



CONGRESSIONAL TESTIMONY

STATEMENT FOR THE RECORD

**AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES,
AFL-CIO**

PROVIDED TO THE

**U.S. HOUSE COMMITTEE ON OVERSIGHT AND
ACCOUNTABILITY**

HEARING ON

**“OVERSIGHT OF OUR NATION’S LARGEST EMPLOYER: REVIEWING THE
U.S. OFFICE OF PERSONNEL MANAGEMENT.”**

MARCH 9, 2023

On behalf of the American Federation of Government Employees, AFL-CIO (AFGE), which represents more than 750,000 federal and District of Columbia government employees, we are pleased to submit this statement for the record for the Committee's hearing entitled, "Oversight of Our Nation's Largest Employer: Reviewing the U.S. Office of Personnel Management."

AFGE supports Congressional oversight of the executive branch. We particularly appreciate the Committee's leadership role in seeking to reinvigorate the competitive service by passing the bipartisan Chance to Compete Act (H.R. 159) introduced by Representatives Foxx and Connolly. We believe that many of the concerns Committee members have periodically voiced about the civil service can best be addressed at the front end by ensuring fair compensation and open competition for the most qualified and committed candidates. Put simply, if the government recruits competitively, based on ability rather than politics, we will have the apolitical civil service that all sides say they want.

Direct or excepted hiring is too often used as a mechanism to fill the ranks of the civil service with less qualified candidates who are more likely to underperform in the long run. It is also used to bypass current agency employees who may never even learn of advancement opportunities. The Chance to Compete Act would reverse this unwholesome trend, which if not halted will soon see fewer than 50% of federal jobs filled through an open and competitive process. Moreover, Chance to Compete will ensure that agencies conduct an objective assessment of candidates and only allow those with a passing score or assessment to advance in the hiring process. It will also make it easier for job seekers to compete for multiple jobs across the entire government without having to separately identify and apply for each one.

It is vital that H.R. 159 be adopted as quickly as possible and in the form that the House approved overwhelmingly in January. Neither the Senate nor the House should entertain any further changes to weaken the bill and to continue the status quo under the guise of reform. Moreover, Congress should refrain from creating any new statutory direct hire authorities or exceptions to competitive hiring, of which there were many created during the last Congress and many previous Congresses. Agencies that are under intense pressure to implement new initiatives – from building new infrastructure to treating chemically exposed veterans to improving our semiconductor industrial base – will always seek expediency in hiring, often at a long-term cost to the quality of the civil service and opportunities for the existing workforce. It is up to Congress to resist these proposals and compel agencies to invest the effort in hiring only the best qualified candidates. Competitive hiring is ultimately the fairest and most equitable process, including for disadvantaged groups whose members are less likely to have friends on the inside of agencies.

There is a commonly held view that federal hiring takes too long. That is true in some cases but the competitive process is rarely if ever the culprit. In fact, most delays are attributable to backlogs in the background security investigation process, even for non-sensitive positions and understaffing and centralization of human resources offices within agencies.

AFGE categorically rejects all efforts to make more civil servants at-will employees, as the previous administration proposed via an executive order creating a new Schedule F.

Schedule F and other hiring authorities outside the competitive service pose a serious risk of politicizing the civil service and reestablishing a patronage or spoils system as existed in the 19th century, where civil servants were hired based on political loyalty rather than professional ability.

Maintaining a High-Performing Civil Service

It is no secret that some in Congress have questioned how long it takes for agencies to deal with poor performers or employees who may have engaged in misconduct. As a threshold matter, AFGE wants agencies to take appropriate, swift, and fair actions toward all employees who fail to meet reasonable expectations and who detract from the service as a whole. AFGE values excellence, and a high-performing civil service is in the best interests of the government, its dedicated workers, and the American public.

AFGE supports allowing management to address poor performance within the context of due process. Performance issues are addressed in chapter 43 of title 5, which allows employees not meeting performance standards to be reassigned, demoted or removed upon a showing of substantial evidence. This is an evidentiary standard that results in management decisions that are almost always upheld, and it is very rare for an employee to win an appeal before the MSPB when challenging an agency performance-based adverse action.

With regard to adverse actions based upon alleged conduct, such actions are governed by chapter 75 of title 5 and require an agency showing of a preponderance of the evidence. Because conduct-based actions are based on other than performance issues, such charges must be subject to stricter scrutiny including a clear showing that the alleged behavior took place, that it was a violation of a known standard, and that the proposed adverse action is consistent with promoting the efficiency of the service.

It is important to bear in mind that federal managers – like managers anywhere – are not infallible. Civil service safeguards exist precisely to ensure that the acts, errors, and omissions of managers do not unfairly end the careers of committed civil servants and degrade the quality of the civil service as a whole. Union collective bargaining agreements play a positive role, first and foremost by creating an environment where workers have reasonable expectations and workplace conditions that promote success, not failure. Where there are problems involving an employee, neutral arbitration offers a rapid and efficient process for gathering the facts and making fair decisions.

Telework and Remote Work

We generally support OPM's recent posture on telework and regularly cite the agency's recent statutorily required report issued in late 2022 which is favorable to federal telework. Individual agencies are best suited to determine their needs for balancing in-office, hybrid arrangements and remote work, acting in partnership with bargaining unit employees. The majority of our members were never eligible for any telework at all even during the worst days of the pandemic. Food safety inspectors, corrections officers, border patrol agents, workers in the skilled trades at Defense installations, DoD and VA clinicians, transportation security

officers and many others “showed up” 100% of the time throughout the pandemic, sometimes at the cost of their lives. In other cases, such as handling customer service calls, federal employees also “showed up” via telework, which may well be the best, lowest-cost solution for the future, even as the pandemic recedes. For example, the VA has taken steps to improve veterans’ access to telemedicine, particularly for mental health care. Veterans often prefer to receive such care remotely, and in many cases the clinicians are working remotely some of the time as well. This is positive for recruiting scarce mental health professionals and positive for at-risk veterans.

We support agencies’ studying the impact of telework and remote work and suggesting measures to optimize agency performance, costs, employee morale, and interactions with the public. When agencies seek to modify telework or remote work arrangements that are covered by existing collective bargaining agreements, those changes should generally be subject to negotiation with employee representatives. Such negotiations benefit all sides, since in the best case they result in solutions that all parties support and that frequently improve upon initial agency proposals. Rank-and-file employees are often best positioned to recognize the challenges associated with sudden changes to telework and remote work, including health and safety concerns, availability of office space, and unforeseen impacts on productivity and collaboration. H.R. 139, the SHOW UP Act, would compel agencies to revoke provisions of existing collective bargaining agreements that were negotiated after the beginning of the pandemic, which provide telework and remote work arrangements that all sides have agreed to and that agencies have viewed as benefitting their missions. For that reason, we have opposed sections of the bill.

FEHB – Improper Enrollments

AFGE supports efforts to ensure that only qualified family members are permitted to enroll under an employee’s FEHB coverage. To the extent that there are any individuals improperly or mistakenly enrolled, it creates an unnecessary cost and burden on the system. OPM’s role in this effort is limited to providing guidance to agencies. Agencies are responsible for ensuring compliance with enrollment requirements, and where improper enrollments have occurred, agencies officials rather than OPM should be held accountable if there are found to be lax procedures utilized.

Postal Service Health Benefits (PSHB) Program

AFGE supports the PSHB Program. However, the contours of that program should be limited to the unique circumstances of the Postal Service which was subject to an unwarranted privatization scheme, the Postal Accountability and Enhancement Act (PAEA) of 2006, which created an immediate financial crisis for the Postal Service by requiring the funding of a \$72 billion accrued liability for medical costs extending 75 years into the future. Instead of allowing the Postal Service to pay these costs on a pay-as-you go basis as is used in two-thirds of private sector retiree medical plans (as well as under the government’s FEHB program), Congress required these costs to be pre-funded and invested solely in Treasury securities. This crippled the finances of the Postal Service.

The creation of the PSHB program by the Postal Service Reform Act of 2022 was designed to address this crisis by eliminating the pre-funding requirement. This was a

compromise to address the crisis caused by PAEA. Unlike the Postal Service, which is an independent government agency that relies exclusively on income received from the sale of stamps and services, Executive Branch agencies rely on appropriations received from Congress. AFGE opposes potential changes to FEHB that would replicate features of PSHB, which increase retiree costs without any improvement to benefits.

