One of the things we have seen, and we have at the Partnership, a Center for Presidential Transition, so we work a lot on a nonpartisan basis with candidates, campaigns, and administrations across both parties. But what we hear overall is that it is difficult to bring these folks in. You mentioned 4,000. That is both Presidentially appointed ones and then over 1,300 that require confirmation of the Senate.

I have heard one former political appointee say it feels a little bit like it is in neutral gear, agencies are, because they do not have those top-level leaders in place to kind of direct the policies of the incoming administration.

You also have people sitting in acting positions, and oftentimes when they are acting they are wearing two or three hats. They are doing three people's jobs under one person. That just makes it hard to make the longer-term decisions. It makes it hard to think about reform. It makes it hard to prioritize each of those individual jobs.

We also see that relationships with Congress, especially as Congress is doing its oversight role, when there are not political appointees in place with the authority to speak on behalf of the administration, that also sometimes makes it a challenge.

These vacancies can be hard, as well, on employee morale. People look to their leaders to direct the agencies. So not having leadership in place can certainly be a drain on morale, which just impacts agency operations.

But on a day-to-day basis, I agree. Career employees are running the day-to-day implementation of work, but that leadership is important to the direction of an agency.

Chairman PETERS. Certainly the continuity of operations during a Presidential transition would be a mess, as Mr. Levine said.

Mr. Devine, you have a comment?

Mr. DEVINE. Yes. I think the bottom line is that you would have, for those employees, a labor force of people whose primary duty is loyalty to the President rather than public service. I am not convinced that this would be limited to 50,000 employees. That is the current roster of jobs that need to be approved by the White House. That roster can be expanded.

Further, the text of the Executive Order (EO) that created Schedule F is so open-ended that the limited boundaries are not reliable. The positions of confidential policy determining, policymaking, or policy advocating character, well, that includes employees who work on agency regulations, who have discretion in exercising legal functions, who engage in activities covered by the deliberative process, or work for or with anyone who is GS-13 or higher what else is left.

Chairman PETERS. Very good. I want to thank our witnesses for their testimony personally. I am also a member of the Armed Services Committee and have some questions, so I am going to be leaving. But I am going to leave this hearing in the very capable hands of Senator Hassan, who will now chair this hearing.

So again, thank you to our witnesses. We look forward to continuing to work with you.

Senator Hassan, you are recognized for your questions and to take the gavel.

OPENING STATEMENT OF SENATOR HASSAN

Senator HASSAN [presiding.] Thank you, Chair Peters. I want to thank you and the Ranking Member for this hearing. I want to thank the witnesses not only for being here today but for the work that you do.

Before I begin my questions I want to also express my relief that former President Trump is safe after what appears to be a second assassination attempt against him. Political violence goes against everything that we stand for in a democracy, and I am grateful for the law enforcement officers who took swift action and protected him.

Turning to the topic of today's hearing, first I want to thank all the women and men who choose to support our country by working for the Federal Government. Whether you help seniors navigate Medicaid or Social Security or stop the flow of illegal drugs and weapons into our country, you all play a critical role in strengthening our Nation. I hope all Federal employees who may either be watching or hear about this hearing know that we are grateful for the work that they do.

I want to start with a question to you, Ms. Duke. According to analysis by the Partnership for Public Service, more than 70 percent of the Federal workforce serves in defense or national security agencies. Nonpartisan career civil servants at these agencies provide stable expertise and institutional knowledge across Presidential administrations and under different political leadership to respond to emergencies, to keep our country secure and safe.

Converting large numbers of civil servants into political appointees could disrupt this stability, which is especially concerning for our defense and national security programs. Ms. Duke, how would converting into political appointees large numbers of our defense and national security personnel impact our homeland and national security in terms of eroding institutional knowledge and expertise?

Ms. DUKE. The mission is carried out by civil servants, and I think, as you said, Senator, the ability to carry out the mission would be eroded by not having enough people doing the mission and not having that institutional knowledge. Many of the career paths in the homeland security mission take years to train, develop, and have someone journeyman level so that they can actually perform the functions. You need that level of stability to effectively carry out the important missions in our homeland. That turnover and that chaos that would be created would obviously detriment the capabilities and the skills of the mission workforce.

Senator HASSAN. Thank you for that. Now a question to Mr. Devine. The overwhelming majority of Federal employees do their work in a nonpartisan manner, seeking to serve their fellow Americans. This is not only important for our democracy, but it also helps protect the appropriate use of taxpayer dollars.

How would increasing the number of political appointees within the Federal Government undermine data-driven decisionmaking at Federal agencies and jeopardize the impartial use of Federal funding?

Mr. DEVINE. Senator, it would mean that a number of the accomplishments that whistleblowers have achieved would not have hap-

pened, and the course of history would have been changed for the worse instead of for the better. The Pentagon would still be spending exponentially more for procurement than it needs to. We would not have defended our country against the intensified al-Qaeda attack, expanded 9/11 attack in 2003, that whistleblowers stopped. We would still be having really obscenely more casualties from land mines than are necessary. We would have had a much greater risk of nuclear power accidents at facilities that were accidents waiting to happen. People would be continuing to die from dangerous drugs such as Vioxx, which killed 40,000 elderly Americans before a Food and Drug Administration (FDA) whistleblower exposed the truth about it.

The course of history would consistently be changed for the worse instead of for the better without freedom of speech for whistleblowers.

Senator HASSAN. Yes. Really for Federal employees to do their job based on data and the evidence in front of them and be able to voice their concerns impartially.

Mr. DEVINE. Now that is a very significant point, Senator, because most of the people covered by the Whistleblower Protection Act are not pointing fingers or filing charges. They are blowing the whistle because that is their jobs. It is their jobs to report fraud, waste, and abuse, to expose public health and safety hazards. They get retaliated against, even under the current system, just for doing their jobs. They will have no rights under Schedule F.

Senator HASSAN. Right. I think, too, about a Federal employee who has some civil servant protections, who is getting pressure to adopt one policy or the next, which they know is not supported, for instance, by evidence, by data. Again, they have the capacity under the current system to push back, even if it is not a terribly political push, but to say, hey, this isn't really what the data supports.

Mr. DEVINE. It is thanks to whistleblowers that the truth can trump politics within public service, and they are indispensable.

Senator HASSAN. Yes. Thank you for that, and I agree with you, and it is one of the reasons the idea of Schedule F is so concerning to me.

Ms. Mattingley, I wanted to round things out with a question to you about Congress' role here in preventing political interference. Earlier this year, the Office of Personnel Management (OPM) established a transparent procedure for converting career civil servant positions to non-career political appointments. In that policy, the Office of Personnel Management also affirmed existing protections for Federal employees so that they cannot be removed if and when an employee's position is converted.

These policies are an important step toward protecting the Federal employee's ability to be objective in their analysis and in carrying out their duties. Are there additional steps that Congress can take to protect the Federal workforce and career civil servants from undue political influence?

Ms. MATTINGLEY. I think Congress has an important role in continuing to do its oversight on agencies and the work agencies do, as well as looking at some of the root causes that we hear about Schedule F, of not being able to take care of poor performers and hold them accountable, not being able to fire Federal employees.

If the goal is to actually ensure that agencies work effectively, for the citizens, for your constituents, then what we need to do is actually look at the root management causes around this, and Congress and this Committee play an important role in looking at the whole talent lifecycle, which are part of holding employees accountable, hiring, employee development, performance management. I think tackling some of those systems, making them easier, simpler, more transparent, would be a good step.

Senator HASSAN. Thank you for that. That is very helpful, and I look forward to following up with you on that and to following up with all of you. I am really appreciative of your testimony today, sharing your expertise and your perspectives, because your experience and expertise is really important.

Our nonpartisan civil service is essential for our government to operate effectively and protect U.S. national security interests. Regardless of the politics of the President in office, the American people should be able to trust that the professionals hired into the civil service are putting the public's interest first and honoring their oath to protect and defend the Constitution. Through legislation and oversight, it is the responsibility of Congress to protect the nonpartisan nature of our dedicated civil service.

With that I wanted to make sure that everybody knows that the record for this hearing will remain open for 15 days, until 5 p.m. on October 2, 2024, for the submission of statements and questions for the record.

With that, thank you again for being here, and this hearing is now adjourned.

[Whereupon, at 11:02 a.m., the hearing was adjourned.]

A P P E N D I X

**Chairman Peters Opening Statement As Prepared for Delivery Full Committee Hearing:
Ensuring a Trustworthy Government: Examining the National Security Risks of Replacing
Nonpartisan Civil Servants with Political Appointees
September 17, 2024**

Every day, civil servants across the federal government go to work for the American people. They ensure our constituents get their Social Security checks on time. They distribute resources in the wake of natural disasters. They strengthen our national security and help protect our borders. These people allow us to carry out the critical tasks of governance.

Right now, people are hired for the civil service because of their ability to do the job, not their political connections. They are career civil servants who serve across Presidential administrations regardless of political party. This ensures that our civil service is highly trained and able to deliver for our citizens.

But some Presidential administration officials and organizations advising Presidential administrations have pursued sweeping changes to this system.

Most recently, the prior administration sought to replace at least 50,000 nonpartisan career civil servants with appointees who followed the former President's politics.

This change would not only hinder our government's efficiency, it would be disastrous for the American people. It would drain the federal government of institutional knowledge, expertise, and continuity. It would slow down services, make us less prepared when disaster strikes, and erode public trust in government.

Perhaps most importantly, it would weaken our national security and make us more vulnerable to serious threats facing our nation. More than 70% of the federal workforce serves in defense and national security agencies.

Proposals that would remove career national security experts in order to increase a President's political influence over agencies would hit hardest where the stakes are highest.

Regardless of anyone's personal opinion about the U.S. strategy for military engagement, diplomacy, intelligence, or disaster preparedness we all want to trust that our leaders in these roles are informed with accurate, reliable, and complete information. This is especially true given the gravity of the decisions these leaders make every day in any Presidential administration.

We don't have to rely on hypotheticals to imagine what a personnel system under a President's political control would look like.

In the 1800s, employment in the civil service was a patronage system, based on rewarding people who followed the same politics. That led to a less effective workforce, one that was unqualified, inept, corrupt, and focused on helping a single party, rather than the best interests of the American public.

Congress finally took action to end this system of cronyism in 1883 – two years after President James Garfield was assassinated by a campaign worker who was denied a federal position he felt entitled to.

A century later, Congress took further action to strengthen hiring and firing protections for nonpartisan civil servants when Watergate documents revealed a Nixon Administration blueprint for a plan to fire and replace civil servants across the government who disagreed with his politics.

That is why today Congress must take action to prevent a future President from using a statutory loophole to make thousands of civil servants fire-able based solely on the whims of the President's political leaders. Job security for civil servants would no longer be tied to whether or not they meet objective performance criteria.

If their politically appointed boss decides to fire them for whatever reason, they would have no rights to appeal the decision. Civil servants would be exempted from the very protections that make them nonpartisan civil servants.

The vast majority of the American people prefer an independent civil service. There is a reason why civil servants take an oath to defend and protect the Constitution rather than the political will of a President.

Increasing the number of appointments by the President or the President's political leaders isn't even in the best interest of the party in power. Modern Presidential administrations already struggle to fill nearly 4,000 appointments across the government each term.

Increasing that number by 50,000 employees would hinder any President's agenda even further and likely lead to vacant jobs and disruptions to government services for much of an administration.

These proposals are short-sighted, misinformed, and put political loyalties above effective service for the American people.

We can and should consider ways to improve and modernize the way the federal government operates, including its personnel policies, whether it's making disciplinary procedures more straightforward to navigate or equipping agencies with better skills-based hiring tools.

My colleagues on this committee, on both sides of aisle, have a deep and shared commitment to making the government more effective and efficient, and eliminating waste, fraud, and abuse. And we have a great track record of passing bipartisan legislation and conducting bipartisan oversight to do so. That is why Congress, working on a bipartisan basis like we do on this committee, must be involved with any type of reform to the civil service. It is also why we need to step in when a President of any party seeks to interfere with the independence of the federal workforce.

Today's hearing is one important step in that mission. Our panel of expert witnesses will help us examine how to keep our civil service intact and suggest how Congress can take steps to improve it for future generations, especially when it comes to keeping our nation safe and secure. I thank them for being here today, and look forward to a productive discussion.

STATEMENT OF ELAINE C. DUKE FORMER DEPUTY (ACTING) SECRETARY OF THE DEPARTMENT
OF HOMELAND SECURITY
for the
SENATE COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS HEARING ON
SENIOR CIVILIANS IN NATIONAL SECURITY POSITIONS
September 17, 2024

Chairman Peters, Ranking Member Paul, and members of this Committee. Thank you for having me back in front of you today. I have always been impressed with the commitment of this Committee to sound and effective government and I am pleased to testify today on one piece of effective government--national security policy.

I would like to begin with a statement of purpose. My principal purpose for being before you is to do my part in ensuring our country has a transparent, accountable, effective, and results driven executive branch. And that our national security mission is executed with the utmost precision humanly possible.

I am opposed to any decision that has high potential to undermine effective national security policy and operations. And I am concerned Schedule F may just do that. My experience leads me to believe that any potential upside to the tempo of producing national security policy from Schedule F is far outweighed by its disruptive downside of less effective policy. This is in the form of less vetted, informed, and comprehensive public policy – therefore less successful public policy. The solutions to the problems identified in the EO already exist. So let's focus and use those methods to correct any performance issues, rather than creating risk, confusion, and disruption in surrounding national security policy. I propose we deal with any performance anomalies with less disruptive, equally effective ways than Schedule F.

Analysis of the EO Effectiveness

One key pillar of a safe and secure Nation is sound national security policy. There are two essential inputs to national security policy: an effective policy making process; and knowledgeable federal employees using that process to produce sound policy.

National Security policy process. My biggest fear is a degradation of the policy that supports our national security. The Schedule F EO could adversely affect the policy process in two key ways. First and most important is less vetting of predecisional, draft policy with key stakeholders across federal government. The importance of stakeholder vetting on policy for national security cannot be overstated. It is important to take the time and value the input of diverse key stakeholders that have tangential interest in the policy under development. Lack of coordination with key stakeholders in the policy development process results in less than optimal outcomes. Considerations of the effects of the policy on other national security areas must be made during development. This is so we can address the issue in developing the policy or be

prepared to deal with them afterward. Career federal civil servants with the expertise and experience to help inform decisions of the policy makers must have input into the policy. They know how policy plays out in implementation through experience, and their input in this regard is invaluable to delivering intended results. Related equities and downstream effects must be considered during development, or the final policy will create unintended consequences and national security risk. These unintended consequences will remain unknown until implementation, which is too late to effectively be managed.

National Security policy people. I'll argue that the vast majority of civil servants are doing their job, and the Schedule F proponents agree with this. Policy personnel are using their knowledge, skills and abilities to deliver results. They attempt to influence the policy process to make the outcome better. But once the decision is made they faithfully implement lawful policy and direction. For the few where that is not the case, the current system allows leaders to appropriately deal with those performance or behavior issues.

The EO does not add anything to performance management except at will termination. Solely making policy personnel exempt puts those people in unnecessary jeopardy and inhibits their ability to do their job. Without other changes to our systems, they will still need to comply with existing law and regulations. They rightfully operate within these boundaries that do not change under the EO

A notable boundary is the Administrative Procedures Act (APA) for regulations. APA is, in my experience, a key contributor to transparency, but also the longest piece of the regulatory process. It can be considered burdensome and time consuming, but we have decided as a country that the transparency and democracy it brings is important.

Another example is ethics. Civil servants should not have even the appearance of political bias in performing their duties. 5 CFR § 2638.102 Government Ethics Responsibilities of Employees states "employees must endeavor to act at all times in the public's interest, avoid losing impartiality or appearing to lose impartiality in carrying out official duties, refrain from misusing their offices for private gain, serve as good stewards of public resources, and comply with the requirements of government ethics laws and regulations, including any applicable financial disclosure requirements". Schedule F seems to create at minimum the appearance of political bias if civil servants are acting with loyalty solely to the President, not the country as in their oath of office. Schedule F and C political appointments will look identical during an Administration and the element of career objectivity that partners so well with the political appointees will be lost.

In addition to the ethics regulations, several other protections have been put in place to ensure that the civil servants and political appointees are distinguishable. Those include anti burrowing rules (converting political appointees to career positions at the change of administration), freeze in SES selections during Presidential transition, and the Hatch Act. Much time and work has

been put into protecting the objective civil service system as a stable base to any Administration. This should not change.

Additionally, it is important to point out a misperception in the overturning of civil servant wrongful termination cases. Data published by the Government Accountability Office (GAO) shows that virtually all performance related terminations of civil servants put before the Merit Systems Protection Board are upheld by the Board in favor of the agency employer. The same is not true terminations appealed on an Equal Employment Opportunity (EEO) basis. EEO protections are rightfully included by the EO in Schedule F. While I support that inclusion, it at least partially negates the desired “at will” nature of the Schedule F workforce.

The Alternative

So how do we meet the objective of the EO, with a solution set that meets its objectives without the negative consequences of Schedule F? The EO states that the President needs “appropriate management oversight”. That need is generally filled with the existing civil service system. But just ok is not good enough for national security. The regulation and policy for the hiring and performance management objectives of the EO exist within the Title V system. *What is woefully lacking though is effective execution of those authorities to responsibly hire and manage performance.* I recommend that rather than expending our energy on creating Schedule F and recreating it every year with the EO’s annual reassessment, let’s use that same effort to systemically fix hiring and performance management in the federal workforce.

Hiring: Schedule F says it is needed to hire people displaying “appropriate temperament, acumen, impartiality, and sound judgement”. This is not unique to schedule F positions. In fact, the fundamental competencies published by Office of Personnel Management for senior executive service (SES) members include: interpersonal skills, integrity/honesty, oral and written communications, continual learning and public service motivation. It appears that the stated competencies of Schedule F and those of the career SES align. The existing system can and should hire people with the stated attributes.

And regarding the EO’s statement of “need the ability to assess prospective candidates without the limitations of competitive service.” Competitive service does not limit the ability to assess any of these qualities, in fact it is consistent with it. The EO states that three principal criteria for selection are appropriate temperament, acumen, impartiality, and sound judgement. Office of Personnel Management (OPM) states the criteria must include ethics, judgement and the ability to meet the needs of an agency. Those criteria are consistent and can, and should, be assessed and used as basis of selection in current system. The failure is the inability of hiring officials to be able to set hiring criteria, conduct interviews and reference checks. That is performance issues of those leaders, not a faulty system. We must train our supervisors and human capital personnel in this area and hold them accountable for performing hiring with skill. And if a mistake in hiring is made, we must properly use the employee probationary period to quickly and effectively terminate employment and resolve the issue.

Performance Management: Schedule F concludes that the system is inadequate based on the 2016 Merit Principles Survey. I would argue that the failure to properly use the system is the problem, not the system itself. The civil service system provides the ability and tools to terminate for both performance and cause, two very different but equally important grounds for terminating a federal employee. The system is designed to address performance with fairness, integrity, and skill. That's because so much is at stake: proper functioning of our government, transparency, equity, and accountability.

Schedule F states that meeting performance Standards is "particularly important" for those in confidential, policy-determining, policymaking, or policy advocating positions. I do not believe that to be true. Performance is certainly particularly important to every level and position in government. However if one has to choose "particularly important", I argue the most important performance is that of those performing critical national security missions. Those men and women performing the front-line mission of keeping our nation safe. The federal law enforcement, military enlisted and officers, vetting and screening personnel, mission support experts delivering national security at the point of the spear are the ones "particularly important" to our national security.

The EO also states that senior agency officials report that poor performance in policy relevant positions has resulted in long delays and substandard quality work..." This is an unclear, vague statement, but my experience does align with it. However, the statement as is, without sources and clarity inhibits our ability to address the root causes and really fix the problems. Instead the EO attempts to slap a Schedule F solution as a band aid fix to a very important, systemic issue.

How instead do we address the ineffective use of the hiring and performance management system without the EO? First, Get back to basics. Supervisors must supervise and leaders must lead and supervise. We must equip our supervisors with the tools they need to effectively hire and manage performance. That is not an inherent skill. We hire based on technical knowledge. Once promoted to a supervisory position, we need to teach employees new skills. That used to be done but has been abandoned over time, perhaps that is why we are facing real or perceived performance management problems today. We need to develop and deliver mandatory supervisory courses. We also need to return to the core tenants of the Senior Executive Service (SES); that SES members are picked to lead, not for the technical prowess. We should use SES as leaders, demand they focus on hiring, workforce development, and performance management as their core job responsibilities. And evaluate their performance based on those leadership competencies and the full set of executive core qualifications: leading people, leading change, results driven, business acumen and building coalitions. Office of Personnel Management (OPM) should lead this. It should refocus on enabling rather than overseeing and restricting. OPM should poll the agencies for flexibility and tools they need in hiring and performance management. OPM should then a service provider to the national security agencies, helping them to fulfill those needs, developing and delivering training, and working within the boundaries of law to change policy and regulation to best meet the agencies' hiring and

performance management needs. In other words, use OPM as the executive agency for human capital change, enabling and assisting agencies to hiring and manage workforce toward national security excellence.

Existing Mechanism for Exempt Policy Employees

If in addition to a better functioning civil service system, if there is still a need for more exempt policy personnel, fill that need through existing authority rather than a disruptive Schedule F. The executive branch can use the existing authorities in Title V to achieve the objectives by increasing the number of Schedule C and Schedule B appointments. The stated intent of the EO is the exact definition of a Schedule C appointment, which is “is a type of political appointment in the Federal government for those who serve in confidential, or policy roles immediately subordinate to other appointees. Most Schedule C employees are confidential assistants, policy experts, special counsel, and schedulers, however some do serve in specialized non-policy support roles”.

Issues with the EO Scope

Finally, I must address the ambiguity of the EO and why it is so alarming even to those who appear not to be directly affected by it and those supporting civil service reform.

The intended scope of the civil service population to be included under Schedule F is so unclear that it indicates deception and lack of transparency. While some agencies’ discretion is understandable, a clarity of general scope is important. If the intent is a small population, why write with such ambiguity that would only serve to impair transparency and trustworthiness. Repeatedly, the EO states the population is “confidential, policy determining, policy making, or policy advocating..” It is important to note a few specifics. First, note the “or” which appears to broaden the scope to include each of the four categories. And with that “or” the importance of “confidential” in the words becomes even more important. In a very broad scope, everything predecisional is confidential. So, nearly the entire employee base of an agency absent a few that may never see or hear anything before the final decision is made (during deliberations) would be included in Schedule F.

In addition to this consistent ambiguity, Section 5 (B) adds additional confusion.

(iii) introduces for the first time employees with “substantial discretion to determine the manner in which the agency exercises functions committed to the agency by law”. This for the first time introduces all non-policy personnel – those that execute the agency’s mission. This makes operators, intelligence, law enforcement, etc. subject to inclusion in Section F.

(iv) introduces for the first time “viewing, circulating or otherwise working with proposed regulations, guidance, executive orders, or other non-public policy proposals or deliberations generally covered by deliberative process privilege”. This language is especially concerning by using executive secretariat as a specific population covered by the Schedule F including.

Executive secretariat administratively edits and process, but do not write policy. The implication here is that anyone who “sees” policy before it is public can be included in Schedule F.

(v) introduces those who conduct collective bargaining negotiations, a function wholly unrelated to policy. I am unclear why this is included but I speculate as a way to get rid of another irritant and further diminish objective input to national security policy and operations.

Conclusion

National security is too important to allow Schedule F to be implemented, especially as written.. We need to keep our vigilance strong and deliver results with transparency to our people. Our government was established incorporating a division of power and system of checks and balances that require transparency and some level of continuity for effectiveness. that is still important to our citizens today. The results of a poll and focus groups for the National Academy of Public Administration (NAPA) in June 2024 show this is true today. Good government must be trustworthy and accountable. It must also be in touch with people, transparent, responsible, effective, competent, productive efficient, nonpartisan, fair and responsive. Schedule is contrary to what the American people want and sound national security demands.

My issues with the EO are twofold. First, it is so ambiguous and contradictory its implementation will be fraught with confusion and disruption. That we can hardly allow to happen without affecting national security, now and every change of administration. Career civil servants form a stable infrastructure to government and political transition that is essential to national security. Second, it proposes a solution to a real problem that I don’t believe is the best solution. Every change has an upside and downside. I believe Schedule F has more downside and less upside to the current hiring and performance management issues in civil service than other options.

Instead, let’s focus on solving civil service hiring and performance issues in a way that really solves the problem, not just for policy persons, but for all civil servants. Performance management in federal service needs to be improved not just for policy persons but for the entire workforce. So let’s tackle this issue and make the government more responsible and responsive. We need to give supervisors the tools to be a supervisor and hold them accountable for doing so – making that their job, with less and less focus on technical as they rise in the ranks. If we need the President to have more direct control over policy by blindly loyal persons, we should add more Schedule C political employees.

So, let’s not hit the easy button with Schedule F. Let’s improve national security by improving workforce management. It is not easy, but well worth it. I remain committed to supporting the Committee should it decide to pursue developing Schedule F alternatives, and look forward to answering your questions today.

STATEMENT OF PETER LEVINE
FORMER ACTING UNDER SECRETARY OF DEFENSE
FOR PERSONNEL AND READINESS
SENATE COMMITTEE ON HOMELAND SECURITY
AND GOVERNMENTAL AFFAIRS
HEARING ON SENIOR CIVILIANS IN NATIONAL SECURITY POSITIONS

September 17, 2024

Chairman Peters, Ranking Member Paul, Members of the Committee, it is a pleasure to appear before you this morning. I worked on the staff of the old Senate Governmental Affairs Committee for 8 years in the 1980s and 1990s, so I place a tremendous value on the work that you do to improve transparency, efficiency, and accountability in government operations. The views I express today are entirely my own, and should not be interpreted as reflecting any position of my employer, the Institute for Defense Analyses.

When I was appointed Acting Under Secretary for Personnel and Readiness a decade ago, Secretary Carter had ambitious agenda for me: he wanted me to help him revitalize the DOD military and civilian workforces by implementing his “Force of the Future” program to attract and retain the smartest and most capable talent available. I could not have made any progress on these issues without the deep expertise, dedication and hard work of the senior career civilians in my office.

The first step that I took after being appointed was to meet with the career SES leaders in my office and to tell them how much I needed their help and looked forward to working with them. They had deep technical knowledge and decades of managerial experience on every issue that would come before me, from military recruiting and civilian hiring to National Guard duty status, and from training and education programs to retirement benefits and family assistance issues. They played two key roles in everything that I did:

- First, before I made any proposal to Secretary Carter, I made sure that I consulted with my senior managers and gave them a chance to provide input. If they had questions or concerns, I wanted to hear them. I wasn’t going to let anybody on the staff dictate policy decisions – but it was important for me to understand the implications of what I was doing before I did it. I firmly believe that our actions were more effective and more enduring as a result of this consultation. If a leader isn’t confident enough in himself or

herself to consider a range of views of views before acting, perhaps that person should not be in a leadership position at all.

- Second, after the Secretary and I had made a decision, our senior career civilians were essential to carrying it out. They were the ones who knew what documents we had to draft; what had to be included in a memo, directive, or instruction; how the documents had to be coordinated and approved; and who had to take additional steps like issuing component-specific supplemental guidance and initiating training activities. Without their hard work, the levers of the Department would not move, and a well-intended policy initiative would change nothing.

This two-step approach is consistent with the role that career civilians are expected play in the federal government: they owe political leaders their best advice, but once a decision has been made it is their duty to carry out that decision. The ability of career civil servants to provide open and candid advice without losing their jobs enables political appointees like me to benefit from the knowledge and expertise that these civilians have developed over the course of their careers, and the duty to follow orders means that our government remains responsive to the political appointees who represent our nation's elected leadership.

Some leaders and commentators have dismissed the views of career civilians and seen them as an impediment to progress. As I wrote in my book on Defense Management Reform, this approach carries significant risk:

“What the building thinks” is a phrase voiced in the Pentagon that describes the kind of concerns that can arise in opposition to proposals that have not been adequately vetted. The views of “the building” are often discounted by those who see them as nothing more than the rigid inflexibility of small-minded bureaucrats who are protecting their turf. There is no question that the Pentagon can be resistant to change, but in many cases there is good reason for the resistance. DOD officials care deeply about the mission of the Department and are naturally concerned by proposals for disruptive changes that threaten to restructure organizations, unsettle existing relationships, and reduce resources in a manner that could compromise that mission.

In some cases, it is necessary to override parochial concerns in the broader interest of the Department, but failure to engage and at least understand the motivation for the concerns is never a good option. Senior

officials can ignore what “the building thinks,” but they do so at their own peril. No matter how important these officials may think they are, the building will be around a lot longer than they will.

In one case that I am aware of, a new political leadership team became enamored of a contractor’s proposal to replace an existing business system with a new “Software as a Service” model. Senior civil servants with deep expertise argued that the expectation that this change could be carried out in six months and at minimal cost was completely unrealistic and inconsistent with the Department’s past experience. Once a decision was made, however, these career civilians carried out the direction and worked hard to implement the new system. Many years and hundreds of millions of dollars later, they are still trying.

By contrast, I believe that there is minimal risk that career civil servants will fail to carry out a directive from their political leadership. I am aware of multiple instances over the years in which the policy decisions of an outgoing Administration have been reversed by an incoming Administration. In each case, the same set of career civilians who had carried out the old policy deferred to the Department’s new political leadership, seamlessly carrying out the new policy. In short, the risk that political appointees will fail to listen to the informed views of career civil servants (or will discourage them from offering such views) is far greater than the risk that civil servants will fail to carry out a directive from political appointees once it has been made.

The leadership and management of the Department of Defense rest on three essential pillars: the Department’s political appointees, its military leaders, and its senior career civilians.

- Political appointees represent the nation’s elected leadership and are responsible for setting the direction of the Department and making policy decisions of all kinds.
- Military leaders bring decades of military training, experience and expertise, making them uniquely qualified to guide and shape the force and manage operations of all kinds.
- Career civilians bring substantive expertise and institutional knowledge that helps frame policy discussions and keep the Department running on a day-to-day basis.

Both political appointees and military leaders rotate out of jobs quickly. The average Senate-confirmed appointee in the Department serves only about two years in office before returning to the private sector. Senior military officers spend 20- and 30-year careers in the military, but rotate through Pentagon assignments in two to four years, giving them little time to build deep expertise and familiarity with the tools needed to run the Department.

Career civilians, by contrast, frequently remain in place over a period of years, learning the ins and outs of an organization, developing deep expertise in its policies, procedures and operations, and building an understanding of how to move the gears of the Department and make things work. The stability of the civil service is a two-edged sword. On one hand, it can lead to stagnation in the senior ranks; on the other hand, it fills gaps in institutional knowledge and expertise left by the constant rotation of political appointees and military leaders, helping keep the Department on track toward its national security objectives.

Senior career civilians play a key role in administering highly complex and legislatively-mandated personnel and pay systems. They provide essential expertise and managerial skills to organizations that run training and education programs, administer travel and change of duty stations, and provide security, support, and facilities sustainment on military bases. The Department relies on their deep knowledge of problems like sexual assault, suicides, bullying and hazing, and drug abuse. They provide the backbone of efforts to ensure that Service members around the world receive the financial advice, voting assistance, and family life counseling that they need and deserve. They play key roles in running 664 hospitals and clinics, 172 schools for military children, 1,880 retail stores, and 2,390 restaurants for our men and women in uniform.

Senior DoD civilians also serve as operational enablers in the intelligence and cyber domains, and are essential to warfighter training and combat system and equipment readiness. They help manage and oversee more than \$300 billion a year in acquisition spending and run the largest and most sophisticated research and development activity in the world. They help operate depots and arsenals that maintain and recapitalize a huge inventory of the most complex and advanced fighting equipment in human history. And they are the life-blood of a logistics system that works 24 hours a day, 365 days a year to ensure that military equipment and supplies are ready when and where needed, anywhere in the world, and often with little or no notice. The Department makes a significant investment in recruiting, hiring, developing and training its senior career civilians, and this investment should not be lightly set aside.

In my experience, the vast majority of DoD civilian employees are highly motivated, hard-working, and strive to perform with excellence. This is particularly true of the Department's cadre of senior executives and other senior managers, who care deeply about our national security and understand their business in a way that few others can. I have seen new projects embraced enthusiastically by employees who work long hours without any reward beyond the challenge of the work itself and the understanding that the results they produce are important to the national security and valued by the Department's leadership.

We live in a time of deepening social, political, and cultural divides in American society, but we all have a shared interest in the security of our nation. Nobody is more committed to this shared interest than the senior civilians who devoted their careers to the Department of Defense. As one who has spent his own career working to make the Department work better, I appreciate the continuing need for change and reform. However, I firmly believe that any change agenda will be stronger and more successful in the long run if it treats the dedicated career civil servants serving in the Department as allies, not enemies.

I look forward to your questions.



Jenny Mattingley
Vice President of Government Affairs
Partnership for Public Service

Written statement prepared for

**Senate Committee on Homeland Security
and Governmental Affairs**

Hearing entitled,

**“Ensuring a Trustworthy Government:
Examining the National Security Risks of Replacing
Nonpartisan Civil Servants with Political Appointees”**

September 17, 2024

Introduction

Chairman Peters, Ranking Member Paul, and members of the Committee on Homeland Security and Governmental Affairs, thank you for the opportunity to appear before you today to discuss the importance of a strong, nonpartisan federal workforce—particularly the national security workforce—as well as the areas where significant reforms are needed to ensure that agencies can effectively meet their missions while delivering easy to access services built with your constituents in mind.

During the past 24 years and across four administrations, the nonpartisan, nonprofit Partnership for Public Service has been dedicated to building a better government and a stronger democracy. The Partnership was founded on the premise that any organization’s best asset is its people and that the federal government needs dedicated, qualified talent to best deliver mission outcomes.

We also believe that the federal government should continually modernize its practices and earn the trust of the public. We’ve recently outlined five key areas for reform in our “Vision for a Better Government”¹: develop better government leaders; make it easier to hire and keep great public servants; hold poor performers accountable; unleash the power of data and technology to achieve better public outcomes; and provide efficient, customer-friendly services to the public.

These priorities also are critical to solving the crisis of public trust in government. Today, too many people believe our government is wasteful, lacking in transparency and accountability, and indifferent to public needs. What we know from our years recognizing government’s untold stories² is that across the country there are federal employees who go above and beyond to meet their missions and protect national security.

As a recent Washington Post series³ highlights, the impacts made by individuals that work in government can happen in the places we least expect and don’t typically think of as the federal government at work. For example, the employee based in Pittsburgh who developed a method to prevent mine roofs from collapsing, saving thousands of lives, or the national security employee who developed and launched the main innovation arm of the U.S. Air Force, improving pilot safety, saving taxpayers hundreds of millions of dollars and strengthening our national defense. Changing public perceptions of the federal government requires telling these stories of the work it does, but also being clear-eyed about the places where reform is needed and working to change the status quo so government works effectively.

¹ “Vision for a Better Government,” Partnership for Public Service, August 15, 2024, <https://ourpublicservice.org/publications/vision-for-a-better-government/>

² Service to America Medals, Partnership for Public Service, <https://servicetoamericamedals.org/>

³ “The Canary,” Michael Lewis, The Washington Post, September 3, 2024, <https://www.washingtonpost.com/opinions/interactive/2024/michael-lewis-chris-marks-the-canary-who-is-government/>

Snapshot of the Federal Workforce

The people who serve inside the federal government are the backbone of the services provided to your constituents and the effective mission delivery of agencies. In fact, they often are your constituents as well, since most federal employees live and work outside of Washington, D.C.

The federal government currently employs over 2 million people⁴ who deliver a wide range of essential services to the public.⁵ Federal employees work in all fifty states and around the world, serving an American population that has more than doubled since 1949⁶ when the government's pay and classification system was created. However, analysis of the federal workforce as a percentage of the total U.S. population for the past 15 years reveals the workforce has represented approximately 0.6% of the population, a significant decrease from 1945 when the workforce represented a historic 2.5% of the entire population.

Their roles are increasingly diverse, covering the missions of every federal agency. Federal employees ensure our food is safe to eat, fight wildfires, process Americans' passports, prevent cybercrime, work in mines, national parks, and rural communities, and provide countless other vital services that the public may never know about. Their work directly impacts our national security and safety, as dedicated federal employees investigate child labor violations, prosecute individuals supplying chemicals to drug cartels, develop encryption standards to prevent and respond to cyberattacks, and arrest drug distributors and members of violent transnational criminal organizations, among many other things.

Defense and national security-related agencies account for nearly 71% of the entire civilian federal workforce.⁷ These are defined as agencies that have protection of the United States and its security as one of their primary missions – either through defense, intelligence, upholding of the law, or care of the veterans that have enabled that defense. This includes the Department of Veterans Affairs, Department of Defense (including Departments of the Army, Navy and Air Force), Department of Homeland Security, and the Department of Justice.

At the end of fiscal year 2023, 80% of the federal workforce was located outside the Washington, D.C., metropolitan area – living and working in states across the country, including in your home states. The locations with the largest federal employee populations were Washington, D.C. (7.3%), Virginia (6.6%), California (6.5%), Maryland (6.4%), Texas (5.7%) and Florida (4.2%). Some work in

⁴ Unless otherwise noted, data in this analysis are for full-time, nonseasonal, permanent civilian employees of the executive branch as of September 2023. The data does not include employees of the legislative or judicial branches, the intelligence community, the U.S. Postal Service, foreign service officers or locally employed staff within the Department of State, or uniformed military personnel. Contractors also are not included.

⁵ "Fed Figures," Partnership for Public Service, <https://ourpublicservice.org/fed-figures/a-profile-of-the-2023-federal-workforce/>

⁶ "Population," USA Facts, <https://usafacts.org/data/topics/people-society/population-and-demographics/population-data/population/>

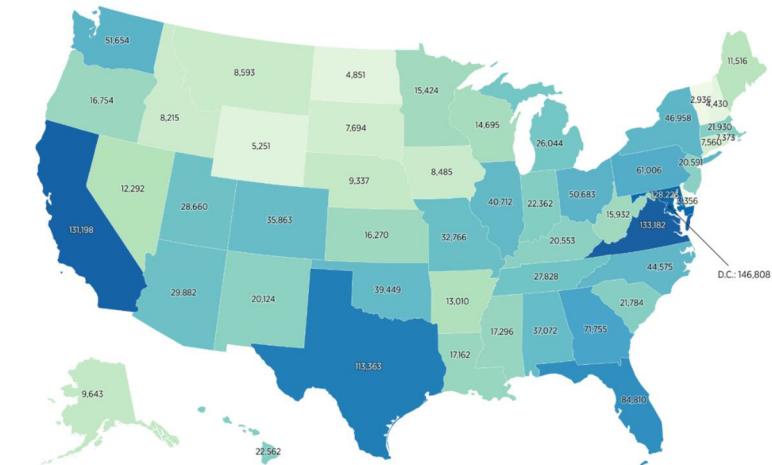
⁷ Not including employees of the U.S. Postal Service.

offices, but many are frontline workers in the field in roles such as federal transportation security officers, national park rangers, clinical biologists, or food inspection workers.⁸

Federal Employment by State

The federal workforce spans the entire country, with employees located in every state.

2,000 70,000 150,000



Note: For security purposes, FedScope does not provide location information for employees in the following agencies: Federal Bureau of Investigation; Drug Enforcement Agency; Bureau of Alcohol, Tobacco, Firearms and Explosives; Secret Service and Bureau of the Mint. As a result, states may have a higher number of federal employees than what is listed above. Data as of September 2023.

Map: Partnership for Public Service • Source: FedScope



Individuals who served in the uniformed military service constitute a considerable segment of the federal workforce. At the end of fiscal 2023, 30% of federal employees were veterans compared to 5% of the total employed U.S. civilian labor force. In the same year, 25% of new federal hires were veterans.

The Importance of a Nonpartisan Civil Service

Career federal employees remain in their roles regardless of which political party occupies the White House and they serve as the bridge to preserving America's security when transitions occur. This continuity is particularly important for agencies supporting our national security interests where expertise, established relationships, and in-depth understanding of the complex dynamics impacting our safety at home and abroad are critical.

While career federal employees can be disciplined or fired for performance (although that system requires significant reform), they cannot be fired based on politics. This is to ensure that there is

⁸ "Focus on the Front Line or Fall Behind: A Fresh Look at Federal Employee Engagement," Partnership for Public Service, August 29, 2024, <https://ourpublicservice.org/publications/focus-on-the-front-line-or-fall-behind-a-fresh-look-at-federal-employee-engagement/>

continuity when political appointees turnover with a new administration and to ensure that services are delivered to the public fairly and impartially. Congress authorizes the programs and appropriates funding for agency budgets – which drive the implementation work of federal employees who ensure services are provided to all Americans.

The public rightfully expects that these services work effectively – after all, they are funded by taxpayer dollars. Yet none of these services would exist without skilled federal employees, the dedicated Americans who serve the public interest and take an oath to the Constitution. Across administrations and regardless of which political party is in office, they carry out the policies of our elected leaders, enforce our laws, protect our rights, and promote our safety and security.

The American people want a nonpartisan workforce that is effective, and there's broad lack of support for policies like Schedule F. Research from the Partnership shows that people do not believe that further politicizing the civil service is a good way to improve our government's ability to deal with national problems. Across the political spectrum, the public believes civil servants should be hired and promoted based on merit rather than their political beliefs – fully 95% of the public agree with that idea, including 96% of Democrats, 95% of Republicans and 94% of independents.⁹ In addition, only 25% say that presidents should be able to fire “any civil servants that they choose for any reason.” Finally, almost 90% say that the federal government is less effective when decisions are “driven by politics.”

Plans for an increasingly politicized workforce would undermine our government's ability to deliver fair and responsive services, as well as destabilizing the national security workforce. A federal workforce filled with employees hired for their political beliefs rather than their skills and qualifications would move us further away from the type of government the public deserves. It would strip federal agencies of expertise and hamper their ability to provide good service to everyone, not just to those who support the president of the day.

Furthermore, creating a system of employment without significant guardrails to prevent politically motivated hiring and firing for thousands of civil servants would in effect drastically increase the number of politically appointed individuals across government. While we often talk about the career civil service, political appointees are an important part of the workforce as well – and they are primarily responsible for bringing an administration's priorities into agencies and serving directly at the pleasure of the president.

Each president has around 4,000 political appointments to make, over 1,300 of which are currently subject to the advice and consent of the Senate. Filling these positions is a daunting task for any president, and the Partnership, through our Center for Presidential Transition, has produced a series of reports detailing vacancies and raising concerns about the effects that these vacancies have on agency performance and national security.¹⁰

⁹ “The State of Public Trust in Government 2024,” Partnership for Public Service, <https://ourpublicservice.org/publications/state-of-trust-in-government-2024/>

¹⁰ See, e.g., Chris Piper, “Taking stock of the vacancy crisis across cabinet departments,” April 25, 2024, <https://presidentialtransition.org/blog/taking-stock-of-the-vacancy-crisis-across-cabinet-departments/>;

Typically, political appointees only serve an average of two to three years in a four-year administration.¹¹ This causes constant churn at agencies, which—combined with an increasingly slow Senate confirmations process—creates vacancies which slow decision-making, long-term strategic planning and modernization efforts. A sense of impermanent leadership also can undermine employee morale.¹² This harms the performance of agencies and impacts services from veterans’ care to support for America’s farmers.

A stable, professional career civil service is also imperative to protecting our national security. There are serious implications when there are vacancies of key national security political appointees, which is why it’s invaluable to have nonpartisan professionals with institutional knowledge and relationships to maintain continuity in turbulent times.

The findings and recommendations of the bipartisan 9/11 Commission are just as relevant as when the Commission issued its report.¹³ One of the 9/11 Commission’s most notable findings was that the Bush administration “like others before it— did not have its team on the job until at least six months after it took office.” Key deputy Cabinet and subcabinet positions remained empty until the spring and summer of 2001, less than two months before 9/11. The Commission concluded that because “a catastrophic attack could occur with little or no notice, we should minimize as much as possible the disruption of national security policymaking during the change of administrations by accelerating the process for national security appointments.”

Despite the 9/11 Commission’s call to action, the percentage of top national security positions confirmed by the twentieth anniversary of the attack in 2021 was only 27%, compared to 57% on the day of the attack in 2001. Although the percentage rose to 67% by the end of President Biden’s first year,¹⁴ we still fall short in addressing the 9/11 Commission’s concern. Numerous other crises during times of transition or early in presidential terms point to the need for strong collaboration between incoming political leaders and seasoned career experts in the civil service: the 1961 failed Bay of Pigs invasion, the 1993 World Trade Center bombing, the financial crises of 2008-2009, the

Partnership for Public Service, Center for Presidential Transition, “Layered Leadership: Examining How Political Appointments Stack Up at Federal Agencies,” Feb. 20, 2024, <https://presidentialtransition.org/reports-publications/layered-leadership-examining-how-political-appointments-stack-up-at-federal-agencies/>; Carlos Galina, Paul Hitlin, and Mary-Courtney Murphy, “Slow Nominations and Confirmations Pose a Threat to National Security,” May 24, 2022, <https://presidentialtransition.org/reports-publications/slow-presidential-nominations-and-senate-confirmations-pose-a-threat-to-national-security/>

¹¹ See, e.g., Dull, M., Roberts, P.S., Keeney, M.S. and Choi, S.O., 2012, “Appointee Confirmation and Tenure: The Succession of U.S. Federal Agency Appointees, 1989–2009,” *Public Admin Rev*, 72: 902-913, <https://doi.org/10.1111/j.1540-6210.2012.02676.x>

¹² Chris Piper and David E. Lewis, “Do Vacancies Hurt Federal Agency Performance,” June 24, 2022, *Journal of Public Administration Research and Theory*, <https://doi.org/10.1093/jopart/muac029>

¹³ “The 9/11 Commission Report: Final Report of the National Commission on Terrorist Attacks Upon the United States,” July 22, 2004, <https://www.9-11commission.gov/report/911Report.pdf>

¹⁴ “Joe Biden’s First Year in Office: Nominations and Confirmations,” Partnership for Public Service, Center for Presidential Transition, January 9, 2022, <https://presidentialtransition.org/reports-publications/joe-bidens-first-year-in-office/>

potential terrorist threat to the 2009 inauguration, and, most recently, the COVID-19 pandemic.¹⁵ With the Senate confirmation process becoming increasingly slow, the need for stability in career staff to help our nation despite the large amount of turnover of political appointees during presidential transitions is all the more important.

Our government is not perfect, but we need to modernize it rather than break it. It will harm our system of government—and the public—more by moving to a less effective, less stable and more politically motivated workforce. Based on more than 20 years of expertise in government reform, the Partnership recommends prioritizing customer experience, modernizing outdated data and technology, improving accountability by modernizing performance management, and developing stronger government leaders to improve how our government serves the people.

These reforms would provide our government with what it needs most: a way to offer the public simple and timely access to services like Social Security, veterans benefits and health care; modern, secure IT systems that help keep our country safe and secure; and highly qualified federal leaders and employees who are committed to the public trust and are good stewards of taxpayer dollars. As a result, the improvements we propose should be the basis for any discussion about enhancing our government’s ability to better serve the public – a goal supported by political leaders on both sides of the aisle, even in this era of increased polarization.

Rebuilding Trust by Modernizing Government and Making it More Effective

A strong democracy requires a government that is trusted and trustworthy. Over the past several years, the Partnership has conducted research to understand the public’s views about the federal government and federal employees. What we have found is that the public overwhelmingly views a nonpartisan and competent civil service as critical to a well-functioning democracy. One Partnership survey shows that fully 91% say that “competent civil servants” are important for a strong democracy, including 94% of Democrats, and 91% of Republicans and independents.¹⁶

Yet, polling conducted by the Partnership found that only 35% of Americans trust the federal government to do what is right at least some of the time. On a brighter note, people view the federal government more positively when asked about specific agencies and their missions and services, or non-elected government officials and their work in public service.

In addition, we know from our polling that that the public overwhelmingly wants a more accountable, transparent and responsive government, and also believes civil servants should be hired based on merit, not their political beliefs. A nationally representative survey conducted by the Partnership in spring 2024 found that the American public overwhelmingly believe that civil servants should serve the people and the Constitution more than any individual president. This

¹⁵ For a discussion of lessons learned from crises during times of transition, see Sasha Blachman and Paul Hitlin, “Presidential Transitions are a Perilous Moment for National Security,” August 16, 2023, <https://presidentialtransition.org/reports-publications/presidential-transitions-are-a-perilous-moment-for-national-security/>

¹⁶ “The State of Public Trust in Government 2024,” Partnership for Public Service, <https://ourpublicservice.org/publications/state-of-trust-in-government-2024/>

remained true across party lines, with 91% of Democrats, 90% of Republicans and 83% of independents agreeing that civil servants should serve the people more than any president, and fully 86% saying civil servants should serve the Constitution first.

To truly boost public trust in government, it needs to work well and be accountable to taxpayers – not just one president or political party. We need a modern, responsive government that provides user-friendly and accessible services to the public. Ultimately, this will require a whole of government approach, with political appointees and career professionals working together to help agencies to achieve their missions and deliver on those services that the public expects and deserves.

What we know, and what years of reports such as the GAO High Risk List¹⁷ show, is that many of the business practices essential to any high-performing organization are outdated and in need of investment and significant reform. In order to identify how best to make the government more effective and to better hold career employees accountable for strong service delivery, it is useful to look at the laws underpinning human capital and performance management across agencies and when they were last updated. For instance, today's pay and classification system was created in 1949. The country was just coming out of World War II, its population was 149 million (compared to over 333 million now)¹⁸ and the federal workforce was largely clerical.

As federal jobs became more advanced and the needs of the public grew, Congress passed the Government Employees Training Act in 1958 to boost efficiency and federal operations. This 1950s law hasn't been updated in light of decades of research and practice across the private sector on better training and development of employees – it still serves as the foundation for training federal employees to advance mission performance.¹⁹

The 1970s and 1980s saw advancements in federal management issues—including the Civil Service Reform Act, Privacy Act and Paperwork Reduction Act—and in hiring and performance practices. The 1978 passage of the Civil Service Reform Act, which established the Office of Personnel Management and directed performance appraisal systems for General Schedule employees and the Senior Executive Service, stands as the last time Congress comprehensively addressed federal personnel management – more than four decades ago.

What followed were sporadic updates to performance management regulation into the 1990s, with limited laws and changes to training, pay and appraisal systems in the early 21st century. Today, many of these legal and regulatory relics persist, standing in stark contrast to the continuous investments made by private sector companies to update their systems. Critics of federal

¹⁷ "High Risk List," Government Accountability Office, <https://www.gao.gov/high-risk-list>

¹⁸ "Population," USA Facts, <https://usafacts.org/data/topics/people-society/population-and-demographics/our-changing-population/>

¹⁹ The [Government Employees Training Act](#) is codified in [Chapter 41 of title 5](#) and gives federal agencies general authority for employee training. The Act was amended by the [Federal Workforce Restructuring Act of 1994](#) to permit agencies to take advantage of training from non-government entities. Further updates and regulatory changes occurred in response to the [Federal Workforce Flexibility Act of 2004](#).

operations often claim that the government should mirror the private sector, but no modern private sector company could operate under such outdated policies and resource constraints.

Private sector companies routinely invest in talent – making sure they recruit, hire and develop highly-qualified individuals, iterating on performance management systems so they can set goals to motivate employees to higher performance, training supervisors to hold employees accountable for good performance and outcomes, and creating incentives and performance practices that help move poorly performing employees out the door. All while also making sure employees have the tools, technology and data to do their jobs and meet their bottom line.

Lawmakers and federal leaders must commit to modernizing outdated laws and regulations that hamstring IT, human capital management and performance management practices, and should invest in updated systems and tools.

Fixing Root Causes, Not Building Workarounds

Proposals to fire federal employees en masse are a workaround to a system that is broken. It would create chaos, particularly in the national security space, make the process less effective and result in worse outcomes for the American people. It would also deepen the decline of trust in the federal government.

When a company's services or products do not work well or an employee does something wrong in the workplace, people generally expect the problem to be dealt with quickly. These same expectations hold true for our federal government – and the bar is even higher because the public has a vested interest in ensuring its tax dollars are put to good use. I understand the committee's continued focus on dealing with poor performers, and it is imperative that they are held accountable and that necessary actions are taken.

One of the merit principles—the core values of the civil service which are enshrined in law—is that employees who cannot or will not improve their performance to meet standards should be separated. In fact, according to data collected by the Office of Personnel Management, agencies formally discipline an estimated 17,000 employees annually for misconduct.²⁰ Federal employees must also follow strict ethics and political interference laws, including potential criminal penalties for violations of conflicts of interest statutes.

Yet the current process for addressing poor performers in government is difficult for managers and confusing for workers, leading to a lack of accountability for government employees who do not carry out their roles and responsibilities effectively. The vast majority of federal employees are doing their jobs well, but a small number who don't make it challenging for everyone else to achieve mission success. Only about 10% of respondents to the 2023 Federal Employee Viewpoint

²⁰ "Federal Employee Misconduct," Government Accountability Office, July 2018, <https://www.gao.gov/assets/d1848.pdf>

Survey reported that poor performers are usually removed or transferred from their work unit.²¹ It is important to ensure that federal employees cannot be fired for politically motivated or unjust reasons, but there are ways to update and simplify the current system that would make it easier to manage performance issues.

Despite the range of work locations, job responsibilities and skillsets among federal employees, we have a one size fits all system of incredibly outdated laws that still govern this modern workforce. Policy proposals like Schedule F or the other bills and ideas that have been floated over the past decade to make all or portions of the workforce at-will—able to easily be hired and fired for personal or political reasons regardless of performance or a business case—won't meet the goal of ensuring that agencies carry out the work that Congress authorizes and appropriates funding for, and is a workaround to a broken system. Updating archaic processes, policies and systems is fundamental to agency and individual performance.

It's also useful to reframe our approach to accountability and performance management. If we get to the point of firing someone, then there have been multiple breakdowns in the process along the way. I encourage the committee to focus on the entirety of employee accountability – from fixing the hiring process to ensure we are hiring highly-qualified individuals, to developing employees and training managers, to modernizing the systems that allow employees to effectively work across the enterprise. These elements are crucial components for any high-performing organization and are all critical parts of accountability.

It's not just the federal government – performance management is a challenging component of any organization. Even private sector companies haven't cracked the code on how to do it best. For example, comparably sized companies like Walmart, Home Depot, and FedEx have adapted their performance management systems many times over the years. However, the private sector clearly views these functions as worth investing in, evidenced by how these companies have established clear cultural values, employee development programs, and performance appraisal, enforcement and reward systems.

At its core, the federal government is a huge, complex organization staffed by professionals. They come to work to do important, mission-driven jobs and they need business systems in place to support them. The bar is high because they must be good stewards of taxpayer dollars and the public trust, serving all Americans who pay into the system – including your constituents. And ultimately, they must be held accountable for their performance in service of the public.

Charting a Constructive Path Forward

Being good stewards of taxpayer dollars and public trust means we need to focus on the pieces that are most resource intensive and fix them. Dealing with poor performers is necessary, but isn't the only reform needed. High performing organizations invest in the employee lifecycle and the tools employees need to do jobs well – recruitment, hiring, development, performance goals and

²¹ "2023 Federal Employee Viewpoint Survey Results," Office of Personnel Management, <https://www.opm.gov/fevs/reports/governmentwide-reports/governmentwide-reports/governmentwide-management-report/2023/2023-governmentwide-management-report.pdf>

conversations, strong supervisors and leaders, and resources (such as modern IT systems, data infrastructure, etc.).

Here are five ways that Congress can modernize the federal workforce and improve performance management:

1) Hold managers and leaders accountable for employees' performance

More than 40% of respondents to the 2023 Federal Employee Viewpoint Survey, the annual nationwide survey of federal employees, reported that poor performers usually remain in their work unit and continue to underperform. This shows that the process is broken and not utilized as intended to deal with legitimate performance issues.

Often managers don't know where to turn when dealing with performance issues. That's partly because we've given people the wrong tools — a single check-the-box supervisor training will not equip someone with the necessary information and resources to take action to hold people accountable. Government needs to develop new, data-driven performance management practices and agencies should be granted the ability to do pilots in conjunction with OPM, following the example of companies in the private sector which continually work toward better systems.

Additionally, agencies need robust human resource functions with HR specialists dedicated to helping employees and supervisors navigate performance management (from setting performance goals, to appropriately rating employee performance, to dealing with poor performance). Agency HR offices are currently not staffed or resourced to provide this type of consultative support that employees need.

Managers should be skilled and supported to hire, onboard, develop, set performance goals, and fairly address performance issues and discipline when needed. Employees who are identified as possible supervisors or those who want to manage people should have to take supervisor training courses along with meeting supervisory skills requirements — and there should be alternate non-supervisory paths for technical experts to progress in their careers. Members of the Senior Executive Service (SES) and political leaders should also have performance plans weighted toward leading people, in addition to driving results.

2) Reform use of the probationary period

While supervisor development, training and leadership attention are critical to holding employees accountable for performance and outcome delivery, there are other areas the committee should consider when streamlining accountability processes. An initial step is to strengthen managers' use of the probationary period for new employees.

The probationary period for new employees is meant to give supervisors time to evaluate whether someone is a good fit for the job. It's typically one year long and is designed to be the final assessment in the hiring process. However, supervisors often do not use this period to ensure new employees have the skills they need to thrive in their new role or take proactive steps, including removal, if someone isn't the right fit. If an employee is not performing well, agencies should have a

process to provide them with additional training, move them to a different position where they are a better fit or terminate them before the probationary period ends.

3) Streamline the employee appeals process

The current federal process for dealing with employee complaints and appeals is fundamentally flawed and does not adequately serve the needs of either managers or employees. Federal employees have access to multiple and sometimes overlapping dispute resolution forums on a wide range of issues and it can routinely take over a year or more to receive a final answer, confusing both managers and employees, and delaying resolution. In fiscal year 2023, it took agencies an average of 102 days to process an employee's initial appeal, according to the Merit Systems Protection Board that adjudicates some employment cases.

For managers, the process of removing or disciplining an employee is daunting in terms of the time and effort required, and often discourages managers from taking appropriate actions. They are not properly trained in handling these situations and often lack the will and the top-level support to act because of the concern about the personal toll and disruptive impact it may have on the work unit. For employees who have been terminated, face disciplinary action or have some other appealable dispute, it can take many months or well over a year to achieve resolution. This system leaves employees in limbo and is demoralizing for the large majority of workers who are performing well.

If an employee is disciplined or terminated for poor performance or misconduct, there needs to be a quick and streamlined review and appeals system, one that provides due process protections and ensures decisions are not politically motivated. The process should be easy to understand, leading employee and employer alike to a fair and expeditious resolution. One option would be to limit most types of employee complaints and appeals to a single authority. Currently, employees can file grievances or appeals with a wide range of bodies, including the MSPB, the Federal Labor Relations Authority, the Equal Employment Opportunity Commission, the Office of Special Counsel and certain federal courts. Streamlining these options while upholding due process rights would reduce the chance of delays or inconsistent rulings.

4) Reform the political appointments process

While the focus of this testimony is on preserving a merit-based civil service, an important related area in need of reform is the process by which a president installs top political leaders. These leaders help a president carry out priorities across the government and set a vision for the career federal workforce to follow. With each successive president, though, the confirmation process for over 1,300 positions requiring Senate confirmation has become lengthier and more arduous. The average time to confirm a nominee in President Reagan's first term was 49 days. For President Trump's term the average was 160 days and now for President Biden it is 182 days. Meanwhile, scores of positions simply go vacant because the number of positions subject to confirmation is unwieldy for both the White House and the Senate.

Many of these positions, while important, report to other layers of Senate-confirmed positions, and therefore could be converted to positions not requiring Senate confirmation. Other procedural reforms could make the confirmation process more efficient, while preserving the Senate's role in

advice and consent. The Partnership has laid out recommendations for improving the appointments process both before this Committee and the Senate Committee on Rules and Administration.²² We look forward to continuing to work with you as we try to create the kind of bipartisan agreement that emerged in 2011 and 2012, when Congress reduced the number of positions subject to Senate confirmation and the Senate created the Privileged Calendar to expedite nominations for positions that are typically not controversial.

5) Prioritize improvements to how our government serves the public

To build a truly effective government, it's critical to prioritize areas that will improve how it serves people. In addition to performance management, these are four additional reforms that would provide our government with what it needs most – a way to offer the public simple and timely access to services like Social Security, veterans benefits and health care; modern, secure IT systems that help keep our country safe and secure; and highly qualified federal leaders and employees who are committed to the public trust and are good stewards of taxpayer dollars.

- *Make it easier to hire and keep great public servants:* Agencies should evaluate current hiring processes to discover where they are not working for applicants, hiring managers and human resources specialists and then take steps to make the system work better, including identifying areas where a change in law is necessary.
- *Modernize leadership requirements:* All federal executives and managers, including political appointees, should be required to meet a consistent standard for leadership that holds them accountable for running healthy and high-performing agencies. The government should adopt a framework that requires leaders to prioritize and demonstrate skills essential to effective federal service, including the foundational value of being a steward of the public good.
- *Build modern, customer-friendly services:* Federal employees at all levels should be held accountable for providing first-rate customer experience. Agencies should identify senior officials to lead customer experience work, fund and staff customer experience teams, and encourage the adoption of best practices across the organization.
- *Make better use of artificial intelligence, technology and data:* Congress must work with federal agencies to implement a long-term funding strategy to modernize outdated technology systems, collaborate to develop uniform rules around the responsible use of emerging technologies like artificial intelligence and use data more effectively to inform federal policies, services and programming.

²² Testimony of Kristine Simmons, Partnership for Public Service, before the Committee on Homeland Security and Governmental Affairs at hearing entitled, "Examining the Senate Confirmation Process and Federal Vacancies," March 3, 2022, <https://presidentialtransition.org/our-priorities/reducing-confirmed-positions/>; Testimony of Jenny Mattingley, Partnership for Public Service before the Committee on Rules and Administration at hearing entitled, "Senate Procedures to Confirm Nominees," July 30, 2024, https://www.rules.senate.gov/imo/media/doc/c0b04070-9fc6-0bf3-2ea7-c0d4a3ca93fd/Testimony_Mattingley.pdf.

Conclusion

Thank you again for holding this hearing and focusing on how to build a more trustworthy government, support a stronger federal workforce, and preserve a nonpartisan national security workforce. As outlined, we believe that constructive, forward-looking reform efforts—like addressing performance management challenges and boosting customer experience efforts—will be most effective in accomplishing this goal.

While dealing with poor performers is a process every organization needs to be prepared for, it is impossible to fire one's way to success. As this subcommittee has shown through its oversight, accountability means tracking and improving outcomes over the entirety of an employee's time at the agency, as well as investing in the workforce population as a whole—from hiring to professional development and growth, to strategic workforce and succession planning—and streamlining the systems and tools they need to work effectively.

We appreciate the Committee's important role in reviewing possible solutions and updates to significantly outdated laws to best help our federal government serve the American people. We have identified reform opportunities in our "Vision for a Better Government"²³ and throughout this testimony, and we look forward to working with you to further identify and implement reforms.

²³ "Vision for a Better Government," Partnership for Public Service, August 15, 2024, <https://ourpublicservice.org/publications/vision-for-a-better-government/>



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**CORRECTED TESTIMONY OF
THOMAS DEVINE**

**LEGAL DIRECTOR
GOVERNMENT ACCOUNTABILITY PROJECT**

**HEARING ON
“REPLACING NON-PARTISAN CIVIL SERVANTS WITH POLITICAL HIRES”**

**BEFORE THE
SENATE HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS COMMITTEE**

SEPTEMBER 17, 2024

Chairman Peters, Ranking Member Paul, and members of the Committee:

Thank you for inviting my testimony. This committee has been the leader for legislation to protect whistleblowers, those employees who use freedom of speech to challenge uses of power that betray the public trust. My name is Thomas Devine, and I serve as legal director of the Government Accountability Project,¹ a nonprofit, nonpartisan, public interest whistleblower protection and advocacy organization. Government Accountability Project has led or been on the front lines of campaigns to enact or defend nearly all modern whistleblower laws passed by Congress, including the Whistleblower Protection Act of 1989,² as well as 1994 and 2012 amendments to this legislation.

We led the campaigns for passage of all three generations of the Whistleblower Protection Act, the primary law that empowers federal employees to report violations of laws, rules or regulations, gross mismanagement, gross waste of funds, abuses of authority, and substantial and specific dangers to the public health and safety free from retaliation. Our work for corporate whistleblower rights includes those in the government contractor law,³ the Sarbanes-Oxley law to protect some 40 million workers in publicly-traded corporations,⁴ the 9/11 law for ground transportation employees,⁵ the defense authorization act for defense contractors,⁶ the Consumer Product Safety Improvement Act for some 20 million workers

¹ Founded in 1977, Government Accountability Project promotes corporate and government accountability by protecting whistleblowers, advancing occupational free speech, and empowering citizen activists.

² Whistleblower Protection Act, 5 U.S.C. § 2302 (b)(8)-(9).

³ National Defense Authorization Act for Fiscal Year 2013, 41 U.S.C. § 4712.

⁴ Sarbanes-Oxley Act of 2002 (SOX) (2002) 18 U.S.C. § 1514A.

⁵ National Transit Systems Security Act of 2007 (NTSSA), 6 U.S.C. § 1142.

⁶ National Defense Authorization Act for Fiscal Year 1987, 10 U.S.C. § 4701.

connected with retail sales,⁷ the Energy Policy Act for the nuclear power and weapons industries,⁸ and AIR 21⁹ for airlines employees, among others.

Internationally, we teamed up with professors from American University Washington College of Law to author a model whistleblower law approved by the Organization of American States (OAS) to implement its Inter-American Convention against Corruption. In 2004, we led the campaign for the United Nations to issue a whistleblower policy that protected public freedom of expression for the first time at intergovernmental organizations, and in 2007 analogous campaigns at the World Bank and African Development Bank. Last December we led a successful campaign with the United Nations Convention Against Corruption for a resolution favoring best practice global whistleblower rights enacted unanimously by 160 nations. Government Accountability Project served as the technical expert on the front lines of successful campaigns to pass whistleblower laws in Serbia and Ukraine, and to defeat an anti-whistleblower law in Slovakia. I regularly participate in speaking tours for the State Department in countries that consider whistleblower laws.

Government Accountability Project has published numerous books and law review articles analyzing and monitoring the track records of whistleblower rights legislation. *See The Whistleblower's Survival Guide: Courage Without Martyrdom*,¹⁰ *The Whistleblower Protection Act of 1989: Foundation for the Modern Law of Employment Dissent*,¹¹ *The Whistleblower*

⁷ Consumer Product Safety Act (CPSA) (text added by the Consumer Product Safety Improvement Act of 2008), 15 U.S.C. § 2087.

⁸ The Energy Policy Act of 2005, 42 U.S.C. §15801, amended the whistleblower protection provisions of the Energy Reorganization Act of 1974, 42 U.S.C. §§5841 and 5851.

⁹ Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR21) (2000) (text added by the Aircraft Certification, Safety, and Accountability Act of 2020), 49 U.S.C. § 42121.

¹⁰ Tom Devine, *The Whistleblower's Survival Guide: Courage Without Martyrdom* (Fund for Constitutional Government, 1997)

¹¹ Thomas M. Devine, "The Whistleblower Protection Act of 1989: The Foundation for the Modern Law of Employment Dissent," *Administrative Law Review*, 51, no. 2 (1999): 531–79. <http://www.jstor.org/stable/40709996>.

Statute Prepared for the Organization of American States and the Global Legal Revolution Protecting Whistleblowers,¹², *The Art of Anonymous Activism* (with Public Employees for Environmental Responsibility (PEER) and the Project on Government Oversight (POGO)), in 2001, revised in 2017 as *Caught Between Conscience and Career: Expose Abuse Without Exposing your Identity* (again with PEER and POGO);¹³ the global survey and evaluation of whistleblower laws, *Are Whistleblower Laws Working? A Global Study of Whistleblower Protection Litigation* (with the International Bar Association);¹⁴, and *The Corporate Whistleblower's Survival Guide: A Handbook for Committing the Truth*.¹⁵ The latter won the International Business Book of the Year Award at the Frankfurt Book Fair.

Along with the POGO, Government Accountability Project also is a founding member of the Make it Safe Coalition, a non-partisan, trans-ideological network of 75 organizations whose members pursue a wide variety of missions that span defense, homeland security, medical care, natural disasters, scientific freedom, consumer hazards, and corruption in government contracting and procurement. We are united in the cause of protecting those in government who honor their duties to serve and warn the public. Our coalition led the citizen campaign for passage of the Whistleblower Protection Enhancement Act (WPEA). Our coalition's members include good government organizations ranging from the National Taxpayers Union to Common Cause; environmental groups from Council for a Livable World, Friends of the Earth and the

¹² Robert G. Vaughn, Thomas Devine and Keith M. Henderson, "The Whistleblower Statute Prepared for the Organization of American States and the Global Legal Revolution Protecting Whistleblowers," *The George Washington International Law Review* 35 (2003): 857

¹³ Government Accountability Project, Project on Government Oversight, and Public Employees for Environmental Responsibility, *Caught Between Conscience & Career: Expose Abuse Without Exposing Your Identity* (2017), https://s3.amazonaws.com/docs.pogo.org/publication/Caught_Between_Conscience_and_Career.pdf.

¹⁴ Samantha Feinstein and Tom Devine, "Are whistleblower laws working? A global study of whistleblower protection litigation," *Government Accountability Project and the International Bar Association* (2021), <https://whistleblower.org/wp-content/uploads/2021/03/Are-Whistleblowing-laws-working-REPORT.pdf>

¹⁵ Tom Devine and Tarek F. Maassarani, *The Corporate Whistleblower's Survival Guide: A Handbook for Committing the Truth* (Berrett-Koehler Publishers, 2010).

Union of Concerned Scientists; conservative coalitions and organizations such as the Competitive Enterprise Institute, American Conservative Defense Alliance and the American Policy Center; to unions and other national member based groups from the American Federation of Government Employees to the National Organization for Women. But the coalition itself is only the tip of the iceberg for public support of whistleblowers. Some 400 organizations with over 80 million members joined the petition for passage of the Whistleblower Protection Enhancement Act of 2012.

My testimony includes an analysis of Executive Order (EO) 13957, Creating Schedule F in the Excepted Service, issued October 21, 2020.¹⁶ This Order would allow replacement of non-partisan professionals in the civil service with political hires. However, I think I've been invited to share a history lesson, because history repeats itself. Schedule F is a déjà vu structure for the "Malek Manual" (officially titled the Federal Political Personnel Manual), a comprehensive effort issued in 1973 during the Nixon Administration to functionally replace the civil service with a political spoils system.¹⁷ My knowledge comes from reviewing thousands of pages of Freedom of Information Act (FOIA) documents from 70 federal agencies that implemented the system. The research was to prepare a Fund for Constitutional Government report with attorneys Joseph Gebhardt and William Dobrovir, "Blueprint for Civil Service Reform" (henceforth "Blueprint").¹⁸

¹⁶ Executive Order 13957, "Creating Schedule F in the Excepted Service," (October 21, 2020),

<https://www.federalregister.gov/documents/2020/10/26/2020-23780/creating-schedule-f-in-the-excepted-service>.

¹⁷ See "Federal Political Personnel Manual: The 'Malek Manual,'" *The Bureaucrat*, Vol. 4, No. 4, pp. 429-508 (January 1976), reproduced at <https://whistleblower.org/wp-content/uploads/2024/09/122473090-Malek-Manual-1.pdf>.

¹⁸ Fund for Constitutional Government, "Blueprint for Civil Service Reform," (1976). <https://whistleblower.org/wp-content/uploads/2024/09/Blueprint-for-Civil-Service-Reform.pdf>. Text drawn from the Malek Manual will be specifically referenced. Any other passages will be drawn from the 1976 Blueprint report, for which footnote documents no longer are available.

Attempts to substitute patronage hires for civil servants are as old as the government labor force. However, traditionally the civil service largely has kept politics out of public service. As the National Civil Service League observed in 1961, “The great battles against the corruption of the federal spoils system have been largely won.”¹⁹ The Malek Manual was an unabashed effort to abolish the merit system, and it was thoroughly discredited in the Watergate hearings. Eerily, its roots were strikingly similar to the practices enabled by Schedule F.

Today’s testimony should be put in perspective. Attempts to engage in political control of the federal labor force are a tireless, bi-partisan tradition. For example, Government Accountability Project has as active a whistleblower docket under President Biden as we did under President Trump. Schedule F, however, stands out. It is a structure to openly do what President Nixon tried to accomplish in secret.

DOES THE MERIT SYSTEM SERVE OR UNDERMINE GOVERNMENT SERVICE?

The Malek Manual emphatically answers that question: “There is no merit in the merit system!” (emphasis in original).²⁰ Outside of open political objectives, the main justification was that cumbersome legal rights are a barrier to overhauling the federal labor force. The Malek Manual rejects them as lengthy red tape procedures that can greatly harm agencies due to litigation burdens, delays and bad publicity.²¹ The Manual’s conclusions also are ominous for whistleblowers. Mr. Malek justified using its tactics to avoid “the costs of the frequent crescendos of bad publicity that are sure to occur frequently and indefinitely if you do not.”²²

¹⁹ Blueprint, p. 105.

²⁰ Malek Manual, p. 478.

²¹ Ibid, p. 480.

²² Ibid, p. 508.

In the name of accountability for poor performance, Schedule F at Section 1 has an analogous justification: competitive hiring procedures are too complicated and elaborate; and the merit system's due process litigation procedures are too extensive, lengthy and difficult to remove employees.

These justifications do not justify canceling the merit system. A political spoils system replaces accountability to the Constitution, Congress and the public with accountability to the President. This is particularly dangerous, when the Supreme Court has held that the President has no accountability for official acts.

Congress enacted the merit system in 1883, because corruption from the spoils system was so extreme that a disappointed patronage seeker assassinated President Garfield. Further, corruption is a threat to democracy. There are almost 3 million federal employees. It would be hard for any leader to lose reelection with a head start of three million employees who have no other choice than to serve the politician's interest or be fired.

By contrast, despite the rule of law's messiness, the job rights protected by the merit system have strengthened government legitimacy by enforcing the law without regard to politics. It has assured continuity for expertise despite changes in political power. Because of tenure, the merit system attracts a far higher quality of candidates. The government needs top professionals, not patronage hires, for decisions where to award high-stakes grants; to call the bluffs of those operating illegally; to conduct life-saving research; to oversee government contractors; and to prevent mistakes due to ignorance or political abuse of power.

Whistleblower protection is a merit system cornerstone. Consider how this right has made a difference. Due to their merit system rights, whistleblowers have been able to:

- expose and spark corrective action against routine Pentagon purchases of the world's most expensive nuts, bolts, toilet seats and coffee pots.

- expose blanket domestic surveillance to congressional oversight committees that began the process of restoring accountability long before media leaks made the issue popular, disclosures that led to passage of the USA Freedom Act.
- force delivery of Mine Resistant Armored Protection (MRAP) vehicles to Iraq and Afghanistan that reduced land mines from 90% of casualties and 60% of fatalities, to only 5% of casualties.
- prevent the Federal Air Marshals from canceling its defensive missions and effectively going AWOL before a confirmed, more ambitious Al Qaeda rerun of 9/11.
- reveal indefensible breakdowns in aviation security such as routine exposure of undercover Federal Air Marshals.
- prevent the trillion dollars next phase of Star Wars, after the Army's top scientist blew the whistle on the program's inherent, structural inability to intercept enemy missiles.
- force repairs on nuclear power plants that were accidents waiting to happen, and plug leaks that were spewing millions of gallons of radiation into America's water supplies.
- expose and end the practice of our law enforcement agencies selling weapons to Mexican drug smugglers.
- expose that drugs such as Vioxx were pain killers that actually killed, leading to its removal from the market.
- reveal that federally funded programs to help abused foster children were diverted while the abuse victims were put in hails with adult criminals.
- disclose evidence how U.S. funded international programs at the United Nations and other Intergovernmental Organizations in practice was financing mass rapes and other human rights abuses by IGO "peacekeepers."

I could continue indefinitely, but the point should be clear. Thanks to their merit system rights, over and over whistleblowers have been able to expose national security breakdowns and abuses of power that only could be sustained by secrecy. Over and over, they have saved the public from government breakdowns in every direction. These victories for the public would not have occurred if they did not have the merit system freedom to expose the truth.

SUMMARY OF EXECUTIVE ORDER 13957

Schedule F was the centerpiece of a sweeping plan to cancel civil service rights. President Trump ordered it just weeks before the 2020 election, so there was not time to

implement the new system. It subsequently was canceled by the Biden administration but has resurfaced in the current election campaign. In the introduction the EO's stated scope is that it applies to confidential policy-determining, policy making or policy advocating "jobs not normally subject to change after an election." In other words, competitive service jobs. In Section 2, the EO defines its scope as all positions whose appointment would require assent by the White House Office of Personnel. While this could limit Schedule F's reach, the White House can expand or shrink that list. Even if initially limited, the history of the Malek Manual was first to test its techniques in more limited beach head settings before replacing the entire civil service.

The text of the EO is so open-ended, however, that the limited boundaries are not reliable even now. For example, section 5(c), positions of a "confidential, policy-determining, policy-making, or policy-advocating character," include employees who work on agency regulations; have discretion in exercising legal functions; engage in activities covered by the deliberative process; work for or with anyone who is GS-13 or higher; or conduct collective bargaining negotiations. What else is left?

Further, in section 4 the EO's scope subsumes merit system positions in Schedules A, B, C, D, E, and F. This means the merit system will not apply for jobs when competitive examinations and academic qualifications are "impracticable." Administrative Law Judges and government attorneys would become at will, political employees. The new Schedule F would apply to existing jobs and incumbents, not just new positions.

While prohibited personnel practices would still apply, their independent enforcement would vanish. Section 6 of the EO directs agencies to create internal systems for enforcement of prohibited personnel practices. This means that the same agencies which for 45 years have been

defendants in prohibited personnel practice cases now will have an honor system as the organizational judge and jury of their own alleged misconduct. In short, Schedule F will turn the Whistleblower Protection Act into a bad joke, with the fox defending the chicken coop.

Schedule F may run into significant legal barriers. For example, the Supreme Court has held that due process is a constitutional right for positions with for cause removal. *Cleveland Board of Education v. Loudermill*, 470 U.S. 532 (1985). In *Roth v. Brownell*, 215 F.2d 500 (D.C. Cir. 1954), the court held that employees retain their prior due process rights when removed at will. Merit Systems Protection Board (MSPB) case law respects this principle. *Briggs v. National Council on Disability*, 68 M.S.P.R. 296 (1996)

THE MALEK MANUAL

In January 1973, the Malek Manual was introduced to 40 federal agencies at a four-day rollout. It consolidated policies that had been evolving since 1969. Although Fred Malek had responsibility as Director for the White House Personnel Office, Alan May actually wrote the document and actively participated in beach head programs at agencies such as ACTION.²³ Other agencies that functionally served as pilot programs included the Federal Communications Commission, Department of Health, Education and Welfare, Department of Housing and Urban Development, General Services Administration and Small Business Administration. In December 1970, Mr. Malek completed an assignment for a management report on the civil service system. The report recommended that the White House make all personnel decisions for the federal government, with agencies providing bi-weekly personnel reports to the White House

²³ ACTION was “the federal domestic volunteer agency” that centralized programs such as the Peace Corps and Volunteers In Service to America (VISTA). See Ryan Wells, “Volunteers in Service to America,” *Encyclopedia Britannica* (last visited September 15, 2024), <https://www.britannica.com/topic/Volunteers-in-Service-to-America>.

using a political rating system for “must” and “priority” and less favored applicants. In January 1971 President Nixon approved the recommendations. The Malek Manual served as a blueprint for how to implement them.

Malek Manual Objectives

Those behind the plan to bypass the civil service system repeatedly reaffirmed that political hiring was the objective. A June 23, 1971 White House memo with top Nixon aides discussed the importance of patronage so that Administration activities would be supported by “loyal troops.” As the Malek Manual later explained, “Political disloyalty and insipatoco relationships with the Administration, unfortunately, are not grounds for removal or suspension of an employee.”²⁴ The Manual listed two explicit objectives:

The overriding goal to be achieved is to insure placement in all key positions of ... politically reliable officials with a minimum burden on line managers in achieving that goal. The objective of that goal is firm political control of the Department, or agency....

Another function is to insure that personnel, which is a resource of the Government ... is utilized in a manner which creates maximum political benefit for the President and the Party.²⁵

While the Manual also had references to better government performance, the bottom line was clear: “reasonably guarantee the appointment to positions of candidates who are ‘clean’ with respect to previous political activity, national security matters, etc.”²⁶

Scope of the Program

Although entitled as applicable for non-career positions, in practice as Mr. Malek later conceded at the Watergate hearings, it was applied to competitive career jobs for pre-Manual incumbents. The Civil Service Commission confirmed the widespread practice for career jobs at

²⁴ Malek Manual, p. 500.

²⁵ Ibid., pp. 433-434.

²⁶ Ibid, p. 455.

GSA. At the FCC, compliance with the 1971 memo routinely extended to career positions. If a non-career job was unavailable, the favored candidate received a career position. At ACTION, even the most highly qualified candidate with a failing political acceptability code would be put in the rejection category. At HUD the selection criteria included loyalty, political support and political affiliation.

Both government attorneys and financial managers would be covered. The Manual explained why it was a “necessity” that those employees be “loyal members of the Administration team. Through the manipulation of money and slots they can be of invaluable aid and/or create insurmountable roadblocks to the programs and goals of your Department or Agency.”²⁷

To assure control, in 1971 agencies had to demonstrate compliance with a political ratings system for new hires – “must,” “priority,” “courtesy,” or “routine.” Agencies had to place all “musts” and at least 50% of “priority” applicants. In 1972 two new categories were added – “politically undesirable” and “political problem.” The latter referenced competing referrals from different political patrons.

The Manual refined and defined the ratings:

I—Must Placement The candidate because of his own past political activities and/or the importance of his placement to his political sponsor(s) leads the evaluator to believe that his placement in a position commensurate with his ability and background will bring great political credit to the party and/or the President, while, conversely, failure to place the individual will cause severe political damage to the party and/or the President.

II—Priority Placement The placement of the individual in a position commensurate with his ability and background will bring political benefit to the party and/or the President, while, conversely, failure to place the candidate will cause some political adversity to the party and/or the President.

III—Courtesy Referral The individual is to be judged on his own merits but should receive a massaging as a political courtesy, and if he is placed some small political benefit to the party

²⁷ Ibid., p. 497.

and/or the President will be derived, while failure to place him will cause little or no political adversity to the party and/or the President.

IV—Politically Undesirable The placement of the individual will create strong political adversity to the party and/or the President while, conversely, the failure to place the individual will be politically beneficial to the party and/or the President.

V—Political Problem This category is a holding category until a determination can be made whether or not to place the individual in one of the above four categories. For example: the Republican Senator from a state says a candidate is a must placement and is essential because the candidate's father is the Senator's largest contributor and finance chairman and crucial to the Senator's reelection. Meanwhile, the Republican Governor of that same state and a Republican Congressman from that same state who sits as a ranking Republican on your agency's appropriations committee strongly object to the individual's placement because he has traditionally and vocally backed their Democratic opponents in past campaigns. It is evident that some additional political research and decision making is going to have to take place before you can make him a Category I or a Category IV.²⁸

The political screening did not end with a rating. For long term oversight, the 1971 memo instructed that an “abstract” outside normal personnel records would track each employee’s political activities. In other words, a patronage dossier.

Patronage Infrastructure

The Malek Manual implemented the 1971 memo with a detailed, step-by-step blueprint to achieve political control through personnel actions. There were two overriding principles. The first was White House supremacy over the agencies, from initial interviews through clearances.²⁹ The second was absolute secrecy to keep the President “disassociated.” Indeed, instructions for patronage hires were to be made verbally. At ACTION, relevant documentation literally was thrown in the garbage.

The foundation for implementation was a Political Personnel Office at each agency. The Manual established that responsibility would lie with an Assistant Secretary for Administration,

²⁸ Ibid., pp. 441-442.

²⁹ Ibid., p. 456.

but the operation would be run by a “Special Assistant” from the White House.³⁰ To impress staff the Special Assistant’s operations should be located near the agency head with “majesty of décor.”³¹ The Offices would handle patronage, recruitment both for career and non-career jobs, initial interviews and clearances to enforce political and other criteria.

The Political Personnel Offices had decisive control of the process. Each agency had to provide three months of advance notice for vacancies. The Office then would interview candidates recruited or selected from its talent pool or other political referrals. After completing political checks and screening out unfavorables, the Special Assistant would refer selected candidates for agency personnel offices to formalize the position. Through this structure, personnel offices were reduced to a paperwork function. As observed in the Manual, “In this way the deck is essentially stacked before the cards are dealt and rarely is a selection disapproved.”³²

The operation had a research and development (R&D) Branch as well. The R&D team was charged with determining those positions in which a “loyal” competent incumbent is necessary to effect control.” In particular, they would include employees whose jobs included communications with the media or Congress, and those controlling disbursement of resources.³³ This function could easily be applied to creating newly designated confidential policy jobs under Schedule F.

Tactics to Purge Incumbents

After ruling that political disloyalty isn’t grounds for removal of civil service employees, the Malek Manual reassured “[T]here are several techniques which can be designed, carefully, to

³⁰ Ibid, p. 434-435.

³¹ Ibid., p. 435.

³² Ibid., p. 439.

³³ Ibid., p. 446.

skirt around adverse action proceedings.”³⁴ Below is a summary of tactics relied upon or to implement the 1971 memo.³⁵

- Designate non-policy jobs as policy positions although there were no relevant duties, a vulnerability directly relevant to Schedule F.
- Engage in a “frontal assault,” telling employees they are not wanted and offering them the choice of resigning with positive references, farewell lunches and possible commendations; or refusing to go and getting fired with a permanent campaign to warn other employers about them.
- Use the “traveling salesman” tactic, assigning the employee to tasks scattered throughout the country nonstop “until his wife threatens him with divorce unless he quits.” Again, offer the same carrot and stick options with respect to the far-flung tasks.
- Transfer to new positions the employee cannot accept, due to financial, family or other obligations.
- Reassign the employee to a meaningless job.
- Reorganize the department to isolate or remove the employee.
- “Tear Up” the current job description and then rewrite it so the incumbent no longer fits duties tailored for the political hire.
- Engage in “layering” so that a “special assistant” employee duplicates the incumbent as a prelude before the latter is forced out.
- Notify the White House of vacancies before the Civil Service Commission, so that the political candidate list can be timely completed.
- Dilute the qualifications in vacancy announcements to justify selection of unqualified “must” applicants.
- Formalize but don’t post the vacancy announcement.
- Fill a position with a temporary appointment of the political hire before posting the vacancy announcement for a permanent position.
- Use “availability of service” to bypass the competitive process for “pressing need” appointments.

³⁴ Ibid., p. 500.

³⁵ Ibid., pp. 478, 497, 500-507.

- Make appointments as exceptions during strategically scheduled hiring freezes.

Although initially the programs were identified as limited to non-competitive appointments, as seen earlier in practice the system covered competitive jobs as well. The impact was far-reaching. To illustrate, GSA Personnel Office whistleblower Arthur Palman and five others processed 700 “must” referrals in four years. Palman had to work full time implementing decisions by the White House and its agency liaison. The Civil Service Commission found that a Special Referral Unit worked outside the Personnel Office to, variously, make exceptions to hiring freezes; act outside the Personnel Office to create jobs; use temporary appointments to get “must” applicant’s feet in the doors; embellish the qualifications of unqualified “must” applicants; and manipulate job descriptions.

Examples illustrate the policy’s impact on the quality of public service. At the Environmental Protection Agency (EPA), a “must” hire’s qualifications included working enthusiastically at the Republican National committee for the previous five years. In February 1973, the White House wrote to all agency Political Personnel Offices reminding them that it had ordered jobs for a large number of campaign and inaugural workers throughout the government. White House staffer Jerry Jones wrote that “it is extremely important that you and your staff make these candidates your highest priority and complete their permanent placement in the near future.” Quite clearly, the goal was not improved public service. The priority was restricting the federal labor force to political loyalists in order to achieve political control.

This 1973 blueprint for political hiring is not merely a historical document. In 1981 and 1982, Special Counsel Alex Kozinski had it on his desk while he purged staff with civil service backgrounds from the Office of Special Counsel, the merit system’s watchdog agency. During the last Congress, Government Accountability Project opposed confirmation of the nominee for

Board Chair after MSPB whistleblowers alerted us that he was studying the Malek Manual as a policy guide. Schedule F enables history to keep repeating itself.

RECOMMENDATIONS

There cannot be credible debate that the current personnel system has frustrated both management and employees alike. Nor can there be credible dissent that the federal government more effectively should be held accountable for misuse and abuse of power. The way to strengthen accountability, however, is not to cancel it in the rule of law. A spoils system will result in a labor force whose first duty is political loyalty, rather than public service.

There are better ways to further merit system public service goals than canceling the merit system. Below are recommendations for your consideration:

1) Require the Merit Systems Protection Board to issue a state of the merit system report. This has been a statutory duty required by 5 U.S.C. § 1204(a)(3) since passage of the Civil Service Reform Act of 1978 that the Board never has honored. By assessing strengths and weakness, it should be the necessary foundation to overhaul a frustrating administrative process. The Board's report should be followed by an independent General Accountability Office assessment of its findings.

2) Intensify congressional oversight. There has not been an oversight hearing on the Whistleblower Protection Act since 2017. The Board needs to know that Congress is watching.

3) Make oversight of and strengthening whistleblower protection a committee priority. Whistleblowers risk their professional lives to challenge government fraud, waste and abuse. Schedule F would transform those rights into agency honor systems.

4) Provide a “kick-out” due process safety valve for transfer of delayed MSPB whistleblower cases to federal court jury trials. Delays due to backlogs have been a primary source of frustration. The new Board still has roughly half of cases remaining from some 3,800 backlogged at the end of 2023. This recommendation would upgrade civil service due process rights to those in all modern private sector laws, as well as rights for state and local government workers. They all have access to court and jury trials to defend their rights. Civil servants are the only major sector of America’s labor force without court access to defend their free speech rights. It also would significantly ease backlog pressures at the Board, as whistleblower cases are far more complex and burdensome than other civil service disputes.

5) Perform necessary maintenance on the administrative process. Rather than throwing out the baby with the bathwater, Congress should provide more funds for Board fact finders, promote them from Administrative Judges to Administrative Law Judges and require that their qualifications include prior service and respect for the merit system. Currently most AJ’s either come from agency lawyers who served as defense counsel in employee rights cases, or from the Judge Advocate General staff. They have grown up professionally by fighting merit system rights. Schedule F would intensify the bias by making them at will employees defenseless against political pressure.

The way to improve inadequate accountability is not by replacing the rule of law with no accountability for absolute presidential power that can be politically abused. Thank you for this opportunity to be heard. Government Accountability Project is on call to be helpful.



CONGRESSIONAL TESTIMONY

STATEMENT FOR THE RECORD

STATEMENT OF EVERETT B. KELLEY, NATIONAL PRESIDENT,
AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO

PROVIDED TO THE

SENATE COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENT AFFAIRS

HEARING ON

“ENSURING A TRUSTWORTHY GOVERNMENT: EXAMINING THE
NATIONAL SECURITY RISKS OF REPLACING NONPARTISAN CIVIL
SERVANTS WITH POLITICAL APPOINTEES”

SEPTEMBER 17, 2024

Chairman Peters, Ranking Member Paul and Members of the Committee: My name is Everett Kelley and I am the National President 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 across the country and around the world. On their behalf, I thank you for inviting AFGE to share its views on the important topic before the Committee this morning, “Ensuring a Trustworthy Government: Examining the National Security Risks of Replacing Nonpartisan Civil Servants with Political Appointees.”

AFGE cannot overstate our commitment to the apolitical, professional federal civil service. Proposals to reclassify the hundreds of thousands of federal positions currently in the competitive service to the political excepted service are profoundly wrong and should be categorically rejected. The reclassification aimed at politicization would create not only dire national security risks, it would also undermine the ability of executive branch agencies to achieve their missions on behalf of the American people. It is absolutely essential that the executive branch continue to fill the vast majority of its positions on the basis of open competition and assessment solely on the basis of objective criteria such as experience and technical expertise. Candidates for jobs in the federal civil service should and must be assessed exclusively on their ability to perform the duties of the position for which they are competing, not their political affiliation or support for any particular president’s ideological agenda.

Maintaining an apolitical merit-based civil service is as crucial for federal jobs that do not implicate national security as it is for those that do. Partisanship has no place in a workforce charged with upholding the Constitution and faithfully executing the laws of the United States. And it certainly has no place whatsoever in positions that involve our nation’s national security. Since the Vietnam War, and especially since the Iraq War, Americans’ distrust of agencies connected to national security and suspicions that these agencies routinely politicize intelligence have risen sharply. Given this, AFGE is particularly at a loss to understand why Congress would entertain reclassifying apolitical positions that implicate national security into political appointments.

Before describing why AFGE opposes such proposals, it is important to stipulate from the outset that AFGE supports the right of a president, regardless of party, to appoint officers and senior personnel to federal agencies and departments based on criteria that are consistent with that president's policy priorities, and to remove them when their conduct or performance displeases a president. Presidents are elected to set policy across the federal government, and they cannot do this without senior personnel whom they trust, who subscribe to their political outlook, and who, presumably, possess the administrative competence and policy expertise to translate vision into actual policy.

Just as AFGE supports a president's right to appoint and remove a relatively small cadre of officials and senior personnel, we maintain that successful implementation of an administration's policy agenda depends on its execution by a nonpartisan competitively hired federal workforce. By the deliberate design of Congress in landmark civil service laws enacted in 1883 and 1978, the apolitical merit system has successfully created a federal workforce with the requisite knowledge, skills, and institutional experience. Without these requisites, successful implementation would be impossible. Implementing an act of Congress, an executive order, or a policy directive that is true to both the spirit and substance of the underlying law, order, or directive, complies with existing laws, and accomplishes its purpose as efficiently as possible is a technical challenge to which no workforce hired on the basis of political affiliation or obeisance to a president can rise. It simply would not be able to occur.

AFGE highlights the critical role of expertise, experience, and institutional knowledge in the implementation of presidential policy to push back against the patently false notion that political appointees are a superior alternative to career civil servants when it comes to the execution of presidential policy. No one should be fooled to believe that the zeal and single-minded devotion that political appointees would bring to the implementation of any given administration's agenda, and the constant threat that such appointees could be summarily fired for falling short, would be enough to succeed in carrying out the responsibilities of our federal government. Further, the allegations that federal employees in the competitive service interfere with the achievement of any president's priorities is simply not supported by the facts. Such allegations are purely ideological attacks on the employees of the apolitical service who demonstrate, every

single day, their commitment to the well-being of the American people, our laws and Constitution, and the missions of the agencies that employ them.

Consider the civilian employees of the Department of Defense, a third of whom are veterans of the U.S. military, who come to work every day with one objective: to support our warfighters, maintain military readiness and lethality, and protect the security interests of our nation. What more would those who accuse them of thwarting a president's priorities ask them to do? With their support, our military is the strongest it has ever been; Defense Department civilian employees who procure, maintain and repair weapons and equipment, handle logistics and the multitude of tasks our military leaders require with a solemn commitment to our nation and its Constitution, not to any political leader or ideology, should not be threatened with the loss of their employment rights.

AFGE was relieved when President Trump's October 2020 executive order establishing Schedule F was rescinded in January 2021. That executive order would have stripped hundreds of thousands of federal jobs of the due process rights and protections connected to those positions. The Schedule F regime would have undermined decades of laws and policies designed to ensure that career civil servants are hired, given assignments, appraised, paid, disciplined, and removed solely on the basis of objective criteria.

Under this merit system, federal employees win a competition for the federal job they apply for on the basis of technical expertise, experience, and a demonstrable ability to perform the duties of the job, without regard to their party affiliations. They are given work assignments that have nothing to do with their party affiliation or political beliefs. They receive regular performance appraisals that measure how well they carry out their assigned duties, the duties of their position. They are paid salaries that reflect the duties and responsibilities of their jobs, not their party affiliation or ideological beliefs. And if they fail to perform these duties up to the standards set by their supervisors, they are disciplined or removed. However, federal employees in the competitive service are permitted due process rights of appeal of some forms of discipline up to and including termination. And the appeal is granted or rejected by an objective third party weighing evidence brought forward by both the agency official and the worker. Significantly,

these rights are intended to protect the integrity of the work civilian employees perform from political pressure and arbitrary interference.

Schedule F's excepted service classification, had it gone into effect, would have dispensed with these elements of the apolitical civil service and made every job so classified into an "at will" appointment. Note that "at will" employment means that the employer, in this case the federal government, is permitted to hire and fire for any reason or no reason. The only criterion for success would be demonstration of loyalty to the president's political agenda. That would be a dangerous path for federal agencies to follow.

The Schedule F executive order directed agencies to reclassify jobs that were in any way connected to "federal policy" – mid- to high-grade General Schedule positions broadly identified as 'confidential, policy-determining, policy-making, or policy-advocating.' There are currently approximately 500,000 federal jobs classified in Grades 13, 14 and 14 of the General Schedule, and a politically-motivated personnel agenda could contrive to identify most of them as being connected to policy. That is particularly true in the realm of national security functions, but it is also true in all agencies. The jobs classified as 13-15 involve policy at the Department of Homeland Security, the Departments of Labor, Health and Human Services, Transportation, Education, Energy and Veterans Affairs. They involve policy at the Social Security Administration, the Environmental Protection Agency, the National Science Foundation, the National Institutes of Health and the Federal Communications Commission, the Federal Trade Commission, the Nuclear Regulatory Commission, the Equal Employment Opportunity Commission, and so on. Imagine the entire top stratum of professionals in these agencies serving at the will of a capricious president. What could go wrong?

Designating so many positions in the civil service as at-will positions for which skill, experience, and performance could be ignored would be an unmitigated disaster for our country. What purpose would be advanced by replacing the seasoned and stable federal workforce who are now in the midst of transmitting institutional knowledge and know-how to younger career-focused hires with politicized, inexperienced, and transient individuals who would change with every administration? Far from facilitating the implementation of a president's policy agenda,

Schedule F would have government operations performed by unqualified amateurs whose primary qualifications are political. This national security vulnerabilities that Schedule F would produce are frightening to contemplate.

It is crucial to recognize Schedule F as only the most extreme example of proposals floated by a few so-called experts who have made careers of complaining that “it’s too hard to fire a federal employee.” These would-be civil service reformers generally rejected Schedule F as too crude when it was unveiled, but in truth, the scheme would have been a dramatic extension of existing excepted service hiring practices; had it gone into effect in 2021, Schedule F would merely have expanded the already pernicious growth of excepted service hiring. It bears reminding the Committee that the category of excepted service is supposed to be the *exception* to the default of the competitive service for federal positions. The excepted service enables federal hiring, promotion, pay and firing outside the standard processes of the competitive service. As such, far less vetting is done to make sure that applicants are suitable for a position. The justification is speed – hire faster, fire more easily. Another rationale is the recognition that federal salaries are too low, and the excepted service allows agencies to provide salaries higher than those a General Schedule classification would provide. Expanding excepted service positions, therefore, is most surely not a way to economize and save taxpayer money but rather a license for managers to authorize higher salaries to favored subordinates that is not commensurate with the work they perform – or authorized lower salaries to subordinates whom they disfavor.

For any Member of Congress who thinks the effective implementation of a president’s order, or an act of Congress, or a secretary’s directive, is routinely thwarted by an intransigent and unaccountable civil service, it bears pointing out that only half of the 2.1 million positions in the executive branch are actually occupied by individuals who were hired competitively. Due to the steady erosion of the competitive civil service in recent decades that seems to have been overlooked by Congress and public administration experts, the other half occupy excepted service or direct-hire positions for which criteria other than expertise, experience, and performance can be used in the selection for a federal job.

A parallel strain of reform proposals holds that if the existing civil service system is simply amended to make it easier to terminate federal employees by shortening time frames for appeals, lowering evidentiary standards, and excluding termination appeals from grievance and arbitration articles in collective bargaining agreements, then the best of the competitive nonpartisan civil service system can be preserved while making it “easier to fire a federal employee.” The flaw in these proposals is that they are based on the entirely false premise that federal law makes it too hard to terminate “poor performers” and that the process for terminating an employee accused of poor performance takes too long. As such, they complain bitterly that managers need new authorities that make the task of termination much faster and easier.

Federal managers have ample authority under the current system to discipline and terminate federal employees for poor performance or misconduct. That they must produce evidence of their allegations that can stand up to scrutiny by a disinterested third party and provide the employee full due process is the burden from which they would like to be relieved. They want to be able to say “you’re fired” and not have to prove that there is legitimate cause for the termination. But the absence of these due process rights for employees would be an invitation to hiring and firing for non-merit reasons: politics, personal animus, discrimination and, perhaps, to shift blame away from managers seeking to avoid accountability for their own mistakes.

We must have a system in place where a federal employee is protected from corruption and political pressures, and that is not compatible with instant gratification for managers regarding discipline and/or termination. The due process protections that federal employees possess are meant to ensure that the integrity of the work that federal employees perform cannot be easily compromised by inappropriate pressure exerted on them, by threats made to them, or by adverse actions taken against them by political appointees who are more interested in advancing an administration’s political priorities than complying with the law to which career civil servants swear to uphold in the course of their duties.

As the Committee considers the important topic before it this morning, AFGE urges Members to remember that Congress legislated federal hiring rules starting in 1883 to guard against arbitrary

hiring and firing decisions that are based not on job performance but on political affiliation, personal loyalty tests, and outright discrimination.

AFGE recommends that the Committee remember why the laws regarding the federal civil service system were enacted in the first place – to end the spoils system and ensure that a competent workforce dispassionately and faithfully implements the policies legislated by elected officials – and consider whether all the exceptions that have been legislated to the civil service system in recent decades have contributed to or detracted from the performance of the executive branch. Only then will it have a basis for concluding whether expanding political appointments would, on balance, advance the mission of the civil service.

Thank you for the opportunity to testify and I would be happy to answer any questions the Members of the Committee may have.

Testimony Submitted for the Record
Senate Committee on Homeland Security And Governmental Affairs
Hearing: “Ensuring A Trustworthy Government: Examining The National Security Risks Of
Replacing Nonpartisan Civil Servants With Political Appointees”

By Debra Perlin, Citizens for Responsibility and Ethics in Washington

September 17, 2024

Chairman Peters, Ranking Member Paul and members of the Committee, thank you for the opportunity to submit testimony regarding the importance of protecting the federal civil service.

My organization, Citizens for Responsibility and Ethics in Washington (CREW), is a nonpartisan nonprofit organization dedicated to fighting corruption and promoting ethical governance. With this mission in mind, I write to you today to highlight the dangers posed by efforts to dismantle our merit-based civil service system and to recommend further action to protect our federal government from corruption and efforts to manipulate the levers of government to anti-democratic ends.

Background

In October 2020, three months before the end of his term, President Donald Trump issued Executive Order 13957. Colloquially referred to as “Schedule F,” the Executive Order would have upended the merit-based civil service system by creating a new job classification within the federal government. Although President Biden quickly rescinded it upon assuming office, this new classification — Schedule F — would have stripped tens of thousands of federal employees of their merit-based civil service protections, including the protection against being fired based on political whims.¹ The goal was to increase presidential control over the federal career public service by returning federal agencies to the spoils system, under which federal employment was based on party loyalty and patronage rather than merit and expertise — a system that was so corrupt and anti-democratic that Congress abolished it in 1883 with the passage of the Pendleton Act.²

The spoils system, which flourished under Presidents Andrew Jackson and Martin Van Buren, is a government structure that allows the president and party leaders to buy and reward people’s loyalty through employment in the federal government.³ This structure helped foster a political system based on patronage and kickbacks rather than popular sovereignty: in order to be elected, aspiring politicians would buy endorsements and reward loyalty with promises to put important party bosses’ political cronies in positions of power in

¹ Exec. Order No. 14003, Protecting the Federal Workforce
<https://www.govinfo.gov/content/pkg/DCPD-202100079/pdf/DCPD-202100079.pdf>

² Pendleton Civil Service Reform Act, 22 Stat. 403 (1883),
<https://govtrackus.s3.amazonaws.com/legislink/pdf/stat/22/STATUTE-22-Pg403a.pdf>.

³ See “Spoils System,” Encyclopedia Britannica, <https://www.britannica.com/topic/spoils-system>. See also, “Spoils System,” Encyclopedia.com, <https://www.encyclopedia.com/history/united-states-and-canada/us-history/spoils-system>; and Jonathan Rauch, *How American Politics Went Insane*, The Atlantic (Jul/Aug 2016), <https://www.theatlantic.com/magazine/archive/2016/07/how-american-politics-went-insane/485570/>.

their administration.⁴ Rather than qualified employees, who are required to do their jobs without regard to political affiliation, the spoils system allowed the president to hire political servants with an overriding loyalty to the party but often without knowledge or expertise in the jobs they were filling. It is not surprising that the spoils system was directly linked to a rise in corruption and even violence.⁵ In 1881 President James Garfield, who was selected as the Republican nominee for president in part because he wanted to end patronage and corruption, was assassinated by a rejected office-seeker, Charles Guiteau, who believed that he played a major role in Garfield's election and therefore was owed a job in Garfield's administration.⁶

But the spoils system didn't just create a government prone to corruption, susceptible to violence and littered with inadequate employees — it also resulted in distorted policy making. After all, "party loyalists are also more likely to be insensitive to the limitations and potential harmful effects of their party's policies" while "partisan bureaucrats are likely to sabotage established federal policies and legal statutes to please political leaders."⁷ This quid pro quo system of politics and federal employment undermined Americans' constitutional right to equal protection of the laws by deploying the federal government to reward those who agreed with the party and punish those who disagreed.⁸ In sum: not only did the spoils system fill the government with corruption and inefficiency, it undermined American democracy itself.

The development of the federal merit system — and the end of the spoils system — was a significant turning point in the history of our government. By requiring that federal agencies hire candidates based on their expertise, experience and ability to do their job — as opposed to the amount of money they or their friends contributed to a campaign — Congress slashed corruption and mismanagement in all federal agencies.

The issue we face today

History makes clear that a return to the spoils system would be catastrophic both for our democracy and our national security. Nonetheless, conservative activists, government

⁴ See William 'Boss' Tweed and Political Machines, *Bill of Rights Institute*, <https://billofrightsinstitute.org/essays/william-boss-tweed-and-political-machines>.

⁵ See "Spoils System," *Encyclopedia.com*; see also "Machine Politics," *PBS*, <https://www.pbs.org/wgbh/americanexperience/features/presidents-unity-garfield/>.

⁶ See Gabe Lezra and Diamond Brown, *FAQ: The conservative attack on the merit-based civil service*, CREW (Jan. 25, 2024), <https://www.citizensforethics.org/news/analysis/faq-the-conservative-attack-on-the-merit-based-civil-service/>.

see also "Machine Politics," *PBS*, <https://www.pbs.org/wgbh/americanexperience/features/presidents-unity-garfield/>.

⁷ See, Jack K. Knott, "A Return to Spoils: The Wrong Solution for the Right Problem," 29 *J. of Admin. & Society*, 6 (1998), <https://rb.gy/c0w1dm>.

⁸ For instance, William Tweed, the infamous "boss" of Tammany Hall in New York City, would dole out thousands of jobs to friends who had little to no experience with the expectation that he would receive kickbacks — he would, for example, distribute money to judges in exchange for favorable rulings. See <https://billofrightsinstitute.org/essays/william-boss-tweed-and-political-machines>.

officials⁹, Trump's likely cabinet members should he serve a second term¹⁰ and Trump¹¹ himself have all called for reinstating Schedule F and upending the civil service. Most notable among them is the Heritage Foundation's Project 2025, the now notorious sweeping policy plan crafted by Paul Dans, who himself was partially responsible for implementing Trump's Schedule F order in his capacity as Chief of Staff of the Office of Personnel Management in 2020.¹²

We are at a perilous time for our democracy. Across the globe, democracy has been in decline for nearly 20 years and the United States is not immune from this decline.¹³ Today, we face election denialism, broad public distrust in our government institutions buoyed by conspiracy theories¹⁴, the continuous flood of money into our politics (including millions of dollars supporting election deniers¹⁵) and corruption scandals at the state and federal level.¹⁶ Against this backdrop, hard-working nonpartisan civil servants with relevant expertise are one of the few backstops against further democratic decline.

Moreover, the merit-based system has only grown in importance since the passage of the Pendleton Act and the end of the 19th century spoils system. With Congress increasingly polarized and unable to pass legislation, federal agencies have been forced to pick up the slack for decades. Rulemakings by administrations of both parties have become the main way our government regulates industries and industry practices— and ensures that our water and air are clean, we can travel safely, we have the technological infrastructure to protect against cyber attacks, our government is prepared to respond to climate emergencies like wildfires and hurricanes and that the medicines we take are safe. Without career civil servants who are experts in their fields and who understand their

⁹ Alayna Treene, *Scoop: 2024 GOP hopefuls back Trump's plan to purge civil servants*, Axios (Aug. 3, 2022), <https://www.axios.com/2022/08/03/2024-gop-hopefuls-trump-plan-purge-civil-servants>

¹⁰ Debra Perlin, *Who would help Trump carry out his promised "purge" of the "deep state"?*, CREW (May 8, 2024), <https://www.citizensforethics.org/reports-investigations/crew-investigations/who-would-help-trump-carry-out-his-promised-purge-of-the-deep-state/>.

¹¹ Erich Wagner, *Trump Vows to 'Shatter the Deep State,' Revive Schedule F and Move More Agencies Out of DC*, Government Executive (Mar. 21, 2023), <https://www.govexec.com/workforce/2023/03/trump-vows-shatter-deep-state-revive-schedule-f-and-move-more-agencies-out-dc/384266/>; Rebecca Jacobs, *Trump has said he wants to destroy the "deep state" 56 times on Truth Social*, CREW (Aug. 1, 2024), <https://www.citizensforethics.org/reports-investigations/crew-investigations/trump-has-said-he-wants-to-destroy-the-deep-state-56-times-on-truth-social/>.

¹² Alec MacGillis, *The Man Behind Project 2025's Most Radical Plans*, ProPublica (Aug. 1, 2024), <https://www.propublica.org/article/project-2025-trump-campaign-heritage-foundation-paul-dans>.

¹³ *The Mounting Damage of Flawed Elections and Armed Conflict*, Freedom House (Feb. 2024), <https://freedomhouse.org/report/freedom-world/2024/mounting-damage-flawed-elections-and-armed-conflict>

¹⁴ *Public Trust in Government: 1958-2024*, PEW Research <https://www.pewresearch.org/politics/2024/06/24/public-trust-in-government-1958-2024/>.

¹⁵ *Bankrolling the Big Lie*, CREW (June 4, 2024), <https://www.citizensforethics.org/reports-investigations/crew-reports/bankrolling-the-big-lie/>.

¹⁶ Gabe Lezra, *Accused foreign agents do not belong in the Senate*, CREW (Apr. 11, 2024), <https://www.citizensforethics.org/news/analysis/accused-foreign-agents-do-not-belong-in-the-senate/>; Press Release, U.S. Congressman Henry Cuellar Charged with Bribery and Acting as a Foreign Agent, Department of Justice (May 3, 2024), <https://www.justice.gov/opa/pr/us-congressman-henry-cuellar-and-his-wife-charged-bribery-unlawful-foreign-influence-and>; Press Release, Jury convicts former Ohio House Speaker, former chair of Ohio Republican Party of participating in racketeering conspiracy, US Att'y Southern District of Ohio (Mar. 9, 2023), <https://www.justice.gov/usao-sdoh/pr/jury-convicts-former-ohio-house-speaker-former-chair-ohio-republican-party>.

responsibilities under the law, these functions would collapse. A government hamstrung by federal agencies filled with unqualified party loyalists would harm almost every part of everyday Americans' lives and leave our democracy vulnerable to attempts to diminish it, including efforts by foreign adversaries, like Russia¹⁷, Iran¹⁸, and China¹⁹, that seek to unlawfully influence our elections.

How to Protect the Civil Service and our Democracy

This hearing is an important step in bringing to light the harms posed by attacks on our civil service, and we hope that other members of Congress follow the committee's lead in seeking to address this issue.

To truly protect the civil service, however, Congress must pass the Saving The Civil Service Act²⁰ which would prevent a future president from resurrecting Schedule F through executive action. The bipartisan bill, led by Senator Tim Kaine (D-VA) and Representatives Gerry Connolly (D-VA) and Brian Fitzpatrick (R-PA), would cap the number of reclassifications within a given term, ensuring that no more than one percent of the employees at a given agency could be converted to a new job classification within a four year span. It also would require the consent of any employee whose role was being converted. These reforms are designed to impede a president from carrying out any wide-scale efforts to upend the civil service, and ensure that civil servants cannot be hired and fired based on their loyalty or disloyalty to a particular president or political party.

While the Office of Personnel Management (OPM) finalized a rule²¹ in April 2024 to strengthen protections for the civil service, administrative rules can be undone by a subsequent administration in compliance with the Administrative Procedures Act (APA). That is why legislation is needed. Passing the Saving the Civil Service Act will provide much stronger protections against a future president who seeks to upend the civil service.

Conclusion

Protecting the career civil service and guaranteeing that it is staffed by people with relevant expertise ensures that agencies can fulfill their role as stewards of Congress's mission. Carrying out federal programs effectively, efficiently and consistently with Congress's intent requires them to be staffed by individuals with a thorough understanding of the particular

¹⁷ Press Release, Justice Department Disrupts Covert Russian Government-Sponsored Foreign Malign Influence Operation Targeting Audiences in the United States and Elsewhere, Department of Justice (Sept. 4, 2024), <https://www.justice.gov/opa/pr/justice-department-disrupts-covert-russian-government-sponsored-foreign-malign-influence>.

¹⁸ Robert Lagare, *U.S. intelligence officials warn of Iran's attempts to interfere in presidential election*, CBS News (Aug. 19, 2024),

<https://www.cbsnews.com/news/intelligence-community-iran-interference-hacking-u-s-elections/>.

¹⁹ Tiffany Hsu and Steven Lee Myers, *China's Advancing Efforts to Influence the U.S. Election Raise Alarms*, New York Times (Apr. 2, 2024),

<https://www.nytimes.com/2024/04/01/business/media/china-online-disinformation-us-election.html>.

²⁰ S. 399, 118 Cong. (2023), <https://www.congress.gov/bills/118th-congress/senate-bill/399>.

²¹ Upholding Civil Service Protections and Merit System Principles, 89 Fed. Reg. 24982 (Apr. 9, 2024),

<https://www.federalregister.gov/documents/2024/04/09/2024-06815/upholding-civil-service-protections-and-merit-system-principles>.

statutory and regulatory schemes, institutional knowledge of the history of the programs, familiarity with relevant stakeholders inside and outside government and substantial technical expertise. That is what the career civil service provides — and what a return to the spoils system would completely destroy. Passing the Saving the Civil Service Act and protecting the merit-based system is therefore critical to the government's ability to continue operating effectively and protecting the health, safety, welfare and security of Americans.

We thank the Committee for holding this important hearing and welcome the opportunity to work with you to advance our shared commitment to our government institutions and our democracy.

FEDERAL WORKERS ALLIANCE

COLLECTIVELY REPRESENTING OVER 550,000 FEDERAL AND POSTAL WORKERS

September 17, 2024

The Honorable Gary Peters
Chairman, Homeland Security and
Governmental Affairs Committee
United States Senate
340 Dirksen Senate Office Building
Washington, D.C., 20510

The Honorable Rand Paul
Ranking Member, Homeland Security and
Governmental Affairs Committee
United States Senate
340 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Peters, Ranking Member Paul, and Members of the Senate Committee on Homeland Security and Governmental Affairs:

On behalf of the Federal Workers Alliance, a coalition of labor unions representing over 550,000 federal and postal employees, we respectfully request that this letter be submitted for the record in connection with the September 17, 2024, hearing before the Homeland Security and Governmental Affairs Committee in the U.S. Senate, titled *“Ensuring a Trustworthy Government: Examining the National Security Risks of Replacing Nonpartisan Civil Servants with Political Appointees.”*

As more Americans come to understand the true implications of Schedule F—an executive order issued by former President Trump aimed at reclassifying hundreds of thousands of nonpartisan civil servants into roles more susceptible to political influence and control—the link between this policy and the erosion of American democracy through the politicization of the Executive Branch becomes increasingly apparent.

To be clear, Schedule F—or any similar authority that replicates its elements—serves only to undermine and corrupt the Executive Branch of the U.S. Government and must be legally prohibited from ever being implemented. We appreciate that on January 22, 2021, President Biden rescinded former President Trump’s Executive Order supporting Schedule F. This was necessary because the most dangerous aspects of Schedule F to American democracy are:

1. The power granted by Schedule F to install unlimited political appointees without term limits within the Executive Branch is a recipe for abuse. It is designed to turn appointees into covert operatives loyal to a specific individual or ideology, undermining the nonpartisan nature of the civil service.
2. The ability to reclassify hundreds of thousands of professional, nonpartisan federal employees into a particular employment category that strips them of essential protections under the Merit Systems Principles (MSP) and shields them from safeguards against Prohibited Personnel Practices (PPP). These protections ensure that the Executive Branch remains honest, transparent, accountable, effective, and fair.

Under Schedule F, professional career federal employees would be left vulnerable to threats or intimidation from political appointees. This would effectively strip them of their ability and obligation to enforce the law or report fraud, waste, abuse, or illegal directives, putting their careers and well-being at risk.

Supporters of Schedule F are misleading the public about its benefits. It is not designed to streamline hiring, quickly remove poor performers, or improve performance management. Any attempt to

present Schedule F, in whole or in part, as a legitimate management reform must be vigorously opposed, and efforts to promote such practices should be met with strong disapproval.

It is essential to recognize that Schedule F is part of a broader scheme to corrupt the Executive Branch for personal and political gain. By undermining oversight and dismantling laws and regulations designed to prevent corruption and political overreach, Schedule F is a critical component of a larger initiative known as Project 2025. This initiative, spearheaded by The Heritage Foundation's Mandate for Leadership, outlines a blueprint for subverting the Executive Branch on a scale that threatens to distort American democracy.

Much like an organized crime or racketeering operation, Project 2025 sets forth a systematic plan for political and ideological operatives to infiltrate the government through a hidden network of presidential appointees. These appointees employ tactics that shield their activities from law enforcement, regulatory agencies, Congress, and the constitutional checks on government power. Marketed as an ultraconservative vision for the future, Project 2025 is, in reality, a playbook for creating an actual "deep state" through corruption and secrecy. It thrives on evading legal oversight and exploiting government authority, costing taxpayers billions of dollars yearly through inflated appointee salaries and the appointee-corrupted programs they oversee.

Without input or oversight from Congress or the public, Project 2025 outlines a plan in which operatives, empowered by Schedule F, would seize government authority to weaponize resources against political opponents, manipulate industries and financial markets, deplete public assets, and exert political control over key "inherently governmental functions." These functions include, as cited, the military, regulatory and law enforcement agencies, trade practices, government contracts, national security, intelligence operations, and infrastructure funding.

Such political control over critical government functions concentrates immense power in the hands of Project 2025 operatives, enabling them to evade legal accountability and hinder law enforcement efforts to hold them responsible. In the context of national security, as highlighted in today's hearing, these conspirators seek to shift authority over sensitive decisions and intelligence assessments from nonpartisan experts to largely unvetted political appointees. Project 2025 further jeopardizes national security by proposing that security clearance management be transferred to political operatives appointed under Schedule F, allowing them to grant clearances without proper vetting [Project 2025, Executive Office of the President, p. 52]. This opens the door to widespread espionage and extortion by foreign adversaries.

To expand the view on national security and the threats to the American democratic republic system, on July 1, 2024, the conservative majority of the Supreme Court, led by Chief Justice John Roberts, issued a ruling in *Donald J. Trump v. United States* that grants the president "absolute immunity from criminal prosecution" for actions deemed to fall within his "conclusive and preclusive constitutional authority." The ruling establishes that presidents are presumed to have immunity when performing "official acts." Justice Roberts further stated that "Congress may not criminalize the President's conduct in carrying out the responsibilities of the Executive Branch under the Constitution" effectively granting the president unilateral power to determine whether an action is official and thus immune from legal scrutiny.

With the Supreme Court's decision now casting a shadow over the continuing legitimacy of the American republic—a "republic" as defined is safeguarded by a constitution that protects those not in power—the future of American democratic institutions, such as elections and the rule of law, could

be severely undermined. If a president chooses to wield the absolute authority the Court grants, it risks tipping the balance, allowing unchecked power to override constitutional safeguards.

In this new American reality, it is critical not to lend any credibility to schemes like Schedule F, which would only accelerate the mass corruption of one of democracy's most vital pillars: a nonpartisan civil service dedicated to upholding the Constitution and serving the American people. Instead, now is the time to act and enact additional safeguards through Congress, starting with the **Saving the Civil Service Act (S. 399)**, currently pending in the Senate. The Senate has repeatedly failed to act on this legislation, even after the House passed equivalent measures five times over the last two congresses, only to see them stripped from bills in the Senate. This inaction is indefensible.

There are additional legislative measures that can mitigate the damage if a president attempts to govern as a dictator or allows their administration to operate as an authoritarian regime, as outlined in Project 2025. These additional measures include reforming the Insurrection Act, amending the Vacancies Act, strengthening anti-corruption laws—particularly about non-FACA advisory groups—banning private nondisclosure agreements that undermine transparency and accountability, empowering inspectors general to investigate political overreach and corruption, and capping the total number of political appointees across the Executive Branch at 3,000.

To dispel the baseless claim that Schedule F is a legitimate management tool or necessary for terminating poor performers, consider the following points:

- **Federal Workforce Size:** The size of the federal workforce has remained consistent since 1952, with approximately 2 million non-postal federal civilian employees. Per capita, the federal workforce is now the smallest it has ever been, representing just 0.597% of the population, down from a post-WWII high of 1.85%. In contrast, the contractor workforce has ballooned to over 4 million. Nearly 40% of all discretionary tax dollars—over \$700 billion annually—are directed to private contractors. According to the Congressional Budget Office (CBO), the federal workforce, including benefits, costs less than one-third of the contractor workforce.
- **Terminations for Cause:** Contrary to the myth that federal employees are “impossible” to fire, around 10,000 federal employees are terminated each year for cause (due to misconduct or poor performance).ⁱ This translates to about 40 involuntary terminations per workday, or 0.5% of the workforce annually.
- **Federal Employee Termination Rate:** The termination rate for federal employees is higher than in the private sector. In the private sector, the annual involuntary separation rate is 1%,ⁱⁱ with approximately one-third of those being terminations for cause and two-thirds being layoffs, resulting in a termination rate for cause of about 0.33%. In contrast, the federal government's termination rate for cause stands at 0.5%. Critics argue that Merit System Principles and federal unions obstruct employee terminations, but this is incorrect. The Merit System Principles are designed to ensure accountability by preventing political interference, corruption, and unfair practices without negatively impacting termination rates.
- **The Truth About the MSPB and FLRA and the Misguided Effort to Eliminate Them:** Contrary to claims that the Merit Systems Protection Board (MSPB) and the Federal Labor Relations Authority (FLRA) unfairly favor federal employees, the reality is quite different. Federal employees win only 18% of cases at the MSPB and a mere 3% of appeals to the entire board. Conversely, management prevails 60% of the time in cases against unions at the FLRA. Despite this, some in Congress argue that these agencies are biased in favor of employees. This assertion is unfounded. Yet, efforts are underway by some lawmakers to block funding and qualified nominees for these agencies, aiming to weaken their ability to

uphold federal case law that safeguards the Executive Branch against political abuse and corruption, including issues like personal bias, favoritism, improper contracting, Schedule F “loyalty” employment, and the Spoils system.

Our nation’s career civil servants—federal employees who serve the public impartially, regardless of political affiliation—are crucial to American democracy. They perform diverse tasks based on their roles and the agencies they represent. Career federal employees uphold regulations and laws, deliver essential public services, ensure national security, support education and research, maintain infrastructure, provide financial services, handle mail delivery, promote public health, and much more, impacting every facet of American life.

These civil servants must remain nonpartisan experts, accountable not only to the President but also to the Constitution, the law, the American people, and Congress. For one hundred fifty years, Congress has diligently worked to establish, protect, and enhance a stable, professional, and nonpartisan civil service.

We, the undersigned federal employee unions, urge Congress to urgently pass the Saving the Civil Service Act to protect the apolitical federal workforce, a cornerstone of modern democracy, from being undermined by unchecked and malicious political forces. Additionally, Congress must fulfill its constitutional duty to investigate the validity of the Supreme Court’s ruling that grants the president absolute immunity from legal accountability. Defending the government against any attempts to diminish or evade equal protection under the law is crucial and a fundamental responsibility of Congress.

If you have any questions, contact FWA legislative co-chairs Faraz Kahn at fkhan@ifpte.org or Steve Lenkart at slenkart@nffe.org.

Respectfully submitted,

Antilles Consolidated Education Association (ACEA)	National Association of Agriculture Employees (NAAE)
Federal Education Association (FEA)	National Association of Government Employees (NAGE)
International Association of Fire Fighters (IAFF)	National Education Association (NEA)
International Association of Machinists and Aerospace Workers (IAMAW)	National Federation of Federal Employees (NFFE)
International Federation of Professional and Technical Engineers (IFPTE)	National Weather Service Employees Organization (NWSEO)
International Plate Printers, Die Stampers, Plate Makers and Engravers of North America (PPDSPM&E of N.A)	Professional Aviation Safety Specialists (PASS)
	Patent Office Professional Association (POPA)

¹[Fedscope.opm.gov](https://www.fedscope.opm.gov); Termination or Removal for Discipline or Performance, FY 2005 to FY 2023.

¹¹ U.S. Bureau of Labor Statistics. (2023, May 31). *Table 5. layoffs and discharges levels and rates by industry and region, seasonally adjusted - 2023 M04 results*. U.S. Bureau of Labor Statistics. <https://www.bls.gov/news.release/jolts.t05.htm>



Testimony of Joe Spielberger, Policy Counsel
Project On Government Oversight
before the Senate Committee on Homeland Security and Governmental Affairs
“Ensuring a Trustworthy Government: Examining the National Security Risks of
Replacing Nonpartisan Civil Servants with Political Appointees”
September 17, 2024

Chairman Peters, Ranking Member Paul, and committee members, thank you for the opportunity to submit for the record this testimony about the importance of our nonpartisan merit-based civil service, especially in the context of national security.

I am a policy counsel at the Project On Government Oversight (POGO), a nonpartisan independent watchdog organization that investigates and exposes waste, corruption, abuse of power, and when the government fails to serve the public or silences those who report wrongdoing. We champion reforms to achieve a more effective, ethical, and accountable federal government that safeguards constitutional principles.

Congress needs to strengthen its oversight of the executive branch to root out corruption and achieve the type of government the people deserve. Much of the corruption and abuse of power that Congress hears about — in both Democratic and Republican administrations — is thanks only to whistleblowers, who take grave risks in speaking out. Presidents of both political parties have taken adversarial stances toward whistleblowers and dissenters.¹ However, targeting whistleblowers’ jobs and reputations only ensures that corruption can continue unaddressed. Unfortunately, some in our country would rather exploit legitimate concerns about corruption and accountability for their own partisan means, and they are seeking to reimplement a policy called Schedule F, or one like it, to aid in that agenda. This policy not only would undermine whistleblowing and make corruption more likely to occur, but it also risks dismantling our entire civil service, turning it into a political arm of the president rather than making it more accountable to the people.

Importance of Merit-Based Civil Service

A nonpartisan merit-based civil service is one of the hallmarks of a free nation — in which our government belongs to the people, not an individual president or whichever political party

¹ Dana Liebelson, “Six Americans Obama and Holder Charged Under the Espionage Act (and One Bonus Whistleblower),” Project On Government Oversight, January 27, 2012, <https://www.pogo.org/analysis/six-americans-obama-and-holder-charged-under-espionage-act-and-one-bonus-whistleblower>; Gabe Rottman, “On Leak Prosecutions, Obama Takes it to 11 (Or Should We Say 526?),” ACLU, October 14, 2014, <https://www.aclu.org/news/free-speech/leak-prosecutions-obama-takes-it-11-or-should-we>; Dan Lamothe, “Army officer who reported Trump probably faced retaliation, inquiry finds,” *Washington Post*, May 18, 2022, <https://www.washingtonpost.com/national-security/2022/05/18/sevegen-v-indian-trump-inspector-general/>; Jim Acosta and Caroline Kelly, “White House pulls nomination of key Pentagon official who questioned legality of Ukraine aid hold,” CNN, March 2, 2020, <https://www.cnn.com/2020/03/02/politics/mccusker-nomination-pulled/index.html>.

happens to be in power. The development and advancement of our civil service was neither inevitable nor straightforward, but it has steadily progressed for more than 140 years through slow and thoughtful deliberations by policymakers determined to avoid returning us to the spoils system that plagued our government during the nineteenth century.

George William Curtis, who was an early leader of the Republican Party and chaired the commission on reforming the civil service under President Ulysses S. Grant, described that system in this way:

Every four years, the whole machinery of the Government is pulled to pieces. The country presents a most ridiculous, revolting, and disheartening spectacle. The business of the nation and the legislation of Congress are subordinated to the distribution of plunder among eager partisans. Presidents, secretaries (of departments), senators, representatives are dogged, hunted, besieged, besought, denounced, and they become mere office brokers. The country seethes with intrigue and corruption. Economy, patriotism, honesty, honor, seem to have become words of no meaning.²

It was a disgruntled partisan office-seeker who felt entitled to a government job simply because of party membership who assassinated President James Garfield in 1881. This act catalyzed the start of the civil service reform movement; Congress passed the Pendleton Act two years later, signaling that civil service jobs should be filled based on merit, not political affiliation or ideological beliefs. In the nearly century and a half since, Congress has continued to reform and modernize the civil service by, for example, providing “just cause” protections through the Lloyd-La Follette Act, protecting against increased politicization of the executive branch via the Hatch Act, and further protecting federal employees from discrimination and retaliation by passing the Civil Service Reform Act shortly after the Watergate scandal.³

Congress needs to prioritize legislation to ensure better oversight of and accountability within executive branch agencies. Schedule F, however, not only runs counter to our traditional merit system principles but also risks undoing centuries of progress by returning government to the spoils system and the festering corruption it enabled.

Schedule F

Then-President Donald Trump signed an executive order in October 2020 creating Schedule F in the excepted service and authorizing federal agencies to reclassify their employees into these new positions with fewer protections.⁴ This effectively would have made those employees at-will employees, meaning it would be much easier for an administration to fire them for almost any reason. The Schedule F policy exploited a loophole in the Civil Service Reform Act, which exempts from most civil service rules employees in “confidential, policy-determining, policy-making or policy-advocating” positions.⁵ People serving in these positions have historically been

² Bernard Rosen, “The Merit System in the United States Civil Service,” December 23, 1975,

<https://www.govinfo.gov/content/pkg/CPRT-94HPR163632/pdf/CPRT-94HPR163632.pdf>.

³ Pendleton Civil Service Reform Act, 22 Stat. 403 (1883); Lloyd-La Follette Act, 37 Stat. 555 (1912); Hatch Act, 53 Stat. 1147; Civil Service Reform Act, 92 Stat. 1111.

⁴ Executive Order No. 13957, 85 Fed. Reg. 67631 (October 21, 2020).

⁵ 5 U.S.C. 2302 § (a)(2)(B)(i).

understood to mean political appointees who usually leave after a change in administration, not career civil servants who generally serve continuously across administrations, and who the public relies on for institutional knowledge, expertise, and continuity of government services and interagency coordination.

Most of these federal employees have certain due process protections that help ensure they can perform their jobs free from political pressure and that protect them from retaliation when they blow the whistle on abuse of power, corruption, or illegality. They can still be fired for poor performance or other for-cause reasons.

Schedule F would reclassify large numbers of federal employees into political positions: It is estimated that the number of employees impacted by Schedule F would likely range in the tens of thousands, up to fifty thousand or more.⁶ While this may not seem significant given the approximately 2.2 million civil servants,⁷ it would exponentially increase the amount of politicization in the civil service and greatly expand executive power to remake the federal government in a president's own image. At best, it would usher in a system that prioritizes partisan goals over the Constitution, rule of law, and serving in the public's best interest. At worst, it would enable an administration to punish employees who refuse to pledge their loyalty to an individual president or political party, and weaponize the tools and resources of the federal government to be used in retribution against perceived political enemies and their supporters, whoever they might be.

Any administration could purge agencies of nonpartisan experts, gut some key agencies or departments altogether, and pack others with partisan loyalists whose allegiance lies first with a president's political agenda rather than with the Constitution, rule of law, and public good.

In fact, many Schedule F proponents are quite clear that their aims are not for accountability but are indeed to engage in mass firings of nonpartisan federal employees and to hire based primarily on ideological beliefs.⁸

⁶ Drew Friedman, "Two agencies took initial steps to implement Schedule F, GAO finds," *Federal News Network*, September 29, 2022, <https://federalnewsnetwork.com/workforce/2022/09/two-agencies-took-initial-steps-to-implement-schedule-f-gao-finds/>.

⁷ Office of Personnel Management, "OPM Issues Final Rule to Reinforce and Clarify Protections for Nonpartisan Career Civil Service," Press Release, April 4, 2024, <https://www.opm.gov/news/releases/2024/04/release-opm-issues-final-rule-to-reinforce-and-clarify-protections-for-nonpartisan-career-civil-service/>.

⁸ "We need to flood the zone with conservatives," said Paul Dans, director of the 2025 Presidential Transition Project and a former [chief of the staff of the Office of Personnel Management in the] Trump administration." and "The president Day One will be a wrecking ball for the administrative state," said Russ Vought." Vought is a former director of the Office of Management and Budget in the Trump administration. Lisa Mascaro, "Conservative groups draw up plan to dismantle the US government and replace it with Trump's vision," Associated Press, August 29, 2023, <https://apnews.com/article/election-2024-conservatives-trump-heritage-857eb794e505f1c6710eb03fd5b58981>; "I think the first thing you need to hire for is loyalty ... you can learn policy. You can't learn loyalty," said Andrew Kloster, former associate director for the White House Office of Presidential Personnel. Jonathan Swan, "Trump's Revenge," *Axios*, July 23, 2022, <https://www.axios.com/2022/07/23/donald-trump-news-schedule-f-executive-order>; "We are failing unless we are disrupting, discrediting, and destroying these people. Until we adopt the Jacksonian approach, which is to throw the b-st-rds out — all of them — we will still be living in the progressive folk tale," said Theo Wold, former deputy assistant to the president for domestic policy. Theodore Wold, "Republicans Are Failing Unless They Are Disrupting, Discrediting, And Destroying The Bureaucracy," *Federalist*, January 16, 2023, <https://thefederalist.com/2023/01/16/republicans-are-failing-unless->

Schedule F had only begun to be implemented before then-President Trump left office and President Joe Biden rescinded the policy. However, what occurred during that short window was disturbing. One of the two agencies that completed their initial reclassification analysis was the Office of Management and Budget (OMB); the administration had reportedly wanted that agency to set an example for other agencies to follow.⁹ OMB, which is responsible for implementing the federal budget, coordinating and allocating resources, and ensuring the performance and effectiveness of other agencies, attempted to reclassify 88% of its entire workforce as Schedule F.¹⁰ Far from what many might assume to be policy-related positions, reclassifications included economists, IT specialists, Freedom of Information Act (FOIA) officers, office managers, human resources specialists, and administrative assistants, greatly expanding the definition of “confidential, policy-determining, policy-making or policy-advocating” to apply to the vast majority of OMB’s workforce.¹¹

Widespread politicization throughout OMB would lead to decisions being made based primarily on partisan aims rather than on delivering the best services to the public or ensuring taxpayer funds are appropriated as Congress intends. Ensuring OMB employees are protected so they can follow the law protects Congress’s Article I powers, especially power of the purse, and particularly with regard to national security appropriations.

Perhaps the most dangerous consequence of Schedule F is that it would likely instill a climate of fear and distrust across the federal government, chilling whistleblowing and dissent and allowing corruption to fester unaddressed behind closed doors. Whistleblowers already take huge risks in speaking out. They put their careers, wellbeing, and sometimes even their lives on the line simply to do the right thing. Who would take such a risk if any hint of disagreement with a particular partisan agenda is likely to put them under a microscope of suspicion, if not cost them their job? How much corruption will occur without our knowledge if we systematically drive out or threaten into silence the people of good conscience serving in government?

National Security Whistleblowers Are Essential to Congress and the Public

Congress is ill-equipped to conduct diligent oversight of the national security apparatus, and historically has needed to rely on whistleblowers to learn of wrongdoing. Whistleblowers are the best positioned to root out and expose waste, fraud, abuse, and other corruption in the executive branch when they witness it, and to act as an essential check on executive branch power and

[they are disrupting-discrediting-and-destroying-the-bureaucracy/](#); “Fire every single midlevel bureaucrat, every civil servant in the administrative state, replace them with our people,” said U.S. Senator J.D. Vance. Andrew Prokop, “J.D. Vance’s radical plan to build a government of Trump loyalists,” *Vox*, July 18, 2024, <https://www.vox.com/politics/361455/jd-vance-trump-vice-president-mc-speech>.

⁹ Government Accountability Office, *Agency Responses and Perspectives on Former Executive Order to Create a New Schedule F Category of Federal Positions*, GAO-22-105504 (September 2022), 16, <https://www.gao.gov/assets/gao-22-105504.pdf>; *Fedweek*, “Agency Response to Schedule F Order Varied, GAO Finds,” October 4, 2022, <https://www.fedweek.com/fedweek/agency-response-to-schedule-f-order-varied-gao-finds/>.

¹⁰ Erich Wagner, “OMB Reportedly Designated 88% of Its Employees for Schedule F,” *Government Executive*, November 23, 2020, <https://www.govexec.com/management/2020/11/omb-reportedly-designates-88-its-employees-schedule-f/170275/>.

¹¹ National Treasury Employees Union, “Schedule F Threat Broader, More Severe Than Previously Known,” Press Release, February 27, 2024, <https://www.nteu.org/media-center/news-releases/2024/02/27/ombschedulefrelease>.

overreach. Whistleblowers have played a vital role in both Democratic and Republican administrations to expose abuse of power and corruption, and they have better enabled Congress to fully exercise its legislative and oversight authorities. National security whistleblowers in particular make some of the most important disclosures because of the safety, security, and civil liberty implications of the corruption they expose. Despite the invaluable role they play in protecting our safety and security, national security whistleblowers are uniquely vulnerable, with fewer opportunities to safely disclose through proper channels and with limited protections from retaliation when they do.

POGO has been sounding the alarm to Congress for decades about inadequate protections for national security whistleblowers.¹² For example, without more independent appeals processes or access to jury trials in federal court, national security whistleblowers are often forced to appeal for protection from the agencies they are alleging retaliated against them. Additionally, abuse of the security clearance adjudication process is a pernicious form of retaliation impacting national security whistleblowers' careers, which Congress has not addressed since *Navy v. Egan*.¹³

Congress's failure to adequately protect national security whistleblowers steers some of them to leak classified information to attempt to fix problems, and discourages potential whistleblowers from speaking out in the future. In addition, agencies' abuse of security clearance adjudications can subject employees to undue scrutiny, discrimination, or retaliation — potentially ending their careers — without any real means of redress.

Implementing Schedule F would only exacerbate whistleblowers' vulnerability and the fundamental threat to national security. There are numerous contexts in which having federal employees with robust protections helps the U.S. government avoid bad decision-making in national security and identify problems after the fact.

Schedule F would also allow an administration that has an underlying goal of creating ideological conformity to install political operatives in important positions, enabling them to manipulate intelligence, suppress unfavorable analysis, and influence decision-makers by parroting only information they want to hear. To ensure the integrity of intelligence and to keep our nation safe, we need people who are committed to speaking the truth. Under Schedule F, we would risk losing those committed public servants who serve with conscience and good character and replacing them with partisan lapdogs willing to obey any order regardless of the consequences. The answer to ensuring robust congressional oversight is to better protect whistleblowers, not further silence them by stripping their protections and instilling this culture of retribution and fear.

Improving Our Civil Service

Since our founding, POGO has held deep concerns about accountability in national security agencies. For more than four decades, we have provided Congress with specific legislative reforms to ensure better accountability, combat corruption and abuse of power, and protect

¹²“S. 372: The Whistleblower Protection Enhancement Act of 2009,” *Hearing before the Senate Homeland Security and Governmental Affairs Committee*, 111th Cong. (June 11, 2009) (testimony of Danielle Brian, Executive Director, Project On Government Oversight), [TestimonyBrian20090611.pdf \(senate.gov\)](#).

¹³ *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

whistleblowers in the military, federal law enforcement, and intelligence agencies. We appreciate the bipartisan interest in making the executive branch more accountable to Congress and the American public. However, Schedule F is an unserious answer to a complicated problem, and it is not what the people want or need.

Recent polling shows that wide majorities favor maintaining a nonpartisan merit-based civil service. Of the 800 adults polled nationwide:

- 87% of Republicans and 88% of Democrats believe that a nonpartisan civil service is important for having a strong American democracy
- 95% of Republicans and 96% of Democrats believe civil servants should be hired and promoted based on their merit rather than their political beliefs
- 90% of Republicans and 91% of Democrats believe civil servants should serve the people more than any individual president
- A majority of respondents, including majorities of both Republicans and Democrats, believe the federal government is less effective when decisions are driven by politics¹⁴

Research also shows that politicizing a civil service leads to worse outcomes: Installing political appointees to manage federal programs — especially employees chosen because of campaign or party experience — is associated with lower governmental performance.¹⁵ On the other hand, recruiting and hiring by merit, protecting career civil servants, and promoting impartiality and professionalism is strongly associated with less corruption and higher government performance.¹⁶ Agencies already have the necessary authority to discipline and fire poor performers; what they actually need is the willingness to hold corrupt officials accountable, especially at higher levels, and to hold managers more accountable for dealing with the poor performers.

Congress needs to legislate to protect the public and our national security from a more politicized civil service. POGO recommends legislation to

- (1) prevent a president from unilaterally converting employees and positions on a massive scale to strip them of due process protections, including codifying into law the Office of Personnel Management's new rule strengthening civil service protections;¹⁷
- (2) strengthen protections for national security whistleblowers, including allowing them to bring retaliation claims to federal court; and

¹⁴ Partnership for Public Service, "The State of Public Trust in Government," June 10, 2024, <https://ourpublicservice.org/publications/state-of-trust-in-government-2024/>.

¹⁵ David E. Lewis, "Testing Pendleton's Premise: Do Political Appointees Make Worse Bureaucrats?" *Journal of Politics* 69, No. 4 (November 2007) <https://www.journals.uchicago.edu/doi/abs/10.1111/j.1468-2508.2007.00608.x?journalCode=jop>; Nick Gallo and David E. Lewis, "The Consequences of Presidential Patronage for Federal Agency Performance," *Journal of Public Administration Research and Theory* 22 No. 2 (April 2012), 219-242 (May 16, 2011), <https://academic.oup.com/jpart/article-abstract/22/2/219/910982?redirectedFrom=fulltext>.

¹⁶ Eloy Oliveira, Gordon Abner, Shinwoo Lee, Kohei Suzuki, Hyunkang Hur, and James L. Perry, "What does the evidence tell us about merit principles and government performance," *Public Administration* 102 No. 2 (June 13, 2023), 668-690 <https://onlinelibrary.wiley.com/doi/10.1111/padm.12945>; Carl Dahlström, Victor Lapuente, and Jan Teorell, "The Merit of Meritocratization," *Political Research Quarterly*, 65 (September 2012), https://www.researchgate.net/publication/258180479_The_Merit_of_Meritocratization.

¹⁷ 5 C.F.R. 210, 213, 432, 451, 752 (2024), <https://www.law.cornell.edu/cfr/text/5/chapter-I/subchapter-B>.

(3) overturn *Navy v. Egan* to end the almost-total carte blanche deference to agency security clearance decision-making.

These reforms would help ensure that employees with critical national security responsibilities are in those positions based on their expertise, and not on ideological beliefs or to pursue a partisan agenda; are able to perform their jobs without political pressure; put their loyalty first to our Constitution and rule of law, and to protecting the American people; and can more safely blow the whistle on abuse of power and corruption without fear of retaliation or further risk to their careers.

Thank you again for inviting POGO to submit this testimony for the record. We are pleased to see this committee engaging on Schedule F and the deleterious impact it would have on oversight, accountability, whistleblowing, and our national security. We encourage Congress to legislate in support of these recommended reforms. POGO is committed to working closely with this committee on such legislation, and we look forward to further engaging with you on these important issues.



SENIOR
EXECUTIVES
ASSOCIATION

The voice of career federal executives since 1980

Written Statement of

Marcus Hill

President

Senior Executives Association (SEA)

For the

Homeland Security and Government Affairs Committee

United States Senate

Hearing On:

**“Ensuring a Trustworthy Government: Examining the National Security Risks of
Replacing Nonpartisan Civil Servants with Political Appointees”**

September 17, 2024

Introduction

Chairman Peters, Ranking Member Paul, and members of the Committee on Homeland Security and Governmental Affairs, thank you for holding this important hearing. The Senior Executives Association (SEA) is a nonprofit, nonpartisan professional membership association committed to promoting good government. Since 1980, SEA has advocated for the interests of career Federal leaders who are members of the Senior Executive Service (SES), Senior Professionals (SL/ST) and other senior career and aspiring public service leaders. I am honored to represent SEA as their President on this critical topic – ensuring our federal government has a modern, professional, apolitical civil service to aid in executing the laws of this nation and delivering essential agency missions and services for the American people.

I served this nation, in uniform, as a reservist, and as a federal civil servant for over 37 years. I embarked on my career in public service while attending Valdosta State College and joined its Air Force ROTC program. I served a tour of duty and then joined the reserves until I retired from the Air Force in 2007. I began working for the federal government as a GS-2 student trainee personnel management specialist at age 17 and continued to do so until my retirement from the Federal Law Enforcement Training Centers (FLETC) within the Department of Homeland Security as a senior executive in 2021. In between, I developed extensive experience with all aspects of the human capital and organizational management spectrum, including negotiating contracts with union counterparts at the Department of the Navy, overseeing Navy regional workforce planning efforts, joining FLETC as a Chief in the Human Capital Division, contributing to the establishment of the Transportation Security Administration (TSA) and serving as the Administrative Officer for the Jacksonville Field Office and helping stand up operations at Jacksonville and Gainesville airports, returning to FLETC to serve in a leadership role with the Training Directorate before taking on mission support, to include human capital, executive and advisory roles prior to my retirement.

I appreciate the committee elevating an important issue that has been often discussed yet politically unresolved through my entire professional career – federal employee performance and “accountability,” and the question of whether greater political control of the federal workforce will improve performance. These are topics closely intertwined with SEA’s history as a professional association representing career federal executives. SEA was founded in 1980 and created to represent new members of the Senior Executive Service (SES), which was established by Congress with the Civil Service Reform Act of 1978 (CSRA). SEA has historically championed efforts by Congress and the President to strengthen and improve the capability and capacity of the federal workforce to handle the ever-expanding list of missions, duties, and requirements imposed by policymakers.

Unfortunately by 1987, less than a decade after the passage of the CSRA, neglect by the President and Congress had led the civil service into a “quiet crisis,” according to Paul Volcker, who chaired the first nonprofit National Commission on the Public Service in 1989. That philanthropy-funded commission sprang out of bipartisan cooperation between the Brookings Institution and the American Enterprise Institute (AEI) when in 1987 they together hosted a symposium envisioning “A National Public Service for the Year 2000.” The issues which

sparked the commission, and the conversation between Volcker and then-head of the Government Accountability Office (GAO) Charles Bowsher summarizing its work¹, would feel frustratingly familiar to policymakers today.

Since that time in the preceding decades, the tradition of serious bipartisan cooperation on the civil service and government operations has degraded, with fewer and fewer Members of Congress expressing interest in these core government management and workforce issues. While the efforts of this committee continue to be an exception to that rule, many reforms have not made the holistic positive impact intended. The organizational debt² and policy problems haven't changed in scope - they've simply magnified, piled on by new requirements and oversight procedures, resulting in calcified behaviors and culture within the federal bureaucracy. The debates in Congress through the 1980s, 1990s, and 2000s on civil service and government management issues were always spirited and bipartisan. However, over time the ambition of lawmakers has narrowed, from systemic reforms intended to address design problems in the government – such as mixed personnel cases³ – to largely tinkering around the edges of decades old personnel laws or bypassing them by adding on new flexibilities and authorities.

Revisiting valid reform proposals of the past, such as the comprehensive congressional testimony on civil service modernization that SEA led the Government Managers Coalition in crafting in 2018 (Exhibit 1), or SEA's SES-focused policy recommendations⁴ or the association's overall policy agenda⁵, with a renewed commitment to solving the underlying management challenges, is necessary and overdue. Congress can create the infrastructure and conditions to enable effective change.

Discussion

The professional apolitical civil service has remained a work in progress for almost 150 years of our nation's history. SEA believes the nation would benefit from elected leaders in Congress and the White House committing their focus and energies to civil service and government modernization. Too frequently does government ask its employees to solve 21st century problems in 19th and 20th century policy and personnel management frameworks. Too often, this results in a poor or frustrating customer experience, or hours of paperwork. Imagine how government could be more responsive to changing needs of the nation if policymakers committed to modernizing government including the civil service for the digital age.

Following the assassination President Garfield by a disgruntled job seeker, Congress decided in 1883 that a partisan federal workforce was not in the national interest. Congress took subsequent action to buttress the apolitical civil service, to ensure the equitable delivery of government services and benefits to citizens. The Hatch Act passed in 1939 in direct response to concerns about politicians using federal employees of the Works Progress Administration (WPA)

¹ [The Not-So-Quiet Crisis: Paul Volcker on the Public Service | U.S. GAO](#)

² [Steve Blank: Organizational Debt is like Technical debt – but worse](#)

³ 29 CFR § 1614.302; A Mixed Case involves an adverse action along with a claim of discrimination.

⁴ [SES Joint Policy Agenda - SEA, PPS, Volcker \(seniorexecs.org\)](#)

⁵ [118th SEA Legislative Agenda \(seniorexecs.org\)](#)

to engage in political activity in the prior election. In response to the Watergate-era and related politicization of agencies and abuse of authority during the Nixon administration, Congress acted swiftly updating the federal workforce and its management through the Civil Service Reform Act of 1978, along with related reforms such as the Ethics in Government Act and Inspector General Act both of 1978. Through all these reforms, Congress has decided that less politics inside the federal workforce is good for America.

Neither do the American people believe that politicization of the federal government and its workforce is the answer, despite sagging trust. New research from the Partnership for Public Service bears this out.⁶ They found that 95% of Americans felt civil servants should be hired and promoted based on their merit rather than their political beliefs, 90% supported the idea that civil servants should serve the people more than any individual president, 89% believed the federal government is less effective when decisions are driven by politics, and 70% felt partisan politics make the federal government less effective.

In the 45+ years since the passage of the CSRA, various reform proposals and initiatives have been introduced in Congress or by the White House. (Exhibit 2) Following through on implementation and continuous improvement has always been the challenge, leaving the system largely stuck in place. Moreover, in the absence of significant legislative effort to resolve many longstanding issues facing the civil service, Congress has as a practical matter deferred over the past two decades to the President's Management Agenda to try and move the needle. But Executive Branch leaders only have so much latitude within the bounds of current outdated law. Congress must act – not by simply passing more laws, but by consciously considering what is needed to repeal or update laws and address root causes not merely symptoms.

Recommendations

Given the full set of issues already on this and every committee's plate today, a new approach is needed, with a dedicated group focused on proposing solutions to these issues. SEA proposes the establishment of a blue ribbon, bipartisan and bicameral Commission on Government and Civil Service Modernization, with Members of Congress among those serving on the commission.

Such a Commission could review the history of reform efforts in the context of current and future conditions, as technological, economic, demographic, and other changes transform the context in which government officials develop approaches to implement law and policy -- based on objective evidence about what works for the people served by government programs. SEA and other organizations, such as the Partnership for Public Service and National Academy of Public Administration (NAPA), have documented multiple conditions that limit the effectiveness of the Federal workers to achieve such results, including the need to improve hiring, manage performance, and develop leaders with sufficient skills to lead and manage important public programs. Additionally, senior executives and government officials have a duty to advise

⁶ [Public Trust in Government 2024 \(ourpublicservice.org\)](https://ourpublicservice.org/public-trust-in-government-2024)

politically appointed agency leaders about analysis and information to help them make informed policy decisions.

Proposals to replace civil servants with politically appointees, at the heart of the “Schedule F” issue, will not improve government’s ability to carry out programs and support political leadership with the best independent advice. A Blue-Ribbon Commission would help to sift through the range of ideas and frame recommendations to address longstanding needs to improve government effectiveness.

Executive branch actions on management reform alone absent policy, behavioral, and cultural changes has real limitations. Congress cannot and should not cede the work done by two million employees of the Executive Branch to a future president. Countless ideas have been proposed to reform and modernize the federal civil service. America needs our elected leaders to again recommit to an apolitical government administration that serves all, muster the political willpower and act to modernize the civil service and federal government.

Exhibit 1 – Government Managers Coalition written testimony to House Committee on Oversight and Government Reform on Civil Service Modernization, July 2018⁷

GOVERNMENT MANAGERS COALITION

• FAAMA • FMA • NCSSMA • PMA • SEA •

July 16, 2018

The Honorable Mark Meadows
Chairman
Subcommittee on Government Operations
House Committee on Oversight and Government Reform
2157 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Meadows,

In the decades since the 1978 Civil Service Reform Act (CSRA) passed, structural problems have become apparent as both the nature of work and the demand on civil servants have become increasingly complex. Due to the statutory and regulatory frameworks that govern the civil service, the federal government's talent management and personnel system remains stuck in a quagmire. Purported reforms over the years, such as the *Veterans Access, Choice and Accountability Act of 2014* (P.L. 113-146), have made the system harder to manage and have taken the focus away from what is really at the core of staffing any agency or department: identifying the necessary skills for each position, then attracting and identifying the right people for the job at the right time.

The Senior Executives Association (SEA), in conjunction with our partners in the Government Managers Coalition (GMC) – the FAA Managers Association (FAAMA), the Federal Managers Association (FMA), the National Council of Social Security Management Associations (NCSSMA), and the Professional Managers Association (PMA), collectively representing the interests of over 250,000 supervisors, managers, and executives serving throughout the federal government --has long and repeatedly identified ways to address systemic civil service reforms. SEA appreciated the opportunity to address some of these concerns in its May 16, 2018, testimony before the Committee.

The most significant challenge facing Congress and the Administration is to resist piecemeal changes to federal human capital modernization, and to instead work together to address comprehensive, long-lasting reforms that will provide agency heads and human resource managers with the necessary tools and guidance on how to recruit, develop, and retain the federal workforce of the future. The GMC believes this more holistic approach is necessary and is developing comprehensive proposals to lead this conversation. Some of the changes needed are regulatory, while others require cultural shifts in how we

⁷ [GMC civil service modernization letter to Chairman Meadows 7-16-18](#)

manage and identify talent -- changes which could be accomplished in absence of legislation. However, there are several core items that require legislation, some of which we have outlined below.

Many of the items that require statutory changes will likely require a deeper review and additional hearings, but we have identified those items we believe could be done now that will open the door for the transformational changes we believe are ultimately necessary. The GMC looks forward to working with you, your colleagues in Congress, the Administration, and other stakeholders on these issues and to discussing these proposals in more detail in the coming months.

The following specific items were identified in the [May 16, 2018](#) testimony by the Partnership for Public Service (Exhibit 1; Number in parentheses correspond to the Partnership list). We have listed them in the order of their importance to the GMC.

Develop Career Leaders (#4)

Many of the government's personnel and performance issues stem from the fact that, often, technicians and subject matter experts are promoted into supervisory roles in order to earn promotions, even as many do not actually wish to manage people and, indeed, often lack the political, negotiation, and interpersonal skills necessary to successfully do so. This problem is not unique to government. The single most important thing Congress can do to alter the trajectory of leadership and management practices in the federal government is to invest in the intentional cultivation of leaders at all levels and to professionalize the practice of leadership.

- Although overall General Schedule reform is needed, a starting place is to create a dual-track system for supervisors/leaders and technical specialists.
- Begin rotational programs for promising GS-11 through GS-13 employees interested in management to provide them with an opportunity to work in different program and management offices, thus developing an enterprise view of how they each work together and contribute to the agency's mission.
- Require joint duty for GS-15 employees, rather than mandatory rotation at the SES level.
- Create a requirement for continuing development of leadership skills and a leadership certification program for all SES.
- Professionalize and develop mission support staff by requiring professional competencies and certification for functions such as HR specialists, acquisition specialists, IT specialists, et al.
- Amend GPRAMA to require that diversity and inclusion be embedded in agency strategic planning and talent management.⁸
- Require the creation of a centralized database of leadership development programs inside and outside government that employees can easily use to identify growth/development opportunities.
- Require the creation of a centralized platform to post details and rotations so employees can more easily move between agencies.
- Require security clearance reciprocity, suitability reciprocity, and paperwork reciprocity, as well as a clear process for details and rotations to better enable the management of employees as an enterprise asset and to better facilitate rotating employees across government.

⁸ [Overcoming Persistent Barriers to Broadening Participation in the Federal Workforce - 2018 \(sagepub.com\)](#)

- Creation of a centralized training center for mandatory/government-wide required check-the-box trainings – use a shared services model to save money, rather than having each agency create their own trainings and systems.

Political Appointee Reform (#10), Hold Leaders Accountable (#1) & Address Accountability (#5)

The GMC recommends a reduction in the number of political employees, which would help streamline decision-making and could save taxpayers nearly \$1 billion over ten years, if the number of appointees were capped at 2,000. According to the findings of two National Commissions, multiple task forces, and scholars like Dr. Paul Light, excessive political appointments “actually undermine effective presidential control of the executive branch.” Unnecessary bureaucratic layering of appointments, coupled with underprepared career leaders has proven to be a recipe for breakdowns.⁹

- Require agencies, in conjunction with PPO and OPM, to provide comprehensive onboarding to all new political appointees, including introduction to agency budgets, strategic plans, human capital requirements, performance management, and agency culture.
- Require all political appointees to have performance plans that conform to OPM and agency standards and align to agency strategic plans.
- Reduce the number of political appointees, making some positions career reserved, especially those positions at the C-Suite level that oversee management, not policy, functions –
 - *Base the percentage of non-career Senior Executives permitted on filled, not allocated positions, and reduce the percentage permitted at any agency from 25% to 15%.*
 - *Require agencies to fill positions that entail direct responsibility for agency-wide administrative functions in the areas of finance, acquisition, information technology, and human resources with career appointees.*
 - *Designate the assistant secretary for administration or management (or comparable position) as career reserved.*
 - *Require all cabinet level agencies to have at least one career Senior Executive at the principal Deputy Assistant Secretary level for each Assistant Secretary or comparable position.*
- Reduce the number of political appointees requiring Senate confirmation for management, not policy focused, jobs – especially at agency components.
- Require Technical Qualifications for certain management-focused jobs, e.g. CFO, CIO, CAO, CHCO to ensure that either career appointees or political appointees have the necessary experience and skillsets to succeed in those positions.
- Increase transparency by publishing all political appointments annually in the Federal Register, regardless of whether the appointment is PAS or not.

Address Accountability (#5)

Facilitate and standardize the termination of poor performers; It should not require an army of lawyers to effectuate a personnel action. The current adverse actions and appeals process is so complex and cumbersome that many managers are reluctant to go through the seemingly endless steps of addressing employee conduct and performance issues. This reluctance is compounded with challenges in the hiring arena, where managers often decide to keep a suboptimal employee because the alternative is having no employee at all to perform necessary duties.

⁹ [Vision + Action = Faithful Execution - The Volcker Alliance](#)

- Eliminate the statutory requirement that creates Performance Improvement Plans (PIPs).
- Require agencies to build out levels of onboarding and training for new employees, new supervisors, and new Senior Level employees that focuses on the expectations of the agency at each level, the tools employees need at each level, and the stewardship of taxpayer dollars through personally and professionally carrying out their duties.
- Amend Title 5 to require mandatory supervisor training every three years.
- Create an ombudsman position within agencies to serve as a liaison to supervisors on personnel actions.
- Provide funding for an online playbook with information on how to handle adverse actions, performance problems, improving employee morale, and other areas supervisors may need guidance.
- Increase the table of penalties for holding Senior Executives accountable.
- Streamline adverse actions appeals and mitigate forum shopping through consolidation of OSC, MSPB, EEOC federal under a single adjudicative entity.
- Probationary period – need to affirmatively decide to keep employee. Manager accountability for making the decision. If manager doesn't make it supervising people, they are kicked back into a functional role instead of getting fired.
- Probationary period – new probationary period for managers moving into jobs with a higher level of complexity. If he/she can't succeed, fall back to prior level.

Use Data (#9)

Currently, there is neither a government-wide set of data standards, nor a standard for data curation to ensure federal data is usable and transparent. Federal employees also lack access to essential training on best practices for data collection, use, and analysis. The GMC believes Congress can help create a data-centric culture in agencies to more effectively and efficiently deliver programs and services – but that to do so requires a focus on ensuring employees throughout the agency understand data and have access to it.

- Create standards and governance for data, along with a named owner (e.g. NIST, Chief Data Officers, U.S. Chief Statistician) to ensure the system is designed to hold agencies accountable for conforming to the new standards.
- Require agencies to train employees on the collection and use of data.
- Empower a central office in each agency to oversee the standards and enterprise use of data to inform agency planning and decision-making.
- Think through datasets and bring together performance data, evidence and evaluation, and other program data in a curated, visually usable, and transparent format; require Performance.gov, USAspending.gov, and Data.gov to create common curation and linkage standards to allow for more transparency for taxpayers; create a data cloud with funding for these sites to ensure any new data systems are interoperable.
- Amend the Paperwork Reduction Act to make quick citizen service satisfaction surveys easier to execute.

Fix Hiring Process (#2) and Make It Easier to Move in/out of Workforce (#6)

The government's hiring and recruiting system is designed to ensure employees can't hire their brother-in-law, rather than to ensure the agency can get the talent it needs. If agencies and departments are to

meet their missions to improve the delivery of services to taxpayers, and if the government is to better compete for talent, this approach must change.

- Require agencies to routinely assess the skills necessary for jobs, especially at the senior levels, and create an overall talent management plan aligned to the specific agency's strategic plan.
- Agencies should have a comprehensive manpower function enabling them to understand the requirements and costs for jobs at all levels – whether those jobs are accomplished by a federal employee, contractor, or other type of personnel (i.e. military or reservist).
- Require the use of shared certificates for most hiring actions and create a federal Talent Assessment Center that can help agencies identify skills needed for jobs and the skills of incoming applicant to provide better matches.
- Create a task force to explore total compensation packages and the possibility of portable benefits in the federal sector.
- Establish career passports to allow exit and reentry from public service, ensuring the federal government benefits from the skills federal employees gain in the private sector and simplifying a return to federal service at a higher level.
- Address appropriations issues that stymie project-based work and HR planning.
- The GMC supports several important government-wide provisions in the House and/or Senate National Defense Authorization Acts (NDAA's) currently in conference, including:
 - House Section 1106, Extension of authority to conduct telework travel expenses test programs
 - House Section 1107, Personnel demonstration projects
 - House Section 1108, Expanded flexibility in selecting candidates from referral lists
 - House Section 1109, Temporary and term appointments in the competitive service
 - House Section 1110, Expedited hiring authority for college graduates and post-secondary students
 - House Section 1112, Reporting requirement
 - Senate Section 1122, Expedited hiring authority for college graduates and post-secondary students
 - Senate Section 1123, Increase maximum amount of voluntary separation incentive pay authorized for civilian employees
 - Senate Section 1124, One-year extension of temporary authority to grant allowances, benefits, and gratuities to civilian personnel on official duty in a combat zone
 - Senate Section 1125, One-year extension of authority to waive annual limitation on premium pay and aggregate limitation on pay for Federal civilian employees working overseas

Fill Critical Vacancies (#4/10)

Leadership vacuums stymie the ability of organizations to seamlessly execute mission and provide service to taxpayers. Acting leaders are not fully empowered to make all necessary decisions, therefore succession planning and thoughtful/intentional alignment of key staff and positions – for both career and political leaders – are two important areas of focus.

- Review the above proposals around converting management positions to career reserved. This would cut down on the number of vacancies across a presidential transition and would also provide for continuity of agency operations.

- At the career level, agencies should be required to have comprehensive talent management IT systems that allow them to track vacancies, hiring efforts, and skillsets required for each vacancy.
- Congress should appropriate funding for agencies to modernize their human capital systems, but require agencies to employ a shared services model to ensure interoperability and to more easily allow employees to transfer between jobs and agencies.
- There are currently 13 agencies without permanent Inspectors General – Presidents and Congress alike must prioritize filling key oversight roles.

Overhaul the Pay & Classification System (#3)

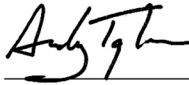
The GMC agrees that it is time for a comprehensive overhaul of the pay and classification system; federal agencies and personnel are currently governed by a byzantine morass of over one hundred systems. Discrete proposals are listed below. However, absent the creation of a strong and professionalized talent management and assessment system, pay reform will not be as effective in meeting government needs as it could and should be.

- Implement market incentive pay that address market realities such as shortages in particular skills or regional considerations.
- Modify or phase out, as appropriate, the General Schedule (GS) to ensure flexible pay bands for a variety of occupations, with the ability to allow for performance-based salary adjustments.
- Allow for two salary adjustments per year – an annual comparability increase and a performance-based increase.
- Revamp the classification system through assessments of jobs, position descriptions, and skills to determine the pay band level for each position.
- Any changes to the GS should be conducted through agency pilots and a ten-year phase-in period.
- Eliminate time-in-grade requirements, which impede the early promotion of highly-skilled employees.
- Delink SES pay from the Executive Schedule.
- Restore locality pay to the SES.
- Provide annual increases (based off the GS increases) to Senior Executives rated Fully Successful or higher.
- Increase the floor of SES pay to 5% above the top GS pay level.
- Create a pay system sunset board – every 5 years agencies need to prove their existing statutory personnel flexibilities are giving them the capabilities they claim they needed, or the authority lapses and they revert to a more common system.

Given what federal employees are able to accomplish within the current system, just imagine what they could do without the unnecessary red tape and bureaucracy hindering their work to deliver on their agencies' missions on behalf of the American people. The GMC is eager to roll up our sleeves and help drive the important conversation around the need for comprehensive civil service modernization. As we hope this communication demonstrates, many federal employees are eager – and indeed have been waiting years or even decades – to see meaningful updates enacted in the civil service.

SEA Executive Director Jason Briefel (jason.briefel@seniorexecs.org) may be contacted with questions and to coordinate further engagement with the GMC on this letter and these proposals. Thank you again for the opportunity to weigh in on this very important topic.

Sincerely,



ANDY TAYLOR
President
FAA Managers Association



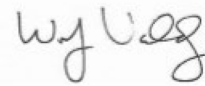
RENEE M. JOHNSON
President
Federal Managers Association



THOMAS R. BURGER
Executive Director
Professional Managers Association



CHRISTOPHER DETZLER
President
National Council of Social Security
Management Associations



BILL VALDEZ
President
Senior Executives Association

CC: Members of House Committee on Oversight and Government Reform

Exhibit 1 - Partnership for Public Service President/CEO Max Stier 10 Civil Service Modernization Ideas

1. Hold leaders accountable

- a. Leader ownership by political leaders is critical – and this includes Congress. Need to be accountable for management; not just rewarded for policy development and crisis management
- b. Establish clear performance plans for political leaders and hold more hearings and meetings with agencies on management issues

2. Fix hiring

- a. On average, it takes the federal government 106 days to hire an employee, well over double the private sector
- b. Quick – direct hire for recent grads, change the standard for OPM approval of direct hire authority to the need to demonstrate a shortage of highly qualified candidates versus a shortage of minimally qualified candidates.
- c. Use student interns as a pipeline for entry level talent.

3. Market Pay

- a. Pay system was last overhauled in 1949 and does not reflect the realities of the modern labor market. Must move to more market sensitive system

4. Develop better career leaders

- a. More and better training for new supervisors and managers
- b. Create a dual promotional track for technical experts
- c. Strengthen the SES

5. Address accountability

- a. Only 28.2 percent of federal employees agree that their work unit takes steps to deal with poor performers who cannot or will not improve
- b. Firing feds faster not the answer, better management is. Use the probationary period and require managers to make an affirmative decision to retain someone

6. Mobility

- a. Public-private talent exchange
- b. Create a “passport” to make it easier for former feds to return noncompetitively at level for which they are qualified not at what they left

7. Customer service

- a. Exempt voluntary citizen feedback from the PRA so that agencies can build the voice of the customer into their programs.

8. Create a culture of recognition

- a. Visit agencies – shout out to Meadows & Connolly
- b. Require IGs to focus not just on what is going wrong in agencies, but what agencies are doing well that can be expanded to other agencies.

9. Use data

- a. Data can be a powerful management tool and a means by which Congress can hold agency leaders accountable for the health of their organizations.
- b. FEVS represents the most comprehensive data on employee views that government has.
- c. Benchmark data for administrative processes provides to highlight and build upon management efficiencies.

10. Address lack of political leadership

- a. Reduce the number of political appointees and those that require Senate confirmation.

Exhibit 2 - Timeline of Illustrative Civil Service Modernization Efforts and Updates Since 1978

- 1978 – President Jimmy Carter made civil service reform a key focus of his presidential administration, suggesting in his first State of the Union address in January 1978 that he considered civil service reform “to be absolutely vital.”¹⁰
- [Civil Service Reform--Where It Stands Today | U.S. GAO](#) 1980
- 1989 – Leadership for America, Rebuilding the Public Service; Report of the National Commission on the Public Service [72f90b643732333a7f4640180f4b383a-1414082145.pdf \(ourpublicservice.org\)](#)
- 1989 - [The Not-So-Quiet Crisis: Paul Volcker on the Public Service | U.S. GAO](#)
- [The History of Civil Service Reform | Pay for Performance: Evaluating Performance Appraisal and Merit Pay | The National Academies Press](#) 1991
- 1998 - [CIVIL SERVICE REFORM: Observations on Demonstration Authority, the Use of Official Time, and the Administrative Redress System GAO/T-GGD-98-160 \(govinfo.gov\)](#)
- 2002 - [Building a Federal Civil Service for the 21st Century: The Challenge of Attracting Great Talent to Government Service - Partnership for Public Service](#)
- 2003 – Biography of an Ideal: A History of the Federal Civil Service published by OPM [OPM-Biography-of-an-Ideal-History-of-Civil-Service-2003.pdf \(armywarcollege.edu\)](#)
- 2003 – Urgent Business for America, Revitalizing the Federal Government for the 21st Century, Report of the National Commission on the Public Service [Volcker Report \(brookings.edu\)](#)
- 2004 - [The State of the Federal Civil Service Today \(sagepub.com\)](#)
- 2009 - [OPM Director John Berry proposes big civil service changes \(federalnewsnetwork.com\)](#)
- 2009 - [Testimony of OPM Director Berry – House Oversight – Public Service in the 21st Century, State of the Federal Workforce](#)
- 2011 - [Enactment and Implementation of the National Security Personnel System: Policy Made and Policy Unmade, Public Administration Review](#)
- 2017 - [The Civil Service Reform Act: Due Process and Misconduct-Related Adverse Actions \(fas.org\)](#)
- 2017 - [Civil Service Reform: Reassert the President’s Constitutional Authority - The American Interest \(the-american-interest.com\)](#)
- 2017 - [Civilian Personnel Reform at the Department of Defense: Lessons from the Failure of the National Security Personnel System, Institute for Defense Analyses](#)
- 2017 & 2018 – National Academy of Public Administration (NAPA) [No Time To Wait: Building a Public Service for the 21st Century No Time To Wait, Part 2: Building a Public Service for the 21st - National Academy of Public Administration \(napawash.org\)](#)

¹⁰ [Civil Service Reform: A New Commitment on JSTOR](#)

- 2018 - [Delivering Government Solutions in the 21st Century Organization Design Principles and Recommendations \(performance.gov\)](#)
- 2018 – 10 Considerations for Civil Service Modernization, SEA [Ten Considerations For Civil Service Modernization \(seniorexecs.org\)](#)
- 2018 - [Recommendations from Renewing America's Civil Service | The Volcker Alliance](#)
- 2018 - [Microsoft Word - Principles to Guide Reform Final.docx \(ourpublicservice.org\)](#)
- 2018 - [Marking 40 Years with the Civil Service Reform Act | U.S. GAO](#)
- 2019 - [Are Declines in U.S. Federal Workforce Capabilities Putting Our Government at Risk of Failing?, SEA](#)
- 2019 - [A Proposal to Help Congress Enact Civil Service Reforms | The Regulatory Review \(theregreview.org\)](#)
- 2019 - [WHO MANAGES THE MANAGERS? A ONE-YEAR LOOKBACK AT PRESIDENT TRUMP'S CIVIL SERVICE REFORMS – The C. Boyden Gray Center \(gmu.edu\)](#)
- 2020 - [Executive Order on Creating Schedule F In The Excepted Service – The White House \(archives.gov\)](#)
- 2021 - [Increasing Accountability in the Civil Service, James Sherk](#)
- 2022 - [Rep. Roy introduces bill to make all federal bureaucrats at-will | Representative Chip Roy \(house.gov\)](#)
- 2022 - [There's No 'Easy Button' to Modernize the Civil Service - Government Executive \(govexec.com\)](#)
- 2023 - [Let's Rethink the Management of Our Civil Service - Government Executive \(govexec.com\)](#)
- 2023 - [Project 2025, Mandate for Leadership chapter on OPM and the civil service 2025_MandateForLeadership_CHAPTER-03.pdf \(project2025.org\)](#)
- 2024 - [Convergence Roundtable on Civil Service Modernization, Blueprint for Action](#)

