



The voice of career federal executives since 1980

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July 29, 2019

The Honorable James Lankford
Chairman
Subcommittee on Regulatory Affairs
& Federal Management
Washington, DC 20510

The Honorable Kyrsten Sinema
Ranking Member
Subcommittee on Regulatory Affairs
& Federal Management
Washington, DC 20510

Dear Chairman Lankford, Ranking Member Sinema, and Members of the Subcommittee:

On behalf of the Senior Executives Association (SEA) – which represents the interests of career federal executives in the Senior Executive Service (SES), those in Senior Level (SL), Scientific and Professional (ST) and equivalent positions and other senior career federal leaders – I write to provide perspective on Solutions to Improving Federal Hiring.

The government's hiring and recruiting system is guided by the dead hand of President James Garfield's assassin to ensure employees cannot hire their brother-in-law, rather than to ensure that agencies can hire the talent they need, when they need it, and where they need it. If agencies and departments are to meet their missions and improve the delivery of services to taxpayers, and if the government is to better compete for talent, the government's approach not only to hiring but also overall talent management must change¹. The government wastes in excess of \$1 Trillion annually in program failure or misdelivery as a result of poor human capital management, which has been on GAO's High Risk List since 2001².

The SEA suggestions that follow are broken down into areas requiring change in law, appropriations, regulation, oversight, and culture/practice.

Succinctly, implementation of the Rule of Many combined with a modified veterans' preference approach and widespread use of robust assessments would dramatically improve the Federal Government's ability to hire top talent. Congress, OPM, and agencies must work together to make these necessary changes a reality. If the government continues on the path it currently is on, it faces significant risks of systemic government failure³. That failure will look like inability to effectively respond to natural disasters or during public health emergencies, to deliver services for veterans, to protect the homeland and national security.

¹ <https://thehill.com/blogs/congress-blog/politics/439505-the-talent-management-problem-plaguing-effective-government>

² https://www.gao.gov/highrisk/strategic_human_management/why_did_study

³ *Are Declines in U.S. Federal Workforce Capabilities Putting Our Government at Risk of Failing?*
https://cdn.ymaws.com/seniorexecs.org/resource/resmgr/government_at_the_risk_of_fa.pdf

Changes to law needed:

- **Update of veterans' preference** – switch from points system to goals-based model. Hold agencies accountable for meeting goals. When combined with category rating, the current application of veterans' preference makes it nearly impossible for hiring managers to see any other candidates on their certificate lists.
 - o In 2018, just 6% of federal job applicants were veterans, while nearly 50% of hires were veterans.
- **Implement market-sensitive pay** that provides for occupational and regional variations. The 2019 Federal Salary Council report⁴ makes a series and range of recommendations to federal compensation practices that, if implemented, would better position the government to compete for talent in a global economy.
- **Eliminate the 1923/1949 classification system** and replace it with an occupation and skills-based system.
- **Authorize career passports** to allow exit and reentry from public service where employees benefit from new experiences with the ability to reenter government at higher position levels.
- **Security clearances and suitability adjudication** are critically important areas that drive delays in hiring and hinder talent mobility. Congress and the Administration are to be commended for focusing on and advancing important legislation, such as Senator Warner and Collins' Integrity in Security Clearance Determinations Act, and cross-agency initiatives⁵ in this area.
- **Require agencies to have manpower functions** responsible to project and manage total workforce needs and costs of the total workforce, including federal employees, contractors, and uniformed service. DOD is required by statute (10 USC 115) to conduct such analyses, and other agencies like VA and DHS have administratively stood up such functions. CRS has published an excellent report on “inherently governmental functions” that should be consulted.⁶
- **Restore a viable, competitive, and robust Federal intern program in the law.** The Pathways Programs are not working well.
- Data & Analytics – **expansion of DATA Act** (P.L. 113-101) by including the terms ‘personnel’ and ‘payroll’ to include OPM data sources.
- Over the years Congress has authorized hundreds of various personnel and hiring authorities. Congress should **establish a sunset commission for personnel and hiring authorities**, with the goal of making agencies prove extant authorities can get them the talent they seek. If agencies cannot prove the authority is necessary, the authority would expire.
 - o A study of Excepted Service hiring authorities published by OPM in 2018 found that most of the 158 agency-specific authorities are unknown and unused by agencies⁷.

⁴ <https://www.opm.gov/policy-data-oversight/pay-leave/pay-systems/general-schedule/federal-salary-council/recommendation18.pdf>

⁵ <https://www.performance.gov/CAP/security-clearance-reform/>

⁶ <https://fas.org/sgp/crs/misc/R42325.pdf>

⁷

<https://chcoc.gov/sites/default/files/OPM%20Special%20Study%20E2%80%93%20Excepted%20Service%20Hiring%20Authorities.pdf>

Moreover, many are outside of Title 5, indicating the notion that the government truly has a merit based personnel system is impossible to prove. Lastly, the study documents that about 80% of all hiring was through Excepted Service, Direct Hire Authority and other flexibilities that are not tied to Competitive Service requirements.

- GAO has come to similar conclusions with many government-wide and agency specific hiring authorities (GAO-16-521⁸). **Congress should cease the practice of authorizing new agency- and occupation-specific personnel authorities without understanding how they fit into the broader array of existing authorities.**
- Work-life programs are critical tools for recruiting and retaining employees in a competitive labor market.
 - The government currently lacks a paid family leave program while many large private sector employers have such a benefit. **Congress should authorize a paid family leave program**, such as Rep. Maloney's Federal Employee Paid Leave Act (H.R. 1534; also included in the House 2020 NDAA).
 - The **government must also preserve and expand workplace flexibilities** such as telework and alternative work schedules, etc. and ensure that these flexibilities are uniformly and predictably available throughout government rather than dependent on the whims of supervisors.

Regulatory / Oversight:

- Section 1107 of the 2019 NDAA (P.L. 115-232) provided expanded flexibility in selecting candidates from referral lists. Effectively this law **replaced the Rule of 3 with the Rule of Many** and could dramatically reduce problems with category rating. OPM has yet to issue regulations on this provision. **Congress should press OPM to complete these regulations as soon as possible.**
- **Competitive examining as currently conducted is a huge part of the problem for hiring**, as are OPM's regulations on hiring and 'fair and open competition'. Congress should push OPM to update 5 CFR Parts 332 & 337.
- **Agencies are not conducting strategic talent management** required by the Government Performance and Results Modernization Act of 2010 (GPRAMA; P.L. 111-352) and OPM regulations (5 CFR Part 250). Congress should conduct vigorous oversight to ensure strategic talent management is tied to agency strategic plans and budget formulation. Congress should also conduct oversight into implementation of training requirements, and whether required trainings are actually producing any tangible outcomes.
- **Agencies are not robustly carrying out succession planning, including supervisory succession planning** (5 CFR 412.102 & 412.201-202). In OPM's recent SES Exit Survey⁹, 64% of executives reported their agencies had no formal succession planning efforts for executives. SEA research conducted in conjunction with Deloitte and published in 2017, *State of Federal Career Senior Leadership*, found the same to be true.¹⁰

⁸ <https://www.gao.gov/products/GAO-16-521>

⁹ <https://www.chcoc.gov/content/federal-senior-executive-service-exit-survey-results>

¹⁰ <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/public-sector/us-fed-state-of-federal-career-senior-leadership.PDF>

- **Eliminate time-in-grade requirements** (5 CFR 300.601-606). The government loses many of its best employees because of lack of adequate career progression opportunities.

Appropriations:

- **Congress should fund robust talent assessment programs through the appropriations process**, which will facilitate agency investments and innovation in validated tests and assessments (including those offered by OPM via USA Hire and USA Staffing, but also available through other sources including the private sector) that help ensure obtaining job candidates are actually qualified for the positions they apply for.
- Congress has achieved its Constitutional mandate to authorize and appropriate funds for the entire government on time only 4 times in the past 40 years. Not having budgets and appropriations makes workforce planning, including hiring, nearly impossible for agencies.
 - o Congress should **adopt biennial budgets** to facilitate long-term planning and inform investments, including in personnel.
- The frequent occurrence in recent years of government shutdowns has significantly damaged the government's brand as an employer, a fact confirmed by GAO earlier this year.¹¹
 - o Congress can address this challenge by simply doing its job, and SEA supports the Lankford-Hassan Prevent Government Shutdowns Act (S. 589).

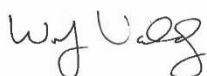
Culture/Practice:

Congressional oversight over the following areas can drive important shifts in agency culture and practices.

- Many of the problems with federal hiring have nothing to do with laws or regulations. Hiring managers and HR often do not coordinate well. Many managers are technicians who became managers to advance their careers, and are not rated through the performance process on how they are cultivating talent, including recruiting and hiring.
- Political appointees seek to drive policy priorities and therefore have few incentives to cultivate the current and future workforce of the agency. This point of view affects career leaders as a result, as they are being driven to accomplish mission.

SEA looks forward to working with this committee and Congress to ensure the federal government can hire and retain the workforce needed to serve the American people. Please have your staff contact SEA Executive Director Jason Briefel (jason.briefel@seniorexecs.org; 202-971-3300) for further information.

Sincerely,



BILL VALDEZ
President

¹¹ <https://www.gao.gov/products/GAO-19-181>