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Before the

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

May 20, 2015

Chairman Lankford, Ranking Member Heitkamp, and members of the Subcommittee, I appreciate the opportunity to testify today. I have been a Fellow of the National Academy of Public Administration since 2008 and have served as its President and CEO since July 2011. Established in 1967 and chartered by Congress, the Academy is an independent, non-profit, and non-partisan organization dedicated to helping leaders meet today's most critical and complex challenges. The Academy has a strong organizational assessment capacity; a thorough grasp of cutting-edge needs and solutions across the federal government; and unmatched independence, credibility, and expertise. Our organization consists of over 800 Fellows—including former cabinet officers, Members of Congress, governors, mayors, and state legislators, as well as distinguished scholars, business executives, and public administrators. The Academy has a proven record of improving the quality, performance, and accountability of government at all levels.

In your letter of invitation, you requested that my testimony identify and discuss a variety of human resources and public administration challenges facing the federal work. I am pleased to present this morning to the Subcommittee my views on these important policy issues. In addition, I will discuss policy changes that could ensure that federal workforce policies meet the needs of today's civil service.

KEY CIVIL SERVICE ISSUES

Today's civil service challenges have roots that stretch back more than 25 years. In 1989, the first Volcker Commission, the National Commission on the Public Service, highlighted many of the problems we face today¹. While they may have morphed in form, the federal government's workforce challenges have been identified many times over. Some can be addressed at the administrative level without legislation; others will require bolder action, possibly buttressed by legislation. The challenge of this Subcommittee, Congress, and the Administration is how to develop solutions that will take hold in order to insure a continuing and viable civil service.

¹ The National Commission on the Public Service, *Rebuilding the Public Service*. 1989. See http://www.washingtonpost.com/wp-srv/opinions/documents/Leadership_for_America_Rebuilding_the_Public_Service.pdf

Federal Hiring

The federal hiring process has long exasperated Congress and multiple administrations, as well as federal managers and applicants themselves. A variety of issues surrounding hiring—including why it takes so long to hire and whether the federal government is recruiting individuals with the necessary knowledge, skills, and abilities—have been the focus of congressional oversight for the last 25 years.

Flexibilities exist in the federal hiring area. They include:

- Direct hire authority—the Office of Personnel Management has long possessed authority to allow agencies to directly hire employees. In order to grant the authority, OPM must determine that there is either a severe shortage of candidates or a critical hiring need for a position or group of positions. Congress should review this language to determine whether it should be granted more broadly. The OPM website lists a relatively modest number of occupations subject to this authority.
- Category rating and ranking—this authority was included in the 2002 legislation creating the Department of Homeland Security. While the Administration has mandated that agencies utilize this authority, we have found anecdotal evidence that some agency subcomponents still use the “rule of three” hiring method. Category rating and ranking can allow a broader pool of potential candidates while following veterans preference rules. The Subcommittee should survey agencies to determine who uses category rating and ranking and who does not in order to inform its oversight of federal hiring.
- New excepted service hiring authorities intended to address specific problems. For example, OPM has Schedule A initiatives granting agencies the ability to bypass some parts of the meandering federal hiring process to fast track the onboarding process for digital services experts. Under Schedule A hiring authority approved by OPM, for example, agencies can fill digital positions at the GS-11 through GS-15 level in temporary, one-year positions. These can be renewed in one-year increments, but only up

to Sept. 30, 2017. Schedule D hiring authorities address intake of new graduates. Special authorities also exist for returning veterans and their spouses.

I would not recommend Congress enact new legislation regarding hiring at this point. The current system possesses sufficient flexibility if agencies will just use it. OPM has launched an initiative entitled REDI (Recruitment, Engagement, Diversity and Inclusion).² According to OPM, this is a “data driven” human capital management strategy aligned with the President’s Management Agenda. One component of this program involves “Untying Hiring Knots” designed to help educate federal human resources professionals on the available hiring flexibilities.

It is important to connect program/hiring managers with human resources staff to make sure that the position description/vacancy announcement suits the hiring manager’s need. And, although additional flexibilities may be desirable in certain instances, they must be balanced against their tendency to complicate an already complex system.

I urge the Subcommittee to focus its oversight in this area on hiring quality. Time to hire is important, but a shortened time frame may not yield the quality of hires an agency needs. This requires that the hiring manager and the agency human resources office communicate effectively in the hiring process. Bringing high-quality new hires on board in a realistic timeframe requires custom position descriptions, well-crafted vacancy announcements, and agency leadership attention.

Accountability

We hear almost weekly about poor-performing federal employees and the reported inability to hold them accountable in a timely manner. I have the greatest respect for civil servants. Although these reports are certainly not representative of the workforce at large, they poison the atmosphere and lead to cynicism and distrust of the civil service and government in general. The

² For additional information on the effort, please see <http://www.opm.gov/about-us/our-director/americas-workforce/redi-roadmap.pdf>

current accountability system in place dates back to the 1978 Civil Service Reform Act. I urge this Subcommittee to exercise its oversight and legislative authority to tackle this difficult area.

The current system was put in place as a reaction to attempts to politicize the workforce in the Watergate era. It was intended to balance merit and fundamental fairness against the need for accountability and promoting the public trust. Merit must continue to serve as the foundation of the civil service, but this does not mean that the processes for General Schedule and Senior Executive Service cannot be modernized. It is important to show the public that public servants are accountable for their actions.

In examining the accountability and removal procedures for career civil servants, the Senior Executive Service (SES) is the most sensitive accountability system in place. In my experience, most executives voluntarily leave if faced with demotion or removal. High profile cases should not taint the entire SES.

To increase accountability, especially at the SES level, the Subcommittee could explore the greater use of term appointments. This concept involves an agency appointing a career executive to a specific term. At the expiration of the term, the appointment could be renewed or terminate. This concept is based on contract employment in the private sector where executives receive a contract for a specified time. This Subcommittee could investigate whether agencies even use the expedited new rules. However, shortened appeals time also can limit agency authority to appeal an adverse ruling.

Further, the Subcommittee may want to consider increasing probation periods for new Senior Executives and employees covered by the General Schedule.

For employees covered by the General Schedule, Grades 1-15, a complex maze of appeals exists. Employees can utilize the Merit Systems Protection Board, the Equal Employment Opportunity Commission, and potentially a union grievance system. The MSPB issued a recent report outlining the history of due process for federal employees and how it comports with the

Constitution.³ Modernizing the appeals processes consistent with the public interest, Constitutional requirements and Supreme Court case law is a complex task, but one worth reviewing to restore the public trust in the civil service.

Federal employees themselves view the current system with some cynicism. For example, a recent survey of federal executives by Academy Fellow David Lewis, a professor at Vanderbilt University, found that large majorities believe that poor performing managers and non-managers are rarely removed or dismissed. This survey also found that accountability and fluency in federal human resources are highly correlated. Interestingly, executives who reported that their agencies provided adequate training on the merit system were more likely to report that poor performance in their agencies was addressed. This leads to an obvious lesson learned: executives who know the system are in a stronger position to use it to address poor performance.

These findings are consistent with those contained in the 2014 Federal Employee Viewpoint Survey. According to the 2014 FEVS results, only 28 percent of federal employees believe their agency is taking steps to deal with poor performers. This item is always near the bottom and was the second lowest rated survey item in 2014 after pay.⁴

The recent study by the Merit Systems Protection Board, entitled “What is Due Process in Federal Civil Service Employment,” notes that 77,000 federal employees were fired from their jobs between FY 2000 – 2014. Based on my interpretation of the MSPB study, it seemed like the agency was promoting the fact that (1) a system is in place to remove poor performers and (2) the system works. But if you run the math, removing 77,000 employees over a 14-year period calculates to about 5,500 employees per year. With a federal civilian workforce of approximately 2 million, the percentage of employees relieved of their duties is paltry in comparison. In seeking increased accountability, it is important to recognize that pure employment at will is a fiction. Even in the private sector, companies have to comply with various laws, such as equal

³ See MSPB, *What is Due Process in Federal Civil Service Employment. A Report to the President and Congress of the United States.* May 2015.
<http://www.mspb.gov/netsearch/viewdocs.aspx?docnumber=1166935&version=1171499&application=ACROBAT>

⁴ At 20 percent positive, the lowest rated item is “Pay raises depend on how well employees perform their jobs.”

opportunity and whistleblower protection. And the larger companies have significant internal policies and procedures that must be followed before termination.

The complexity in civil service procedures leads to inaction. There are multiple authorities over time; flexibilities are not used; and there is a need for increased capacity from the federal HR workforce, much like we have seen with procurement, IT, and cybersecurity. This challenge was noted in the Fiscal Year 2008 Annual Report by the Chief Human Capital Officers Council and was included as part of the Council's Transition guide for the incoming administration.⁵

To address this capacity issue, the Obama Administration has created the HR University (HRU). HRU is intended to serve as the Federal Government's "one-stop" training resource center for the Federal HR professional. Through the use of a web-based platform, HRU provides a wide variety of training and development resources geared toward HR professionals. The creation and operation of this entity is a positive accomplishment, but much more work needs to be done in this area.

One of these areas for additional attention includes strengthening the performance management process. On May 29th, the Academy will host Robert Goldenkoff, Director of Strategic Issues for the Government Accountability Office, to discuss GAO's findings on their report entitled: "OPM Needs to Do More to Ensure Meaningful Distinctions Are Made in SES Rankings and Performance Awards." Also, the Department of Defense is implementing an enterprise-wide performance management system for the civilian workforce called "New Beginnings". The system is based on three levels of performance "Unsuccessful, Successful, and Superior."⁶

Future Civil Service Reform

The previous decade's civil service modernization efforts focused on reforms of the General Schedule Pay and Classification System, as contained in the 1949 Classification Act. A pay system worthy of the mid-20th century federal government is woefully out-of-date today.

⁵ <http://www.chcoc.gov/Documents/DisplayDocument.aspx?PublicDocID=60>

⁶ <http://www.federaltimes.com/story/government/management/agency/2015/05/14/defense-performance/27302727/>

Further, I would suggest a re-examination of the utility and relevancy of the landmark 1978 Civil Service Reform Act is warranted. This nearly forty-year old statute marked significant progress at the time, but a thorough review to determine whether it meets the demands of a mid-21st century government would be of benefit.

Several questions are worth exploring in detail:

- The Civil Service Reform Act created separate and distinct roles and responsibilities for OPM, Merit Systems Protection Board, and Federal Labor Relations Authority. How are these relationships working today and what, if any, changes could be made to improve federal HR policies and procedures?
- In addition, what impact are other agencies, including Office of Special Counsel and the Equal Employment Opportunity Commission, having on our government's ability to support and sustain the Merit System Principles?
- Do we need a centralized personnel office? If so, how should it be structured, and is OPM that entity? The Balkanization of agency personnel systems questions the need for this central office given the issue of "have and have not" agencies like the Federal Reserve and other banking entities. But what about retirement and health and background investigations? Many agencies, both large and small, have neither the interest nor the resources to establish and operate their own personnel systems, but rely on OPM to fulfill these duties.
- How do we address the General Schedule pay structures? Can the 2002 OPM White Paper on Pay serve as a guide? ⁷

More detailed study would be required to determine how best to structure a 21st Century civil service. I would suggest that any private sector entity operating with a nearly 40-year old personnel system and a nearly 70-year old pay system would likely be out of business today.

⁷ *A Fresh Start for Federal Pay: The Case for Modernization*. This thought provoking document offers a timely and comprehensive examination of the way the Federal Government currently determines employee pay. It is merely intended to open the conversation on the possibilities for a modernized Federal pay system for the 21st century. See <http://archive.opm.gov/strategiccomp/whtpaper.pdf>

However, in considering reforms to the civil service, one tenet must remain: the Merit System Principles should remain central to any federal personnel system.⁸ These principles are not obsolete, but the programs that have been put into place to support them may be.

Performance Management

Much effort has been applied to enhancing performance management systems in the federal government. This Administration, along with past administrations, has tackled the challenge of devising systems that give fair and timely feedback to employees in an attempt to hold employees accountable for their performance. Further, such systems should require managers to distinguish among different levels of performance. Addressing poor performers requires rigorous documentation, and the agency performance management system, ideally, should be an ally to managers attempting to address poor performance.

Oftentimes, however, the system is not. According to Academy Fellow Jeffrey Neal, a former Chief Human Capital Officer at the Department of Homeland Security, past research has shown that “the vast majority of federal employees receive a rating at or above the mid-point. The number of marginal or less-than-satisfactory ratings is small. The number of unsatisfactory ratings is miniscule. Few managers, employees, union officials (or anyone else) will tell you the rating process serves a useful purpose. Many will say it is harmful.”⁹

In February 2015, GAO released a report to Senate Homeland Security and Governmental Affairs Committee Chairman Johnson outlining avenues available to federal managers and supervisors to address poor performance.¹⁰ In general, GAO found that federal employees and agency leaders share a perception that supervisors ineffectively address poor performance and that federal performance management systems are not built to address poor performance.

⁸The Merit System Principles are nine basic standards governing the management of the executive branch workforce. The principles are part of the [Civil Service Reform Act of 1978](#), and can be found at [5 U.S.C. § 2301\(b\)](#)

⁹ <http://www.federalnewsradio.com/204/3455577/Why-do-we-bother-with-performance-reviews>

¹⁰ See GAO, Federal Workforce: Improved Supervision and Better Use of Probationary Periods Are Needed to Address Substandard Employee Performance, GAO-15-191, (Washington, D.C. Mar. 9, 2015). <http://www.gao.gov/assets/670/668339.pdf>

Congress should consider an overhaul of the current performance management system for the federal government. As a starting point, Congress could direct OPM, in consultation with MSPB, to conduct a series of demonstration projects exploring different options, consistent with Merit Systems Principles and due process requirements, for addressing this issue. Such pilots would likely take a legislative mandate since OPM has not utilized its demonstration project authority in at least six years, and changes to the appeals systems would likely require legislation. This would be a ripe subject for the next Administration to explore. Starting this process now would allow the result to be available within the first year or two of the next Administration.

THE UPCOMING PRESIDENTIAL TRANSITION

Many of the questions I have raised today in my testimony lend themselves to a thorough and comprehensive process of review. Now is the perfect time to initiative such an oversight effort in preparation for the 2016 Presidential Transition. This Subcommittee could do the new Administration and the public a tremendous service if it could recommend comprehensive bipartisan legislative initiatives for a new Administration to tackle as part of its management agenda.

Recognizing that the United States will have a new incoming Administration with a new President, new Cabinet, and new appointees throughout the executive branch, the Academy launched last week its *Transition 2016* initiative aimed at equipping government with the tools for success as we transition to a new Administration and Congress. Civil Service reform is one area ripe for discussion. Ed DeSeve (former Clinton Administration Office of Management and Budget Deputy Director for Management) and David Chu (former Department of Defense Under Secretary of Defense for Personnel and Readiness) are leading the Academy's efforts, and we will be working with the American Society for Public Administration in identifying key issues to assist in the Transition. The American University School of Public Affairs, Key Executive Leadership Program is supporting our efforts. In order to ensure that useful management reforms of the previous two decades are built upon, not discarded, one of our goals is to identify useful past and current initiatives and reforms.

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Mr. Chairman, these are challenging times for the federal government and its workforce. With great challenges, however, come great opportunities. You have the power to strengthen their public service to ensure that it works for all Americans. I believe that the issues outlined in my testimony are worth further exploration and could make a positive change in the way the federal government conducts its business and manages its workforce.

Mr. Chairman, that concludes my prepared statement, and I would be pleased to answer any questions you or the Committee members may have.