

Statement of
STEVEN V. LENKART
EXECUTIVE DIRECTOR
NATIONAL FEDERATION OF FEDERAL EMPLOYEES, IAMAW
before the
Subcommittee on Government Operations and Border Management
Committee on Homeland Security and Governmental Affairs
United States Senate
Hearing on
*“Chief Human Capital Officers at 20:
What is Needed to Empower CHCOs to Ensure HR Practices Support Agencies’ Mission Success”*
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Greetings Madam Chair, Ranking Member Lankford, and Members of the Subcommittee.

My name is Steve Lenkart, Executive Director of the National Federation of Federal Employees, America’s oldest federal employee union now in its 105th year of operation. I am a career member of the Senior Executive Service, during the tenure of which I served as the chief operating officer for three federal agencies. One of those agencies, and perhaps the most relevant to today’s hearing, is the Merit Systems Protection Board (MSPB) where I served as Executive Director. My responsibility was to discharge the agency’s mission of ensuring efficiency, effectiveness, and fairness within the federal workforce of two million employees.

The Modern Relevance of the Civil Service Reform Act of 1978

The MSPB was created in 1978 via the Civil Service Reform Act. The same law also created the Office of Personnel Management (OPM), the Office of Special Counsel, the Federal Labor Relations Authority, the Senior Executive Service, and Merit System Principles. Together, these entities were meant to operate under the law as a vigilant system of checks and balances to empower managers while protecting the government and its workforce from undue influence, unethical behavior, and corruption.

In its design, the Civil Service Reform Act (CSRA) was brilliant. It provided for equal and opposing forces within the Executive Branch that are charged with the creation, implementation, evaluation, and alteration of the policies that govern Executive Branch operations. The CSRA was intelligent enough to anticipate an evolving federal workforce, one shaped by future challenges and uncertainty to which the country must respond. It is from and on behalf of this realization that led to the creation of the Merit System Principles (5 USC 2301).

The Merit Systems Principles

With all the uncertainty we face today, and with the pace at which events occur, the requirements of the federal workforce change daily. Merit System Principles serve as the basic

tenets of good government, meant to withstand the test of time through the application of sound management practices. Often misunderstood and even mocked when compared to less structured private sector practices, Merit System Principles ensure that workforce of the government is prepared to address the requirements of the present and the future. Merit System Principles are as unique as they are critical because unlike the private sector, government cannot fail. Businesses and industries fail all the time, most without any lasting impact. Conversely, a failure of government, even once, is catastrophic and would cripple the chances of recovery for the country.

It is out of this concern—the fear of failure—that we hold government to a higher standard. It is why the CSRA created the merit principles to govern our processes and policies to prevent the government from falling into unethical or corrupt hands. Our Merit System Principles are nothing less than a cornerstone of a modern democracy, a foundation from which the business of the government shall excel, free from undue political influence and corruption.

OPM and CHCOs and the Role of Merit

The Merit System Principles are a governing doctrine for the policies of the Office of Personnel Management. Along with the Chief Human Capital Officers (CHCOs) of the federal departments and agencies, OPM serves as facilitator and enforcer of workforce policies and operations. In brief, their shared responsibility is to ensure that the federal workforce is suitably staffed via proper means, and that modifications are anticipated to keep the workforce effective, efficient, and fair.

As the senior authority of the two, OPM is charged with creating and implementing government-wide policies, and then disseminating its guidance via directives and other means to CHCOs across the federal departments and agencies. Having a single authority for human resources management is critical; the government cannot withstand 100 independently operating human resource offices under the same employer. That is an unabashed recipe for disaster, inconsistencies, unethical behavior, and corruption.

OPM and CHCOs as Facilitators and Enforcers

However, CHCOs are on the front line and often the first to experience problems that lead to inefficiencies, mismanagement, poor behavior, or worse. Therefore, CHCOs need as many tools as possible at their disposal to handle these issues as quickly as possible without violating law or regulation. Consequently, a balance must be achieved in the relationships between OPM and CHCO that allows certain flexibilities conducted through transparency and independent oversight.

For both OPM and CHCO, ordinary times present significant challenges for maintaining the federal workforce. These challenges include a constant stream of congressional continuing resolutions that make qualified workforce planning nearly impossible. Other challenges include swings in the nation's employment markets, and equally, diversions in national economic

security that will increase or decrease the number of applicants. Greater challenges even still include large-scale human and natural events, such as pandemics or war, that will place heavy demands on the federal workforce and its requirements. These are events we cannot control; nonetheless, they are events for which we must be ready.

The Case for Change and the Strengthening Merit

In the name of readiness, it is important and quite remarkable to note that the number of federal employees has not changed much since 1951 even though the population of the United States has more than doubled. While the number of federal employees has remained largely the same, the aperture of mission has increased dramatically. As a result, a proactive and strategic approach to human capital management is necessary to continue modernizing, leading, adapting, and overcoming obstacles.

As envisioned in the CSRA, the optimal human capital environment comprises several elements working together. This means that OPM remains apolitical, the tribunals are staffed, the investigators are unbiased, and the CHCOs are productive and embracing merit. If any of these elements fail, a gap exists in the overarching system of merit making it easier to exploit the other parts. It is in the interest of a complete and fully effective system of merit that I submit the following recommendations for your consideration:

1. The U.S. Merit Systems Protection Board needs immediate staffing at the Board level, and its original mandates exercised with more vigor and frequency. Specifically, the MSPB should increase the frequency of published studies regarding the federal workforce, and a new mechanism should compel OPM and CHCOs to review study findings. Also, the MSPB must further embrace its original mandate of reviewing the significant actions and policies of OPM and react accordingly to safeguard merit principles. The duty of MSPB to review and respond appropriately to the actions and policies of OPM is very clear in the law however this has hardly ever occurred.
2. Consider increasing career apolitical leadership representation in the very top senior ranks at OPM. If any agency requires stability throughout a presidential transition, OPM is certainly at the top of the list. As an added benefit, long-term top leadership can increase long-term accountability, transparency, and planning.
3. Consider the same benefits of apolitical career-reserved leadership for department and agency CHCOs and chief administrative officers for ease of transitions between administrations and increased accountability, transparency, and performance over time.
4. Create a robust OPM Advisory Committee on Human Capital that consists of apolitical public and private sector human resources experts, federal labor and management, academia, and federal worker affinity groups.
5. Consider expanding the aperture and efficacy of the Chief Human Capital Council (CHCO Council) to provide CHCOs with a mechanism to explore and implement solutions to the

problems of human capital while ensuring strict adherence to Merit System Principles through the advice and review by the MSPB.

6. OPM and CHCOs together and separately should discuss changes to support the workforce that may or may not warrant legislation, such as minimizing the reliance on four-year degrees as an absolute requirement, raising the caps on student loan forgiveness in public service, creating more mobility in job classifications, improving access and professionalism of federal internships, and other innovations while protecting merit principles.
7. Pass legislation to allow career SES and senior managers, including CHCOs, to performance review and discipline Schedule C and SES noncareer or political appointees. While political appointees serve at the pleasure of a president or other singular authority, they are still bound to the same laws and regulations as career employees, including those directing performance and conduct. The time has come to end the “secret workforce inside the workforce” by simply allowing seasoned career professionals to evaluate and supervise noncareer appointees. This is a no-cost recommendation that will increase the level of transparency and accountability otherwise required under law, and it may improve the quality of political appointments.
8. Limit the use of Direct Hire Authority (DHA). DHA is authorized only in rare instances of a demonstrated critical need or a severe shortage of applicants. The use of DHA is a sign of failure if the critical need or shortage is caused by a lengthy hiring time or a lack of outreach to find qualified applicants. For these instances, other remedies exist that do not involve the suspension of merit principles. In addition, movement of an employee hired under DHA should increase from 90 days to one year to discourage the disingenuous use of DHA to secretly hire for another competitive position.
9. Limit the expansion of Excepted Service positions and other authorities that circumvent competitive hiring and promotions or limit systematic protections that enforce honesty and fairness in the workplace. With every step away from the systematic protections afforded under Title 5 USC, the propensity for misuse and mistreatment of federal employees and federal resources increases dramatically. The use of Excepted Service authority for the intelligence community and other professional cadres, such as information technology, should be reconsidered. Flexibilities exist for pay and other unique requirements, such as the control of sensitive information, without the need to compromise the systematic protections (i.e., Merit System Principles) that keep government honest, transparent, and accountable.
10. Pass legislation to prevent the creation of hiring authorities and employment classifications that pervert the law, such as the Schedule F hiring authority created under Executive Order 13957 in October of 2021. There is no legitimate business case for Schedule F-like authorities. Schedule F and hiring schemes like it are a precise return to deep-rooted, permanent corruption in government. Schedule F and employment schemes like it are defended only by dark money political hacks or criminal opportunists seeking to infiltrate government for personal gain. This kind of unchecked authority is a

risk to national security because it creates an easily exploitable vulnerability for bad actors, foreign and domestic.

In Conclusion: The Risk Versus the Reward

The government of the United States is based on the tenets of an open democracy. As such, we accept a certain level of risk that bad actors and other transgressors will attempt to exploit or game for personal gain or for more nefarious reasons. I am not afraid of the risk nor am I afraid of the dark pursuits of individuals because the proven good far outweighs the negative. I am up for this fight, and I hope that sentiment is shared widely and commonly among all Americans as we continue our collective pursuits of happiness, stability, and prosperity.

An open democracy allows employment opportunities within the federal government for those who want to give back, or for those who want to serve their country in a civilian capacity, or for those who want to be a part of something more important than themselves. The relationships between OPM, CHCOs, the tribunals, and other supporting elements are critical to affording those opportunities to all Americans, and it clears a path for the future success of the country. I thank the Subcommittee for prioritizing the relationships between OPM and the departments and agencies that drive human capital wellness and performance, and I look forward to continuing to work with you in the future on these and other issues regarding the federal workforce.

Thank you.