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Chairman Lynch, on behalf of the 150,000 federal workers represented by the National Treasury Employees Union (NTEU), I would like to thank you for holding this hearing and for inviting me to testify on the important issue of the use of temporary employees by the federal government. While temporary employment status can be of great use to an agency when properly applied, it is also a status that lends itself to abuse and can be an unfair working condition for an employee. Properly, temporary status is for work that is not envisioned to last more than a year. Employees and their collective bargaining representative have few rights in challenging an agency's judgment that work would last no more than a year and agencies have the right to extend temporary status for a second year if they have underestimated the duration of the work. Temporary employees generally are not allowed retirement benefits other than participation in Social Security Old Age, Survivors and Disability Insurance. They lack the right to family and medical leave as well as leave for military service. This might be a defensible policy for a true temporary employee of a one year or less duration, but becomes a severe denial of rights when the status is abused. Regulations are very clear that agencies are prohibited from using temporary employee status to avoid the costs of employee benefits or to extend the one or two year probationary period already present in permanent positions. Temporary status also is not to be used to avoid competitive hiring. However, we are concerned that these regulations are often ignored. Vigilance on this matter is very important. Mr. Chairman, with today's hearing, you are doing your part and I commend you for it. Where temporary employees have representation by NTEU, we do all that we can under the limitations of law federal sector unions are subject to. The Office of Personnel Management and federal Departmental leaders must also be committed to seeing that temporary status is not abused.

Today, I wish to particularly speak about a grave situation confronting current and former employees of the Federal Deposit Insurance Corporation (FDIC) who performed temporary service early in their careers. NTEU is the exclusive bargaining representative for FDIC employees. The FDIC hired thousands of temporary employees during the 1980s known as LG's or liquidation grade employees. Their duties included managing and liquidating the assets of failed banks and savings and loans. These employees were allowed to participate in the FDIC's health care plan (at that time, FDIC had it own health care plan, separate from the Federal Employees Health Benefit Program). However, they were excluded from any credit for retirement under the federal system. They served in continuous one year appointments with thousands of them serving longer than five years and many renewed yearly for over fifteen years. NTEU strongly protested the status of these employees who were clearly temporary only in name. Working with Congress and the Office of Personnel Management (OPM) new policies were implemented that limited FDIC's use of temporary employees in order to halt widespread abuses. In 1993, OPM informed FDIC management that their special authority to use temporary employees for extended periods would be revoked come 1994 unless FDIC could provide a justification.

I would note, Mr. Chairman, that the special authority did not originate during the Savings and Loan crisis of the 1980s but was acquired by FDIC in 1938 during the Great Depression and never surrendered. However, even during the Great Depression and afterwards, it had only been used to hire temporary bank-specific teams of liquidation personnel. In the early 1980's FDIC adopted a new policy of establishing regional offices dealing with multiple bank liquidations. It is this action that NTEU considered an abuse as such work had historically

been viewed as permanent. In fact, the classification of regional office liquidation personnel as temporary was questionable enough that NTEU was able to litigate over the legal permissibility of this action. While, in the end, the federal Appeals Court ruled against NTEU and these employees, giving great deference to the agency's personnel decisions, we believe the five years of litigation over this matter shows that there were real legal questions as well as the obvious unfairness of the misuse of the LG classification. Further, FDIC management's principal defense of the use of this special authority was that it allowed them to fill urgent positions immediately once a bank closed without having to wait to conduct competitive examinations, rather than any connection to the length of the appointment.

Over the objection of NTEU, FDIC demanded a continuation of it special authority beyond the January 1, 1994 date OPM had planned to terminate the authority. FDIC argued for this special authority by stating it needed continuity in the LG workforce and that these employees clearly have specific knowledge of bank and thrift cases needed to bring about a timely resolution. NTEU argued that it was exactly for these reasons these workers should have been given permanent status. In fact, FDIC management came to understand the importance of LG employee retention to its work. While denying them federal retirement credit, they worked to retain these employees and responded to NTEU's objection to their classification by offering them the dental, vision and life insurance offered to permanent full time FDIC employees. Once OPM objected in 1993 to their abuse of the temporary classification and threatened to take away their special authority, FDIC extended to these LG employees the benefit of participating in FDIC's supplemental 401(k) retirement plan with the same employer match as permanent employees. That is right, Mr. Chairman, they were given the FDIC's supplementary retirement

benefit but not the basic federal retirement benefit. They worked hard and earned their dinner. But management withheld the roast beef, only throwing them a cupcake.

Nevertheless, OPM agreed to allow FDIC to phase out its on-going misuse of the temporary classification over two and a half years, from January 1994 to June of 1996, after which it would be required to follow a new government wide standard issued by OPM that full time temporary employment was limited to one year with the option of a renewal of one additional year. Employees hired for more than a year would then be classified as term employees. While term employees lack many of the job protections that permanent federal employees have, they are eligible to earn leave and generally have the same benefits as permanent employees including health and life insurance, within-grade increases and Federal Employees Retirement System and Thrift Savings Plan coverage. Term appointments are not to extend for more than four years.

For many years, NTEU has urged Congress to act to correct the grave injustice suffered by LG employees. With the passage of the Federal Employees Retirement System Act in 1986 [Public Law 99-335 – 5 U.S.C. Section 8411, Subsection (b)(3)], federal employees without retirement credit because they had years in temporary status were able to buy back credit for the years prior to 1989 by paying for the retirement deductions that were not taken. But former LG employees were not allowed to buy back credit for temporary service after 1989. The result is that valuable service time from January 1, 1989 until the date that they actually became eligible to participate in FERS and have deductions made was essentially lost or forfeited. We understand the intent of Congress in the 1986 FERS legislation was to encourage agencies to

cease overusing temporary employees and abusing the classification. Congress allowed a two year window as agencies transitioned. It was not expected that FDIC, a government corporation with considerable administrative autonomy, would continue to abuse the temporary classification beyond this period.

Legislation would be required to fix this injustice to FDIC LG employees. Bills have been introduced periodically, including by your colleague Representative Paul Kanjorski (D-PA), who ably serves on the Oversight and Government Reform Committee as well as the Financial Services Committee that has jurisdiction over the FDIC. FDIC management has also voiced support for legislation to correct this past injustice. I want to be clear the proposal that NTEU supports would not simply give former FDIC LG employees credit for years of service they performed between 1989 and when they were given permanent status, but would require them to make a payment for these years of credit equal to the retirement deductions they would have contributed if they had been allowed, plus interest. In all cases, this credit would only be available to those who were victims of the unfair policy in which they were renewed annually for many years as temporary employees until the late 1990s when management finally changed its policy and gave these employees permanent or term status. We are not asking for this to be extended to those who never acquired permanent federal positions. What this would require is a simple amendment to Chapter 83 of Title V, U.S.C. and NTEU would be happy to work with the Subcommittee in developing appropriate legislative language. We believe that allowing these misclassified LG employees the opportunity to buy back their missed retirement credit would be an equitable and just way to compensate them for their long standing and on-going service to the federal government.

The employees impacted by denial of credit for these years are not a large group. We estimate that there are 150 former LG employees with missing service credit still working at FDIC and approximately 500 other such individuals who are working in other parts of the federal government, mostly in other financial regulatory agencies such as the NTEU represented National Credit Union Administration.

In a few days, Mr. Chairman, we expect President Obama will be signing the very important Dodd-Frank Consumer Protection and Financial Reform bill. I know you and your staff were very helpful to the authors of this legislation in crafting the aspects dealing with personnel policies at federal financial regulatory agencies. This ground breaking consumer protection legislation is witness to the importance of the work of the front line employees at the FDIC and other financial regulatory agencies. I don't think it is too much to ask that those very men and women who are working so hard as bank examiners and liquidation specialists and credit union consumer compliance specialists be given retirement credit for all of their service years in federal employment.

Chairman Lynch, thank you again for this opportunity to discuss the situation of federal workers with temporary service. I would be pleased to answer any questions you or other members of the Committee have. Thank you.