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for the
SENATE COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS HEARING ON
SENIOR CIVILIANS IN NATIONAL SECURITY POSITIONS
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Chairman Peters, Ranking Member Paul, and members of this Committee. Thank you for having me back in front of you today. I have always been impressed with the commitment of this Committee to sound and effective government and I am pleased to testify today on one piece of effective government--national security policy.

I would like to begin with a statement of purpose. My principal purpose for being before you is to do my part in ensuring our country has a transparent, accountable, effective, and results driven executive branch. And that our national security mission is executed with the utmost precision humanly possible.

I am opposed to any decision that has high potential to undermine effective national security policy and operations. And I am concerned Schedule F may just do that. My experience leads me to believe that any potential upside to the tempo of producing national security policy from Schedule F is far outweighed by its disruptive downside of less effective policy. This is in the form of less vetted, informed, and comprehensive public policy – therefore less successful public policy. The solutions to the problems identified in the EO already exist. So let's focus and use those methods to correct any performance issues, rather than creating risk, confusion, and disruption in surrounding national security policy. I propose we deal with any performance anomalies with less disruptive, equally effective ways than Schedule F.

Analysis of the EO Effectiveness

One key pillar of a safe and secure Nation is sound national security policy. There are two essential inputs to national security policy: an effective policy making process; and knowledgeable federal employees using that process to produce sound policy.

National Security policy process. My biggest fear is a degradation of the policy that supports our national security. The Schedule F EO could adversely affect the policy process in two key ways. First and most important is less vetting of predecisional, draft policy with key stakeholders across federal government. The importance of stakeholder vetting on policy for national security cannot be overstated. It is important to take the time and value the input of diverse key stakeholders that have tangential interest in the policy under development. Lack of coordination with key stakeholders in the policy development process results in less than optimal outcomes. Considerations of the effects of the policy on other national security areas must be made during development. This is so we can address the issue in developing the policy or be

prepared to deal with them afterward. Career federal civil servants with the expertise and experience to help inform decisions of the policy makers must have input into the policy. They know how policy plays out in implementation through experience, and their input in this regard is invaluable to delivering intended results. Related equities and downstream effects must be considered during development, or the final policy will create unintended consequences and national security risk. These unintended consequences will remain unknown until implementation, which is too late to effectively be managed.

National Security policy people. I'll argue that the vast majority of civil servants are doing their job, and the Schedule F proponents agree with this. Policy personnel are using their knowledge, skills and abilities to deliver results. They attempt to influence the policy process to make the outcome better. But once the decision is made they faithfully implement lawful policy and direction. For the few where that is not the case, the current system allows leaders to appropriately deal with those performance or behavior issues.

The EO does not add anything to performance management except at will termination. Solely making policy personnel exempt puts those people in unnecessary jeopardy and inhibits their ability to do their job. Without other changes to our systems, they will still need to comply with existing law and regulations. They rightfully operate within these boundaries that do not change under the EO

A notable boundary is the Administrative Procedures Act (APA) for regulations.. APA is, in my experience, a key contributor to transparency, but also the longest piece of the regulatory process. It can be considered burdensome and time consuming, but we have decided as a country that the transparency and democracy it brings is important.

Another example is ethics. Civil servants should not have even the appearance of political bias in performing their duties. 5 CFR § 2638.102 Government Ethics Responsibilities of Employees states “employees must endeavor to act at all times in the public's interest, avoid losing impartiality or appearing to lose impartiality in carrying out official duties, refrain from misusing their offices for private gain, serve as good stewards of public resources, and comply with the requirements of government ethics laws and regulations, including any applicable financial disclosure requirements”. Schedule F seems to create at minimum the appearance of political bias if civil servants are acting with loyalty solely to the President, not the country as in their oath of office. Schedule F and C political appointments will look identical during an Administration and the element of career objectivity that partners so well with the political appointees will be lost.

In addition to the ethics regulations, several other protections have been put in place to ensure that the civil servants and political appointees are distinguishable. Those include anti burrowing rules (converting political appointees to career positions at the change of administration), freeze in SES selections during Presidential transition, and the Hatch Act. Much time and work has

been put into protecting the objective civil service system as a stable base to any Administration. This should not change.

Additionally, it is important to point out a misperception in the overturning of civil servant wrongful termination cases. Data published by the Government Accountability Office (GAO) shows that virtually all performance related terminations of civil servants put before the Merit Systems Protection Board are upheld by the Board in favor of the agency employer. The same is not true terminations appealed on an Equal Employment Opportunity (EEO) basis. EEO protections are rightfully included by the EO in Schedule F. While I support that inclusion, it at least partially negates the desired “at will” nature of the Schedule F workforce.

The Alternative

So how do we meet the objective of the EO, with a solution set that meets its objectives without the negative consequences of Schedule F? The EO states that the President needs “appropriate management oversight”. That need is generally filled with the existing civil service system. But just ok is not good enough for national security. The regulation and policy for the hiring and performance management objectives of the EO exist within the Title V system. *What is woefully lacking though is effective execution of those authorities to responsibly hire and manage performance.* I recommend that rather than expending our energy on creating Schedule F and recreating it every year with the EO’s annual reassessment, let’s use that same effort to systemically fix hiring and performance management in the federal workforce.

Hiring: Schedule F says it is needed to hire people displaying “appropriate temperament, acumen, impartiality, and sound judgement”. This is not unique to schedule F positions. In fact, the fundamental competencies published by Office of Personnel Management for senior executive service (SES) members include: interpersonal skills, integrity/honesty, oral and written communications, continual learning and public service motivation. It appears that the stated competencies of Schedule F and those of the career SES align. The existing system can and should hire people with the stated attributes.

And regarding the EO’s statement of “need the ability to assess prospective candidates without the limitations of competitive service.” Competitive service does not limit the ability to assess any of these qualities, in fact it is consistent with it. The EO states that three principal criteria for selection are appropriate temperament, acumen, impartiality, and sound judgement. Office of Personnel Management (OPM) states the criteria must include ethics, judgement and the ability to meet the needs of an agency. Those criteria are consistent and can, and should, be assessed and used as basis of selection in current system. The failure is the inability of hiring officials to be able to set hiring criteria, conduct interviews and reference checks. That is performance issues of those leaders, not a faulty system. We must train our supervisors and human capital personnel in this area and hold them accountable for performing hiring with skill. And if a mistake in hiring is made, we must properly use the employee probationary period to quickly and effectively terminate employment and resolve the issue.

Performance Management: Schedule F concludes that the system is inadequate based on the 2016 Merit Principles Survey. I would argue that the failure to properly use the system is the problem, not the system itself. The civil service system provides the ability and tools to terminate for both performance and cause, two very different but equally important grounds for terminating a federal employee. The system is designed to address performance with fairness, integrity, and skill. That's because so much is at stake: proper functioning of our government, transparency, equity, and accountability.

Schedule F states that meeting performance Standards is "particularly important" for those in confidential, policy-determining, policymaking, or policy advocating positions. I do not believe that to be true. Performance is certainly particularly important to every level and position in government. However if one has to choose "particularly important", I argue the most important performance is that of those performing critical national security missions. Those men and women performing the front-line mission of keeping our nation safe. The federal law enforcement, military enlisted and officers, vetting and screening personnel, mission support experts delivering national security at the point of the spear are the ones "particularly important" to our national security.

The EO also states that senior agency officials report that poor performance in policy relevant positions has resulted in long delays and substandard quality work..." This is an unclear, vague statement, but my experience does align with it. However, the statement as is, without sources and clarity inhibits our ability to address the root causes and really fix the problems. Instead the EO attempts to slap a Schedule F solution as a band aid fix to a very important, systemic issue.

How instead do we address the ineffective use of the hiring and performance management system without the EO? First, Get back to basics. Supervisors must supervise and leaders must lead and supervise. We must equip our supervisors with the tools they need to effectively hire and manage performance. That is not an inherent skill. We hire based on technical knowledge. Once promoted to a supervisory position, we need to teach employees new skills. That used to be done but has been abandoned over time, perhaps that is why we are facing real or perceived performance management problems today. We need to develop and deliver mandatory supervisory courses. We also need to return to the core tenants of the Senior Executive Service (SES); that SES members are picked to lead, not for the technical prowess. We should use SES as leaders, demand they focus on hiring, workforce development, and performance management as their core job responsibilities. And evaluate their performance based on those leadership competencies and the full set of executive core qualifications: leading people, leading change, results driven, business acumen and building coalitions. Office of Personnel Management (OPM) should lead this. It should refocus on enabling rather than overseeing and restricting. OPM should poll the agencies for flexibility and tools they need in hiring and performance management. OPM should then a service provider to the national security agencies, helping them to fulfill those needs, developing and delivering training, and working within the boundaries of law to change policy and regulation to best meet the agencies' hiring and

performance management needs. In other words, use OPM as the executive agency for human capital change, enabling and assisting agencies to hiring and manage workforce toward national security excellence.

Existing Mechanism for Exempt Policy Employees

If in addition to a better functioning civil service system, if there is still a need for more exempt policy personnel, fill that need through existing authority rather than a disruptive Schedule F. The executive branch can use the existing authorities in Title V to achieve the objectives by increasing the number of Schedule C and Schedule B appointments. The stated intent of the EO is the exact definition of a Schedule C appointment, which is “is a type of political appointment in the Federal government for those who serve in confidential, or policy roles immediately subordinate to other appointees. Most Schedule C employees are confidential assistants, policy experts, special counsel, and schedulers, however some do serve in specialized non-policy support roles”.

Issues with the EO Scope

Finally, I must address the ambiguity of the EO and why it is so alarming even to those who appear not to be directly affected by it and those supporting civil service reform.

The intended scope of the civil service population to be included under Schedule F is so unclear that it indicates deception and lack of transparency. While some agencies’ discretion is understandable, a clarity of general scope is important. If the intent is a small population, why write with such ambiguity that would only serve to impair transparency and trustworthiness. Repeatedly, the EO states the population is “confidential, policy determining, policy making, or policy advocating..” It is important to note a few specifics. First, note the “or” which appears to broaden the scope to include each of the four categories. And with that “or” the importance of “confidential” in the words becomes even more important. In a very broad scope, everything predecisional is confidential. So, nearly the entire employee base of an agency absent a few that may never see or hear anything before the final decision is made (during deliberations) would be included in Schedule F.

In addition to this consistent ambiguity, Section 5 (B) adds additional confusion.

(iii) introduces for the first time employees with “substantial discretion to determine the manner in which the agency exercises functions committed to the agency by law”. This for the first time introduces all non-policy personnel – those that execute the agency’s mission. This makes operators, intelligence, law enforcement, etc. subject to inclusion in Section F.

(iv) introduces for the first time “viewing, circulating or otherwise working with proposed regulations, guidance, executive orders, or other non-public policy proposals or deliberations generally covered by deliberative process privilege”. This language is especially concerning by using executive secretariat as a specific population covered by the Schedule F including.

Executive secretariat administratively edits and process, but do not write policy. The implication here is that anyone who “sees” policy before it is public can be included in Schedule F.

(v) introduces those who conduct collective bargaining negotiations, a function wholly unrelated to policy. I am unclear why this is included but I speculate as a way to get rid of another irritant and further diminish objective input to national security policy and operations.

Conclusion

National security is too important to allow Schedule F to be implemented, especially as written.. We need to keep our vigilance strong and deliver results with transparency to our people. Our government was established incorporating a division of power and system of checks and balances that require transparency and some level of continuity for effectiveness. that is still important to our citizens today. The results of a poll and focus groups for the National Academy of Public Administration (NAPA) in June 2024 show this is true today. Good government must be trustworthy and accountable. It must also be in touch with people, transparent, responsible, effective, competent, productive efficient, nonpartisan, fair and responsive. Schedule is contrary to what the American people want and sound national security demands.

My issues with the EO are twofold. First, it is so ambiguous and contradictory its implementation will be fraught with confusion and disruption. That we can hardly allow to happen without affecting national security, now and every change of administration. Career civil servants form a stable infrastructure to government and political transition that is essential to national security. Second, it proposes a solution to a real problem that I don't believe is the best solution. Every change has an upside and downside. I believe Schedule F has more downside and less upside to the current hiring and performance management issues in civil service than other options.

Instead, let's focus on solving civil service hiring and performance issues in a way that really solves the problem, not just for policy persons, but for all civil servants. Performance management in federal service needs to be improved not just for policy persons but for the entire workforce. So let's tackle this issue and make the government more responsible and responsive. We need to give supervisors the tools to be a supervisor and hold them accountable for doing so – making that their job, with less and less focus on technical as they rise in the ranks. If we need the President to have more direct control over policy by blindly loyal persons, we should add more Schedule C political employees.

So, let's not hit the easy button with Schedule F. Let's improve national security by improving workforce management. It is not easy, but well worth it. I remain committed to supporting the Committee should it decide to pursue developing Schedule F alternatives, and look forward to answering your questions today.