STATEMENT BY

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BEFORE THE

SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT, THE FEDERAL WORKFORCE, AND THE DISTRICT OF COLUMBIA

SENATE COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

ON

DEVELOPING FEDERAL EMPLOYEES AND SUPERVISORS: MENTORING, INTERNSHIPS, AND TRAINING IN THE FEDERAL GOVERNMENT

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Mr. Chairman and Members of the Committee: My name is J. David Cox and I am the National Secretary-Treasurer of the American Federation of Government Employees, AFL-CIO (AFGE). On behalf of the more than 600,000 federal and DC government employees represented by AFGE, I thank you for the opportunity to testify today. I have been asked to address federal internship programs generally and more specifically the Federal Career Intern Program (FCIP), the importance of training and mentoring for supervisors, and our union's views on S.674. The Federal Supervisor Training Act. These are all important issues for current and prospective federal employees because how they are addressed will have an enormous impact on both the career development opportunities of our members, and the integrity of the Merit System. The Federal Career Intern Program (FCIP)

The Federal Career Intern Program (FCIP) is the federal government's most ubiquitous and problematic special hiring authority. The FCIP is essentially a direct hiring program that bypasses open competition and veterans' preferences, and circumvents career ladder promotions opportunities for the incumbent workforce. The program was established by Executive Order 13162 on July 6, 2000 as an excepted service hiring authority under the oversight of the Office of Personnel Management (OPM). As an excepted service hiring authority, the FCIP gives agencies enormous discretionary authority to hire employees without using the competitive hiring process or the public notice processes ordinarily required by Chapter 33 of Title V of the United States Code. AFGE strongly objects to the federal government's continued use of the FCIP because agencies have embraced it to such a degree that it has nearly

superseded the competitive service, and because it has become a preferred vehicle for favoritism.

The ostensible purpose of the FCIP was, originally, "to attract exceptional men and women to the Federal workforce who have diverse professional experiences, academic training, and competencies, and to prepare them for careers in analyzing and implementing public programs." Based on reports from our members, however, agencies have strayed from this purpose by using the FCIP as a closed hiring system that does not reach many qualified members of the American public or current federal employees. AFGE does not believe that the federal government can succeed if its primary hiring process evades the open competition requirements set forth in the Merit Systems Principles or that operates outside the bounds of simple fairness in hiring.

It was for this reason that when the FCIP was initially established, our union immediately expressed the concern that the FCIP would obliterate the rule of competitive hiring. At that time, OPM responded to this concern by asserting that the FCIP was only part of a series of improvements that OPM intended to make to the Federal hiring process. Ten years later, with much damage already done, we continue to receive the same message from OPM.

In the meantime, federal agencies such as the United States Border Patrol, the Department of Homeland Security's Citizenship and Immigration Services and the Social Security Administration have used the FCIP as the almost exclusive hiring authority for thousands of newly hired employees. Indeed, according to a 2007 report prepared by the Government Accountability Office (GAO), in both 2005 and 2006 the Department of Homeland Security used the FCIP more than any other recruitment tool

when compared to the number of new permanent hires. Based on these numbers, it seems clear that FCIP hiring has extended well beyond the limited number of professional, scientific and administrative positions that it was initially intended to cover.

Moreover, the ever-increasing rise in FCIP hires flies in the face of advice issued by the Merit System Protection Board (MSPB) that cautioned federal agencies, "against practices – such as using the FCIP as the sole or primary means of filling a particular type of job, combined with heavy reliance on recruiting methods that restrict the pool of applicants – that have the cumulative effect of limiting citizens' access to job opportunities." The MSPB succinctly summarized up by advising that, "[e]xceptions to fair and open competition that are legitimate and reasonable on a selective basis are problematic if they become standard practice."

AFGE believes that federal agencies looking for an easy way out of the responsibility to honor veterans' preference and open competition have subverted the purpose of the FCIP. The FCIP now represents the unrestricted use of a hiring authority that extremely subjective, and grants managers a degree of discretion that should not exist in the federal government. Further, managers have total control over newly hired employees whose tenure is characterized by the absence of procedural due process protections, such as adverse action appeal rights, and a probationary period that is double the length of new employees hired under competitive processes. The United States Court of Appeals for the Federal Circuit lent persuasive support to this criticism just last year when it invalidated OPM's regulation governing the pass-over of veterans' preference eligible individuals for positions in the excepted service. *Gingery v. Department of Defense*, 550 F.3d 1347, 1353-54 (Fed. Cir. 2008). The *Gingery* Court

found that the Defense Contract Audit Agency's use of OPM's regulation to pass over Mr. Gingery for positions in the FCIP violated his statutory veterans' preference rights.

Combined with the FCIP's lack of transparency, the above problems have turned the FCIP into a step backward from the basic civil service protections first introduced by the Pendleton Act in 1883. AFGE has urged the Obama Administration to take immediate action either to eliminate the FCIP, limit it to a small number of positions, or revise the program significantly in order to strike a more appropriate balance between the need for hiring flexibility and the imperative to uphold the principles of transparency and fairness in federal hiring. At an absolute minimum, AFGE has urged a strict limit on the number of appointments available in any given fiscal year, and we ask this committee to enact such a limit. A limit on the number of available FCIP appointments would preserve merit-based hiring by ensuring that Federal agencies and departments would not succumb to the temptation to evade their responsibilities under the Merit System and the law relating to veterans' preference.

AFGE is extremely sensitive to agencies' pleas with regard to expedited hiring, especially in the context of insourcing jobs that were inappropriately outsourced in the last decade. With the recognition that each Full Time Equivalent position (FTE) insourced saves the federal government approximately \$40,000 per year, according to Department of Defense estimates, the financial motivation to insource is substantial. It has become routine for agencies to complain that the competitive hiring process is cumbersome and time-consuming, and use this as an excuse either to resist or delay insourcing, or to revert to non-competitive hiring processes such as the FCIP. AFGE does support the Administration's efforts to modernize and expedite the competitive

hiring process, and we are hopeful that with the proper training and resources, managers at agencies throughout the federal government will make use of the more user-friendly procedures to uphold the merit system and veterans' preference and hire competitively.

Mentoring for All Federal Employees

There is a large body of academic research that supports the proposition that a formal mentoring program can be valuable and cost-effective training for any organization of business. The importance of classroom education and "learning through experience" cannot be questioned, but the payoff from a personal "coaching" or "mentoring" relationship to productivity, morale, career advancement success, willingness to take on new assignments and expand the boundaries of one's area of responsibility are all potential benefits that are attributable to mentoring. In addition, an effective mentoring experience can in some circumstances eliminate the need for costly training seminars and travel, and provide instruction and information tailored specifically to the agency's needs. But mentoring that produces these types of positive and cost-saving results does not happen automatically. It requires genuine support from managers and supervisors, who must in turn know how to establish and facilitate mentoring relationships that serve both mentor and protege, and that further the mission of the agency.

It is also important to recognize the difference between formal and informal mentoring. While in some cases informal mentoring that arises spontaneously between a mentor and a protégé can be extremely valuable, we do not believe that federal managers should rely exclusively on informal mentoring. One problem with merely

encouraging and being supportive of informal mentoring relationships after they arise is that they have historically, in effect if not in intention, been discriminatory against women and minorities. Formal mentoring programs not only avoid this discriminatory impact, but they also have the important virtue of imposing boundaries and restrictions that protect the interests of both mentor and protégé. Management involvement in mentoring is also necessary to help prevent toxic relationships that may effectively sabotage the careers of any of the participants. Mentor and protégé relationships are susceptible to all of the same conflicts as other interpersonal relationships, and it is crucial that bad chemistry or misunderstanding not stand in the way of a less experienced worker obtaining the benefits of mentoring, and a well-managed mentoring program can help address these and other problems which may arise.

Finally, it is crucial that mentoring programs, once established, be open to all employees who are interested in participating, not just a lucky few selected unilaterally by management. Since the potential benefits of mentoring are so substantial, excluding a federal employee who wants to benefit from the wisdom and knowledge of a more experienced employee can do substantial material harm to that employee's career development prospects. A formal mentoring program must not be allowed to reproduce the "good ol' boy" discriminatory patterns of informal mentoring, and should be open to all.

The Federal Supervisor Training Act

The timing for the introduction of S.674 could not be more opportune, as the next few years will see a substantial turnover in the federal government as the baby boom retires and the next generation is hired to take their place. In addition, thousands of

jobs that have been inappropriately contracted out because they are inherently governmental, or closely related to inherently governmental work, will be insourced. It is hoped that government work that is being poorly performed by contractors will also be insourced during this period. This large influx of new federal employees will be successful if those who are appointed to manage and supervise them are well-trained and knowledgeable about the unique aspects of the federal workplace, and this bill would go a long way toward ensuring competent federal management for the future.

The establishment of a high quality mentoring program, discussed above, is just one example of a management task that requires the kind of training set forth in S.674. If a mentoring program is to be effective in such areas as succession planning, diversity initiatives, retention, or agency "on-boarding," the manager in charge had better have the skills described in the legislation such as "communication, critical thinking, responsibility, flexibility, motivating employees, teamwork, leadership, and professional development."

Another provision of S.674 that AFGE strongly supports is the mandate "to provide training to supervisors on the prohibited personnel practices" such as discrimination, retaliation against a whistleblower, the practice of favoritism, or politicization of the workplace or personnel actions. In addition, the bill requires training for supervisors on "employee collective bargaining and union participation rights, and the procedures and processes used to enforce employee rights." The eight years of the Bush administration brought home the importance of never taking these rights for granted, even though they are provided in law. Managers and supervisors trained to understand their responsibilities under the law with respect to employee rights,

collective bargaining, and prohibited personnel practices will be less likely to succumb to the kind of pressure exerted during the past administration to violate those rights in pursuit of political ends.

Conclusion

AFGE urges the Committee to enact legislation that would restrict the use and abuse of direct hiring authorities in general, and the Federal Career Intern Program in particular. The FCIP makes a mockery of the Merit System and its promise of open competition for federal jobs, as well as veterans' preference. Numerical limits and other restrictions on FCIP should be accompanied by hiring reforms and increased resources available to agency human resource offices to expedite both insourcing, and the hiring of the next generation of federal employees. Once hired, these new federal employees should be given every opportunity to succeed, including access to well-managed mentoring programs. Mandated training for managers and supervisors, along with restrictions on non-competitive direct hiring will also help ensure that the federal government workforce continues to be a source of pride for all Americans.