

American Federation of Government Employees, AFL-CIO

Statement by

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before

**The Subcommittee on Federal Workforce, Postal Service,
and the District of Columbia
House Committee on Oversight and Government Reform**

regarding

Jobs, Jobs, Jobs: Transforming Federal Hiring

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Mr. Chairman and Subcommittee Members:

My name is Jacqueline Simon. I am the Public Policy Director of the American Federation of Government Employees, AFL-CIO, which represents 600,000 federal workers in 65 agencies across the country.

Thank you for the opportunity to testify today on the matter of federal hiring reform. Reforming the federal hiring process has become an important issue because the baby boom generation is preparing to retire, and because the Obama administration is trying to restore in-house capacities in jobs that were improperly contracted out during the era of privatization. In their haste to simplify and accelerate the federal hiring process, however, some have proposed new policies that would undermine the Merit System Principles of free and open competition for federal jobs and weaken veterans' preference. AFGE supports modernization, simplification, and reduction in the time it takes to hire and train a federal employee for a new job, recognizing that meeting these goals requires significant investment in human resources staff, not just administrative changes. In addition, AFGE will support only those measures that uphold the requirements of open competition and veterans' preference.

Although much emphasis is placed upon external candidates for federal jobs, the retention of current employees should also be a priority. Current employees often make the best candidates for federal job openings. The federal government's policies should encourage the employees in whom it has already invested to look for career development possibilities within the government rather than outside it.

The Obama Administration's Hiring Reform Efforts

Since June 2009, the Obama Administration has pursued several valuable strategies to expedite federal hiring. The first is to require every agency to establish SWAT teams to "map" current hiring processes in order to identify bottlenecks and

problems. The SWAT teams are also charged with rewriting job announcements in plain English. The second is to have similar agencies work together to share “best practices” in pursuing all of the reform policies that emerge from the administration’s efforts. The third item involves additional training for hiring managers, and the last item involves establishing a mechanism to notify applicants of their status in the hiring process at four different points: when an application is received, when it has been assessed for basic qualifications, when it has been referred to a “selecting official” (or not), and when a final decision has been made.

As you know, Mr. Chairman, last week President Obama issued his Presidential memorandum on hiring reform. AFGE is pleased to see this important matter receive such high-level attention. With regard to the specifics of the memorandum, we believe that efforts to engage operational managers more in the hiring process will undoubtedly lead to better and faster hiring decisions. In addition, it makes sense to eliminate mandatory KSAs for the initial application for a federal job. AFGE is reviewing the decision about moving to category rating instead of “rule of three.” While OPM has assured us that category rating is a better tool for ensuring veterans preference than the rule of three, we will monitor this to ensure that there are no unintended consequences.

We are disappointed, however, that the President has not used the memorandum to restrict the use of the Federal Career Intern Program (FCIP). Numerous agencies have been using the FCIP almost exclusively for new hires, evading competitive procedures and veterans’ preference in the process. While the Obama Administration has committed to evaluate the use of the FCIP, there is already ample evidence that the FCIP is on the verge of replacing the competitive service, as we will discuss later in this statement. If the hiring reforms the administration has presented are to have any relevance, the FCIP must be either repealed or vastly scaled back. We strongly urge the Obama Administration to scrap FCIP promptly so that its reformed competitive hiring with veterans preference can become the standard for the federal government.

Veterans' Employment Initiative

AFGE strongly supports the Veterans Employment Initiative established last November by President Obama. This is an excellent plan which will require agencies to develop operational plans for promoting employment opportunities for veterans, to establish veterans' employment offices to handle the responsibility, and to provide mandatory training to agency human resources personnel and hiring managers concerning veterans' employment. But of course, the easiest and quickest solution for supporting veterans' preference is to eliminate or drastically scale back the FCIP, which is a great impediment to veterans' preference in hiring.

Background

AFGE applauds the Obama Administration's decision to reverse the policy of the Bush Administration with regard to contracting out, especially for work that is inherently governmental, or closely related to inherently governmental. The urgent need to insource government work that was improperly contracted out has made hiring a top priority in many federal agencies. Coupled with the imminent retirement of thousands of federal employees from the baby boom generation, it is imperative that federal agencies have the resources and tools they need to fill many federal positions that will open up in the coming years.

Hiring the next generation of federal employees is a serious undertaking. Those charged with the task have both a legal and social responsibility to conduct federal hiring in the most open, fair, and competitive way possible, and the plain fact is that openness, fairness, and competition take time. Federal agencies have a legal and moral responsibility to honor veterans' preference. Internal candidates who were selected into career ladder positions must be given the opportunities they have been promised. Background checks, and in some cases, security clearances, have to be conducted. Information regarding education and prior employment must be verified. Working for a federal agency is not the same as working at a private firm, and it takes time to make sure an applicant meets

the standards and requirements our society expects the federal government to uphold.

The problems with federal hiring are similar to those with federal procurement and have similar causes. The important lesson is that speed should not be the most important goal. The downsizing of the early 1990's eliminated tens of thousands of federal positions that had been assigned to enforce acquisition laws and regulations. Once those positions were gone and federal agencies had few employees left who were able to oversee the contracting process or force compliance, the speed and efficiency of what was left of the acquisition workforce soared. No more red tape – contractors could be hired in a flash, and no time-consuming competitions or scrutiny could slow anybody down.

The Bush Administration set the stage for a similar debacle in federal hiring through its Lines of Business Initiative that centralized and privatized almost all federal human resources functions. All federal agencies were required to outsource their human resources functions to “centers of excellence” selected and certified by the Office of Personnel Management (OPM). Even those that were nominally located within federal agencies were mostly contracted out. The rationale was that “back office functions” like human resources were not core to any agency’s mission, and should be handled by third parties that excelled at the function. The result, however, has been a system that makes it very difficult to hold a true open competition for a job.

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 summarized 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 is extremely subjective, and grants managers a degree of discretion that should not exist in the federal government. Further, managers have total control over new employees hired under FCIP, because they have no procedural due process protections, such as adverse action appeal rights, and suffer 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 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.

Pay Gap

Another source of difficulty in federal hiring is the persistent gap between federal and non-federal pay. Politicized pay for performance schemes and below market salaries have hurt both recruitment and retention. For the General Schedule (GS) and the Federal Wage System (FWS), successive administrations have refused to follow the law with regard to market comparability even during periods when the budget was in surplus and the economy was at full employment. And in the past three years, the size of the measured pay gap between federal and non-federal

salaries has actually grown according to the Federal Salary Council and the President's Pay Agent. The reason for its growth is in part because full comparability raises have not been implemented, and also because the Salary Council has adopted a more detailed and accurate measure of the gap, one that includes far more actual job matches between the private and federal sectors. The new measurement includes jobs at various supervisory levels, and far more professional and technical jobs. Thus it has provided a truer, richer and more relevant picture of how much federal salaries lag behind those in the private sector.

Unfortunately, President Obama's FY 2011 Budget proposed to eliminate the Bureau of Labor Statistics (BLS) data survey that has been used to measure the pay gap. Instead, he has proposed that the BLS perform econometric procedures on data from another survey in order to approximate the pay gap measurements that had resulted from the actual federal job match survey. We urge you to reject the President's budget proposal regarding this important pay data. Federal pay is an important component of the government's ability to recruit and retain the workforce it needs to carry out its responsibilities. The BLS has a statutory obligation to provide data on the pay gap and measures of federal vs. non-federal pay comparability, and we believe that the President's budget proposal would greatly undermine the quality of those measures. The pay gap cannot be ignored in any discussion over the obstacles to federal hiring, and all should understand that closing the gap requires the ability to gauge its size accurately and reliably.

Advertising for Recruitment

AFGE has long argued that civilian agencies should begin to emulate the armed forces in terms of advertising for recruitment. The commercials for the Army, Navy, and Marines are compelling, professionally produced and placed on the air at times when they are likely to have the greatest impact, greatly enhancing the military's ability to recruit. In contrast, federal agencies have generally been limited to using relatively inexpensive media and placing their on-air advertisements at

inauspicious times, with predictable results for civilian hiring. However, we have recently seen excellent commercials during prime time for professional health care jobs in the Department of Veterans Affairs. We urge other agencies to follow the VA's example.

The 2009 Federal Hiring Process Improvement Act (S.736)

In March 2009, Senators Daniel Akaka (D-Hawaii) and George Voinovich (R-Ohio) introduced the Federal Hiring Process Improvement Act, a bill designed to streamline the federal hiring process. The bill's highlights include elimination of the "knowledge, skills, and abilities" essays in federal job applications, the requirement that job announcements be written in "plain" language, and the development of a centralized database of applicants that could be accessed by many agencies. It would encourage agencies to accept resumes and cover letters as initial applications for federal jobs, and would require agencies to include in their strategic workforce plans short- and long-term plans for general hiring, and the hiring of "qualified candidates from diverse backgrounds."

One potentially harmful aspect of the bill is its repeated reference to "targeted applicant pools." Although the bill includes language promising that the "targeting" it requires will not supersede public notice requirements, it is difficult to believe that the targeting process described will not have that very effect. For example, if the bill's provisions are followed and agencies "target applicant pools...before posting job announcements," and "clearly and prominently display job announcements in strategic locations convenient to" the targeted applicants, and "seek to develop relationships with targeted applicant pools to develop regular pipelines for high quality applicants" how will it be possible to uphold the principle of free and open competition? How will an applicant fare who is not a member of the targeted applicant pool? How will a potential applicant who is at a geographic or social remove from the targeted pool find out about the position? How will incumbent federal employees who are planning, training, and otherwise preparing themselves for transfer or promotion into new positions be viewed relative to candidates from the "targeted pool?"

Targeting an applicant pool may be efficient and might even be considered “simple,” but it is not fair to those not in the targeted pool. Why, for example, should graduates of a good program at one university be given any advantage over graduates of a good program at another university? In addition, the bill makes submission of materials such as transcripts, proof of veterans status, and professional certifications optional “unless necessary to complete the application process” which seems contradictory. They are either necessary or not, and we believe that they should be considered necessary. In recent years, there have been too many federal managers who have won their positions by using falsified documents and fake credentials, and we believe that the requirements regarding proof of educational and professional attainment should be strengthened rather than weakened.

S. 736 is a well-intentioned effort to ease and expedite federal hiring. However, its provisions regarding “targeted applicant pools” are dangerous with regard to the principles of open competition and veterans’ preference. The “plain language,” the resume and cover letter to replace “knowledge, skills, and abilities” essays, and the centralized database of candidates are all excellent ideas that AFGE supports. But even these positive actions will not be sufficient to expedite hiring if agencies are not provided with adequate funding for human resources staff to utilize these new tools.

That concludes my statement. I will be happy to respond to any questions.