



**WRITTEN TESTIMONY BY  
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**BEFORE THE  
HOUSE COMMITTEE ON OVERSIGHT AND REFORM  
SUBCOMMITTEE ON GOVERNMENT OPERATIONS**

**HEARING TITLED:  
“TRUMP’S WAR ON A MERIT BASED CIVIL SERVICE”**

**MAY 21, 2019**

Chairman Connolly, Ranking Member Meadows, and members of the Subcommittee on Government Operations:

Thank you for the invitation to testify regarding the proposed merger of the Office of Personnel Management (OPM) with the General Services Administration (GSA). I offer this testimony on behalf of the National Active and Retired Federal Employees Association (NARFE), its 200,000 dues-paying members and the interests of the more than five million federal employees and annuitants who have chosen to dedicate their careers, in whole or in part, to public service. I appreciate the opportunity to express NARFE's views.

### **Background on NARFE**

Since NARFE's founding in 1921, the association's mission has been to defend and advance the earned pay and benefits of America's federal civil servants. Today, NARFE's advocates continue to work tirelessly on behalf of the federal community. Supported by grassroots activists, NARFE is a leading voice in Washington and across the country on matters of federal pay, benefits and human resources policy.

Federal benefits and retirement plans are unique, complex and subject to change. NARFE provides federal workers and retirees with the clear, reliable and accessible counsel they need to make critical decisions and gain confidence in a secure financial future.

NARFE's 200,000 members live in every congressional district across the country and include both retired and current federal workers from all branches and levels of the federal government. These proud public servants form a grassroots network of activists who advocate on behalf of the more than 5.2 million federal employees, retirees and their survivors who make up the federal community.

Federal workers dedicate their working lives to the betterment of our country, and in return they expect that Congress and the Administration hold up their end of the bargain – the promises made to them when they were hired, including their compensation package. NARFE is here to honor their service and ensure they have a secure future.

### **NARFE's Interests**

OPM has a number of important responsibilities. It directs human resources and employee management services, administers retirement benefits, manages healthcare and insurance programs, and oversees merit-based and inclusive hiring into the civil service. As one of the largest organizations representing the interests of the federal employees and retirees who are affected by and rely on OPM's policies and operations, NARFE has a strong interest in ensuring the mission and responsibilities currently under OPM's purview are carried out effectively.

In a May 16, 2019, letter to Congress, Office of Management and Budget (OMB) Acting Director Russell Vought wrote, "The Federal Government has operated for too long under outdated technology, organizational constructs, and processes, leaving the American people and

Federal workforce frustrated. There is broad recognition that maintaining the status quo at the Office of Personnel Management (OPM) is unsustainable.”

I am not going to disagree with that statement, and I doubt any of you would as well. OPM, and the federal government as a whole, are not without their challenges. But that alone does not justify a near-complete absorption of OPM into GSA. At the outset, NARFE is concerned about any effort that could add a layer of bureaucracy to an already strained and busy agency. We are even more skeptical of the potential adverse consequences that could result from subordinating OPM’s work and mission to another ministerial, non-independent agency. OPM’s critical mission is managing and promoting our nation’s smart and talented civilian government workforce; a workforce that could be subject to political persecution and non-merit-based adverse actions should this proposed merger come to pass.

### **Assessing the Administration’s Arguments for Merging OPM & GSA**

Any government reorganization should aim to improve government efficiency and performance to better carry out the missions directed by Congress and the President. The question is whether the Administration’s proposed absorption of OPM into GSA will actually do so, and thus far, the Administration has not made that case yet.

#### ***(1) The transfer of NBIB to DOD does not justify the merger.***

First, the proposal is driven in large part by the budgetary impact of the transfer of the National Background Investigations Bureau (NBIB) from OPM to the Department of Defense (DOD). The May 16 letter to Congress and accompanying legislative text and justification included the following:

*Despite the criticality of its mission, OPM is not structured or funded to manage the current activities on behalf of Federal employees and retirees in a secure, financially stable or sustainable way. The status quo structural model and financial risks resulting from the transfer of background investigations to the Department of Defense (DoD) spell disaster for the information technology (IT) and operational viability of the agency. Lack of effective IT infrastructure investments was at the heart of the disastrous data breach of 2015. These structural issues have continued to plague attempts to modernize and remediate service quality, security, and mission responsiveness.*

I won’t disagree that OPM has structural problems or try to argue that the massive 2015 data breach wasn’t disastrous. But the Administration’s failure to prepare for the budgetary consequences of this transfer and properly communicate them to Congress prior to their authorization in the Fiscal Year 2018 National Defense Authorization Act is not an adequate justification for the transfer of OPM’s remaining functions to GSA. Additionally, Congress appears to have failed to ask the important question of what would come of OPM once NBIB was transferred to DOD. We are now at a point where if Congress allows such a bait and switch, it would reward lack of transparency, inadequate communication and partnership between the two branches and insufficient planning. If the transfer of NBIB leaves a funding gap at OPM, the Administration and Congress should support increased budget authority for OPM. Merging with

GSA is not the only option. That said, remaining justifications for the merger should not be dismissed simply due to failure in this regard.

If the problem is simply an allocation of resources, shouldn't the solution be a request for adequate resources through congressional appropriations? If it isn't, how does moving functions from OPM into a new branch of GSA change anything? We expect the Administration to be able to easily answer these questions in making its case for the merger.

***(2) The Administration has not made the case that GSA can adequately carry out OPM's transactional functions or improve government-wide strategic workforce management.***

Second, the Administration argues that the reorganization will better align OPM's resources to its mission of promoting an efficient civil service. It stated: "Its original mission focus has become blurred by new responsibilities, such that more than 80 percent of OPM's workforce and budget are now dedicated to transactional activities."<sup>1</sup> Even as it acknowledges that those transactional functions – including administering the Federal Employees Health Benefits (FEHB) program for more than 8.2 million federal employees, retirees, and their families, and managing the Civil Service Retirement System and the Federal Employees Retirement System for more than 5.3 million federal employees, annuitants, and survivors – are vital, the Administration argues that "their scope and scale are such that they distract agency leadership's attention from strategic workforce management and stewardship of an efficient civil service structure."<sup>2</sup>

But whether the Administration likes it or not, those transactional functions are a key part of OPM's responsibilities and mission. Public servants work hard, often through long careers, to serve the needs of the American people. In exchange, they earn both pay and benefits. It is OPM's job to make sure our government is upholding its end of the pay and benefits bargain for both current employees and retirees. If the Administration's plan is to ensure a greater focus from agency leadership on strategic workforce management and the stewardship of an efficient civil service structure, it needs to explain how OPM's remaining functions will receive the attention and resources they deserve.

Furthermore, it is unclear how merging OPM with GSA will improve government-wide strategic human resources management. We do note that the United States Government Accountability Office (GAO) has included Strategic Human Capital Management on its high-risk list since 2001, explaining in its 2019 High-Risk Report, "mission-critical skills gaps both within federal agencies and across the federal workforce pose a high risk to the nation because they impede the government from cost-effectively serving the public and achieving results."<sup>3</sup> But how does merging OPM with GSA solve that problem? If the Administration aims, at least in part, to confront this issue with a new Office of Federal Workforce Policy within OMB, we have concerns regarding the politicization of the civil service, which I discuss later in this testimony.

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<sup>1</sup> Office of Management and Budget, March 2019, "Analytical Perspectives, Fiscal Year 2020 Budget of the United States of America," [https://www.whitehouse.gov/wp-content/uploads/2019/03/ap\\_8\\_reorganization-fy2020.pdf](https://www.whitehouse.gov/wp-content/uploads/2019/03/ap_8_reorganization-fy2020.pdf), p. 79.

<sup>2</sup> *Id.*

<sup>3</sup> U.S. Government Accountability Office, March 6, 2019, "HIGH RISK SERIES: Substantial Efforts Needed to Achieve Greater Progress on High-Risk Areas," (GAO-19-157SP), <https://www.gao.gov/assets/700/697245.pdf>, p. 75.

Consistent audit reports of extensive agency-wide internal control deficiencies at GSA only heighten NARFE's doubts that the agency can take on new responsibilities as significant and substantial as administering civil service retirement services and federal health care and insurance programs. GSA senior leadership's lack of attention to internal controls led to noncompliance with laws and regulations, misreporting and failure to properly steward public resources. The rationale for the merger relies on the capabilities of GSA, but GSA is not without its own problems.

For instance, in a recent letter<sup>4</sup> to the Administrator, the GSA's Inspector General (IG) stated:

*The mission of GSA IT is to inspire and drive technology transformation by delivering innovative, collaborative, and cost-effective IT solutions and services. To do this, GSA IT must have a highly skilled cybersecurity staff to, among other responsibilities, respond to and recover from unintentional or intentional cyber attacks, including those related to personally identifiable information... GSA IT faces the immediate retirement of 20 to 50 percent of its staff in its four mission-critical occupations.*

Certainly, if the Administration is going to make the case that GSA has IT capabilities that OPM does not, hiring in this area must be a top priority.

In terms of the overall proposed merger, the IG stated, "GSA faces major challenges with this merger," and went on to say the following specifically about the move of HR Solutions to GSA, but the same concerns can be expressed for every piece of this proposed merger:

*GSA and OPM leadership will face challenges in transitioning the government's human resources services with minimal disruption and without compromising the services provided. GSA must ensure all staff are properly and effectively trained in applicable systems, laws, and regulations that support the services integration. Similarly, OPM staff must become accustomed and knowledgeable in GSA systems, policies, and processes. Additionally, GSA management will face the operational challenge of determining where the additional people will reside and to whom they will report.*

In light of the OPM data breaches in 2015 that affected nearly 22 million individuals, NARFE finds it particularly alarming that the Administration would consider transferring OPM's functions to an agency that not only had its own breach, but one where the IG found GSA's response to be lacking. As stated in the same letter:

*In October 2018, we issued an implementation review report on GSA's corrective action plan for our Audit of GSA's Response to the Personally Identifiable Information Breach of September 18, 2015. We reported that GSA did not successfully implement corrective*

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<sup>4</sup> U.S. General Services Administration, Office of the Inspector General, "Assessment of GSA's Management and Performance Challenges for Fiscal Year 2019," October 16, 2018, available at: <https://www.gsaig.gov/sites/default/files/management-challenges/Assessment%20of%20GSA%27s%20Management%20and%20Performance%20Challenges%20for%20Fiscal%20Year%202019.pdf>.

*actions for two report recommendations. First, we found that GSA did not notify remaining individuals who were affected by the breach that their personally identifiable information was exposed until more than 2 years after the breach occurred. Second, we found that although GSA IT assessed and revised its Breach Notification Policy in accordance with its corrective action plan, the revisions made could significantly extend the Agency's breach notification timeframes and hinder GSA's ability to notify affected individuals without unreasonable delay. We concluded that GSA's revisions did not meet the spirit of our recommendation, which was aimed at improving its policies for responding to these breaches.*

These are just a handful of examples from a much more detailed letter, which, undoubtedly, the members of the Subcommittee are familiar with, but the following sums it up:

*Our reports cross all areas of GSA and, when taken together, the repeated findings regarding a lack of effective internal controls or failure to follow the controls in place highlight a large-scale issue. GSA management is challenged to implement a more effective system of internal controls to ensure the Agency consistently complies with laws and regulations, produces accurate and reliable reports, and operates effectively.*

The transfer of OPM to GSA would risk not only important federal employee programs receiving insufficient attention and resources when folded into a larger organization, but also a lack of oversight with proper internal controls to protect against mismanagement. The identification of these challenges does not inspire confidence that adding to GSA's responsibilities is the best approach. GSA is simply in no position currently to assume these vital functions.

***(3) The Administration has not sufficiently shown how GSA will improve OPM's IT infrastructure modernization.***

Finally, the Administration argues that merging OPM into GSA will improve OPM's information technology. Specifically, its "case for change" says the following:

*Operational stability will be derived from aligning the mission and the aging IT infrastructure with the expertise of GSA. Transitioning OPM functions and workforce to GSA gives OPM a more structurally sound foundation to support OPM's critical strategic human capital management mission, including a vastly more stable information technology infrastructure allowing a focus on creating improvements to addressing cyber risks and improving service quality.<sup>5</sup>*

We recognize that OPM has had its share of IT problems, with massive data breaches exposing the personnel records of millions of individuals and the failure to more fully automate retirement processing. Given OPM's track record, moving its IT responsibilities to any agency may result in improvement. But as noted above, GSA also struggled to protect sensitive information.

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<sup>5</sup> OPM Reorganization, available at: <https://federalnewsnetwork.com/wp-content/uploads/2019/05/CASE-FOR-CHANGE.pdf>.

The Administration has done little to explain exactly *how* GSA will tackle OPM’s specific IT challenges, other than to argue that GSA is simply better at managing IT than OPM. This may be true, but it’s not clear that this is enough to solve OPM’s challenges. Furthermore, even if GSA could improve OPM’s IT infrastructure, why is merging OPM with GSA a better solution than directly addressing OPM’s IT challenges through the adoption of best practices, and hiring individuals with the necessary critical skills? The Administration needs to do more to make its case in this regard.

### **Administration of Federal Health Benefits**

Surveys of federal employees and annuitants suggest that that OPM’s Healthcare and Insurance division has done a good job administering FEHB for the benefit of the more than 8.2 million federal employees, retirees and their families who rely on it. Additionally, FEHB annual premium increases are typically lower than industry standards. In short, if it’s not broken, don’t fix it. Merging OPM with GSA could affect how FEHB is administered, which seems like an unnecessary risk and one that’s ripe for causing problems where none currently exist. If nothing else, NARFE needs assurance from the Administration that this program would continue to run efficiently under GSA, and detail how it would do so.

Federal employees and retirees value highly their health benefits. More than 98 percent of federal annuitants rated their FEHB coverage as important (10.3 percent) or extremely important (88.5 percent), and more than 90 percent of federal employees rated their FEHB coverage as important (11.8 percent) or extremely important (78.3 percent).<sup>6</sup>

Employees and retirees also believe that FEHB meets their needs and provides good value. Nearly 98 percent of annuitants say FEHB meets their needs to a great (82.7 percent) or moderate (14.9 percent) extent, and nearly 83 percent say it provides excellent (42.8 percent) or good (41 percent) value for the money.<sup>7</sup> For active employees, more than 96 percent say FEHB meets their needs to a great (63.1 percent) or moderate (33.2 percent) extent, while more than 73 percent say it provides excellent (25.8 percent) or good (47.8 percent) value for the money.<sup>8</sup>

With less attention from agency leadership within a larger GSA, will the division continue to administer FEHB as successfully as it has thus far? Even if there’s not an obvious reason why FEHB would falter under GSA, I ask again, if it’s not broken, why fix it?

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<sup>6</sup> Office of Personnel Management, March 2017, “2016 Federal Annuitants Benefits Survey Report,” <https://www.opm.gov/policy-data-oversight/data-analysis-documentation/employee-surveys/federal-annuitant-benefits-survey-results-summary.pdf>, p. 11.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

## **Administration of Retirement Services**

Unsurprisingly, federal employees and retirees also highly value their retirement benefits. More than 94 percent of employees find the retirement annuity through FERS or CSRS is “extremely important” or “important.”<sup>9</sup> Federal retirees often rely on it as their primary source of income.

Federal retirees rely on OPM’s Retirement Services (RS) division to ensure they are paid the full annuity they earned in a timely manner. Unfortunately, RS has a mixed record. In January 2012, failure to process retirement applications in a timely manner resulted in a backlog of 61,108 claims. At that time, the average time to process an annuity claim exceeded five months. Many claims, however, took far longer to process. However, in response, OPM developed a Strategic Plan to improve its processing of claims, and followed through with notable improvements. As of April 2019, RS had an inventory of 17,802 claims, and took an average of 56 days to process each one.

Yet, despite the improvements in claims processing, the retirement processing system remains paper-based, at least in part, and more costly and time-consuming than modern technologies should allow. The backlog itself arose, in part, due to failed attempts to modernize retirement processing systems. RS reduced staff in anticipation of the new system, then found itself inadequately staffed when it failed. RS then reduced the backlog mostly through increased staff hours. That is not a 21<sup>st</sup> century solution.

Even so, is merging OPM with GSA the answer? How will GSA’s IT division tackle the problem of modernizing RS’ IT for retirement processing? Why can’t OPM solve the problem? The Administration must dial down to the root causes of the challenges, and the tangible solutions that require GSA’s involvement to make the case that GSA will improve OPM’s retirement processing. It has not yet done so.

## **Guarding Against the Politicization of the Civil Service**

An organization of any kind is only as good as its people, and the federal government is no exception. One of the basic tenets of federal employment is political neutrality. Dating back to the late 1800s, career employment with the federal government has been based on merit, not political affiliation or the political whims of the occupant of the White House. Previously, political influence in civil service hiring and firing allowed jobs to be handed out or taken away based on political contributions or affiliations rather than individual capabilities. The history of the spoils system that existed in the 1800s shows that this leads to corruption and incompetence in the civil service. It had the potential to shift substantial power from Congress to the executive branch as federal employee jobs could depend more on allegiance to the President or his political party than to the Constitution and laws enacted by Congress. While political appointees have always worked to advance an administration’s policy agenda, the federal employees who carry out the work of our nation do so based on their qualifications to hold that job, not their political affiliation.

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<sup>9</sup> Office of Personnel Management, April 2018, “2017 Federal Employee Benefits Survey Report,” <https://www.opm.gov/policy-data-oversight/data-analysis-documentation/employee-surveys/2017-federal-employee-benefits-survey-results.pdf>, p. 6.



As the agency tasked with federal workforce policy in addition to its programmatic responsibilities to manage the workforce and its benefits, OPM was created, we can only assume purposefully, as an independent agency. Per the 1978 Civil Service Reform Act, the OPM Director is charged with "...executing, administering, and enforcing...the civil service rules and regulations of the President and the Office and the laws governing the civil service" found in title 5 of the U.S. Code. In the debate crafting this legislation, House and Senate conferees stated that OPM was established "...to protect against prohibited personnel practices and the use of unsound management practices by the agencies." Conversely, the GSA Administrator, by law, "shall perform functions subject to the direction and control of the President." One body operates and serves at the pleasure of the President; the other does not.

The overall move of OPM to GSA and the creation of an Office of Federal Workforce Policy at OMB threaten the independence of OPM as intended by Congress. Let's take a look at the specifics. The proposed legislation would transfer all of OPM's functions, authorities and resources to GSA, unless otherwise specified. GSA would carry out the roles previously carried out by OPM. As such, the OPM Director, currently an Executive Level 2 position within an independent agency, would report to the GSA Administrator, an Executive Level 3 position. This move simultaneously demotes the OPM Director and elevates the GSA Administrator.

However, the proposal "transfers OPM's rulemaking authority to the Office of Management and Budget, to allow the new Office of Federal Workforce Policy to assume a policy leadership role. By delegation and in practice, GSA will conduct the significant majority of this rulemaking." I think that last sentence should have an asterisk after it, as there's certainly no guarantee such practice would occur.

The new Office of Federal Workforce Policy within OMB would provide overall strategic direction and coordination of workforce policies and regulations for executive agencies. A presidentially appointed Administrator who reports to OMB's Deputy Director for Management would lead the office. This Administrator position would not be Senate-confirmed. The person responsible for human capital management and civil service policy would not be vetted by the Senate.

The Chair of the Chief Human Capital Officers (CHCO) Council would be OMB's Deputy Director for Management, with the Administrator for General Services serving as Vice Chair. Currently, the CHCO Council is chaired by the OPM Director. Essentially, this places human-resource policy discussions in the hands of a political appointee instead of an independent agency. If this merger were to receive congressional authority, the CHCO Council should go to GSA with the rest of OPM and reside with the Director. The proposal also would merge OPM's current Office of Inspector General (OIG) with GSA's OIG. OPM's IG currently has oversight over the policy offices. If policy moves to OMB, there is no longer an IG to oversee this new office as OMB does not have an OIG.

But the logistics of the move aren't what concerns us most. It's the new Office of Federal Workforce Policy, which appears to have all the policy authority of the OPM Director without the checks and balance of Senate deliberation. Under this new office, civil service policy would ultimately be beholden to the President, threatening the non-political, merit-based civil service

we have today. With an Administration that has shown disdain, at times, for a professional, merit-based civil service, this raises red flags and concerns that the move is intended as part of an effort to exert undue political influence on career hiring and firing decisions.

Given the fact that strategic human capital management has been on GAO's high-risk list since 2001, clearly we need a different government-wide approach to human capital management. Moving it to OMB would provide more "teeth" than OPM currently has over policy both government-wide and within individual agencies. However, we should not sacrifice our non-political, merit-based workforce to achieve possible improvements in human capital, and that's exactly what this proposal does.

Without a doubt, this move has the serious potential to change the nature of all human capital policies to be responsive to the President's political motives, rather than making human capital a true business function, which is what it should be. This is not to say human capital isn't in need of attention should it remain with OPM. But that's not what we're here to discuss today. NARFE welcomes further discussion with Congress on how we can improve the civil service and ensure that the federal government is an employer of choice.

### **Congressional Authority**

The Administration first proposed the reorganization of the Office of Personnel Management as part of its reform plan and reorganization recommendations, titled "Delivering Government Solutions in the 21<sup>st</sup> Century," in June 2018. It then updated and incorporated its proposal into the President's fiscal year 2020 budget request to Congress.

While these documents outlined the proposal and provided a basic rationale for the merger, the Administration still has yet to identify what changes it believes it can make without prior congressional authorization, and what is its legal rationale for such an action. Failing to do so irresponsibly risks a legal conflict with Congress should the Administration move ahead with plans without congressional support and unnecessary disruption if it does so without proper authority.

Additionally, whether OPM stays where it is or merges with GSA, it will rely on congressional appropriations to be properly resourced. It is difficult to see how a reorganization proposal designed to better align resources towards the mission of promoting a more efficient civil service succeeds without the support of the branch of government responsible for providing those resources. For this reason, I urge the Administration to work to build consensus for any reorganization plan through improved transparency and communication with Congress and relevant stakeholders, including its assessment of where it needs formal congressional authorization and where it does not. While it has made strides in the run-up to this hearing, it should not take a congressional hearing to force a consensus-building process.

There are notable pieces of this proposed merger missing in the documents provided to Congress; we implore Congress to pursue them before it even considers such a merger. First, there is no timeline for any actions, even ones where the Administration believes it has the authority to pursue, such as HR Solutions. Nor is there any requirement that GSA and OMB have

an operating plan in place that shows how they are going to accomplish the merger efficiently and effectively. Merging an agency into another seems easy at a 90,000-foot level, but the details are really difficult – where will employees sit, what happens to performance plans and awards that are mid-cycle when you’re transitioning them to a new system at GSA, how will they get access to GSA’s IT systems when it already takes time to onboard new employees, the plan to train OPM employees on GSA’s systems/procedures/cultures, among other logistical questions. GSA should be required to have a detailed plan that lays all of this out before any consolidation is considered.

Clearly, Congress intended OPM to be an independent body to ensure a politically neutral, merit-based federal workforce, and further intended itself to be the only authority that can change OPM’s core mission and independence. The statutory mission of OPM – propagating and regulating the laws governing the civil service, including merit principles and prohibited personnel practices that keep the federal workforce free from political influence – can only be modified by Congress. Based on what we’ve learned in advance of this hearing, we urge Congress to reject this proposal and allow OPM to remain an independent agency.

## **Conclusion**

OPM’s systems and processes are in dire need of modernization and NARFE fully supports efforts to improve the ability of OPM to carry out its mission and fulfill its responsibilities. To the extent that reorganizing OPM into another agency would achieve this goal, it is worthy of consideration. But the Administration has not made a convincing case that it would. And such moves should not be done at the expense of maintaining a politically neutral, merit-based civil service. NARFE urges the Administration to be transparent if it chooses to proceed down this path, and for Congress to maintain its authority to statutorily approve any government agency reorganization.

Thank you for the opportunity to express NARFE’s views.