



Testimony of

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**Senate Committee on Homeland Security and Governmental Affairs
Subcommittee on Regulatory Affairs and Federal Management**

**“Examining OMB’s Memorandum on the Federal Workforce, Part II:
Expert Views on OMB’s Ongoing Government-wide Reorganization”**

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Chairman Lankford, Ranking Member Heitkamp and members of the Subcommittee, thank you for allowing NTEU to share its thoughts on the Administration's plans to reorganize the federal government. As National President of NTEU, I represent over 150,000 federal employees in 31 agencies and I appreciate the opportunity to discuss this important issue.

As the Subcommittee is aware, on April 12, 2017, the Office of Management and Budget (OMB) issued agency guidance on how to fulfill the requirements of both the January 23, 2017, Presidential Memorandum imposing a hiring freeze and the March 13, 2017, Executive Order directing OMB to submit a comprehensive plan to reorganize federal agencies while aligning those initiatives with the President's March 16, 2017, Fiscal Year (FY) 2018 Budget Blueprint. This guidance required all agencies to:

- Begin taking immediate actions to achieve near-term workforce reductions and cost savings, including planning for funding levels in the President's FY 2018 Budget Request;
- Develop a plan to maximize employee performance by June 30, 2017; and
- Submit an Agency Reform Plan to OMB in September 2017 as part of the agency's FY 2019 Budget submission to OMB that includes long-term workforce reductions.

With the issuance of this new guidance, the government-wide hiring freeze for federal agencies was lifted and in its place, agencies were told to adhere to the principles, requirements, and actions laid out in the new guidance when hiring new employees. It is also important to note, however, that some agencies, such as the Environmental Protection Agency, continue to operate under a virtual hiring freeze. At the same time, the memo noted that the President's FY 2018 Budget request would propose decreasing or eliminating funding for many programs across the Federal government, and in some cases, redefine agency missions, which should drive agencies' planning for workforce reductions and inform their Agency Reform Plans.

In addition, OMB laid out a series of guidelines for determining how to eliminate positions in the long term. Specifically, OMB urged agencies to use data-driven workforce planning; to consider consolidating higher-grade positions and downgrading management-level positions; to ensure that they have the fewest amount of management layers needed to provide for appropriate risk management, oversight and accountability; to eliminate redundancies; and to review positions as they become vacant to ensure they are relevant and reflect current mission needs.

NTEU is in favor of improving the efficiency and effectiveness of federal agencies to ensure that they are providing the services that Americans rely upon and that taxpayer dollars are spent wisely. However, we are deeply concerned with agencies being directed to make reductions in the workforce, based only on proposed budgets that do not have congressional approval, which will drastically impact the ability of agencies to meet their missions. Additionally, it is our fear that staffing reductions of federal employees are being proposed with the aim of outsourcing agency functions and services, that, based on past experience, will only cost taxpayers more money and will provide the public with less transparency and accountability.

Agencies Consulting with Employee Representatives

As I stated previously, NTEU supports efforts to make federal agencies more effective and efficient. However, we believe that reform efforts should not take place in a vacuum. Senior agency officials and new political appointees do not have all of the relevant information or ideas on where to focus reform efforts. Rather, we believe that only by having senior officials working closely with front-line employees and their representatives will real positive reform take place. Front-line federal employees and their union representatives are an essential source of ideas and information about the realities of delivering government services to the American people.

In 2009, President Obama issued Executive Order (EO) 13522, Creating Labor-Management Forums to Improve Delivery of Government Services. As E.O. 13522 makes clear, pre-decisional involvement (PDI) is an important component of the implementation of labor management forums, and therefore calls for agencies to involve employees and their union representatives in pre-decisional discussions concerning all workplace matters to the fullest extent practicable. Front-line employees and their union representatives have essential ideas and information about delivering quality government services to the public and the PDI process allows employees, through their labor representatives, to have meaningful input resulting in better quality decision-making, more support for decisions, timelier implementation, and better results for the American people.

According to the October 2014 Labor-Management Relations in the Executive Branch report, there are numerous instances where PDI and employee engagement efforts have been successful. These examples demonstrate how PDI has increased agency productivity as well as significantly increased employee satisfaction and morale. I see no reason why similar success cannot be had with this new government-wide reform effort.

On May 15, 2017, I met with then OMB Senior Advisor Linda Springer and discussed our desire to be part of reorganization planning and how our chapter leaders were soliciting reform recommendations from our members. However, we have not hear back from OMB regarding our request to have OMB counsel agencies to reach out and involve front-line employees. We fear that such reform efforts without employee involvement will fail; adversely impacting the morale of the federal workforce as well as the services we provide to the American people. Not deterred, I then sent a memo to our chapters, asking them to provide ideas I could share with agency heads. I am pleased to say that the response from our members was overwhelming. After collecting these ideas, I then wrote letters to agency heads summarizing our members' suggestions and offering a meeting to discuss them in depth and answer any questions they might have so that they could fully appreciate how these recommendations will improve Agency and employee performance. Unfortunately, other than a meeting with Customs and Border Protection (CBP) and a perfunctory response in a few cases, we have not heard back from agencies and are concerned about the proposals they are submitting to OMB. While we hold no illusions that all of our ideas will be accepted, it is important for agencies, the Administration, Congress and the public to understand that when it comes to meeting the public's expectations for their government, front-line federal employees have much to offer.

Suggestions for Agency Reform Plans

In June, I sent letters to CBP, the Internal Revenue Service (IRS), Commodity Futures Trading Commission (CFTC), the Environmental Protection Agency (EPA), the Social Security Administration (SSA), and the Department of Health and Human Services (HHS), among others, to share our members' recommendations for the agency reform plans. Although the recommendations were specific to each agency, they fell into similar themes.

Increase telework and/or hoteling to reduce real estate costs and wasted travel time

At the IRS, we recommended eliminating the requirement that employees report to their assigned posts-of-duty (POD) at least two days each pay period. Many employees report that they do not have any work-related need for reporting physically to work, and that it is sufficient that the Agency have the ability to direct telework-eligible employees to report to their POD on special circumstances. In addition, it would also include expanding the "Home as POD" program to include any employee who volunteers to telework full-time and is willing to surrender their permanent office space/cubicle. These changes would increase employee morale and reduce Agency rent expenses.

Similarly, at the CFTC we recommended an increase in telework. With increased telework, CFTC could promote office sharing and reduce rented office space. In addition, one additional telework day per week could save up to an estimated \$300,000 per year in transit subsidies. We also recommended increased flexibility in work schedules, which would increase productivity and staff retention as well as reduce the amount the Agency spends on transit subsidies.

Consolidate Management Layers

According to the OMB memorandum, as part of their reform plans, agencies are to consider consolidating higher-grade positions, downgrading management-level positions, and ensuring that they have the fewest amount of management layers needed to provide for appropriate risk management, oversight and accountability.

For example, at CBP we continue to see a top-heavy management organization. In terms of real numbers, since its creation, the number of new managers has increased at a much higher rate than the number of new frontline CBP hires. CBP's own FY 15 end of year workforce profile (dated 10/3/15), shows that the supervisor to frontline employee ratio was 1 to 5.6 for the total CBP workforce, 1 to 5.7 for CBP Officers, and 1 to 6.6 for CBP Agriculture Specialists. Prior to 2003, supervisor to frontline ratio was closer to 1 supervisor to 12. It is also NTEU's understanding that nearly 1,000 CBP Officers are serving either at CBP headquarters or non-Office of Field Operations locations. This means that nearly 4,000 CBP Officers are serving in supervisory positions.

The tremendous increase in CBP managers and supervisors has come at the expense of border security preparedness and frontline positions. Also, these highly paid management positions are straining the CBP budget. CBP's top heavy management structure contributes to

the lack of adequate staffing at the ports, excessive overtime schedules and flagging morale among the rank and file and is something we have routinely raised with CBP leadership.

In another example, units such as the National Case Assistance Centers (NCAC) in the Office of Disability Adjudication and Review (ODAR) at the SSA have four layers of management ranging from GS 13s to GS 15s. First line supervisors are GS 13s. They directly interact with and supervise bargaining unit employees. The group supervisor reports to a unit manager, who reports to an associate director, who then reports to the Director. The multiple layers of management in these offices are not only wasteful, but also make communication less effective and efficient.

In addition, the Baltimore NCAC was initially set up to manage approximately 300 employees. Due to transfers and attrition, the Baltimore NCAC employs approximately 181 employees. Despite the reduction in the frontline workforce, NCAC management remains at the same level. The Baltimore NCAC, as well as the St. Louis NCAC, have four levels of management- 1 Director, 1 Deputy Director, 2-3 Unit Managers, and a number of Group Supervisors. NTEU proposes eliminating the NCAC Unit Manager position. These are GS 14 positions and the resulting savings would total \$698,495 to \$778,338 annually. NTEU also proposes eliminating the two NCAC Deputy Director Positions, which would result in additional saving totaling \$208,794 to \$271,437 annually.

At the Farm Service Agency at the United States Department of Agriculture (USDA), NTEU is concerned with the reorganization plan for its Office of Budget and Finance. On May 15, 2017, USDA submitted a reorganization proposal to the Senate Appropriations Subcommittee on Agriculture, Rural Development, Food and Drug Administration, and Related Agencies, for approval. This reorganization produces a higher manager to employee ratio than OPM recommends. The manager to employee ratio in this reorganization is 1 to 5, instead of OPM's recommendation of 1 to 11. NTEU was only provided a copy of this plan after it was submitted to the Subcommittee for approval. Nonetheless, we suggested to USDA that the reorganization be revised to consolidate units where the manager has less than 5 employees reporting to them in order to bring the manager to employee ratio at least somewhat closer to OPM's staffing recommendation.

At ODAR, NTEU proposes eliminating the Quality Review Officer (QRO) positions in the Regional Offices and shifting oversight of the quality review specialists to the Regional Attorney. The Regional Attorney position description outlines that one task to be performed is to "coordinate and evaluate the work of Attorney Advisors and other support staff." Often Regional Attorneys review cases sent to them by hearing offices asking for guidance on issues identified in decisional drafts. They provide guidance and feedback to the hearing offices. These duties go hand in hand with the duties performed by the QRO, which results in duplicative processes. QROs are GS 14 positions. Eliminating the 6 QRO positions would result in savings ranging from \$598,710 to \$779,338, based on the Rest of the US pay scale.

Furthermore, at the IRS Office of Chief Counsel, we recommend eliminating the approximately 200 non-bargaining unit (NBU) GS-15 905 Senior Technician Reviewer and Special Counsel, and Special Trial Attorney positions in Chief Counsel and converting these positions to bargaining unit (BU) GS-15 Senior Counsel positions. These positions are not used or needed for management functions, but are needed for performing complex legal and review work. The Office has too many GS-15 attorneys designated as NBU who are not really managers. These employees generally do not perform or are not needed to perform managerial

functions. They act as reviewers and lead attorneys and work on the more complex matters. Essentially, they perform functions that are substantively indistinguishable from Senior Counsel BU attorneys. All of these positions should be converted to a single Senior Counsel bargaining unit position both in the National Office and the Field offices.

In addition, NTEU recommends reducing the number of front line managers in the Field Offices, Associate Area Counsel (AAC), and Deputies/Assistants NBU GS-15 905 positions at the IRS and converting them to BU Senior Counsel positions. Field attorneys should continue to perform litigation functions and not only administrative managerial tasks. The Assistant Branch Chief or Assistant to the Branch Chief NBU GS-14 position could be eliminated.

Hire more support staff

For many agencies, we recommended the hiring of additional support staff so that staff members with more complex work could spend less time performing administrative functions. At ODAR, for example, we believe that by simply focusing on hiring more Administrative Law Judges (ALJs) without the support staff of Attorney Advisors and Decision Writers is counter-productive to reducing the backlog.

Empower front-line decision making

We believe that by empowering employees, agencies breed individual and group confidence, enabling people to work both more efficiently and more effectively. When employees are confident within their work and with their employer, they are more willing to identify problems and suggest ways to improve the quality of their work.

Fill existing vacancies

While this recommendation may seem counter to the goals of the agency reorganization efforts by the Administration, we believe that efficiencies can be achieved by fully staffing agencies so that agencies can meet their missions. For example, we recommend ODAR staff approximately 200 unfilled Senior Attorney Advisor (SAA) positions via promotion. Filling these SAA positions with current Attorney Advisors will allow a number of significant tasks to be performed which will improve case processing.

A Senior Attorney just about anywhere can do prehearing conferences with unrepresented claimants just about anywhere – using the phones or video hearings or other modalities. Feedback indicates that unrepresented claimants appreciate the opportunity to talk to someone about their appeals and what to expect. This provides excellent public service and the data we have seen indicates prehearing conferences reduce the numbers of no shows/continued hearings to obtain representatives, allowing ALJs to be more efficient. Moreover, rocket dockets for unrepresented claimants can be set with Senior Attorneys and after a prehearing conference type meeting, could go to an ALJ hearing when appropriate or possibly an on-the-record (OTR) recommendation.

At the IRS, we recommend increasing the number of Department of the Treasury, Office of Tax Policy GS-15 docket attorneys to expedite work on published guidance regulations and legislation. The Office of Tax Policy attorneys in TLC (Tax Legislative Counsel), BTC (Benefits Tax Counsel) and ITC (International Tax Counsel) work with IRS Office of Chief Counsel attorneys in publishing tax guidance including regulations, revenue rulings, notices and announcements. Inadequate staffing in the Office of Tax Policy results in a bottleneck in issuing

tax guidance to the public. Hiring attorneys for very short term tenures (1 – 2 year stints) further exacerbates the problem.

Another option is to insource work currently being performed by contractors. Contracting companies charge overhead costs while contract employees lack the accountability, expertise, and institutional knowledge of federal employees. Moving these contractor responsibilities in-house would translate into improved productivity, better work product, and savings in overhead costs. The CFTC currently has just under 700 full-time equivalent employees and 400-600 contractors and could realize significant savings by insourcing work.

Concerns Over Outsourcing

Relatedly, one of the major concerns NTEU has with the reorganization efforts taking place in federal agencies is that such plans will lead to increased outsourcing of government functions. In fact, the OMB Reorganization Memorandum states that agencies should consider leveraging outsourcing to the private sector when the total cost would be lower. It also states that agencies should consider government-wide contracts for common goods and services to save money and free-up acquisition staff to accelerate procurements for high-priority mission work.

NTEU has long maintained that federal employees, given the appropriate tools and resources, do the work of the federal government better and more efficiently than any private entity. When agencies become so reliant on federal contractors, the in-house capacity of agencies to perform many critical functions is eroded, jeopardizing their ability to accomplish their missions. It has also resulted in the outsourcing to contractors of functions that are inherently governmental or closely associated to inherently governmental functions.

Over the years, we have seen at agencies delivering vital services, contractors perform critical and sensitive work such as law enforcement, government facility security, prisoner detention, budget planning, acquisition, labor-management relations, hiring, and security clearances. According to the Government Accountability Office (GAO), the Department of Homeland Security has used contractors to prepare budgets, develop policy, support acquisition, develop and interpret regulations, reorganize and plan, and administer A-76 efforts.

One of the most egregious examples of the outsourcing of inherently governmental functions was the 2006 IRS private tax collection program. The program, under which private collection agencies were paid to collect taxes on a commission basis, was an unmitigated disaster. The program resulted in a net loss of almost \$5 million to the federal government and lead to taxpayer abuse. Further, at one juncture in the program, the IRS had to assign 65 of its own employees to oversee the work of just 75 private collection agency employees. Given the obvious failures of this undertaking, and in the face of strong opposition by NTEU and a broad range of consumer and public interest groups, Congress voted to cut off funding for the program. Then, in March 2009, after conducting a month-long, comprehensive review of the program, including the cost-effectiveness of the initiative, the IRS announced it was ending the program. Yet, Congress reinstated the program in late 2015 to offset the costs of the long-term highway funding bill, and NTEU remains highly concerned by the use of private collection agencies, which not only are costly to taxpayers, but run the risk of exposing the public to scam artists.

The aggressive targeting of federal jobs for public-private competition is not new. During the Administration of President George W. Bush, competitive sourcing was one of its top initiatives. As part of their efforts, we saw the rules of competition overhauled, quotas set for competed jobs, and grades given to agencies on their efforts in conducting competitions. The changes undoubtedly had the desired effect: between 2000 and 2008, spending on contracting doubled, since 2001, reaching over \$500 billion in 2008. The explosion in contract spending also led to a drastic increase in the size of the contract workforce in addition to waste, fraud and abuse.

The Obama Administration, noting several issues with the A-76 process, instilled a moratorium on outsourcing while it looked to improve the competitive process. I urge this Subcommittee to ensure that the current A-76 moratorium be continued. In addition to the concerns with the A-76 process and issues with cost overruns and proper contractor oversight, ethical issues are also of concern as contractor employees are working for the benefit of their employer company—not the benefit of the American people. Such initiatives also have a demoralizing impact on the existing federal workforce as they wonder if their job is the next to be outsourced.

By ensuring that the outsourcing process is fair and that federal employees are able to compete for work with contractors on an even playing field, federal agencies will be better able to provide high quality services and will save taxpayer dollars and achieve the goals for the OMB Memorandum.

Conclusion

NTEU has always supported efforts to improve agency performance and eliminate government waste and inefficiencies. However, previous reform and reorganization efforts failed to accomplish these goals. Instead, we've seen overly ambitious efforts to reform the civil service that eroded employee rights and employee morale or haphazard efforts to reduce the number of federal workers by cutting an arbitrary number of personnel, implementing a hiring freeze, or failing to replace employees who had retired resulting in gutted agencies and largely contributing to the looming retirement crisis facing the federal government today. In fact, one of the biggest lessons and failures of the Clinton-Gore Administration's so-called "Reinventing Government" initiative was the hollowing out of positions, leaving agencies unable to conduct proper workforce planning, and without a skilled workforce in place. I fear that the efforts of this Administration, with its ongoing limitation on hiring, will only contribute to agencies inability to meet their missions.

There are many challenges facing the federal government; the inability of our government to carry out the basic functions without threats of a default or shutdown undermines any confidence that massive reform efforts can be successfully achieved. If the Administration is planning to make drastic reductions in the workforce without real input from federal employee representatives, and without congressional approval, we fear a real opportunity for change will be wasted along with taxpayer dollars.

Thank you again for the opportunity to share my views with you today. I am happy to answer any questions.