

December 11, 2020

The Honorable Nancy Pelosi
Speaker
United States House of Representatives

The Honorable Charles Schumer
Minority Leader
United States Senate

Dear Speaker Pelosi and Leader Schumer,

The undersigned organizations are united in our commitment to ensuring excellence and integrity in the federal government for the betterment of the American people. We write to urge you to include language in the next government funding package to block implementation of President Trump's Executive Order (EO) 13957, which creates a broad new exception to competitive civil service rules that could be used to dismantle the career civil service in the administration's waning days.

Failing to act now risks grave consequences for our government, disrupting the orderly transfer of power and delivery of life-sustaining services in the middle of a pandemic and economic crisis. This EO enables President Trump to remove thousands of federal employees during the lame duck period. His administration could also leverage this authority to "burrow in" political appointees to career positions and hire any number of people into this new category.

With COVID-19 cases rising, and the challenge of widespread vaccine distribution on the horizon, now is not the time to risk such an outcome. Many critical response efforts will be stymied without the federal workers to carry them out. As you look to pass a bill providing the executive branch with hundreds of billions of dollars in budget authority, we urge you to protect a key check on corruption and abuse of executive power – public servants who hold allegiance to the rule of law and the Constitution, not a political party.

Specifically, we urge you to include the limitation of funds language in subsection (b) of Senator Gary Peters' bill, S. 4907, to nullify the EO, or in section 2(b) of H.R. 8687, the Save the Civil Service Act, introduced by Reps. Gerald Connolly, Carolyn Maloney and Steny Hoyer, or similar language, in any omnibus appropriations bill or continuing resolution.

The EO creates a broad exception to competitive civil service rules through a new Schedule F job classification, which could apply to hundreds of thousands of federal positions. The EO gives agencies a deadline of January 19 to develop a preliminary list of federal positions to petition the Office of Personnel Management (OPM) for conversion to the new Schedule F. However, agencies are already moving, and OPM is encouraging them to provide submissions prior to the deadline. Reports indicate the Office of Management and Budget (OMB) already petitioned OPM to reclassify 88 percent of its workforce, and OPM is poised to approve the reclassifications, if it hasn't already. Other agencies are also moving forward, and we have heard from several others that they have been instructed to put together lists of employees who should be moved to Schedule F by the end of this week.

With positions converted to Schedule F, the Trump administration could remove the newly converted employees at any time. Normal due process safeguards ensuring termination for cause

would no longer apply and would instead be determined on an agency-by-agency basis. These firings could begin immediately as this session of Congress is coming to a close and there would be little chance for Congress to reverse the actions prior to Inauguration Day. Further compounding the issue are political appointees (including current political appointees under Schedule C) “burrowing” into newly classified Schedule F positions. With the EO directing agency-level protections, removal of converted political appointees could prove difficult.

If firings occur, even on a small scale, it would cause substantial disruption of government operations because of the nature of responsibility of roles covered by Schedule F. If the Trump administration exercises its new authority to remove and replace employees, government operations could come to a screeching halt for a significant length of time. In the midst of an already truncated transition, the Biden administration would be forced to turn its attention to staffing instead of governing and pandemic response. Such losses will hamstring the new administration’s ability to implement its agenda, as it deprives agency leadership of institutional knowledge and skilled capacity.

In the case of OMB, Biden stands to risk entering the White House without some of the only federal career employees the White House employs. Career staff at OMB run the budget of every federal agency, formulate every new program or policy the president wants to implement and understand the processes to implement those programs. Government-wide, what happens if too many essential employees are terminated? What authorizations on expenditures of funds may not occur, or occur improperly, particularly as Congress looks to the executive branch to carry out an omnibus in addition to an economic relief package?

Even if the Biden administration is able to reverse the order and bring back employees, this process could take weeks, if not months, added to the weeks prior to inauguration that government must operate without the fired employees, and would raise other complications for the dismissed employees, such as breaks in service. And any reversal would need to account for burrowed-in appointees who may seek to disrupt the Biden administration. Even the simplest reversal of new hiring actions will require lengthy and costly litigation and present the risk of a court reinstating the new hires. As such, reversing implementation of the EO may entail a more complicated process than simple rescission of the order.

We urge you to take the prospect of such scenarios seriously. Otherwise, you are placing your trust solely in the good faith and restraint of President Trump and his political appointees during the final frenzied weeks of the lame duck period. Significant resistance to blocking the EO may signal an intention to use the new authority broadly. If these unprecedented authorities to remove and replace executive branch career federal employees are abused, the consequences will be grave and costly.

For these reasons, the undersigned organizations urge you to include language blocking implementation of President Trump’s Executive Order (EO) 13957 in the next government funding package considered by Congress.

Thank you for your consideration of our views. Should you have any questions or wish to discuss further, please contact John Hatton, Senior Director for Legislative and Political Affairs

with the National Active and Retired Federal Employees Association (NARFE), at jhatton@narfe.org, or Gabe Lezra, Counsel with Citizens for Responsibility and Ethics in Washington, at glezra@citizensforethics.org.

Sincerely,

American Federation of Government Employees, AFL-CIO
American Federation of Teachers (AFT)
American Oversight
American Society for Public Administration
American Statistical Association
Americans for Democratic Action (ADA)
Americans for Financial Reform
BOLD ReThink
Center for Auto Safety
Citizens for Responsibility and Ethics in Washington (CREW)
Coalition on Human Needs
Code for America
Data Coalition
Demand Progress
DemCast USA
Democracy Fund Voice
Environmental Protection Network
FAA Managers Association
Faith in Public Life Action Fund
Federal Managers Association
Field Team 6
Friends of the Earth
Government Accountability Project
Government Information Watch
Greenpeace US
In the Public Interest
Indivisible CA-33
Indivisible California Green Team
Indivisible Ventura
International Association of Fire Fighters
International Association of Machinists Union
International Brotherhood of Teamsters
International Federation of Professional and Technical Engineers (IFPTE)
International Marine Mammal Project of Earth Island Institute
Jacobs Institute of Women's Health
Mainers for Accountable Leadership
Metal Trades Department, AFL-CIO
National Active and Retired Federal Employees Association (NARFE)
National Air Traffic Controllers Association (NATCA)
National Association of Assistant United States Attorneys (NAAUSA)

National Center for Health Research
National Education Association/Federal Education Association
National Employment Law Project
National Federation of Federal Employees
National Nurses United
National Security Counselors
National Treasury Employees Union
National Weather Service Employees Organization
National Women's Health Network
Normal Heights Indivisible
NY4WHALES
Ocean Conservation Research
Partnership for Public Service
Patent Office Professional Association
Power to Decide
Professional Managers Association
Project Blueprint
Project On Government Oversight
Public Employees for Environmental Responsibility
Results for America
Revolving Door Project
Rooted in Resistance
Senior Executives Association
Seven Circles Foundation
SolidarityINFOService
Stand Up America
True North Research
Truman National Security Project

Hon. Parris N. Glendening, former Governor, Maryland 1995-2003; President, Leadership Institute, Smart Growth America*
Thomas W. Ross, The Volcker Alliance*
JoAnn Loulan, Local Majority*
William Resh, CLEAR Initiative, Sol Price School of Public Policy, University of Southern California*
Donald Moynihan, McCourt School of Public Policy, Georgetown University*
Donald F. Kettl, LBJ School of Public Affairs, University of Texas at Austin*
Bob Bland, Masks For America*
Barry A Price, Bend the Arc: Jewish Action*
Ivy Czekanski, Extinction Rebellion Justice*

*Organization listed for identification purposes

Cc: House Majority Leader Steny Hoyer