



Testimony of

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Chairman Lynch, Ranking Member Chaffetz, and members of the Subcommittee, I appreciate the opportunity to appear before this distinguished subcommittee. I would like to congratulate both of you in your new capacities as chair and ranking member of the subcommittee that has the important mission of overseeing the federal government's workforce.

These are exciting times in federal service, times that will engage our leaders in public service to recognize and use what is best about government to make it responsive to our country's needs. During these times, I am confident that the talents and expertise of front line employees, many of whom have been too often overlooked, will be tapped to help resolve complicated problems and achieve our country's goals. As president of the National Treasury Employees Union (NTEU) representing more than 150,000 federal employees in over 31 different agencies and departments throughout the government, I look forward to working with both of you to make the federal government successful in its important mission.

A good deal has happened since I last testified before the Federal Workforce Subcommittee. We have a new president and new OPM leadership who see government as part of the solution to the country's challenges, rather than the problem. The challenges facing us are complicated and broad ranging—reviving our floundering economy and financial institutions, strengthening the security of our homeland, moving our country on the path to energy independence, resolving our federal budget crisis, and restoring the faith of the American people in our government.

The extent to which our government will be successful rests in large measure with our federal agencies and the federal employees charged with carrying out those agency missions. In the final analysis, a great country is the sum of the actions of its people – and in few, if any, endeavors, does that hold more truth than in the work of the employees of its government.

I was proud that NTEU's award winning public service campaign "Federal Employees...They Work for U.S." was well received throughout the country. We were proud to air radio spots in 65 stations, in 50 markets nearly 17,000 times, and TV spots that resulted in 74 million impressions. These ads reminded the public of the important work federal employees do in an array of agencies in communities throughout the nation.

For the public and its many varied interests to be served effectively and efficiently, there must be a federal workforce made up of dedicated and skilled women and men for whom such service truly is a calling. The change in administrations clearly provides a window not only for improvements in the way government conducts itself—and thus serves the public—but in the ways it attracts and retains those who perform the people's work.

Agency Funding and Staffing

In the past administration, too often federal agencies were hamstrung, understaffed, underfunded and led by political appointees who were ambivalent about their missions. By engaging the federal workforce and refocusing on agency missions, the new administration can take a different path and tackle our nation's problems while restoring vitality to our federal government.

America's skilled and experienced federal employees, like all Americans, want the effective, efficient delivery of government services every single day. They have the expertise to deliver on that goal but improved service to the American public requires agencies to have the proper resources.

Unfortunately, as Professor Paul Light of NYU's School of Public Affairs recently pointed out in discussing OPM's 2008 bi-annual survey of 210,000 federal employees taken during the previous administration, the federal workforce is at risk. "Federal employees report persistent shortages of the basic resources they need to maintain the highest level of performance. Barely half say they get the training they need to do their jobs, and even fewer say they are satisfied with the information they get from management on what's going on in their organization." (*Washington Post*, January 14, 2009)

The last administration recommended devastating cuts to agency budgets. While the use of outside contractors skyrocketed, staffing in many agencies, including the IRS, DHS, and FDA has not even kept up with inflation or has declined in recent years. The IRS, for example, saw a 24% overall decrease in staffing levels during the past 12 years, despite staggering increases in workload. Consolidation of immigration, customs and agriculture inspection functions at CBP, referred to as One Face at the Border, caused logistical and institutional weaknesses resulting in a loss of expertise in critical homeland security priorities. And long waits at our ports of entry are clear evidence that more resources are needed. The FDA remains particularly understaffed and underfunded, thereby endangering the health and safety of consumers. And the backlog of Social Security appeals cases has also been a growing problem, one that is directly related to low staffing levels and limited resources.

Fortunately, this new Congress stepped up to the plate and included additional resources in both the House and Senate passed budget resolutions for Fiscal Year 2010 to help address some of the agency shortfalls. The IRS is slated to receive additional enforcement funds which, according to the administration, could save more than \$13 billion between 2010–2014. The budgets also assume funding for the Social Security Administration (SSA) to address the backlog of thousands of disability claims through its Continuing Disability Reviews (CDRs) program. The resolutions rejected the outgoing SEC Chairman's budget that called for a third year of staffing reductions at the agency responsible for preventing financial securities fraud. Instead, the House and Senate supported our call for increased funding for this important agency. And both measures include an important commitment to funding pay parity which I will discuss later in this testimony.

While the final budget conference report still needs to pass, NTEU is encouraged by these positive strides forward. NTEU will work with the administration and appropriators to achieve proper funding levels for specific agencies, but we urge you as overseers, to set the tone by giving our agencies and federal employees the tools they need to do their jobs.

I would be remiss if I did not back up and mention one major cause of the depleted agency budgets. The last administration saw a reliance on outside contractors as the norm. This belief led to rampant contracting out, even inherently governmental duties such as the IRS tax collection program. That program fiasco paid debt collectors a commission for work that agency

personnel could do more cheaply and efficiently. Fortunately, with the assistance of our congressional friends and the new administration, NTEU was able to put a stop to the IRS's private tax collection program. However, we still need to repeal the underlying authorization to assure the program never resurfaces, and I urge all of you to cosponsor H.R. 796, Rep. John Lewis's bill to do so.

NTEU does not oppose all government contracts. However, employee groups must be given a fair shot at competing for work and participating on a level playing field. This is in both the employees' and the government's financial interests and it is the right thing to do. I applaud the Congress's recent action in including provisions FY '09 Omnibus Appropriations bill containing a one-year government-wide moratorium on new public-private job competitions for federal work. The language specifically prohibits the use of funds to begin or announce new public-private competitions pursuant to OMB Circular A-76, so that the new administration has the opportunity to review and develop Federal workforce policies.

Retention and Recruitment of Federal Employees

Flexibilities and Pay Parity

In addition to staffing our agencies with enough resources and personnel so they can meet our nation's goals, we need to retain our valued public servants. I have testified many times before Congress on the numerous flexibilities available to federal agencies to keep its valued employees. These flexibilities can be used for both retention and recruitment purposes and they remain underutilized. Agencies can provide recruitment bonuses to employees in difficult to fill positions. They can provide relocation assistance. They can pay a retention bonus to retain an employee they deem essential. There is a student loan repayment program. In special circumstances, you can match previous private sector annual leave. Telework is an underutilized option. Flextime schedules are available. With greater use of these flexibilities, I believe we can attract more workers and keep our good ones. I understand that in many cases, agency budgets have been slashed so significantly that there is no money for these flexibilities. Maybe we need to consider designating funds for these accounts so that they can be used.

On the retention side, it is no secret that one way to keep valued employees, is to compensate them fairly. Mr. Chairman, as you know, the Federal Employees Pay Comparability Act (FEPCA), enacted in 1990 to close the gap between federal and private sector pay, has never been fully implemented, leaving a 23 percent disparity between federal employees and their private sector counterparts.

In these difficult economic times, federal civil servants are willing to do their part, but they do deserve parity in pay with their brothers and sisters in the military as has been the case for almost two decades. I know you, Mr. Chairman, and many distinguished members of this subcommittee are well aware and have been longtime supporters of the bipartisan principle of pay parity between federal civilian employees and the military. Pay parity, or equal levels of pay percentage increases for both the federal civilian workforce and military personnel has been a tenet of federal pay policy.

NTEU has long argued that both groups work together and often side-by-side in defending our borders, protecting our homeland, keeping our government systems running, protecting our food safety, collecting our revenue, and safeguarding public health, and both groups deserve an equal pay raise level. NTEU was disappointed in the administration's recommendation of only a 2 percent pay increase for federal civil servants, less than the recommendation for military personnel of 2.9 percent and I have spoken with our friends on both sides of the aisle, and the administration, about this. NTEU believes pay parity is a precedent too important to ignore and will work on a bipartisan basis with Congress and the Administration to reinstate the longstanding principle. If we want to retain talented employees, we need to abide by this compensation principle.

Collective Bargaining

I cannot emphasize enough, the importance of collective bargaining in the workplace. Collective bargaining gives employees a voice in the work they have chosen to do, and a stake in the mission of the organization. That is good for both the employee and employer. And what better way to improve morale, than to bargain for conditions that affect an employee every day he or she gets up and goes to work?

Just this month, with NTEU's support, Rep. Nita Lowey (D-NY), Chairman Bennie Thompson (D-MS), and Rep. Sheila Jackson-Lee (D-TX) introduced H.R. 1881, legislation to provide collective bargaining rights and civil service protections to the employees of the Transportation Security Administration (TSA). Eliminating the present unfair system faced by TSA employees will give this crucial security workforce the stability it needs. And it will provide an avenue to help strengthen and improve the TSA workplace.

Under the law establishing the agency, the TSA Administrator was given the power to set all basic employment rights, including compensation and performance standards. That experiment has been a disaster. It has resulted in an agency that continually ranks at the bottom in morale, and has the highest attrition rate and the highest injury rate in the federal government. Our union officers have been demoted or moved to less-traveled areas for trying to get disputes resolved. People are injured on the job and told to stay home or even told to find a different place to work. TSOs are forced to take annual leave when they clearly are eligible for Family and Medical Leave Act leave. Jobs are not posted; they are filled by TSOs friendly to management. TSOs routinely are at the airport 11 to 14 hours a day, but get paid for 8. Staffing levels at some airports are so low that TSOs are working extra shifts, not getting breaks, and working on their days off. The Transportation Security Officers, who put themselves on the line every day, at every airport, deserve better than what they've endured so far.

TSA's pay for performance system, known as PASS, has been so disastrous that employees do not know what is expected of them. The training and certification program, performance appraisal system, and health and safety programs all lack accountability and therefore lack credibility with employees.

When I met with the three House authors of H.R. 1881, early in the year, I pointed out the many benefits of collective bargaining legislation. For example, capricious and arbitrary

management and the denial of the most basic workplace rights of our dedicated Transportation Security Officer (TSO) workforce has undermined the original goal of providing screeners with adequate pay, benefits and training. Providing collective bargaining rights to TSA employees is crucial to retaining these public servants who protect our homeland on a daily basis, yet as I mentioned, have the highest attrition rate. I am urging the new administration to provide civil service protections administratively. I also urge all of you to cosponsor H.R. 1881, and together, we can all turn this agency around.

In addition to TSA, we need to permanently end the failed DHS human resource management experiment (formerly called MaxHR) that allowed DHS to limit collective bargaining rights for DHS employees. NTEU worked with Congress to eliminate annual funding for this failed system, and now NTEU will support legislation in the 111th Congress to repeal Chapter 97 of Title 5 this year.

And we cannot forget collective bargaining rights for the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). On November 26th, 2008 nearly 1,000 NTEU-represented employees were stripped of their right to collectively bargain by an executive order issued by former President Bush. The former administration claimed that ATF employees could not continue to have collective bargaining rights due to national security concerns. For some thirty years, the provisions of the labor-management statute had been applied to ATF in a manner consistent with national security requirements and considerations, with no lapse in the ability of federal employees to enforce laws and carry out the missions of the United States. This action must be overturned. The treatment of public servants with dignity and respect through collective bargaining must be maintained as a viable retention opportunity.

Mr. Chairman, a quick look at the business section of any daily will tell you that the federal financial regulatory (FIRREA) agencies have significant and important work on their hands. These agencies need the authority and staff required to do their job. Alone among all the other financial regulatory agencies NTEU represents, the employees of the Office of the Comptroller of the Currency (OCC) are not able to bargain over pay and benefits. The result has been problems with recruitment and retention, particularly of the most qualified employees. Legislation is needed to correct this exception among the FIRREA agencies and NTEU would be interested in working with the Congress on this, hopefully in a bipartisan way.

Labor Management Partnership Councils

Another critical personnel enhancement is the restoration of labor management partnership. On October 1, 1993, President Clinton issued Executive Order 12871, establishing labor-management partnerships in the federal government. That executive order was rescinded by President Bush soon after he assumed office. NTEU believes it is time to re-establish labor-management partnerships in the federal government.

When labor-management partnerships were in effect during the 1990s, there was a climate of recognition that the sometimes adversarial labor-management relationships in federal agencies could be transformed into problem solving relationships. Partnerships were made up of managers, employees, and employees' representatives who had insights into designing and implementing the processes necessary to more efficiently achieve agencies' missions. Partnership councils functioned in federal agencies throughout the country and in cooperation with a National Partnership Council, on which I served. The purpose of the partnerships was to identify problems and craft solutions to better serve the taxpayer, not to provide for co-

management. Often, issues within federal agencies were resolved before they became major obstacles or points of contention in the labor-management arena. Through partnerships came a recognition that employees and their union representatives added value to the decision making process.

In a December 2000 report to Congress, the Office of Personnel Management (OPM) found that partnerships between labor and management “have helped cut costs, enhance productivity, and improve customer service at agencies across Government.” It is time to bring the creative ideas of management and labor together again in government.

Giving employees a seat at the table is a sure way to keep them invested in and contributing to the missions and goals of the agencies.

Federal Employee Health Benefits Program (FEHBP)

In the coming years, federal agencies will be hiring many new workers. Fifty-eight percent of supervisory and 48 percent of non-supervisory workers will be eligible to retire by the end of fiscal year 2010, according to a 2004 report by OPM. In order to compete with the private sector, and attract and retain the best workers, federal benefits must be competitive.

Federal employees know they are fortunate in, for example, having a choice of health plans and the ability to switch plans yearly. But while the Federal Employees Health Benefits Plan (FEHBP) has good elements, it is not without serious problems. If we want to retain our dedicated public servants and compete with the private sector in recruiting new hires, we need to take a realistic look at FEHBP as well as the whole range of benefits that could be offered to new employees. Restoring quality and forward looking human resource packages *now* may be a sensible investment so that we may be able to attract the kind of talent we need *in the future*.

I am hearing from federal workers across the country that their health insurance premiums are too high. This year FEHBP premiums increased between 7 and 13 percent. In 2008, premiums rose between 2.1 percent and 8.5 percent not counting the reserves OPM tapped to keep premium increases down. Thanks to many of you on this subcommittee, Blue Cross/Blue Shield withdrew its original plan last year to charge consumers up to \$7500 per surgical procedure for using an out-of-network physician.

Despite constant premium increases in the last eight years, the program has seen benefit and coverage cutbacks, higher co-payments and the addition of new plans, like HSAs and HDHPs, that undermine the integrity of the system. NTEU supports a comprehensive review of FEHBP to see how costs can be held down for the 8 million enrolled federal employees, annuitants and their families.

NTEU also supports increasing the federal share of the premium cost to 80 percent, up from the current weighted average of 72 percent. Most large companies and state and local governments cover 80 percent of their employees’ premiums. And we support a study of whether costs can be held down by directly negotiating for drugs instead of through insurance carriers as is currently done, and the use of the subsidy available under the Medicare Prescription

Drug Act.

Age 22 and FEHBP

Under current law child dependents are cut off from FEHBP participation when they turn 22. Many of these individuals are fully dependent upon their parents. They are often students in four or five year college programs and find themselves without the ability to find or pay for insurance on their own. According to the Commonwealth Fund, young adults are the fastest-growing age group among the uninsured. The Commonwealth Fund found that 22 year olds face waiting periods, temporary positions, and lower wage jobs as they enter the job market. Health care is not available to them at a price they can afford. Many states, including Massachusetts, New Jersey, Maine, Illinois, Minnesota, Maryland, Utah, and over 20 more have enacted new legislation requiring private sector companies to extend coverage beyond age 22.

NTEU believes the FEHBP risk pool could actually be helped by the infusion of young and generally healthy dependents and we urge the subcommittee to lift the age 22 cap under FEHBP and treat federal employees the same as the private sector in so many states.

Domestic Partners Legislation

Improving health care means also allowing all federal employees to provide for their families. NTEU strongly supports legislation to allow federal employees to include their same sex domestic partners under the FEHBP family plan insurance. Federal employees have waited too long for this and a bill is likely to be introduced soon by Representative Tammy Baldwin (D-WI). We urge the subcommittee to act this year on the domestic partners legislation.

Paid Parental Leave

According to a March 2008 report by the Joint Economic Committee Majority Staff, nearly all Fortune 100 firms offer working parents some paid time off when they have a new child. Furthermore, in a global economy, the federal government must compete not only with the American private sector, but with foreign countries as well. Yet, our nation's paid parental leave policies are lagging: we are the only industrialized nation that does not guarantee paid leave upon the birth or adoption of a child. A paid parental leave policy will also save the government money by reducing turnover and replacement costs, which is estimated to be 25 percent of the worker's salary.

Currently, federal workers do not have any guarantee of paid leave for the birth or adoption of a child. Some have accrued paid sick or vacation time that they may be able to use while on FMLA leave. However others, especially younger workers who haven't accrued sick or vacation time, have no choice but to take unpaid leave.

H. R. 626 recently introduced by Rep. Carolyn Maloney (D-NY) provides federal workers with four weeks of full pay to use while they are on Family and Medical Leave Act (FMLA) leave for the birth or adoption of a child. The bill also allows federal workers to use up to eight weeks of accrued paid sick time to care for their new child and gives the Office of

Personnel Management (OPM) authority to increase the amount of paid parental leave from four to eight weeks once further studies are conducted. Congress should waste no time in passing this bill, which will help our federal government recruit and retain dedicated and talented workers, enable working parents to care for and bond with newborns and newly-adopted children, and show that the federal government truly values families.

H.R. 1804

I would like to thank you, Mr. Chairman, and members of the subcommittee who helped advance H.R. 1804, which just passed the House on April 1st and includes a number of key provisions for retaining and attracting quality public servants. As you know, this bill, whose provisions are coupled with H.R. 1256, allows counting unused sick leave towards the FERS retirement calculation; makes important Thrift Savings Plan (TSP) improvements, including the addition of a Roth contribution fund for those who choose it; and, fixes the retirement calculation glitch for certain CSRS covered retirees who choose to go part-time during their service. All of these provisions are critically important to supporting our dedicated civilian employees, and recruiting future talent with a good benefits and retirement package. NTEU will work diligently on this important legislation in the Senate to see the measure enacted into law. But let me salute this subcommittee for seeing a legislative opportunity and achieving House passage expeditiously.

Hiring for the Future

With awesome responsibilities facing our government, an aging workforce, many of whom may choose to retire in the next decade, and a new attitude toward the role of our public servants, there is an understandable need to make the hiring process more user friendly and faster. In a July, 2008 bulletin, the Merit Systems Protection Board (MSPB) cited a study predicting that throughout the next 5 years one-third of the Federal Government's full-time permanent workforce will leave the Government—the majority through retirement. (*Issues of Merit, MSPB July 2008*) While we do not know whether that prediction will materialize, and workers who are eligible to retire, will actually do so, NTEU believes we should nevertheless have a plan in place to bring qualified talent to government.

We need to fix what is broken in hiring, *and do so only within the context of the very important competitive service, while maintaining the federal merit principles.* To do otherwise, would be to throw out the baby with the bathwater.

The precedent of competitive examining for government jobs goes back two decades and its history is one that promotes fairness, transparency and equal opportunity. I regret to say that in the last administration, the use of special hiring authorities to circumvent the normal competitive process was rampant. MSPB found in a recent report, that “fewer than one-third of new hires in FY 2005 came from Competitive Examining—the traditional hiring authority open to all U.S. Citizens.” (*Federal Appointment Authorities, MSPB, June 2008*)

One of the tools outside of the normal competitive process that agencies increasingly rely

on is the Federal Career Intern Program (FCIP). Far from being a limited special-focus hiring tool, aimed at providing structured, two-year training and development “internships”, FCIP is now the option of choice. CBP uses FCIP almost exclusively in its hiring. The IRS now fills positions such as Revenue Officer and Revenue Agent using FCIP, and the FDIC has begun filling most entry-level positions using FCIP. In addition, the MSPB has shown that widespread use of the FCIP can narrow the applicant pool and create the perception of “unfair, arbitrary, or inequitable treatment”.

There are many problems with this approach and NTEU has challenged FCIP in two different lawsuits. We believe that FCIP rules give agencies excessively broad discretion to depart from the carefully designed and statutorily mandated competitive examination and selection requirements for the federal civil service. Vacancy announcements do not have to be posted, veterans preference rights are diminished, and agencies have discretion to make selection decisions without following rating and ranking processes or merit promotion plans. They also create a de facto two- or three-year probationary period, instead of the standard one-year period for entry level positions in the competitive service. As a result, many agencies have adopted the FCIP as the hiring method of choice, often at the expense of fair and open competition.

NTEU believes there are problems in federal hiring and those problems do need to be fixed. However, changes need to be targeted so other fiascos are not created, like FCIP. Everyone has heard a horror story about a person trying to get a job in the government. If you can actually navigate the USAJOBS web site, which is not very user friendly – it uses terms of art that cannot be easily understood and are not defined, like Career-Conditional and Excepted Service, and it sometimes kicks you out in the middle of a search – you could wait for months and sometimes up to a year to hear from the agency to which you applied. Even if you do get called in for an interview, the backlog for background investigations can add another year to your wait for employment and there are many jobs that now require a background investigation. Many people get discouraged and find other work while waiting.

There are some obvious problems in hiring. Some of them may require legislative remedies, and others can be handled through OPM. NTEU stands ready to work with Congress and the administration on these.

I think that OPM can take a leadership role with the other agencies in providing the kind of resources that will really help agencies improve their hiring and retention efforts. We need to have a depository of good ideas for agencies to use. And I look forward to working with Director Berry on this.

Finally, Chairman Daniel Akaka (D-HI) and Senator George Voinovich (R-OH) recently introduced a bill to simplify federal hiring, S. 736. This bill is intended to be a starting point for a larger discussion on improving hiring in government, and I told them, and I will tell the subcommittee today, I am willing to work with Congress on this. However, hiring changes must be done within the context of the competitive service, while maintaining the federal merit principles. This is paramount to NTEU.

Conclusion

The challenges facing our government are large and historically important. But it is truly a new day for us all. The federal workforce has been through a lot in the last eight years suffering depleted resources and staffing. But it is a strong, resilient and capable one that wants to fully participate again as a partner in solving the many challenges ahead of our country.

We need a comprehensive plan and the resources to get back to the place where we attract the “best and the brightest” this country has to offer. The federal government’s missions will be complicated in the years ahead. Let’s try to create a workforce that will best help us achieve them.