

Testimony
Before the United States Senate
Committee on Homeland Security and Governmental Affairs
Subcommittee on Regulatory Affairs and Federal Management
February 9, 2017

Empowering Managers: Ideas for a More Effective Federal Workforce

**Statement of
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Chairman Lankford, Ranking Member Heitkamp, and Members of the Senate Homeland Security and Governmental Affairs Subcommittee on Regulatory Affairs and Federal Management:

My name is Renee Johnson and I am here today on behalf of the Federal Managers Association (FMA), representing the interests of more than 200,000 managers, supervisors and executives in the federal government. Thank you for this opportunity to present our views on the management of the federal workforce before the Subcommittee. As federal managers, we are committed to carrying out the mission of our agencies in the most efficient and cost-effective manner while providing necessary services to millions of Americans.

I am the National President of the Federal Managers Association. In my professional life, I am Customer Engagement Branch Head at Fleet Readiness Center (FRC) East in Cherry Point, North Carolina. Please note that I am here on my own time and of my own volition representing the views of FMA and do not speak on behalf of the Department of the Navy.

Established in 1913, the Federal Managers Association is the largest and oldest association of managers and supervisors in the federal government. FMA was originally organized to represent the interests of civil service managers and supervisors in the Department of Defense (DOD) and has since branched out to include more than 40 different federal departments and agencies. We are a nonprofit, professional, membership-based organization dedicated to advocating excellence in public service. Our purpose is to ensure an efficient and effective federal government, so this hearing, examining ways to empower managers and discussing ideas for managers to better perform their jobs, is welcome and timely. As front-line managers, we appreciate the opportunity to appear before you today.

FMA supports reforms that establish increased flexibilities, accountability and performance results across the federal government. Below are FMA's views on challenges facing the federal workforce and policy changes that we recommend in order to modernize the federal government in the areas of recruitment and hiring, retention, performance management, and termination, among other provisions.

RECRUITMENT, HIRING, AND RETENTION

With regard to hiring, FMA recognizes and applauds the bipartisan efforts on commonsense reforms that came out of the Homeland Security and Governmental Affairs Committee last year, specifically the Competitive Service Act (P.L. 114-137). This bill allows agencies to review and select job candidates from another agency's "best qualified list" – a list of applicants who have already undergone a competitive assessment process and are certified as eligible for selection by an agency selecting official. This tool expands access to highly qualified candidates across the government and helps streamline the hiring process, allowing agencies to recruit and hire top talent more easily.

However, FMA hears regularly from our members about the challenges associated with hiring, calling the process cumbersome and far too long to compete with the private sector. From the point of announcement in USAJobs to the point where the employee is on board, the best and brightest candidates are often offered and accept a similar role in the private sector – where they stand to earn far higher wages – while waiting to hear back about a federal position. At FRC-East, managers voice

concerns regarding difficulty recruiting and retaining new talent necessary in the artisan world to maintain ever-aging aircraft in the high fleet operational tempo. The current process serves as a deterrent for many highly qualified people.

Further, we have heard concerns voiced about the self-assessment questionnaire and its overall impact on hiring. Some people believe that a potential candidate must rank themselves as a “5” on a scale of 1-5, on every question asked, in order to even be considered for an interview. FMA believes in an open, honest, transparent system and would certainly never advocate that a candidate knowingly mislead or blatantly lie in an interview process. However, in practice, the prevalent rumors regarding how candidates should rank themselves puts people in an awkward position of inflating or exaggerating their own skills on the questionnaire in order to get an opportunity to interview. FMA recommends the committee oversee reform in this area by the Office of Personnel Management.

Direct Hire Authority

Allowing direct hiring authority (DHA), particularly for recent graduates, is emerging as a top priority. FMA notes that Congress approved favorable language on this issue in the most recent National Defense Authorization Act (NDAA), allowing for DHA within the Department of Defense for financial management experts, including accounting, auditing, and actuarial positions, among others.¹ FMA sees this as a positive step with regard to hiring, and supports continued action in the future.

DHA allows managers to expedite the hiring process, addressing a concern noted above. Filling positions in a timelier manner would achieve a maximum benefit to the vital missions accomplished by federal employees across the government. FMA recommends that the subcommittee continue to examine other positions in the federal workforce where managers could utilize DHA.

Salary Adjustments to Compete for New Hires

Another commonsense area of interest that would immediately help managers in hiring is the ability to provide salary adjustments that would enable managers to compete for new wage grade hires, especially in high-cost areas of the United States. For example, blue-collar employees in San Diego, California – which has a notoriously high cost of living – are compensated less for performing the same work performed in Cherry Point, North Carolina.

This poses severe challenges for managers looking to attract and retain the best people, who are deterred by the comparably low salaries. Managers need the ability to recruit, hire, and train the best and the brightest. Approximately two-thirds of the federal workforce at my installation at Cherry Point consists of wage grade employees maintaining and repairing military aircraft, engines, and components. It severely impacts our ability to perform the mission when managers are unable to compete because the private sector can pay more for wage grade employees. Further, it costs untold taxpayer dollars to recruit and train an employee, who often leaves the federal workforce after as little as a year to go to the private industry. Therefore, FMA recommends that the committee investigate options for managers to adjust hiring packages that reflect the unique circumstances in their areas.

¹ <https://www.gpo.gov/fdsys/pkg/CRPT-114hrpt840/pdf/CRPT-114hrpt840.pdf>

Hiring Freeze and Attrition

On January 23, 2017, President Trump signed an Executive Order instituting a hiring freeze across the federal government. Current and former managers have expressed deep concerns with this action, and argue its effect will run counter to its intent. The immediate hiring freeze applies to all agencies across the federal government and will be in effect for at least 90 days. During this freeze, the only hiring to take place will be those which agency heads deem “necessary to meet national security or public safety responsibilities.” The Executive Order continues the 90 days will be for the directors of the Office of Management and Budget and the Office of Personnel Management to develop a greater plan of attrition across the federal government and the hiring freeze will end once that plan is put in place.

FMA steadfastly opposes any blind, arbitrary plans to cut the federal workforce and believes that the President and Congress should work together to develop a plan where federal agencies are properly funded to complete their congressionally-mandated missions. The Government Accountability Office has consistently concluded that wide-ranging cuts to the federal workforce end up saving far less money than projected, and may actually cost taxpayers. Managers need the tools that enable them to achieve their goals of ensuring national security, public safety, and each American’s quality of life. A hiring freeze, or attrition, as it has been proposed, severely hamstrings their ability to do so. Instead of a hiring freeze or attrition, the American taxpayer would be better served with improvements to the workforce, not blind cuts. All federal agencies should be allowed to match hiring actions that align with essential mission and funding.

As this committee and Members of Congress consider ideas related to hiring, FMA urges you not to adopt legislation that would make it harder to accomplish our missions by arbitrarily demanding cuts in staffing levels across the federal government. In the executive action taken by President Trump, the hiring freeze is slated to be replaced with an attrition policy calling for agencies to only be allowed to hire one new employee for every two or three employees who leave federal service. This does not take into account the impact on many of the critical missions of this country. The Social Security Administration (SSA) and Internal Revenue Service (IRS) already face a severely depleted workforce and are unable to meet their missions.

A conservative estimate shows the IRS has lost at least 18,000 employees since 2010. While the agency handled more than 137 million tax returns in 2015, it only managed a level of service of 37.6 percent, meaning more than six out of every ten people who call an IRS call center do not speak to a customer service representative. As a result, the IRS estimates government losses of greater than \$2 billion in revenue. Additional results are reduced enforcement operations to combat fraud and abuse, as well as delays in tax refunds to the American public.

Before he retired, your former colleague, the esteemed Senator George Voinovich, a chairman and ranking member of the Subcommittee on Oversight of Government Management, the Federal Workforce and the District of Columbia, addressed his colleagues about what agencies should do when Congress does not provide the funding and resources all agencies need to operate:

“It just drives me crazy that more departments don’t really stand up and start raising you know what when we don’t give you resources you need to get the job done, particularly in management . . . I

think you ought to stand up and fight and not get rolled. Make a big deal out of it. Get the president involved. If I'm going to get the job done I've got to have the tools to get that job done."

Sen. George Voinovich²

FMA agrees with this sentiment. Mandating attrition and further reducing the federal workforce will only result in higher costs and more inefficiency.

Veterans' Preference

FMA has heard from many members that the current veterans' preference program is burdensome and in some cases prevents otherwise-qualified applicants from consideration of positions. Subcommittee member John McCain (R-AZ) included language (Sec. 1134) in the Senate-passed version of the National Defense Authorization Act (NDAA) last year that would have limited the application of points for preference eligible hiring to the first appointment of a preference eligible candidate in a permanent position in the competitive service. FMA notes that while this language was not adopted in the final conference report, the conference committee included concerns about the Department of Defense (DOD) "accessing highly skilled non-veterans into its civilian labor force due to strict preference eligible hiring requirements."

The final conference report also called for a comprehensive overview of the use of the veterans' preference process in federal hiring, including a close examination of the current process, the impact on agencies' ability to hire non-veteran applicants, and the impact on science, technology, engineering and math positions, among other provisions.³ FMA members have voiced concerns with the current veterans' preference policy, favoring the original language limiting veterans' preference to the first appointment, and welcomes this study, due on May 1, 2017.

PERFORMANCE MANAGEMENT AND TERMINATION

FMA makes the following recommendations based on our belief that providing talented managers with fair benefits and compensation, as well as the authority and flexibility to make tough decisions, is the key to managing a successful and strong civil service.

Performance Incentives

Pay-for-performance is a system that businesses in the private sector have utilized successfully for a long time. FMA believes the General Schedule (GS) should be utilized as a stepping stone to create a more evolved system that focuses on pay-for-performance and reflects the needs of the present federal workforce. While the common denominator of all departments and agencies is providing exceptional service to the American people, the federal government is made up of the equivalent of many different businesses and industries. Departments and agencies must have maximum flexibility and ability to

² <http://www.govexec.com/federal-news/fedblog/2016/06/george-voinovich-rare-politician-who-fought-better-management/129036/>

³ <https://www.gpo.gov/fdsys/pkg/CRPT-114hrpt840/pdf/CRPT-114hrpt840.pdf>

compete with the private sector to attract the best and the brightest men and women to answer the call of public service.

Transparency, fairness, and objectivity need to be core elements that comprise any personnel system. FMA urges a departure from the rigid approach of the current GS, to a classification and pay system that reflects the diverse missions of agencies across the federal government. The current GS system of classification and pay setting should be revised to more easily accommodate changing missions. The system would function more efficiently by allowing flexibility to significantly change positions, as needed, to accomplish the mission of the agency.

The current system promotes a workforce based on longevity rather than performance. The highest performing employees should be rewarded with the highest rates of pay; those employees who fall below the curve in terms of overall performance should not be rewarded at the same level. Where is the incentive in performing better than your colleagues when little is done to recognize additional efforts? Incentives to reward top performers would aid in retention and allow the federal government to be more competitive with the private sector.

If Congress considers making changes to the GS or develops a new pay system or performance review method, we recommend the following be included in any effort:

- maintenance of current benefits for active and retired employees;
- no loss of pay or position for any current employee solely as a result of the implementation of the new system(s);
- merit principles preventing prohibited personnel practices as well as an adherence to current whistleblower protections;
- continued use of the Merit Systems Protection Board (MSPB), an independent appeals process for disciplined or terminated employees;
- adequate funding of “performance funds” for managers to appropriately reward employees based on performance;
- development of a performance rating system that reflects the mission of the agency, the overall goals of the agency, and the individual goals of the employee, while removing as much bias from the review process as possible;
- a transparent process that holds both the employee being reviewed, and the manager making the decision, accountable for performance as well as pay linked to that performance; and,
- a well-conceived, ongoing and mandatory training program that includes skills training and is properly funded and reviewed by an independent body (we recommend the Government Accountability Office as an auditor) which clearly lays out the expectations and guidelines for both managers and employees regarding the performance appraisal process.

A shift in the culture of any organization cannot occur without an interactive, ongoing training process that brings together the managers responsible for implementing the personnel system and the employees they supervise. Implementation trumps design as the biggest factor in a system’s ultimate success or failure. With the upheaval any major change brings to a new pay for performance system, it is necessary to remain committed to the change long enough to let it work.

Termination

Recently, allegations of misconduct plagued the federal workforce and scandals erupted in several federal departments and agencies. This behavior does not reflect the federal workforce as a whole, and FMA has long argued the need to better address poor performers. Managers must be able to address both misconduct and poor performance, however many managers currently feel it is easier to keep a poor performer and deal with their subpar performance than take the steps to document and convince the agency to remove. A clear, straight-forward process should be available to every manager to remove confusion and frustration from the termination process. It is necessary to have protections and due process in place to prevent members of the civil service from being terminated on a whim or in response to outside pressures. The mission of the MSPB is to protect the merit system and ensure the federal workforce is capable of providing excellent service to the American public. FMA's concern lies not with the MSPB process, but with many agencies that practice risk avoidance rather than risk management when it comes to problem employees.

A federal employee's right to due process is fundamental and constitutional, and Congress must not take steps to eliminate or erode this right. In *Cleveland Board of Education v. Loudermill*, 470 U.S. 532 (1985), the Supreme Court held that the Constitution guarantees that if there must be a cause to remove a public employee from his or her job, then there is automatically a due process requirement to establish that the cause has been met.

Several iterations of Veterans Affairs reform legislation considered in the 114th Congress would have significantly eroded due process and appeals rights for all federal employees in that department. The legislation sought to dramatically reduce an employee's ability to appeal a decision that would deprive that employee of their job and salary. Preventing an employee from understanding charges against them or preparing a meaningful defense undermines an employee's due process and is wrong. At the same time, limiting the number of days to process an action may result in findings of legal insufficiency and no action being taken, rather than taking the necessary time to resolve any documentary issues. Further, legislation introduced in the House of Representatives would specifically make all new federal employees at-will employees, essentially returning public service to a spoils system where the civil service is politicized.

This does not mean every employee should be retained. As with any population, there may be good and bad employees, and employees who are not suited for the position they occupy. Managers have an obligation to ensure that employees are terminated for the right reasons: unacceptable conduct or performance that cannot be corrected in another way.

The current system, as written in statute, is not broken. However, it is not always being used as it was intended. Current statute only requires a minimum 30 day notice period from the date the proposal to remove or demote is issued to the employee until the effective date of action. This is not an unreasonable period of time to decide whether or not to terminate an individual's employment. According to the MSPB, more than 77,000 full-time, permanent, federal employees were terminated as a result of performance or conduct issues between Fiscal Year 2000 and FY 2014. FMA opposes legislative efforts to arbitrarily reduce or eliminate due process for federal employees across the government.

Administrative Leave Reform

FMA appreciates the bipartisan efforts this committee took regarding the use of administrative leave, culminating in reform being included in the NDAA.⁴ Administrative leave reform is an excellent example of Congress working together on meaningful, commonsense legislation that helps managers provide a more efficient and effective workplace. The Administrative Leave Act establishes clear timelines, definitions, and new leave categories, which will bring much-needed uniformity, transparency, and accountability to federal agencies, while reducing waste in the federal government.

Training

Current law requires agencies to establish training programs for managers on topics including: addressing poor performing employees, mentoring, and conducting accurate performance appraisals. However, there is no accountability to ensure managers participate, and during times of strained budgets, training is often viewed as a secondary expense and is typically the first program to meet the chopping block when cuts are made.

Many employees are promoted to management roles based on their technical skills rather than their ability to lead, especially under the GS system where pay is based on promotion through the various levels and steps. Therefore, it is not surprising that many employees note their supervisors' managerial skills lag behind their technical skills. An agency's ability to meet its mission directly correlates to the quality of workforce management. There is a clear need for training if a manager is to be fully successful. If an agency promotes an individual to managerial status based on technical prowess but then fails to develop the individual's supervisory skills, that agency severely jeopardizes its capability to deliver the level of service the American public expects and does a disservice to both the manager and to the employees supervised by that inadequately developed manager. For this reason, FMA supports the creation of a dual-track system, providing employees with superior technical prowess an opportunity to advance in their career, without taking on supervisory responsibilities.

The development of managerial skills is one of the greatest investments an agency can make, both in terms of productivity gains and the retention of valuable employees. This cannot be done solely by looking at a computer screen. A supervisor's ability to effectively monitor his or her workforce while resolving internal conflicts is instrumental in forming an appealing work environment. Whether serving as a mediator between upper-level managers and their staff or clearly defining organizational goals, well-trained federal managers serve a vital role in the continuity of operations on a day-to-day basis and are an essential component in ensuring the federal government retains a workforce that espouses a strong work ethic and commitment to the nation's wellbeing.

Management training can no longer be viewed as an expendable program. For federal agencies to remain competitive, effective and efficient, these programs need to be made mandatory. By establishing a mandatory initial training program and ongoing training series, the entire workforce benefits from enhanced supervision and improved leadership. Funding these programs in the appropriations process is essential to preventing training dollars from being cut when budgets are tight. Properly trained managers

⁴ <https://www.gpo.gov/fdsys/pkg/CRPT-114hrpt840/pdf/CRPT-114hrpt840.pdf>

will also lead to fewer employee grievances, both formal and informal. When managers are properly trained to do the job for which they have been hired, everyone wins.

FMA calls for the introduction of legislation that requires agencies to provide interactive, instructor-based training on management topics ranging from mentorship and career development to hostile work environments and poor performers. After the initial supervisory training, which would take place within one year of promotion, supervisors would be required to receive ongoing training once every three years thereafter. In addition, the measure should include an accountability provision to establish competency standards to ensure the training is effective. FMA endorsed the Federal Supervisor Training Act of 2016 (S. 3528), offered by subcommittee ranking member Heidi Heitkamp (D-ND) in the 114th Congress, which addressed many of these issues, and urges Congress to consider similar legislation in the 115th Congress.

Probationary Period

Initial and supervisory probation periods were originally intended to be an extension of the hiring process. Probation is a time to evaluate the employee or manager and determine whether they are suited, not just for the initial position, but also for federal service. Some career fields are so complex that it takes more than one year to properly train an entry-level employee. FMA advocates extending the probationary period. This would benefit both the government and employees by allowing supervisors to make decisions based on the employees' performance as fully trained employees – not just guessing at how they will perform after the training is completed.

Many federal agencies employ labor forces requiring specialized, technical skills to carry out their duties. New employees must often master broad and complex policies and procedures to meet their agencies' missions, necessitating several months of formal training followed by long periods of on-the-job instruction. To ensure each manager and supervisor oversees a workforce that exhibits the abilities required to execute its objectives, lawmakers must afford federal agencies the latitude to extend the probationary period beyond the current length of only one year from date of hire.

In occupations where training takes substantial time, supervisors may only have a few months of work to judge employees' performance. An extended period would allow supervisors to fully assess employees' abilities. The current economic environment requires agencies to take on greater responsibility while receiving fewer resources, and it is critical that members of the federal workforce prove they are up to the challenge of serving the interests of the American public.

Not only does this affect managers, but also puts an unfair burden on the employee. These jobs are difficult and complex and it takes some people additional time to learn the job. Managers are placed in the difficult position of having to decide whether or not to keep employees when they may not have had sufficient time to evaluate them. There is an incentive to dismiss the employee prior to the expiration of the one-year window even though the employee may not have had sufficient time to show that they could master the job.

Members of Congress saw fit to extend the probationary period to two years for Department of Defense employees as part of the 2016 National Defense Authorization Act. In January 2016, the House Oversight and Government Reform Committee approved legislation, H.R. 3023, that would extend the

probationary period to two years following completion of training. FMA sees these reform efforts as steps in the right direction, beyond the one-year period. FMA urges Congress to bring other agencies in line with the Department of Defense, the largest employer in the country, and develop a probationary period that recognizes the complexities of federal agencies' training periods.

Wounded Warriors Federal Leave Act

FMA remains grateful to the Senate Homeland Security and Governmental Affairs Committee in the 114th Congress for considering and shepherding the Wounded Warriors Federal Leave Act (P.L. 114-75) into law. The legislation created disabled veteran leave, a new leave category that provides additional leave to new hires in the federal government who need time to attend medical appointments related to service-connected disabilities. P.L. 114-75 covers approximately 85 percent of the federal workforce.

FMA endorsed legislation that extended disabled veteran leave to employees at the Federal Aviation Administration, and further calls for legislation to provide disabled veteran leave to all new hires with a service connected disability rating of thirty percent or greater who remain uncovered.

CONCLUSION

The federal civil service should be the model employer that other employers strive to emulate. We should be such an attractive employer that we have young people lining up to compete for positions as their first choices instead of looking elsewhere. This hearing is an important step toward determining what Congress can and should do to empower managers and give them the tools they need to increase both the efficiency and cost-effectiveness of the federal government. Thank you for the opportunity to share some of FMA's views with the Subcommittee. I am eager to answer any questions you may have.