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A Civil Service for the Mission

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Table of Contents

Introduction 4

I. A Brief History of Civil Service Reform 6
- A. From Spoils to Merit 6
- B. Executive and Legislative Tug of War 8
- C. Executive Ascension and the Civil Service Reform Act of 1978 10
- D. Hiring Changes via the Court: The Luevano Adjustments 12
- E. Reagan Weaponizes the CSRA 14
- F. Clinton Doubles Down 16
- G. Decline and Stasis in the 21st Century 18

II. Lessons from the History of Civil Service Reform 21

III. A Civil Service for the Mission 28

Conclusion 32

Appendix: The Civil Service Modernization Act 34

Introduction

On January 30, 1961, President John F. Kennedy, Jr., proclaimed in his first state of the union address, "Let the public service be a proud and lively career. And let every man and woman who works in any area of our national government, in any branch, at any level, be able to say with pride and with honor in future years: 'I served the United States Government in that hour of our nation's need.'"[1] Though civil servants continue to serve with pride and honor, the civil service has been the target of criticism, blame, and suspicion from the Oval Office for years. President Trump's recent actions targeting the structures of the civil service are unprecedented in their breadth, but he is not the first president to target rather than uplift the federal workforce. In fact, for over 50 years, almost all of the men elected to the presidency have run on a platform that government is largely a problem, if not *the* problem, rather than a solution. They have managed the civil service as though the cohort were the cause of systemic failings. Moreover, labeling government as a problem and then reorganizing and/or downsizing the workforce, without thoughtful procedural reform, has served as a tool to accumulate power in the executive and ignore the true needs of an outdated but necessary pillar of democracy.

The governing processes of civil service have been in dire need of comprehensive reform for decades but have fallen victim to a political structure that shortchanges routine maintenance. Presidents and Congresses generally have little incentive to direct their attention to or spend political capital on civil service reform. But any administration that follows the current Trump presidency will not have the luxury of sidestepping this issue for a simple reason: to have the government work toward effectual policy goals in any domain, and from any perspective, requires personnel. In order to make the government work, any future administration will therefore have to tackle the needs of the civil service.

Effective rebirth of the civil service must take into account how the current structure emerged, why known needs have been ignored, and why the civil service has always been at once, and in different ways, at the top and bottom of presidential priority lists. Any reimagining will also have to answer the key questions that animate all civil service reform efforts: To what degree should the civil service respond, like the turning of a head, to the preference of the president? Are the goals of a merit-based civil service and the missions of government agencies best served through a centralized or

[1] John F. Kennedy, Annual Message to the Congress on the State of the Union (Jan. 30, 1961).

decentralized system? How should a merit-based civil service support, balance, or limit the power of the executive and Congress? Though these questions may seem theoretical, their answers provide the framing for how civil servants are hired, how their jobs are classified, how they are compensated, and how they are disciplined and protected.

This paper argues for a bold, comprehensive restructuring of the civil service in the United States. This transformation includes three major components: decentralization of the civil service hiring process to include the necessary authorities the govern it; the revival of the Civil Service Commission to serve a hub for personnel management expertise; and a default personnel policy option for agencies that do not wish to, or do not have the capacity to, build their own.

To make this case, Part I offers a brief history of the three eras of the civil service: the run up to the Pendleton Act of 1883 and its implementation, the strengthening of the system from the 1910s to the 1970s, and the motivations and effects of the Civil Service Reform Act of 1978. In the process, it describes the tug of war between Congress and the Executive and steady march to increasingly centralized executive power over the civil service. Part II offers lessons from this history, namely that reform efforts have largely consolidated power in the presidency, but have not addressed the mechanisms of the civil service; and that reform advocates have long grappled with the tension between universal standards and agency needs, but myriad agency-specific policies show that flexibility is not the problem.

Part III provides a framework for how to execute a civil service that focuses on mission over compliance with decentralization of the authorities necessary to enable mission-based hiring, a centralized center of excellence for agencies to rely upon for personnel policy support and to ensure transparency of agency systems, and a default set of policies for agencies who are unable or uninterested in developing their own. Finally, the appendix provides a section-by-section of draft legislation to execute this vision. While it does not address every issue that will need to tackled in comprehensive reform, it does provide a framework to consider the technical manifestation of a decentralized, mission-centric structure.

I. A Brief History of Civil Service Reform

A. From Spoils to Merit

With the exception of the Chinese Han state of antiquity, "the modern merit-based civil service has only existed for some 200 years" as the growing complexity of government demanded more consistent expertise than cronyism and nepotism could offer.[2] For its first one hundred years, in contrast, the United States federal government had an informal framework governing how federal employees were hired, fired, or managed. Presidents were free to, and often did, hire individuals based on merit, loyalty, or party ties. This period was sometimes known as the "government by gentlemen."[3] In this system, the president, Congress, and party leaders jockeyed to appoint their loyalists to important jobs or jobs where money could be made.[4] Though often associated with President Andrew Jackson, patronage existed in America prior to 1828.[5] Jackson did, however, alter the system in a populist push to democratize government and open positions to more than just those gentlemen elite.[6] While under the earlier system, lower level government posts rarely changed with administration, Jackson expanded precedent for who was considered part of the spoils system. This effort both broadened who served in government but also decreased its professional competence and, ultimately, led to the rise of civil service reformers.[7]

Advocates for a merit-based system had been pushing for change since before the Civil War, as the inefficiencies of a patronage system increased,[8] but it wasn't until President James Garfield was assassinated in 1881 by a disgruntled job seeker that they were able to codify reform. Charles Guiteau shot President Garfield for denying him an official post in Paris with hopes that the vice president, Chester A. Arthur, a known patronage supporter, would appoint him.[9] While Garfield lingered on his deathbed, Vice President Arthur grew concerned that the public would connect him with the

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[2] Jos C. N. Raadschelders & Hon Ronald P. Sanders, *New development: Loyalty to principle or politics—The US civil service under attack … but is it justified?*, 45 PUB. MONEY & MGMT. 144, 145 (2025).
[3] LORENZO CASTELLANI, THE HISTORY OF THE UNITED STATES CIVIL SERVICE 36 (2021).
[4] *Id.*, at 37-38.
[5] THOMAS ANDREW BAILEY, PRESIDENTIAL SAINTS AND SINNERS 47-48 (1981).
[6] Castellani, *supra* note 3, at 39-41.
[7] *Id.*, at 39-41.
[8] *Id.*, at 40.
[9] Todd Arrington, *Stalwarts, Half Breeds, and Political Assassination*, NAT'L PARK SERV. (Nov. 2012) https://www.nps.gov/articles/000/stalwarts-half-breeds-and-political-assassination.htm.

assassination, and the National Civil Service Reform League capitalized on the moment to push nationwide for reform. By January 1883, then-President Arthur signed into law the Pendleton Act of 1883, creating the modern merit-based civil service[10]

The Pendleton Act of 1883 established the Civil Service Commission, mandated "competitive examinations" for positions covered by the act, and stated that federal employees are not obligated "to contribute to any political fund" and couldn't be removed for refusing to do so.[11] When it passed, the Act's protections only covered about ten percent of the federal workforce, but it also gave presidents authority to expand this coverage by executive order.[12] In most cases, subsequent presidents took the opportunity to bring more and more federal positions under the purview of the act to prevent their successors, particularly if from the other party, from removing the individuals for political reasons and appointing their own loyalists.[13] President Theodore Roosevelt was particularly active, which makes sense given that he was the only president to have also served as a Commissioner on the Civil Service Commission.[14] He closed a loophole in the law to fully eliminate political assessments of workers, increased the percentage of federal positions classified under the Pendleton Act from 46 to 66 percent, and laid the groundwork for the eventual Hatch Act of 1939.[15]

Over the first half of the 20th century, the modern civil service began to take form. In 1912, the Civil Service Commission established the Division (later, Bureau) of Efficiency to create a government-wide rating system, and Congress passed the the Lloyd-La Follette Act further expanding protections for classified employees.[16] By 1921, the

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[10] Alan Gephardt, *The Federal Civil Service and the Death of James A. Garfield*, NAT'L PARK SERV. (Sept. 2012) https://www.nps.gov/articles/000/the-federal-civil-service-and-the-death-of-president-james-a-garfield.htm.

[11] Pendleton Act, ch. 27, 22 Stat. 403 (1883).; Richard D. White, *Theodore Roosevelt as Civil Service Commissioner: Linking the Influence and Development of a Modern Administrative President*, 22 ADMIN. THEORY & PRAXIS 700, 700 (Dec. 2000).

[12] White, *supra* note 11, at 697, 700; Scott Greenberger, *The civil service was once politicized. Then a president was assassinated.*, WASH. POST. (Jan. 29. 2025), https://www.washingtonpost.com/history/2025/01/29/civil-service-reform-trump-james-garfield-chester-arthur/

[13] White, *supra* note 11, at 702-703.

[14] *Id.*, at 701.

[15] *Id.*, at 711.

[16] U.S. BUREAU OF EFFICIENCY, REPORT OF THE UNITED STATES BUREAU OF EFFICIENCY FOR THE PERIOD FROM NOVEMBER 1, 1921 TO OCTOBER 31, 1922 12 (1922), https://www.govinfo.gov/content/pkg/SERIALSET-08152_00_00-

classified, or competitive, civil service had expanded to include about 80 percent of federal employees.[17] In 1923, Congress passed the Classification Act, formalizing the concept of standardized pay for standardized positions across government and tied compensation to specific positions, rather than individuals. Though not the first attempt to provide structure to the federal government (an early attempt at pay standardization was tried in 1853), it was the first comprehensive attempt.[18] The classification system was reviewed several times over the 25 years and was updated in 1949 by a subsequent Classification Act, which also created the General Schedule (GS), simplifying the pay schedules system, and delegated some classification authority to agencies.[19]

B. Executive and Legislative Tug of War

As the civil service became more autonomous, protected from political interference, and centrally controlled, there were significant effects on politics, and on the legislative and executive branches. First, the new system reduced the power of political parties and changed the role of Congress. Under the patronage process, party leaders and power brokers, members of Congress, and governors maintained sway over critical appointments in their districts. That system gave whichever party controlled the White House foot soldiers at a local level to convey political messages and a steady source of campaign funds, as appointees gave part of their salaries to the party.[20] In the new system, Congress's authority became more removed, an ability to exercise constraints on the executive branch and civil service rather than engage directly in its construction.[21]

Second, presidents recognized the power of a competent administrative state and its potential to serve their priorities if the system was more aligned and controllable. President Franklin D. Roosevelt was the first executive to test the system. Most New Deal agencies were created outside the civil service system, as a less burdensome process allowed the government to move swiftly and staff with patronage employees

003-0421-0000/pdf/SERIALSET-08152_00_00-003-0421-0000.pdf; Nicholas Handler, *Administrative Law of McCarthyism*, 78 STAN. L. REV. __ (Forthcoming 2026) at 14.

[17] RONALD N. JOHNSON & GARY D. LIBECAP, THE FEDERAL CIVIL SERVICE SYSTEM AND THE PROBLEM OF BUREAUCRACY 48 (1994).

[18] Castellani, *supra* note 3, at 41.

[19] GEORGE T. MILKOVICH & ALEXANDRA K. WIGDOR, PAY FOR PERFORMANCE: EVALUATING PERFORMANCE APPRAISAL AND MERIT PAY 15-16 (1991).

[20] Sean M. Theriault, *Patronage, the Pendleton Act, and the Power of the People*, 65 J. of POL. 50, 54 (2003).

[21] Handler, *supra* note 16, at 16-17.

which increased Congressional support.[22] President Roosevelt was also interested in staffing the agencies with people who agreed ideologically with his vision of their mission.[23] The result was that by 1936 only 60 percent of federal employees fell under the classified service.[24] Roosevelt sidestepped the already complex personnel system to ensure advocates filled the new agencies.[25] Notably, Roosevelt's instinct to centralize management of the bureaucracy in the office of the president was supported by the Brownlow Committee, a commission which supported the idea that general executive power was essential to an efficient government.[26] The Brownlow Report was also the first "affirmation of the idea that the president was directly responsible for the organization of the executive branch."[27]

By 1952, the classified civil service had regrown and accounted for 88 percent of federal employees.[28] But like Roosevelt, Dwight D. Eisenhower approached civil service reform with an eye towards increased managerial control in the White House, convinced, not without reason, his predecessors had filled agencies with loyalists to his Democratic predecessors.[29] Recognizing the benefit of more political influence at the agency level and a need to correct for previous administration's ideological influence, in 1953, President Eisenhower ordered the creation of a new exempted status, Schedule C, which would collect all those that either require confidentiality or determine policy.[30] Competitive examinations had long been understood to be a poor fit for accession to a variety of positions. The Pendleton Act accounted for these jobs by establishing a different path to service, via Schedule A and Schedule B

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[22] Johnson & Libecap, *supra* note 17, at 70.
[23] *CIVIL SERVICE SEEN FOR NEW AGENCIES; Congress to Be Asked to Put More Bureaus Under the Competitive System*., N.Y TIMES (Dec. 29, 1935), https://www.nytimes.com/1935/12/29/archives/civil-service-seen-for-new-agencies-congress-to-be-asked-to-put.html.
[24] Milkovich & Wigdor, *supra* note 19, at 15.
[25] Patricia Ingraham, *The Reform Game*, in THE PROMISE AND PARADOX OF CIVIL SERVICE REFORM 6-7 (PATRICIA W. INGRAHAM & DAVID H. ROSENBLOOM EDS., 1992).
[26] *Id.*, at 8-9.
[27] Castellani, *supra* note 3, at 61; *See* PRESIDENT'S COMM. ON ADMIN. MGMT., ADMINISTRATIVE MANAGEMENT IN THE GOVERNMENT OF THE UNITED STATES (1937), https://babel.hathitrust.org/cgi/pt?id=mdp.39015030482726&seq=3 (also know as the Brownlow Committee Report).
[28] Joseph A. Loftus, *Eisenhower Order Puts Focus on Civil Service; 'Several Thousand' in New Class May Be Dropped to Make Way for Others*, N.Y TIMES (June 28, 1953), https://www.nytimes.com/1953/06/28/archives/eisenhower-order-puts-focus-on-civil-service-several-thousand-in.html.
[29] Castellani, *supra* note 3, at 94, 98.
[30] Loftus, *supra* note 28.

appointments.[31] These positions were known as the "excepted" service, in contrast to the competitive service. By the mid-1950s, these excepted positions included a variety of narrow jobs like lawyers, chaplain's assistants, as well as some political roles. Framed as a tool to improve control of a growing executive branch, the Civil Service Commission released a report in 1956 that studied the creation of a new exception and the redefinition of existing ones.[32] By 1956, Eisenhower's reforms were in full force and a new class of political appointees emerged for the first time since the creation of the classified civil service.

The executive branch was not alone in its mid-century attempts to exert power. It was met, though only briefly matched, by Congress. By the late 1930s, prominent members of Congress, often serving on the House Un-American Activities Committee and the Senate Internal Security Committee, were vocally concerned about individuals in the civil service subverting American values and aims.[33] These concerns coincided with the expansion of the state through the New Deal.[34] Eventually, they successfully pressured President Truman to establish the Federal Loyalty Program in the Civil Service Commission in 1947.[35] A decade and many loyalty investigations later, the Supreme Court held in *Service v. Dulles* that the firing of a Foreign Service Officer based on claims of disloyalty had been improper, stating that federal personnel had the right to due process.[36] Ultimately, "[the] federal loyalty program, designed as a vast purge of politically suspect federal workers, instead accelerated the development of a robust system of civil service protections. Rather than strengthening the President's ideological control of the executive branch, it formalized and hardened institutional resistance to presidential fiat."[37]

C. Executive Ascension and the Civil Service Reform Act of 1978

Though presidents before him had advanced policies to tighten the leash on the bureaucracy and assert executive power via civil service reform, Richard Nixon moved further. Nixon came to power convinced that the bureaucracy opposed him

[31] U.S. Office of Pers. Mgmt., Excepted Service Hiring Authorities: Their Use and Effectiveness in the Executive Branch 2 (July 2018). [hereinafter *Excepted Service Hiring Authorities*]
[32] *Id.*, at 2.
[33] Handler, *supra* note 16, at 21.
[34] *Id.*, at 25.
[35] *Id.*, at 22-23.
[36] *Id.*, at 60; *Service v. Dulles*, 354 U.S. 363 (1957).
[37] *Id.*, at 5.

ideologically.[38] But he framed his effort to control the civil service as a matter of efficiency. In 1973, Nixon said, "Americans are fed up with wasteful, muscle-bound government in Washington and are anxious for a change that works."[39] He combined the strategies of his predecessors: "structural change, governmental reorganization, and larger numbers of political appointees to direct the career bureaucracy."[40] He created an advisory committee and adopted recommendations to restructure the executive branch to enable better coordination of agencies from the White House and, critically, responsiveness to the president.[41] Nixon developed a playbook to blame the bureaucracy for anything and everything as a tool to centralize control, acting with force on frustrations long held by West Wing residents.

By the time Jimmy Carter ran for president, the narrative of the Watergate scandal had evolved and was viewed as a failure of the bureaucracy rather than a warning of executive control.[42] Capitalizing on this misdiagnosis, Carter made civil service reform a cornerstone of his campaign. He pledged to make the government more effective, arguing that to do so he must "bring the horrible bureaucratic mess under control".[43]

Using recently regranted reorganization authority from Congress, President Carter sent Reorganization Plan No. 2 to Congress in 1978. The plan dissolved the Civil Service Commission and, in its place, created the Office of Personnel Management (OPM) and the Merit Service Protection Board (MSPB). While the Civil Service Commission had been an independent agency led by three bipartisan chairs, the OPM director was established as a political appointee reporting to the president, whose director assumed the authority of the Civil Service Commission.[44]

Later that year, President Carter signed into law the Civil Service Reform Act (CSRA) of 1978, which included a number of other changes to the civil service under the auspices

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[38] Ingraham, *supra* note 25, at 10

[39] John Herbers, *Nixon's Presidency: Centralized Control*, N.Y TIMES (Mar. 6, 1973), https://www.nytimes.com/1973/03/06/archives/nixons-presidency-centralized-control-nixons-presidency-an-attempt.html.

[40] Milkovich & Wigdor, *supra* note 19, at 19.

[41] Ingraham, *supra* note 25, at 10. Of note, Nixon created the Office of Management and Budget (formerly the Bureau of the Budget) and the Domestic Policy Council.

[42] Ingraham, *supra* note 25, at 11.

[43] Haynes Johnson, *Limits*, WASH. POST (Mar. 4, 1978) https://www.washingtonpost.com/archive/politics/1978/03/05/limits/dd3a43ec-2fcc-466a-bcb2-f95b1718890a/; Ingraham, *supra* note 25, at 11.

[44] 43 F.R. 36037, 92 Stat. 3783.

of improving performance, like bonus pay and pay for performance. The CSRA also established the MSPB as the watchdog of the core principles of the merit-based civil service.[45] Most importantly, the CSRA converted what had previously been the most senior positions on the General Service scale to the created Senior Executive Service (SES). The SES corps lost civil service protections and a percentage of the positions became political appointments, strengthening the overall political accountability of the group.[46]

While scholars have noted that Carter was interested in the actual functioning of the government, the CSRA did not actually address the gummiest parts of the civil service system that had evolved over the preceding 100 years, including entrance, classification, and compensation systems and procedures.[47] Instead, the effect of the law was the further centralization power in the hands of the presidency and the largest increase in political appointments since the Eisenhower administration. The bureaucracy did not have to wait long to see how this accumulated power could be used by a leader who viewed government as an inherent problem to be attacked. As one 1988 paper quipped, the CSRA "enabled Reagan to be a successful Richard Nixon."[48]

D. Hiring Changes via the Court: The Luevano Adjustments

In the last months of his presidency, Carter made a quiet decision that would have an enormous and lasting impact on the civil service: he signed the *Luevano* consent decree. In 1979, five civil rights groups filed a suit against the federal government, *Luevano v. Campbell*, alleging that the Professional and Administrative Career Examination (PACE) had an adverse impact on minority applicants.[49] Since the Pendleton Act, determining merit for the merit-based civil service had been achieved through competitive exams.[50] The tests had evolved in the following 100 years but the structure remained largely the same.

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[45] Bernard Rosen, *Crises in the U.S. Civil Service*, 46 PUB. ADMIN. REV. 207, 211 (1986).
[46] Ingraham, *supra* note 25, at 12-13.
[47] Milkovich & Wigdor, *supra* note 19, at 17.
[48] Joel D. Aberbach and Bert A. Rockman, *Political and Bureaucratic Roles in Public Service Reorganization*, in ORGANIZING GOVERNANCE: GOVERNING ORGANIZATIONS (COLIN CAMPBELL AND B. GUY PETERS EDS., 1988).
[49] *Luévano v. Campbell*, 93 F.R.D. 68 (D.D.C. 1981).
[50] Carolyn Ban & Patricia Ingraham, *Retaining Quality Federal Employees: Life After PACE*, 48 PUB. ADMIN. REV. 708 (1988).

In the 1920s, entrance into the civil service was highly selective, and the Scientific Management Movement resulted in sophisticated technical and management exams. In 1955, the government adopted the Federal Service Entrance Exam (FSEE) as a universal entrance tool for college graduates into federal service. In 1971, the Supreme Court ruled in *Griggs et al. v. Duke Power Company* that the entrance exams had to be shown to be linked to job performance and could not be discriminatory,[51] illuminating the increasing tension between tests originated for routine clerical work and the increasingly complex workforce of the federal government. The FSEE was replaced with the PACE in 1974, and in 1978, the Equal Employment Opportunity Council (EEOC) issued the Uniform Guidelines on Employee Selection Procures.[52] The Uniform Guidelines, adopted in federal regulation, provided guidance on what constituted adverse impact on a group and how to validate exam methods, allowing for adverse impact *if* validation could be shown.

Claimants in *Luevano* argued that the PACE had not been adequately validated and, therefore, the demonstrated adverse impact of the test on different ethnic and racial groups violated the Uniform Guidelines. The newly-established OPM argued the PACE was valid, but President Carter still agreed to the consent decree.[53] This change had two important effects. First, by moving away from the PACE exam to first primarily Schedule B appointments and later to alternative exams and other assessments, more women and minorities came into government and the civil service, substantiating the claims of the civil rights groups who challenged them.[54]

Second, because the tests had been an enormous part of the federal hiring process, the shift to an alternative occurred without a clear view of what that alternative should or would be.[55] While the initial response was to hire for positions previously included under PACE into the excepted service through Schedule B authority and tests for six positions were eventually developed during the 1980s,[56] the systems gap created by the *Luevano* consent decree was not addressed as needed. The abrupt transition coincided with the further centralization of control of the civil service and its processes through OPM and the assumption of office by an administration that viewed the bureaucracy as the issue.

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[51] *Griggs et al. v. Duke Power Company*, 401 U.S. 424 (1971).
[52] Ban & Ingraham, *supra* note 50, at 708; 41 CFR Part 60-3.
[53] *Id.*, at 709.
[54] *Id.*, at 714-715.
[55] *Id.*, at 709, 713-714.
[56] *Id.*, at 709-711, 713-714.

E. Reagan Weaponizes the CSRA

In his inaugural address, Ronald Reagan said, "Government is not the solution to our problem; government is the problem."[57] As president, he saw his mission as the clawing back of the independence and size of the administrative state and became president at a moment of profound change for the civil service, most of which had tilted the deck in his favor.[58] Within the preceding 24 months, new laws consolidated oversight of the civil service in the White House, established a new band of managerial leadership with a high percentage of political appointees in the SES, and created new authorities for tying pay to performance for senior and mid-level managers. Further, Carter and the courts had disbanded, in the pursuit of greater equity in federal career accessions, the primary form of accessions into entry level positions for college graduates, resulting in the expansion of excepted service hiring.[59] The Reagan administration capitalized on the chaos, along with hiring freezes and budget cuts,[60] to hobble the independence of the bureaucracy.

First, the administration reshaped OPM. The CSRA created OPM to provide oversight and assistance to agencies in an increasingly decentralized — even more so in the wake of the *Luevano* consent decree — execution of the hiring process. Reagan's OPM Director Dr. Donald Devine instead saw his agency as a political weapon to be wielded on behalf of the president. Devine tripled the political appointees at OPM and reduced the total number of personnel by 20 percent.[61] He limited OPM oversight engagement with agencies, expanded noncompetitive appointment authority, and tried - though was stopped by an appellate court — to circumvent laws around new policies and reduction in force.[62]

Second, the administration used the *Luevano* ruling to undermine the competitive service. The consent decree allowed for the PACE to be phased out over three years and to be replaced by other validated exams. Instead, OPM Director Devine abolished the test outright in 1982, and then fired many of the OPM staff who would have been responsible for developing the new replacement exams. At the time, PACE had been the single largest point of entry for federal service for college graduates to entry level

[57] Ronald Reagan, First Inaugural Address (Jan. 20, 1981).
[58] Milkovich & Wigdor, *supra* note 19, at 26.
[59] Ban & Ingraham, *supra* note 50, at 709.
[60] *Id.*, at 710.
[61] Rosen, *supra* note 45, at 209.
[62] *Id.*, at 209-210.

positions, who now lacked a clear path to public service.[63] The Reagan OPM did slowly develop new tests to fill the gap, but not at a pace or breadth to keep up with hiring needs at agencies. OPM instructed agencies to hire internally, off the displaced workers list (those fired from other agencies), and granted agencies authority to bring on new employees as members of the excepted service, rather than the competitive service, under Schedule B.[64] As Schedule B hires, the employees had fewer protections. Furthermore, following a 1987 executive order, these individuals were able to convert to the competitive civil service, but the move raised questions about a percentage of the civil service having entered through a non-competitive process.[65]

Finally, while curtailing central support for personnel management and limiting pathways of entry to federal service, the administration aggressively attacked the budgets and personnel levels at almost every federal agency. From 1982 to 1988, the federal workforce decreased by five percent.[66] Some agencies faced deeper cuts: the General Services Administration lost 43 percent of its staff, and the Tennessee Valley Authority lost 35 percent. Enormous budget cuts and reductions in force resulted in chaos and low morale.

With centralized power over the civil service, the Reagan administration attempted to decentralize the implementation of its processes and policies. Because OPM failed to adequately address the enormous gap in the hiring process created by the dissolution of the PACE, agencies pursued ad hoc patches to manage and bring on new civil servants but without the resources to do so effectively. The Advisory Committee on Federal Pay warned as early as 1986 that this system could result in the "balkanization of the general schedule."[67] Laden with new responsibilities, lower morale, and little support from OPM, agencies floundered as they independently attempted to modernize personnel processes. This posture largely continued for the next two decades.

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[63] Judy D. Olian & John C. Wilcox, *The Controversy Over PACE: An Examination of the Evidence and Implications of the Luevano Consent Decree for Employment Testing*, 35 PERS. PSYCH. 659, 661 (1982).
[64] Ban & Ingraham, *supra* note 50, at 711.
[65] *Id.*
[66] MARK GOLDSTEIN, AMERICA'S HOLLOW GOVERNMENT: HOW WASHINGTON HAS FAILED THE PEOPLE 70 (1992). Note: This decrease covers the non-military, non-postal service part of the federal workforce.
[67] LARRY M. LANE & JAMES F. WOLF, THE HUMAN RESOURCE CRISIS IN THE PUBLIC SECTOR: REBUILDING THE CAPACITY TO GOVERN 47-48 (1990).

F. Clinton Doubles Down

Bill Clinton took aim at the federal bureaucracy immediately with the National Performance Review (NPR). Pledging to create a government that "works better" and "costs less," Vice President Gore led the initiative with a Reagan-like preference for deregulation, decentralization, and delegation.[68] The administration's NPR led to a transformation that started with OPM and extended into agency policies and personnel structure.

Clinton's OPM Director Jim King saw his mission as downsizing and privatizing the agency.[69] While the Reagan administration had ignored the dual OPM mission of supporting and regulating agencies in their efforts to uphold the merit-based civil service, the Clinton administration attempted to reshape OPM's role. Between 1993 and 1997, King decreased OPM staff by 48 percent, from 6,208 to 3,253 personnel.[70] OPM shed its role in training federal managers in 1995, and following a congressional amendment to the CRSA, OPM began charging agencies for staffing services, as part of the NPR goal of making agencies more entrepreneurial.[71]

Another congressional amendment in 1996 delegated examining authority to all federal agencies.[72] During its existence, the Civil Service Commission had maintained the authority to examine and certify all candidates for federal jobs, administering exams and referring eligible candidates to agencies for their final selection. Then, the CSRA granted the OPM director the authority to delegate this examination to agencies. The Reagan administration delegated many of these authorities in an ad hoc nature, and agencies became dependent on the many special authorities granted during the Reagan administration that skirted the competitive service process.[73] The 1996

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[68] AL GORE, FROM RED TAPE TO RESULTS: CREATING A GOVERNMENT THAT WORKS BETTER AND COSTS LESS, REPORT OF THE NAT'L PERFORMANCE REVIEW (1993), https://www.cia.gov/readingroom/docs/CIA-RDP97M00518R000600620002-5.pdf.

[69] Gary S. Marshall, *Whither (or Wither) OPM?*, 58 PUB. ADMIN. REV. 280 (1998).

[70] *Id.*, at 281.

[71] MERIT SYS. PROT. BD., THE U.S. OFFICE OF PERSONNEL MANAGEMENT IN RETROSPECT: ACHIEVEMENTS AND CHALLENGES AFTER TWO DECADES 21 (Dec. 2018) [hereinafter MSPB, *The U.S. Office of Personnel Management in Retrospect*].

[72] MERIT SYS. PROT. BD., THE ROLE OF DELEGATED EXAMINING UNITS: HIRING NEW EMPLOYEES IN A DECENTRALIZED CIVIL SERVICE 1 (Aug. 2018) [hereinafter MSPB, *Delegated Examining Units*].

[73] *Id.*, at 1.

amendment pushed all examining authority to agencies since they had already assumed the bulk of the responsibility but reclaimed standard setting for OPM.[74]

The Clinton administration justified the OPM budget and personnel cuts by decentralizing civil service management responsibilities to agencies. Simultaneously, they pledged to assist these agencies in enacting their newfound responsibilities by cutting regulation. OPM Director King got rid of this 'red tape' by throwing out the Federal Personnel Manual, considered "the bible" of federal hiring by government HR professionals. Though critics saw the manual as an inhibitor to innovative hiring techniques, to those doing the hiring, it was a collection of institutional knowledge and wisdom that provided HR specialists with much-needed guidance for a complex and litigious system.[75] Critically, the laws underpinning these best practices did not change when the book was cast aside, so personnel professionals were left to recreate it on their own in agency silos.[76]

Finally, the Clinton administration reduced the total number of federal employees government-wide, and the reductions targeted the human resource management teams at agencies. Mirroring the hollowing out of OPM, from 1992 to 1996, 18 percent of HR professionals were fired across the government.[77] In 1999, a MSPB report noted the immediate effects of these staffing reductions: "downsizing efforts targeted human resources staff disproportionately, and led to the retirements or buy-outs of many older and more experienced personnel employees."[78]

By the end of the 1990s, OPM was much smaller and structured to conduct regulatory oversight and act as a paid consultant to agencies now responsible for all onboarding steps. Agency hiring units, however, had more responsibility, less guidance, less money, fewer people, a governing body they had to pay for help, and the same outdated statutory constraints.[79] OPM had thrown out binders filled with best practices and statutory interpretation but didn't change the underlying law or regulation the agencies were still subject to.[80]

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[74] *Id.*, at 2.
[75] Marshall, *supra* note 69, at 282.
[76] Carolyn Ban, *Reinventing the Federal Civil Service: Drivers of Change*, 22 Pub. Admin. Q. 21, 23 (1998).
[77] *Id.,* at 24.
[78] MSPB, *Delegated Examining Units*, *supra* note 72, at 8.
[79] MSPB, *The U.S. Office of Personnel Management in Retrospect*, *supra* note 71, at 23.
[80] Ban, *supra* note 76, at 23.

Though civil service reform occupied top billing during the Clinton administration, the actual nuts and bolts of the structure received little attention. The administration didn't tackle reforms requiring statutory change in the first two years and then efforts that would have strengthened the institutions, like more flexible pay structures government-wide or classification, became politically untenable when Republicans took control of Congress in 1994.[81]

In 1998, civil service expert Carolyn Ban wrote that the massive changes of the decade forced agencies to take it upon themselves to respond individually, and without a strong push for comprehensive government-wide reform that would have to go through Congress, agencies were left to argue their case for exceptions and special authorities before Congress. By 1998, Navy labs, National Institute of Standards and Technology (NIST), and the Federal Aviation Administration (FAA) had been given individual authority to manage personnel outside the civil service structure.[82] By ignoring a brittle system, the Clinton administration doomed it to fracture. By simultaneously cutting resources and shifting responsibilities, the administration condemned it to fail.

G. Decline and Stasis in the 21st Century

Like Reagan, George W. Bush hoped to improve control of the bureaucracy and make it more responsive to the White House. Unlike Reagan, President Bush did not see the bureaucracy as the enemy, though there was a "shrink the state" contingent in the administration.[83] He did continue privatization of federal positions apace and expanded the purview and number of political appointees.[84] But he also attempted to advance some reform of the personnel structure. In the wake of 9/11, Congress created the Department of Homeland Security (DHS). The Homeland Security Act of 2002 gave DHS authority to construct a personnel system for civilians outside of standard civil service guidelines, and the following year's National Defense Authorization Act gave the Department of Defense the authority to do the same for

[81] *Id.*, at 24.
[82] *Id.*, at 30.
[83] Richard Stevenson, *The Nation; The Incredible Shrinking Government, Bush Style*, N.Y TIMES (Dec. 8, 2002) https://www.nytimes.com/2002/12/08/weekinreview/the-nation-the-incredible-shrinking-government-bush-style.html.
[84] Paul Singer, *Bush and the bureaucracy: a crusade for control*, GOVEXEC. (Mar. 25, 2005), https://www.govexec.com/management/2005/03/bush-and-the-bureaucracy-a-crusade-for-control/18859/.

their civilians.[85] The Bush administration hoped to extend this new, decentralized (with requisite authority) system across federal agencies, but faced immense scrutiny and immediate legal challenges from federal labor unions. The modernization experiment was never fully implemented and withdrawn entirely in 2008 due, in large part, to a failure by the Bush administration to effectively engage with federal unions while enacting the law and a court finding that the administration that changed labor engagement beyond what was allowed in the law.[86]

The Obama administration's approach to civil service reform focused on processes and systems, but it also failed to address longstanding concerns around classification, compensation, and assessments. In 2010, the Obama administration eliminated essays as part of the job applications, known as Knowledge, Skills, and Ability (KSA) narrative statements.[87] These essays had become a critical component of assessing candidates in the hiring process following the *Luevano* consent decree and the elimination of most examinations. This satisfied applicants but led to a dramatic increase in applicants and, according to a 2018 review by the MSPB, "unintentionally made it more difficult for agencies to evaluate applicant qualifications."[88] By removing the detailed KSA statements, agencies resorted to occupational questionnaires, known as self-assessments, a tool easy to administer but loathed by hiring managers.

The Obama administration also moved away from the "rule of three" selection method, in which HR professionals determine candidate eligibility and then present hiring managers with the top three candidates to choose, in favor of category ratings, allowing hiring managers to see more candidates. However, while the MSPB had long

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[85] Homeland Security Act of 2002, Pub. L. No. 107-296, § 841, 116 Stat. 2135, 2229 (2002); National Defense Authorization Act for Fiscal Year 2004, Pub. L. No. 108-136, § 1101, 117 Stat. 1392, 1621 (2003).
[86] Christopher Lee, *Civil Service System on Way Out at DHS*, WASH. POST (Jan. 27, 2005), https://www.washingtonpost.com/archive/politics/2005/01/27/civil-service-system-on-way-out-at-dhs/5f99456c-eadb-462b-83b1-1d63549899e4/; Brittany Ballenstedt, *Homeland Security scraps plan for personnel system*, GOVEXEC (Oct. 2, 2008), https://www.govexec.com/pay-benefits/2008/10/homeland-security-scraps-plans-for-personnel-system/27801/; *Human Capital Issues at the Department of Homeland Security: Hearing Before the Subcomm. on Mgmt., Integration, and Oversight of the H. Comm. on Homeland Sec.*, 110th Cong. (2007) (statement of Nat'l Treasury Emps. Union), https://www.nteu.org/legislative-action/congressional-testimony/human-capital-issues-at-20160502t213611; *NTEU v. Chertoff*, 452 F.3d 839 (D.C. Cir. 2006).
[87] THE WHITE HOUSE, *Presidential Memorandum – Improving the Federal Recruitment and Hiring Process* (May 11, 2010), https://obamawhitehouse.archives.gov/the-press-office/presidential-memorandum-improving-federal-recruitment-and-hiring-process.
[88] MERIT SYS. PROT. BD., IMPROVING FEDERAL HIRING THROUGH BETTER ASSESSMENT 6 (July 2018) [hereinafter MSPB, *Improving Federal Hiring*].

advocated for the shift to category ratings in lieu of the "rule of three," the positive effects of the change were masked by inadequate assessment tools found across the government.[89] Agencies, as they had in the 1980s and 1990s when they began acquiring more and more hiring responsibilities, still lacked the ability to develop, validate, and employ rigorous assessment. MSPB wrote in 1999, "Agencies vary widely in their ability to develop and apply good…assessment instruments. Agencies with little in-house expertise in this field, and little or no discretionary money to pay OPM or anyone else for the needed expertise, are at a distinct disadvantage."[90]

Even the Obama administration's attempt to resurrect testing as an assessment tool provided limited value because the tests could be used only for a limited number of jobs and, critically, agencies had to pay for each use. Like the other fee-for-service benefits, these examinations, known as USA Hire, furthered the have and have-nots of federal agencies, in which creative and effective hiring tools are almost entirely dependent on budget and budget decisions.[91]

The first Trump administration viewed the bureaucracy as an enemy. In 2020, President Trump created a new excepted service category, Schedule F, to reclassify thousands of members of the competitive and protected civil service into unprotected positions.[92] President Biden revoked this authorization and attempted a handful of reforms aimed at hardening the civil service. They have proved inadequate as the second Trump administration has been more determined and better equipped to assert dominance over the civil service. Though following in the tradition of past presidents who have used executive authority to expand political control over the bureaucracy, President Trump's actions are uniquely destructive.[93] The second Trump administration has publicly stated an intention to break the will of personnel across the

[89] *Id.*, at 7.
[90] MERIT SYS. PROT. BD., ASSESSING FEDERAL JOB SEEKERS IN A DELEGATED EXAMINING ENVIRONMENT 31 (Feb. 2002) [hereinafter MSPB, *Assessing Federal Job Seekers in a Delegated Examining Environment*].
[91] MSPB, *Improving Federal Hiring*, *supra* note 88, at 11-13.
[92] Shannon Bond, *Thousands of federal workers would be easier to fire under Trump rule change*, NPR (Apr. 18, 2025), https://www.npr.org/2025/04/18/nx-s1-5369550/trump-federal-workers-schedule-f.
[93] David Lewis, President Trump and the Federal Personnel System: Theory and Practice, Working Paper, 2026, at 12.

government. They have invoked mass firings,[94] agency shutdowns,[95] labor agreement terminations,[96] resurrection of Schedule F now termed Schedule/Policy Career,[97] establishment of a Schedule G,[98] and deferred resignations.[99] The assault is having its intended effects and decades worth of institutional knowledge and experience is being unceremoniously shoved out of public service.

The second Trump administration's decisions will ultimately necessitate action on the civil service — and provide an opportunity for governance reforms that may have once seemed impossible. The degradation of state capacity, the politicization of federal hiring, and the demonstration of the frailty of many civil service protections means that in the wake of the second Trump administration, both democracy and the functioning of the state will require a new approach to the civil service.

II. Lessons from the History of Civil Service Reform

Where do we go from here? A merit-based civil service and professional bureaucracy is a foundational component of a democratic system, and its governance mechanisms sit

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[94] Tami Luhby, Annie Grayer, & Alayna Treene, *Trump administration lays off thousands of federal workers during government shutdown*, CNN (Oct. 10, 2025), https://www.cnn.com/2025/10/10/politics/government-shutdown-federal-worker-firings.

[95] Edward Wong, *Trump Appointees Fire 2,000 U.S.A.I.D. Employees and Put Others Worldwide on Leave*, N.Y TIMES (Feb. 23, 2025), https://www.nytimes.com/2025/02/23/us/politics/trump-usaid-employees-firing.html.

[96] George Weykamp, *Trump Renews Push to End Union Contracts for Federal Workers*, BLOOMBERG LAW (Feb. 13, 2026), https://news.bloomberglaw.com/daily-labor-report/trump-renews-push-to-end-union-contracts-for-federal-workers.

[97] FEDWeek Staff, *Final Rules Issued for New At-Will 'Schedule Policy/Career' that Could Affect 50K Positions*, FEDWEEK (Feb. 5, 2026), https://www.fedweek.com/fedweek/final-rules-schedule-policy-career-adds-category-of-appointees/.

[98] Memorandum from Scott Kupor, Dir., U.S. Off. of Pers. Mgmt., to Heads and Acting Heads of Dep'ts and Agencies, Guidance on Executive Order Creating Schedule G in the Excepted Service (July 29, 2025), https://www.opm.gov/chcoc/latest-memos/guidance-on-executive-order-creating-schedule-g-in-the-excepted-service.pdf.

[99] Andrea Hsu, *Federal workers who took Trump's buyout are getting final paychecks and an uncertain future*, NPR (Sept. 30, 2025), https://www.npr.org/2025/09/30/nx-s1-5545715/federal-employees-fork-deferred-resignation-trump.

at the heart of foundational constitutional questions. The history of its evolution provides lessons and illuminate a path forward.

First, almost all efforts to reform the civil service have increasingly consolidated power over the bureaucracy in the hands of the president.

The Pendleton Act wrested power over the bureaucracy from the president and Congress in the name of good governance. Since then, both branches have attempted to regain control and influence, though the executive branch has been considerably more successful. Starting largely with New Deal and accompanying Brownlow Committee, presidents have reformed and consolidated control of the bureaucracy supported by a rhetoric of managerial responsibility.[100] Civil service scholar Patricia Ingraham wrote of the reform initiatives of Presidents Nixon, Carter, and Reagan: "All of these efforts have been couched in terms of improved management and efficiency; without any doubt, their intent and effect has been to strengthen the Executive Office of the President at the expense of other key actors in the policy system."[101] Similarly, scholar Peri Arnold pointed out that all reorganization and reform efforts since the mid-1970s have denigrated the government. He notes that all efforts at reform are inherently political. This was true of the progressive era reforms as well as those in the 1960s. What distinguishes the modern era, however, is the instinct of the leaders of government to attack the credibility of the institutions they lead and claim to want to improve.[102]

In lieu of fighting over policies outright, politicians have fought over the people who implement them, rightly viewing personnel policy as "[conferring] substantial political power."[103] This is, of course, at its root a constitutional question, but one that gets minimized instead of viewed through its rightful lens. As Handler writes, "federal personnel law, often treated as a niche of employment law, is better understood as a core site of administrative and constitutional governance."[104] Therefore, considerable attention needs to be paid to the governance mechanisms of these policies.

Second, no recent president nor Congress has ever seriously attempted to reform the mechanisms and structure of the civil service.

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[100] Ingraham, *supra* note 25, at 5.
[101] *Id.*, at 5.
[102] Peri E. Arnold, *Reform's Changing Role*, 55 PUB. ADMIN. REV 407 (1995).
[103] Handler, *supra* note 16, at 69.
[104] Handler, *supra* note 16, at 6.

The mechanisms of the civil service are outdated because no president nor Congress has attempted to update them since 1949. Even the reforms which have been framed as comprehensive reform efforts, namely the Civil Service Reform Act of 1978, simply weren't. Scholar Patricia Ingraham wrote, "it can be argued that the Civil Service Reform Act reformed only at the fringes of the system…many of the reforms necessary to achieve those objectives were simply not included in the package."[105] Therefore, it is not that many things have been tried and failed in a quest to modernize the civil service. It is that no one has really tried. This is for two primary reasons. First, as discussed above, presidents and Congress have an incentive to influence parts of the civil service structure in order to improve its responsiveness to their priorities. This does not translate into improving the more boring and less politically salient, yet absolutely essential, parts of the process, like classification for example.

Scholar David Lewis, in his accounting for the unkempt nature of the administrative state, writes that Congress is incentivized by their desire to be reelected to generally neglect oversight that does not pertain to electorally relevant groups, and when conducting oversight to do so in a reactive and particularistic manner.[106] Similarly, presidents, also motivated by elections and legacy and generally are unconcerned with governance, outside of priority areas. This perspectives manifests in the consolidation of personnel management, centralization of levers of management, reform, or disassociation from the bureaucracy with an eye towards control not performance.[107] The effect, he writes, "is an administrative state that is increasingly fragmented, under stress, and plagued by weak leadership."[108] Perhaps notably, this account of managerial incentives would seem to contradict the assumption of pro-executive consolidation New Deal-era Brownlow Committee "that the interests of good administration and the President's interest were overlapping, if not identical."[109]

Second, and related, as long-time civil service scholar Donald Kettl wrote, "to raise civil service reform is to induce quickly the MEGO (my eyes glaze over) phenomenon."[110] The ins and outs of assessment validity, managerial reporting structures, and timing of audits by the Inspector General will never enthrall the public. In reviewing the legacy of

[105] Ingraham, *supra* note 25, at 16.
[106] David Lewis, *Deconstructing the Administrative State*, 81 J. OF POL. No. 3 (July 2019) 767, 769.
[107] *Id.*, at 772-773.
[108] *Id.*, at 774.
[109] Ingraham, *supra* note 25, at 9.
[110] DONALD KETTL ET AL., CIVIL SERVICE REFORM: BUILDING A GOVERNMENT THAT WORKS 2 (1996).

the NPR, public administration scholar James Pfiffner wrote, "'We want to improve public management in marginal, though important ways,' is not a very galvanizing battle cry."[111] This means that presidents have an incentive to influence the civil service in immediately self-serving ways and have little incentive to spend political capital on important yet deeply boring and complicated reforms. Furthermore, Congress attempted briefly to reassert control over the civil service in the mid-century but those actions were also political and not focused on structural reform. Though Congress has passed various pieces of legislation providing frameworks for executive authority and agency-specific flexibilities, the legislative branch has since ceded most responsibility for oversight of the civil service to the MSPB and the executive branch, even disbanding House and Senate committees specific to civil service oversight[112] and folding these responsibilities into much broader government reform committees in both chambers.[113]

Third, reform efforts have long grappled with how to maintain uniform standards while allowing enough flexibility for the processes to respond to the unique needs of agencies.

Those concerned with the administration of the civil service as a merit-based, apolitical body have long focused on the need to build a system that sets a government-wide standard enabling equality across agencies while enabling each agency to successfully recruit and manage their personnel. This is a different question than whether the civil service is directly responsive to the president, Congress, or neither. The Pendleton Act and subsequent legislation created a set of standards centrally managed initially by the Civil Service Commission and later by the Office of Personnel and Management. Centrally administered tests, centrally drafted job descriptions, and centrally determined classification and compensation system made sense for a government performing fairly rote tasks and provided a clear path to equality in service, a core principle of the merit-based civil service, but have long since become brittle.

[111] James F. Pfiffner, *The National Performance Review in Perspective*, 20 INT'L J. OF PUB. ADMIN 41 (1997).
[112] House Post Office and Civil Service Committee, U.S. CONGRESS, https://www.congress.gov/committee/house-post-office-and-civil-service/hspo00 (last visited Feb. 21, 2026).
[113] House Committee on Oversight, U.S. CONGRESS, https://oversight.house.gov/ (last visited Feb. 21, 2026).

This has been pointed out many times by many academics, the Merit Service Protection Board in 1998,[114] the Civil Service Commission in 1977,[115] among others. Carolyn Ban wrote in 1998: "For at least 10 years, some reformers have taken a more radical stance, arguing that the time for a centrally managed, unitary set of rules governing human resources management in all federal agencies has passed and that agencies need the authority to develop their own systems to reflect their specific needs."[116] In 2014, the U.S. Government Accountability Office (GAO) wrote, "Almost since its inception in 1949, questions have been raised about the ability of the GS system—the federal government's classification system for defining and organizing federal positions—to keep pace with the evolving nature of government work."[117] More recently in 2018, the National Academy for Public Administration published a report that pronounced:

> The elaborate one-size-fits-all procedures that characterize so much of the current personnel system are the legacy of the era when scientific management dominated government operations. Furthermore, in the pursuit of each agency's mission, employees' circumstances often vary greatly. Managing different employees in different lines of work in different positions and in different locations often presents very particular challenges that would be handled best with tailored treatment. The pursuit of horizontal equity often handcuffs the system and prevents it from accommodating these differences and advancing the differences in agencies' missions. The key lies in making mission first—and then ensuring that merit principles are applied always. Accountability comes through producing outcomes, not examining processes.[118]

There is near universal acknowledgement among those individuals and organizations who study the civil service that these processes are in desperate need of modernization and have been for decades. Modernization of this tangled and far-reaching web, however, is of course easier called for than implemented.

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[114] MSPB, *The U.S. Office of Personnel Management in Retrospect*, *supra* note 71, at 10.
[115] James Thompson, *Civil Service Reform is Dead: Long Live Civil Service Reform*, 50 PUB. PERS. MNGT 584, 588 (2021).
[116] Ban, *supra* note 76, at 29.
[117] ROBERT N. GOLDENKOFF, U.S GOV'T ACCOUNTABILITY OFF., GAO-14-677, HUMAN CAPITAL: OPM NEEDS TO IMPROVE THE DESIGN, MANAGEMENT, AND OVERSIGHT OF THE FEDERAL CLASSIFICATION SYSTEM (2014), https://www.gao.gov/products/gao-14-677.
[118] NATIONAL ACADEMY FOR PUBLIC ADMINISTRATION, NO TIME TO WAIT PART 2: BUILDING A PUBLIC SERVICE FOR THE 21ST CENTURY 29 (2018) [hereinafter NAPA, *NTTW Part 2*].

Fourth, personnel management is already inconsistent and non-uniform, but flexibility itself isn't the problem.

Civil service experts Donald Kettl, Patricia Ingraham, Ronald P. Sanders, and Constance Horner wrote in 1996: "the federal government's uniform merit system today is neither uniform, merit-based, nor a system."[119] This is due to failed comprehensive reform and sporadic and occasionally successful individual agency reforms.

The CSRA pursued half measures to increase agency flexibility, cautious of the effects of further decentralization. First, the law gave OPM the authority to delegate examinations to agencies. As discussed, these responsibilities were delegated partially during the Reagan administration and fully under the Clinton administration. Compensation and classification, however, remained controlled by law and OPM policy, respectively. The law did not reform these key tenets of the civil service, and they have not been tackled since. Without changes to these tenets, any other reform effort and particularly siloed decentralization was doomed. Second, at the advice of members of the Civil Service Commission, the CSRA allowed agencies to pursue "demonstration projects" to experiment with new management structures for pay, classification, hiring, and other functions.[120] Despite some successful pilots, successful projects did not translate into wider adoption or reform.

In lieu of comprehensive reform, Congress and OPM have granted agencies exemptions from the system on an ad hoc basis. Compensation carve outs are the most widespread. The Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA) of 1989 gave financial regulatory agencies the authority to develop pay systems outside the General Schedule.[121] Later, the FAA, Postal Service, intelligence agencies, among others also won independence to develop their own systems. The expansive yet outdated classification system has also forced agencies to force new positions into existing classifications to avoid the bureaucratic process of getting a new one or to take advantage of the special authorities attached to an existing one. The excepted service has also become a go-to to fill a variety of positions, and many agencies have won new hiring authorities for positions or capabilities deemed worthy. Commenting on the expansive nature of special hiring authorities across the government, Kettl and his fellow observers wrote "these special authorities, coupled

[119] Kettl et al, *supra* note 110, at 1
[120] Thompson, *supra* note 1115, at 5.
[121] BERNARD UNGAR, U.S GOV'T ACCOUNTABILITY OFF., GGD-91-137BR, PAY AND BENEFITS: INFORMATION ON FOUR FEDERAL BANKING AGENCIES 2 (1991), https://www.gao.gov/assets/ggd-91-137br.pdf.

with the agency-based hiring process, have made the system a triumph of ad hocracy."[122]

Some may look at this patchwork system and argue that a true merit-based service must be stripped of these differences and return to a standardized system. However, it is not clear that flexibilities undermine adherence to merit-based principles in practice.[123] In a 2022 paper, Gene Brewer et al. analyze data from the 2010 Merit Principles Survey conducted by the MSPB.[124] The MSPB grouped the employee perception of adherence to the merit principles into three general categories: fairness, protection, and stewardship. Brewer and his coauthors find that employees at "highest and lowest ranked agencies are consistent performers across the key merit dimensions."[125] NASA, the Federal Deposit Insurance Corporation (FDIC), and Social Security Administration (SSA) ranked at the top of each category. The Department of Housing and Urban Development (HUD), the Department of Education (ED), and Department of Homeland Security (DHS), however, ranks at the bottom almost consistently, with the Department of Interior surpassing the ED in one category.[126]

The authors discuss the many possible reasons for the discrepancies in how employees view their agency's support for the merit principles, including "leadership, resources, or capacity to administer the merit system effectively," noting that the higher-ranked agencies tend to have fewer political appointees at higher levels and are less politicized in general.[127] Interestingly though, for the purposes of understanding the impact of flexibilities on merit principle adherence, the paper does not suggest a link in either direction between how closely the agency must adhere to the full suite of Title 5 provisions and how its employees view its commitment to the merit principles.

If the core tenets of the civil service are an adherence to the merit principles and an avoidance of prohibited personnel practices, perhaps rather than attempting, again, to build a one-size-fits-all model for the sprawling U.S. government, reform should rather

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[122] Kettl et al, *supra* note 110, at 18.
[123] Along these lines, in their 2018 report the NAPA panel wrote: "Our experience shows that the government can tolerate differences across agencies as they experiment and adapt to meet their missions." *See* NAPA, *NTTW Part 2*, *supra* note 118, at 39.
[124] Gene Brewer et al, *The Importance of Merit Principles for Civil Service Systems: Evidence from the U.S. Federal Sector*, 42 REV. OF PUB. PERS. ADMIN. 686, 688 (2022).
[125] *Id.*, at 693.
[126] *Id.*, at 693-694.
[127] *Id.*, at 694.

arm the government with a structure that can meet agency needs while maintaining guardrails.

III. A Civil Service for the Mission

What the history shows is that returning to the pre-1970s, one-size-fits-all approach, will no longer work.[128] It also shows the tendency towards centralization of bureaucratic control, as well as the limitations of the inevitable bottlenecks created by centralized control. OPM, a product of this centralizing dynamic, lacks the capacity and expertise to provide the support needed to effectively manage the personnel policies of the entire federal workforce. Meanwhile, congressional authorizers and appropriators, have responded by giving agencies within their jurisdictions some of the tools they need, but with little thought to the entire system or its structure.

In short, the current U.S. civil service system is outdated, overly complex, and no longer suited to the scale and diversity of the modern federal workforce. Designed as a one-size-fits-all model, it now fits no one: it is brittle, fractured, inequitable, and ineffective. Agencies appear to have control over personnel processes but in practice most lack the authority to make the necessary changes to meet their mission. Maintaining the existing structure is increasingly untenable and the governance structure too complex to disaggregate individual reforms.

Rather than continue to centralize authority, provide exceptions on an ad-hoc basis, and avoid serious change, what is needed is a bold, comprehensive approach to reshaping the civil service. A new system should focus on the most important aspect of the civil service: its ability to fulfill the legal and policy missions delegated to them by Congress. That is the core work of government and a civil service system should be designed to effectuate the government's ability to deliver.

This mission-based approach to reforming the civil service has three core elements:

- Decentralization of the civil service hiring process. Agencies need to have the authorities necessary at an agency level to design a personnel system and manage themselves in a manner fitting their mission, rather than being constrained by a central governing body that lacks insight or the ability to gain it into their needs and constraints. Flexibility in pursuit of mission goals would be

[128] NAPA, *NTTW Part 2*, supra note 118, at 29.

the norm rather than exception. This would include pushing down and out all responsibilities currently held by OPM to agencies (and a few to GSA) to make agency-level, mission-based flexibility in personnel policy the default posture.

- A centralized home center of excellence to offer lessons, best practices, and management expertise, and conduct data collection and dissemination. This would involve a revival of the Civil Service Commission, but it would now be set up primarily with the aim of simply collecting and providing information and expertise to the agencies.
- A default option for agencies that do not wish to, or do not have the capacity to, build their own civil service hiring processes. This default option would be administered by the newly re-created Civil Service Commission.

To be clear, success requires budgetary investment in agency-capacity for managing personnel. When the Reagan and Clinton administrations attempted to decentralize implementation responsibility and remove regulation, they assumed that agencies could take advantage of these changes without guidance and with fewer people. Both assumptions were devastatingly wrong. A mission-based approach will fail if agencies do not have the support, funding, and surge capacity they need to transition from the old system to the new one. In the long run, they will be able to move more quickly and meet their needs, but there will be growing pains that must be accounted for and receive appropriate investment and attention.

The mission-based approach has significant benefits. First and foremost, it would allow all agencies to have more flexibility in hiring and to hire in a way that best advances their missions. Agencies have specific mission-based needs that already warrant carve outs from personnel statute, broad policy exceptions, and financial flexibilities. These exceptions do not by themselves cause a degradation in adherence to merit principles. If some agencies have the political capital to negotiate mission-based flexibilities and are able to implement them in a way that does not degrade the quality of the civil service, why not allow all agencies to do so? By giving all agencies the flexibilities already held by many, agencies will be able to design and implement personnel policies that address the needs of their specific missions, within the parameters of a merit-based service. This will allow for nuanced and responsive hiring, recruiting, and permeability policies, as well as pay scale adjustments that address the specific needs of the workforce and critically position requirements that reflect the agency work, needs, and mission.

It will also allow for more targeted recruiting, flexibility in defining position requirements, and specificity in constructing career lifecycle structures that react and engage to specific job sectors and dynamics. Further, and importantly, oversight of the civil service currently falls to one set of committees, though, oversight of each agency, of course, falls to many. Rather than committees of jurisdiction engaging with their agencies' personnel policy in an ad hoc nature, as something to be skirted or overcome, this would join oversight of agency administration *and* personnel policy explicitly in the same committee.

It is for this reason that many scholars and leading organizations studying public administration have recommended this approach as a path forward.[129] As the National Academy for Public Administration wrote in 2018, "the time has come to construct a legal framework for a mission-focused, merit-based federated system for strategic human capital management in the federal government."[130] However, the scholars and organizations that have also come to this conclusion have not shown how exactly such a reform could be achieved. To that end, the appendix provides a detailed section-by-section overview of how to draft a possible Civil Service for the Mission Act. This detailed blueprint grapples with the primary technical questions on how to implement these reforms.

Importantly, mission-based civil service reform would not change everything about the civil service. This system would not change the merit-based service principles.[131] This list of nine principles was created in 1883 and codified in 1978, and it sets the conditions to develop a civil service based on competency rather than political affiliation. These reforms would also continue to incorporate all of the existing prohibited personnel practices, and adherence to Title VII.[132] If the merit principles are the goals, the prohibited personnel practices are the floor of implementation of the merit-based service, preventing discrimination, political coercion, and cronyism. The

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[129] See, e.g., James R. Thompson and Rob Seidner, *Federated Human Resource Management in the Federal Government: The Intelligence Community Model* (Washington: IBM Center for The Business of Government, 2009), http://www.businessofgovernment.org/sites/default/files/SeidnerReport.pdf; NATIONAL ACADEMY OF PUBLIC ADMINISTRATION, NO TIME TO WAIT: BUILDING A PUBLIC SERVICE FOR THE 21ST CENTURY, PART 1 (2017) [hereinafter NAPA, *NTTW Part 1*] and NAPA, *NTTW Part 2*, *supra* note 118. (featuring recommendations from Donald Kettl, Doris Hausser, Jozef Raaadschelders, Ronald Sanders, and Stan Soloway for a decentralized, federated model).

[130] NAPA, *NTTW Part 2*, *supra* note 118, at 39.

[131] 5 U.S.C. § 2301. For a discussion of the importance of bounding flexibility within merit principles *See* NAPA, *NTTW Part 1*, *supra* note 129, at 22.

[132] 5 U.S.C. § 2302.

current system of oversight would also continue. The MSPB is currently responsible for conducting research and providing non-binding recommendations to agencies to better meet the merit principles. The Office of Special Counsel, similarly, is responsible for investigation violations of the prohibited practices. These responsibilities will not disappear in a decentralized system. Agencies will still be overseen by these bodies, but they would be released from the compliance auditory structure currently in place. These reforms also do not make any changes to existing labor laws, though recognizes that discussion of collective bargaining would be a necessary part of any comprehensive reform.

While there have long been arguments made against decentralization, those arguments are far weaker now than they have been in many years. Critics will argue that a federated civil service policy structure will allow for greater pay fragmentation and decreased workforce portability. This concern suffers from three problems. First, the current system — with a detailed, statutory pay structure and a centrally managed classification system places a primacy on standardization. It ensures standard pay and portability, but at the expense of mission specification. Minimum qualifications are managed centrally to create equity, but instead are outdated, brittle, and impossible to maintain. On the surface, this forces comparability between a range of positions even if the actual jobs and missions they support differ substantially. The reason is that few jobs are exactly the same at different organizations. Trying to shoehorn all jobs into comparable categories comes at an enormous cost.

The emphasis on standardization hinders hiring, retention, and other personnel policies. Ironically, it is the rigidity adherence to this kind of horizontal demand that incentives hiring managers and others to pursue even more flexibility pathways for hiring and management — and which has ultimately sowed the seeds of its own destruction. So, while a federated policy may marginally decrease portability and pay comparability, other areas — like speed of hiring and manager satisfaction — will improve. Second, the criticism is weak because the current system does is already failing to achieve this goal. The patchwork exemptions and flexibility that already exist means uniformity is limited. And, perhaps more notably, fewer people switch jobs as this theory might suggest.[133] Finally, concerns about horizontal movement seem quaint

[133] According to the most recent OPM data available, there are between approximately 14,000 and 18,000 individual transfers annually, compared to between 250,000 and 300,000 new hires. Of note, these averages are for 2015-2024, as there is a marked decline in all federal hiring due to a change in policy in 2025. *See* OFFICE OF PERS. MGMT., *OPM Federal Workforce Data, Separations and accessions over time*, (Dec. 2025), https://data.opm.gov/explore-data/analytics/workforce-changes.

amidst the firing of vast swaths of the federal workforce, and the increasingly severe limits to agency capacity. If the government is to function well — and do so quickly — it will require reducing bottlenecks and expanding flexibility and expertise. The decentralized model will be able to do that far more easily than continuing a centralized approach. Even so, the decentralized model does preserve a measure of mobility and equity, but it does so *within* agencies rather than *across all agencies*.

Critics may also argue that while more flexibility allows high-performing agencies to perform even better, it also creates the potential for other less politically connected agencies to fail without a safety net. With this in mind, this proposal includes three avenues to prevent and correct for such trends. First, agencies will be required to present a coherent proposal for their comprehensive personnel policy and then work with the Civil Service Commission to ensure it meets their needs and adheres to merit principles. Second, if agency leadership feels the agency lacks the need or ability to design their own policy, they can opt into the default policy structure offered by the Civil Service Commission. This could be initially a reliance on current Title 5 provisions or eventually a modernized default with a pay banded structure and a set of broad job families that agencies could specialize within. Third, like other democratic countries' civil services that give agencies more autonomy, this proposal relies on transparency with comprehensive public and congressional reporting requirements to disclose and then address discrepancies in agency policy incompatible with the merit principles.

Finally, critics might argue that a federated civil service will lack a common culture and spirit. There are many components of the important and persistent civil service culture in today's federal government, but complicated, centralized personnel policy is likely low on the list. Indeed, as stated before, many agencies — from NASA to the U.S. Securities and Exchange Commission (SEC) — already have substantial flexibility if not complete independence from the statutory constraints of Title 5. Employees at these institutions are not lesser parts of the fabric of the civil service nor disengaged from their mission. Indeed, a framework of common values provides a cohesive culture more readily than mission-blind compliance.

Conclusion

The American public want and deserve a federal government that serves them effectively. The necessary and unavoidable reform to governance mechamisms must make that the focus of any effort. While the processes of the civil service are unlikely to

rise to political prominence or salience, their reform is imperative to fulfilling any other policy priority. The history of civil service reform is one of narrow interests and broad avoidance resulting in a Gordian knot of law, regulation, and practice that hinders those who aim to serve Americans in countless ways. By giving agencies the authority and space to bring in the talent they need and manage them to meet their specific mission, reformers can demonstrate that public service is a "proud and lively career" and ensure that more Americans have an easy path to saying: "'I served the United States Government in that hour of our nation's need.'"[134]

[134] Kennedy, *supra* note 1.

Appendix: The Civil Service Modernization Act

A Civil Service for the Mission argued that relying on a centralized body to set and manage upkeep for a multi-million-person workforce with diverse career paths and missions is outdated and unsustainable. The trend towards centralization has been motivated by presidents interested in shaping the bureaucracy to advance their priorities, rather than in service of better governance. Instead, a decentralized model that pushes most centralized responsibilities to agencies who can build personnel policies to meet their mission would give agencies the flexibility they need.

This appendix shows how the mission-based civil service reform approach could be implemented. It does so by offering a detailed, section-by-section summary of what possible legislation would look like. In the process, it grapples with the primary implementation and reform challenges for making a vision for a mission-based, decentralized system real. At the same time, it does not attempt to answer every question that lays at the feet of civil service reform advocates. Perennially debated issues like veterans' preference, mixed-case adjudication, notice periods, and engagement with labor unions are also worthy of discussion and proposals. This proposal has largely avoided wading into these other debates, as they are not central to main reforms of a mission-based approach. But I have made some choices in these areas where necessary. There may, however, be many options worthy of consideration that are compatible with a mission-based approach that prioritizes giving agencies the flexibilities they need to serve the public.

Section-by-Section of The Civil Service Modernization Act

TITLE I: A MERIT BASED SERVICE

Sec. 101. Merit Service Principles

This section reaffirms the merit service principles already outlined in federal statute.

Sec. 102. Prohibited Personnel Practices and Oversight

This section reaffirms the prohibited personnel practices and reaffirms the role of the Office of Special Counsel in receiving complaints of violations of these practices. It also assigns responsibility for adjudication of appeals to the Civil Service Commission (CSC), a responsibility inherited from the Merit Service Protection Board.

Sec. 103. Employee Appeals and Whistleblower Protections

This section reaffirms the principle of employee appeal of personnel decisions and protections for whistleblowers who bring to light violations of prohibited personnel practices and other violations of law. These will be adjudicated by the Civil Service Commission, a responsibility inherited from the Merit Service Protection Board.

TITLE II: CIVIL SERVICE FUNCTIONS

Sec. 201. Civil Service Commission

This section will establish the Civil Service Commission. It will provide an overview of key leadership positions and their responsibilities. It will detail the responsibilities that are inherited from the Office of Personnel Management and the Merit Service Protection Board, including:

- *General Provisions*
    - Center of Excellence: The CSC will maintain subject matter expertise related to all personnel matters and provision of technical assistance to agencies.
        - The CSC will not develop mandatory policies, audit or enforce compliance. Enforcement will occur through the employee appeal process and via OSC investigations.
        - Maintain I/O psychologists on staff to consult with agencies to support validation of assessments.
    - Ensure Transparency: The CSC will ensure public and Congressional reporting on agency success in upholding the merit principles.
- *Powers and Authorities*
    - Best Practices: The CSC maintain best practices and resources portal from agencies for agencies.
    - Default Personnel Option: The CSC will develop and maintain an optional, opt-in personnel system for agencies to use, if they do not want to build their own system. This would include pay system, job family and capability structure, general personal policy, and validated assessments.
    - Adjudication: The CSC will adjudicate personnel matters related to the merit system previously conducted by the Merit Service Protection Board, importing the adjudicatory structure of the MSPB.
- *Structure*
    - The commission would have three members and one chair.

Sec. 202. Decentralized Pay, Classification, and Policy

This section would describe the responsibilities held by agencies under a new federated civil service system, specifically regarding pay, classification, and policy.

- It would grant all agencies authority to determine the pay system that best meets their needs, either through the General Schedule system, though another type of system, or a hybrid.
- It would grant all agencies authorities to determine their own classification structures, including setting standards and qualification for positions. During the phased transition, agencies will be able to adopt and amend current OPM standards as needed.
- The system must align with merit principles and cannot violate the prohibited personnel practices.
- The structures must be published and easily accessible to the public.
- It would grant agencies authorities to determine their own personnel policies including organic examination authority, guided by merit service principles and without violating prohibited personnel practices or equal opportunity statute.
- If agencies do not have the capacity or desire to create their own structure, they can adopt default policy package set developed and maintained by the Civil Service Commission.

Sec. 203. Transition of Responsibilities of the Office of Personnel Management and Merit Service Protection Board

This section will transition the responsibilities of the Office of Personnel Management and the Merit Service Protection Board and dissolve those organizations. The current responsibilities of both will go to either the Civil Service Commission, the agencies, or the General Services Agency.

Sec. 204. Transfer of Benefits Administration to General Services Administration

This section would assign responsibility for benefits administration to the General Services Administration, following the dissolution of the Office of Personnel Management. This section would give GSA authority to manage Federal Employee Health Benefits, and handle retirement appeals and actuarial duties, previously the responsibility of OPM. GSA will also absorb those OPM personnel responsible for these duties. They will be offered the option to transfer to GSA to perform their same duties.

Sec. 205. Office of Special Counsel

This section would reaffirm the current role of the Office of Special Counsel. This section will also establish the OSC relationship with CSC to mirror that previously had with the MSPB.

Sec. 206. Federal Labor Relations Authority

This section would reaffirm the current role of the Federal Labor Relations Authority. This section will also establish the FLRA relationship with CSC to mirror that previously had with the MSPB.

TITLE III: DECENTRALIZATION OF PAY AND CLASSIFICATION AUTHORITY

Sec. 301. Delegation of Pay and Classification Authority to Agencies

This section would give agencies authority and responsibility to determine their own pay system and manage their own classification structure to meet their agency-specific missions.

- Agencies will have the authority to develop their own pay system. It could be the General Schedule system, another type of pay system (e.g. pay bands), or a hybrid.
    - Collective bargaining rights would remain consistent with the Federal Service Labor-Management Relations Statute.
- Agencies will have the authority to develop their own classification structure. They will set descriptions, standards, and minimum qualifications for all positions.
- In developing these new structures, agencies must:
    - Complete and publish an internal comparability analysis demonstrating equal pay for essentially equal work across the agency.
    - Develop and use standard criteria for placement within the pay structure.
    - Ensure pay decisions must reflect employee competency and duties.
    - Comply with public and congressional reporting requirements as detailed in Sec. 304.

Sec. 302. Default Personnel System

This section would provide more detail on what would be included in the optional Personnel System developed and maintained by the Civil Service Commission.[135]

[135] The easiest form for default system would be the current Title 5. Ideally, the Civil Service Commission would take several years and design a modernized default, but in the interim an alternative to the text included here would be to set the default temporarily to Title 5.

- Agencies have the option to opt-in to this pre-set package of pay and classification structure, examination tools, and general personnel policies.

Sec. 303. Role of Agency Leadership

This section would define the role of agency leadership in creating their agency's pay and classification structure. Agency leadership would have the option to opt-in to the Civil Service Commission created standard management package, but they also have the authority to build their own. The agency head is responsible for final determination of the agency's human resource and management system, and will work with the agency's Chief Human Capital Officer (CHCO) to devise a system within the time frame set forth in the phased transition plan outlined in Sec. 601.

- The agency leaders are bound by the merit principles, the prohibited personnel practices, and topline personnel budget as determined by Congress.

Sec. 304. Reporting and Transparency Requirements

This section would create a public reporting requirement for agencies to disclose the details of their personnel system, including details of pay system and classification structure (bands, grades, ranges; definitions; qualification requirements; promotion rules; placement rules; employee counts by designation). They will be required to publish an annual report by the first Monday in February detailing their pay and classification structure.

There will be carve outs to public reporting, as needed, for national security considerations. Any necessary classified sections that cannot be released publicly will be transmitted to congressional committees of jurisdiction by the first Monday in February.

Sec. 305. Collective Bargaining and Union Agreements

This section reaffirms that collective bargaining and union agreements will be managed at the agency level and disputes adjudicated through the established Federal Labor Relations Authority Process.

Sec. 307. Existing Flexibilities

This section would provide guidance for how this legislation interacts with existing agency flexibilities regarding pay, classification, hiring, and other personnel management policies.

TITLE IV: EXAMINATION AUTHORITY AND PERSONNEL MANAGEMENT POLICY

Sec. 401. Examination Authority

This section would give agencies organic (rather than delegated) examination authority. Agencies will ensure that examinations comply with relevant law, guided by an adherence to the merit principles and without violating the prohibited personnel policies. Examinations must be valid under the Uniform Guidelines on Employee Selection Procedures. Examinations will be validated at the agency level by the Office of the CHCO.

Sec. 402. Personnel Policy Regulation

This section would strike any federal regulation that contradicts anything in this law. The CSC will be responsible for issuing a clean CFR Title 5 within 12 months of enactment.

Sec. 403. Preference Eligible

This section reaffirms that preference eligible candidates will maintain eligibility and will be applied by each agency during their examination and assessment process.

This section amends the law to note that the preference exists only for the first position attained in government.[136]

Sec. 404. Competitive and Excepted Service

This section would reaffirm current statutory definitions of the competitive service and the excepted service.

Sec. 405. Assessment Tool Database

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[136] This section borrows from the proposal introduced, but ultimately withdrawn, by Senator John McCain in 2016 in the FY2017 National Defense Authorization Act. The application of preference to eligible populations, namely veterans, is undoubtedly worthy of a discussion and amendment. As has been discussed by many experts, the current system is unsustainable, having none of the intended effects for veterans, the government, or the public. There is space for debate and improvement in this section. *See* Kellie Lunney, McCain Says He Will Scrap Change to Veterans' Preference, GOVEEXEC (Oct. 6, 2016), https://www.govexec.com/management/2016/10/mccain-says-he-will-scrap-change-veterans-preference/132165/; NAPA, *NTTW Part 2*, *supra* note 118, at 44-46; MERIT SYS. PROT. BD, VETERANS' EMPLOYMENT REDRESS LAWS IN THE FEDERAL CIVIL SERVICE (Nov. 2014) https://www.mspb.gov/studies/studies/Veterans_Employment_Redress_Laws_in_the_Federal_Civil_Service_1103655.pdf; Jennifer Pahlka, *Dear Mr. Kupor: Please fix federal hiring*, EATING POLICY (Dec. 23, 2024), https://www.eatingpolicy.com/p/dear-mr-kupor-please-fix-federal.

This section would describe the responsibility of the Civil Service Commission to maintain, free of charge, a centralized database of validated assessment tools that could be used by different agencies. These tools can be developed by the CSC or by agencies. Agencies have an obligation to share any certified assessment tool with the CSC once developed.

- The CSC will also be responsible for annually conducting and analyzing a survey of federal employee perspectives (similar to previously conducted Federal Employee Viewpoint Survey (FEVS)).

Sec. 406. Notice and Comment

This section would give agency heads the authority to determine a method vacancy notice that would most likely produce diverse and qualified candidates and ensure potential applicants have appropriate information relevant to the positions available.[137]

- Agencies would not be required to post every position on USAJobs.com unless determined by the agency head to be the most effective mechanism to reach the above threshold.

TITLE V: INVESTING IN AGENCY CAPACITY

Sec. 501. GAO Merit Mission Scorecard

This section would create a requirement for the creation of a bi-annual review by GAO. GAO will create a score card for each agency to be publicly released and posted on GAO's website. It would include, at a minimum, an evaluation of the agency's ability to conduct operations and ability to accomplish their human resources mission within the framework of the merit principles.

Sec. 502. Role of the Chief Human Capital Officer

This section would detail the role of the Chief Human Capital Officer in a federated civil service. The Chief Human Resource Officer will assume in rank at each agency the equivalent of the third most senior person in the agency. They will be responsible for working with the agency head (or subordinate bureaus, as appropriate) to develop and implement the adoption of an agency-specific human resources and management plan or opting-in to the default personnel policy option administered by the Civil Service Commission.

- This section gives CHCO responsibility and authority to:
    - Shape the agency personnel system.

[137] This mirrors a recommendation included in the NAPA's 2018 report, No Time to Wait Part 2. See NAPA, *NTTW Part 2*, *supra* note 118, at 44.

        - Develop and maintain the agency's strategic human capital plan.
        - Establish internal policies on position design, job family usage, and staffing patterns.
        - Lead the development of the agency's pay and classification system and certify its compliance with merit principles.
    - Set regulation.
        - Issue agency classification and position standards.
        - Define minimum qualifications for all agency positions.
        - Approve all examinations, assessments, and selection procedures prior to use.
        - Establish uniform criteria for setting initial pay and within-band movement.
        - Define promotion and advancement criteria for each job family.
        - Oversee Human Resource Information Technology systems and ensure compatibility with CSC data and public reporting requirements.[138]
        - Sign waivers for preferred eligible pass over.
- While exercising these authorities the CHCO must:
    - Publish the proposed policy for internal notice and comment for no less than 30 days before issuing agency-wide human capital policies, the CHCO shall:
        - Consult with General Counsel, agency labor relations office, and component HR offices before issuing final determinations affecting classification, qualification, or assessment systems.
        - Publish all policies and determinations on the agency website within 14 days of issuance.
        - Transmit all classification, qualification, and assessment decisions to the Civil Service Commission for inclusion in the government-wide database.

Sec. 503. Role of the Agency Head

This section would detail the role of the agency head in personnel policy for the classified civil service. The agency head would be responsible for:

- Signing and releasing annual reporting requirements.
- Engaging with Congressional committees of jurisdiction to ensure access to timely and comprehensive details on the personnel system.

[138] Recognizing that there may be benefit in centrally purchased HR tools, the CSC could still, under this system, act to coordinate among agencies to procure the best tool.

TITLE VI: EFFECTIVE DATE AND TRANSITION

Sec. 601. Effective Dates and Phased Adoption

This section would direct the Civil Service Commission to establish criteria for phased adoption of the statute once enacted. When agencies or bureaus meets the established criteria (which can vary depending on the mission, size, and needs of the organization), they will be able authorized to transition to their agency and mission-specific system.

Sec. 602. Transition Authority

This section will provide guidance on employee rights during the transition period. It will cover job conversion, pay conversion, appeal rights, bargaining obligations, and union agreements. This section will affirm that positions must maintain comparability to previous positions for five years, there can be no pay reduction during conversion, employees have the right to challenge a determination in a new system and appeal through the appropriate channels, and that in designing their new system agencies are required to engage with employee representatives in good faith.

Sec. 603. Evaluation Mandate

This section would create an evaluation mandate of the statute as enacted by the Government Accountability Office within 5 years, 10 years, and 15 years of enactment.

Sec. 604. Authorization of Appropriations

This section would authorize appropriations necessary for enactment of this statute.

- To support implementation of this act at the Civil Service Commission over five years.
- To support implementation of this act at appropriate agencies over five years.
- For training and workforce development at agencies to support implementation of this act at appropriate agencies over five years.
- For technology at agencies to support implementation of this act at appropriate agencies over five years.
    - Any software or enterprise technology procured using these funds must have an open and interoperable architecture.
- GAO to implement the creation of the agency scorecards.

This section would also stipulate that the funds previously appropriated to OPM and MSPB would be transferred to the appropriate organization to continue certain responsibilities.

No more than 20 percent of the funds appropriated to agencies may be used prior to a briefed by the agency head to committees of jurisdiction on the course of action for that agencies development of an agency-specific personnel policy.

Sec. 605. Conforming Amendments

This section would provide guidance to update all U.S. Code in accordance with the agency restructurings, dissolutions, and transfer of responsibilities.