



CONGRESSIONAL TESTIMONY

STATEMENT BY

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BEFORE

**HOUSE SUBCOMMITTEE ON GOVERNMENT OPERATIONS
HOUSE COMMITTEE ON OVERSIGHT AND REFORM**

ON

**THE ADMINISTRATION'S PLAN TO ABOLISH
THE OFFICE OF PERSONNEL MANAGEMNT (OPM)**

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Introduction

Mr. Chairman, Ranking Member Meadows, and Members of the Subcommittee, my name is J. David Cox, and I am the National President of the American Federation of Government Employees, AFL-CIO (AFGE). On behalf of the 700,000 federal and District of Columbia employees represented by our union, I thank the Subcommittee for the opportunity to present AFGE's views on the Administration's plan to dismantle the Office of Personnel Management (OPM).

The Administration proposed specific legislative language to obtain authority to abolish OPM late in the day on May 16, 2019. We are continuing to review that proposal. Prior to last Thursday, the only other Administration proposal we had seen was buried in the General Services Administration (GSA) Congressional Budget Justification for Fiscal Year (FY) 2020. The fact remains that no coherent rationale for this reckless proposal has been offered beyond the two-page narrative "Case for Change" sent out late last week. Since the Administration's more comprehensive legislative language was made available so late in the day on May 16th, there is insufficient time to allow witnesses to address it in written testimony for this hearing. However, our early review confirms our worst fears.

One element of the dismantlement plan was to transfer background investigative services to the Department of Defense. The Administration accomplished this by Executive Order (EO) 13869 entitled "Executive Order on Transferring Responsibility for Background Investigations to the Department of Defense," issued on April 24, 2019. That EO implements Section 925 of the National Defense Authorization Act for Fiscal Year 2018. Remarkably, the "Case for Change" justifies dismantling OPM by explaining that without the revenue from performing background investigations it lacks sufficient monies to fund its other operations. However, divesting itself of the background investigation function has been part of its plan from the beginning. That is, their primary rationale for abolishing OPM is to deal with the consequences of one element of their plan to abolish OPM.

Fortunately, there is still time to prevent the remainder of the administration's reckless plan, specifically the transfer of the remainder of OPM's operations to GSA and the Executive Office of the President.

OPM, established as a result of the Civil Service Reform Act of 1978 to replace the Civil Service Commission (CSC), is the government's central personnel department. It is an agency that dates to the Pendleton Act of 1883. Its most famous Commissioner was Theodore Roosevelt, often referred to as the "undisputed father of today's Federal Service," and after whom the OPM building is named. Its core responsibility is to ensure the integrity of the non-partisan career civil service.

This scheme to abolish OPM reminds me of the following insight from Mr. Roosevelt: . "a man who has never gone to school may steal a freight car; but if he has a university education, he may steal the whole railroad." One can only wish that the university

educations that went into the development of the administration's plan had been put to better use.

The plan to abolish OPM is reckless, ill-conceived, and potentially dangerous. It is reckless because there has been no "business case" or other type of analysis of its costs, rationale, or risks. It is ill-conceived because there has been no consideration of how the plan would affect the substantive work currently performed by OPM. And it is potentially dangerous because without a separate personnel agency, there is no formal institutional structure to protect and defend the apolitical civil service from an administration intent on politicization.

The civil service is an under-appreciated pillar of our democracy that the administration has repeatedly shown an interest in undermining. Indeed, the Trump administration has routinely questioned the political loyalties of federal employees and complained when their work challenges its own opinions and understanding in areas ranging from science to the law to economics. We are not in the realm of hypotheticals. I cannot tell you that retaining OPM will suffice to protect the civil service, but I will tell you that the administration's plan removes an important obstacle to prevent such a terrible thing from happening.

It is also important to acknowledge, on a mundane level, that no successful enterprise, either in the public or private sector, operates without an office focused on human resources. But success is not what this administration is looking for when it comes to the agencies of the federal government, and especially when it comes to the recruitment and retention of a professional, apolitical federal workforce. Government failure in various realms is an important precondition for privatization and deregulation, two of the central policy goals of this administration.

However, the success of the agencies of the government's executive branch should be a priority of everyone. Government success is America's success. Government success is in the public interest. The agencies of government are our society's means of caring for our veterans, and protecting our air, water, borders, food supply, health, our democracy and our national security, and so much more. Again, the purpose of OPM is to protect us all from the corruption that would occur if partisan political considerations factored into the hiring and firing of civil servants who carry out this important work. A robust "merit-based" civil service system is a cornerstone of all modern democracies, including America's. It ensures that technical expertise is brought to bear on performing government's missions, without the threat of partisan agendas controlling or corrupting the way day-to-day operations are carried out.

Dismantling the Apolitical Civil Service

The administration's purported rationale for dismantling OPM remains unclear, but they have insisted that it has something to do with the agency's information technology (IT) systems, and a data breach that occurred four years ago. If IT improvements were actually the problem, acquiring better IT would be the solution. But,

IT quality is definitely not the “problem” the Trump administration is addressing with this proposal, as its details reveal.

Apart from sending the background investigations function to DoD, the initial plan was to send some part of OPM’s policy function to the Executive Office of the President. Last week this was changed to the creation of three FTE; they seem to be making this one up as they go along. Everything else is supposed to go to the General Services Administration (GSA). Transferring the human resources policy functions to the White House is an obvious move to politicize the civil service and federal employment, but so is the transfer of OPM’s other human resource functions to GSA, even if it is less obvious.

GSA is an agency that supplies other federal agencies with contracts for goods and services and leases office space and fleets of vehicles. Contracting and leasing, that’s what GSA does. And what is the Trump administration’s agenda with regard to the federal workforce? The Administration has made no secret that it would like to use a lot more temporary and term appointments, sometimes known as “gig” employment. In the same way that GSA provides agencies with fleets of leased vehicles, if the administration gets its way, GSA would provide fleets of leased employees, hired for discreet terms, and available to be used, abused, discarded, and replaced.

Americans must be able to rely on the fact that the federal workforce is processing their Social Security claims and measuring pollution in the air without regard to politics or political considerations. We simply cannot have a federal workforce hired or fired on the basis of politics. But in addition to the proposed dismantlement of OPM, this administration has tried to eliminate, degrade, restrict, or otherwise undermine federal employees’ due process and collective bargaining rights. These rights will only become more vulnerable to abuse or elimination if the administration gets its way with regard to abolishing OPM.

AFGE Urges Congress to Reject the Breakup of OPM

The merger plan was developed without input or involvement from either Congress or affected employees. The idea first appeared in the President’s Management Agenda and as I previously mentioned was partially fleshed out and buried in GSA’s obscure Congressional Budget Justification. Now the Trump administration has brazenly announced that although believes it has sufficient authority to carry out parts of the merger administratively, bypassing Congress, it will ask for “full authority up front to allow for a more seamless transition” because that will be better for the workforce.

The idea of dispersing the civil service functions of the government to GSA should appall members of the Committee. Civil service and human resources functions **are not** equivalent to letting contracts and leasing buildings. OPM provides specialized services, including managing the Federal Employees Health Benefits Program, the Civil Service Retirement and Disability Trust Fund, developing and administering pay

programs, ensuring proper classification of federal jobs, and the examination of candidates for appointment to competitive service positions. OPM and GSA are very dissimilar agencies. OPM is centered on “people policy.” GSA is about acquiring goods and services, and real estate. There is no logical reason for their pairing unless people are reduced to commodities – the type of thing GSA routinely purchases.

Abolishing OPM is the wrong thing to do, but this is an especially inappropriate time to consider any kind of executive branch reorganization. No one should trust the Trump administration with civil service policy change. At the moment, federal employees are fighting a lonely battle to defend the apolitical civil service from corruption and politicization. We have an administration that has tried to bypass Congress through the issuance of executive orders to all but eliminate the right of federal employees to obtain the union representation they have voted and paid for. This administration has tried to restrict collective bargaining to such an extent that it is becoming an exercise in futility. The administration keeps trying to freeze federal pay and distort the measurement of the gap between federal and private sector pay, cut federal retirement benefits, and cut federal health insurance benefits. This administration is trying, and sometimes succeeding, in drastically curtailing union and due process rights.

The administration wants to privatize and contract out federal jobs including those that are closely associated with inherently governmental and core functions of agencies. In addition to trying to abolish our central personnel agency, the administration is also closing regional offices of some agencies and breaking up others in ways that will reduce efficiency and citizen access to services. The administration has cut staff through layoffs and attrition and refusals to hire much needed personnel, including physicians and nurses at VA medical facilities. Last but not least, the administration has tried to politicize agencies through intimidation, questioning of loyalties, quashing scientific findings, and forbidding federal employees from using certain words connected to scientific matters. This is not the time or the administration to trust with any kind of profound reorganization, especially one that will have such a detrimental effect on governmentwide personnel policy.

OPM’s “Case for Change” is Contradictory, Nonsensical, and Incomplete

Just last week, on May 15th, OPM shared a two-page document with the press entitled the “Case for Change.” This document was not shared with AFGE until the next day. In this document, OPM attempts to argue that completely unidentified and unexplained “synergies” between OPM’s and GSA’s “people, facilities, and contracts” will save between \$11 and \$37 million “through long term efficiencies and consolidations.” OPM does not define the “long term,” it does not identify the “efficiencies” and it most certainly does not identify what “consolidations” it imagines.

A big part of the narrative has to do with OPM’s so called “technological deficit.” In other communications, the administration has cited this Committee’s Federal Information Technology Acquisition Reform (FITARA) report card on various measures

of IT efficiencies. Indeed, GSA's relatively high grades, and OPM's relatively low grades, have been cited repeatedly as the reason GSA has been selected to receive OPM. The most recent Biennial IT Scorecard does show OPM with a low overall GPA even though it has excellent grades in IT improvement, referred to as "incremental development" or agencies' new investments to "deliver functionality." Indeed, OPM has matched GSA in this category for the past two years; both agencies have scored 100%. The Government Accountability Office (GAO) official who has analyzed the grades says that "FITARA scores are meant to spur cost savings from IT investments. The law requires OMB to develop (and most agencies to implement) a process to review IT investment portfolios in order to boost efficiency and effectiveness, and identify potential waste and duplication."¹

Like all report cards, FITARA grades are meant to show areas where improvement is needed. The punishment for a bad grade should not be abolishing the entire agency. Note that bad grades reflect the agency's failure to achieve cost savings from IT, they do not suggest that an agency no longer deserves to exist. Indeed, DoD, the Treasury Department, USDA, the Nuclear Regulatory Commission, and the Department of Justice all have the same FITARA GPA as OPM. Why aren't all of them being abolished and sent to permanent detention at GSA? The absurdity of this should show the absurdity of the administration's plan with regard to OPM.

We ask the committee to require the administration to answer the following question: If OPM needs GSA's IT system, why not just host OPM's IT function through GSA? If the administration has considered that option and rejected it, we believe that Congress and the public deserve to see the analysis used to justify the rejection of that option. If the administration has not considered that option, it suggests, at best, that too little analysis has been done to justify something so radical as abolishing OPM. At worst, it suggests that the rationale being offered may not be the entire story.

Why should an entire agency – this particular agency -- need to be abolished to address its IT problems? As OMB often argues, "shared services," particularly for IT, is a "best practice." In fact, OMB, through the Chief Information Officers Council (CIO), encourages agencies to leverage more out of their sparse IT budgets through "shared services," or even on the "cloud."² As Tony Scott, the former federal CIO has noted, agencies should consider sharing IT services when that provides more economy and efficiency.³

Perhaps this whole exercise in abolishing OPM could be avoided by having OPM host some or all of its IT functions through another agency. OPM says it has an IT funding shortfall. If there is a funding shortfall, Congress can provide flexibility for some

¹ <https://fedtechmagazine.com/article/2018/10/fitara-2018-tech-and-policies-agencies-need-comply-perfcon>

² See *Federal Shares Services*, available at <https://www.cio.gov/assets/files/sofit/02.04.shared.services.pdf>

³ Tony Scott: "Cyber means sharing more than just info." <http://fedscoop.com/tony-scott-wants-to-seemore-sharing-among-agencies>

part of the GSA IT fund to be used for OPM purposes. An IT need and/or a funding shortfall for IT is no excuse to abolish a 140-year old agency.

An extremely troubling sentences in the “Case for Change” is:

“Approximately \$60 million in additional mandatory budget authority is also used to directly support trust fund operations. Once the IT is at GSA, we will be able to determine the appropriate ratio necessary to ensure effective administration of the Civil Service Retirement and Disability Fund (CSRDF).”

Translation: We’ll abolish OPM and hand its functions to GSA and then figure things out. This is a shameful example of putting the cart before the horse.

In addition to alleged IT problems, the administration bases its plan on the contention that losing the National Background Investigations Bureau (NBIB) leaves it with a \$70 million operating deficit. However, the NBIB was only a part of OPM for three years, so why would its transfer to DoD be so crippling for OPM? For approximately 20 years (1996 – 2016), OPM did not even conduct background checks on federal employees. That function was performed by the now discredited US Investigation Services (USIS), a private sector company that ceased operations after the Department of Justice joined a whistleblower in a civil false claims act suit against the company, and OPM terminated the USIS contract.

In FY 2012, OPM spent more than \$250 million on USIS services, representing 67% of all OPM contract spending. Subsequent to the termination of the USIS contract, OPM “stood up” its own internal background investigations program. Now, just three years after starting this function, OPM considers the loss of NBIB fatal to its continued existence? This strains all credulity. Rather than abolishing an agency to address an IT issue, the Administration should seek solutions that address the specific problem. In another words, don’t use a sledgehammer to crack a nut.

In addition to its apparent failure to consider obvious solutions to IT problems such as those described above, the administration has offered no analysis of the risks involved in its proposal. It is abundantly clear that the administration has not done a thorough inventory of the discrete operations of OPM. Such an inventory would be a crucial first step in assessing whether moving these functions to GSA poses risks regarding the ability of that agency to carry out the statutory obligations and responsibilities previously reposed in OPM.

The legislative proposal that OPM shared at COB Thursday, just hours before this testimony was due on Capitol Hill, transfers regulatory and policy authority to OMB but sends operational responsibilities to GSA. This separation is important. An individual in the Office of Federal Workforce Policy (OFWP) in OMB will have primary responsibility for the development of personnel policy and regulations. This position will not require Senate confirmation, and as such, will not be directly answerable to Congress.

The position will effectively serve the President; it is explicitly a part of the President's staff. What this means is that the person who has responsibility for regulations and federal workforce policy will answer only to the White House and the top political appointees at OMB. This represents a serious risk to the political independence of the civil service. The current administration obviously deems this risk to be either unimportant or desirable. But I ask you to take this risk seriously.

When a private company undergoes an audit, the auditor must assess "risk;" that is, the risk that an entity may make misstatements either because of an honest error or because the integrity of those who make decisions about what is reported is unreliable. The administration's plan with regard to dissolving OPM needs a thorough audit, one that takes into consideration all the risks to the integrity of OPM's responsibilities that may be affected.

Congress should not rely solely on the information supplied by the administration. We need an analysis that delves into exactly what functions would be transferred and where, how the function would be performed and by whom, where existing legal authorities would land and whether those who would assume those authorities have the requisite background and appreciation of the responsibilities they would assume. The federal government requires this kind of thorough analysis prior to contracting out any ongoing function performed by federal employees, and it should do no less when the function is effectively contracted out to an agency with absolutely no prior experience or current capacity for managing or performing OPM's existing functions.

Conclusion

The importance of maintaining a nonpartisan, apolitical civil service in an increasingly partisan environment cannot be overstated. We cannot allow this administration to abolish OPM, the agency whose primary mission is to uphold this important foundation of our democracy.

As it appears the Administration intends to breakup or abolish OPM, with or without Congressional authorization, we urge Congress to consider prohibiting any use of appropriated funds, whether directly appropriated to OPM, or appropriated to any other agency which then reimburses OPM for "services," from being used by GSA to perform any functions currently performed by OPM.

We are well aware that decades of politicians denigrating public employment and the mission of government agencies has taken its toll. Failures and missteps by federal agencies are hyped as evidence that the government itself can do nothing right, even when identical failures by private entities are understood as the result of inadvertent mistakes or the actions of a few bad apples. But let's not succumb to the simplistic notion that the structure and rules that guarantee an apolitical, professional civil service are what stands in the way of more effective government. Let's acknowledge that

difficulties in recruitment and retention are the result of low pay, low public regard, and an enormous workload due to understaffing and too few resources.

OPM's latest manufactured excuse, that the transfer of NBIB to DoD endangers the entire functioning of OPM should be seen for the shallow pretext that it is. The same is true for the FITARA scores, which are meant only to suggest areas for improvement, not to use as justification for abolishing agencies.

This concludes my testimony. I will be happy to answer any questions you may have.
