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May 5, 2021

Honorable Kathleen H. Hicks
Deputy Secretary of Defense
1010 Defense Pentagon
Washington, D.C. 20301-1010

Dear Secretary Hicks,

On behalf of the American Federation of Government Employees, AFL-CIO, (AFGE) which represents more than 700,000 federal employees who serve the American people in 70 different agencies, including approximately 300,000 in the Department of Defense (DoD), we appreciate your support of a strong national defense and your recognition of the importance of a professional, apolitical civil service supporting our uniformed warfighters. We applaud the actions taken by President Biden and Secretary of Defense Austin to revitalize the federal civilian workforce, including revitalized collective bargaining, recognizing diversity, revamping the Department's advisory boards, and a return to apolitical civil service principles.

The National Security Commission on Artificial Intelligence, the Government Accountability Office, the Congress and the Department of Defense have all recognized that the Department has significant skills gaps in various Scientific, Technological, Engineering, Mathematical, Manufacturing (STEMM), acquisition, financial management, cyber, artificial intelligence, and foreign language skills critical to meeting 21st century threats to our national security as articulated in President Biden's National Defense Strategy.

These skills gaps have persisted after numerous "flexibilities" have been provided to the Department of Defense as exemplified by the non-exhaustive illustrative list below:

- The Secretary of Defense has broad authority to establish the hiring levels and compensation for civilian faculty at the National Defense University and Defense Language Center since 1989 in section 1595 of title 10;
- The Secretary of Defense has authority to deviate from title 5 in a so-called "pay for performance" demonstration project for the acquisition workforce since 2011 in section 1762 of title 10;
- The Cyber excepted service excludes oversight from the Office of Personnel Management, is exempt from the Classification Act, only allows veterans to appeal to the Merit Systems Protection Board, and has a 3 year probationary period (see 10 U.S.C. 1599f);
- Various direct hire authorities as exceptions to competitive hiring are authorized for the Secretary of Defense in section 9905 of title 10, including depot maintenance and repair, acquisition workforce, cyber, science, technology and engineering or math positions, medical or health positions, child care positions, financial management, accounting,



auditing, actuarial, cost estimation, operational research, and business administration;
and,

- Since 2016, a two year probationary period (in contrast to the government-wide one year probationary period under title 5) has been in effect, as well as significant deviations from standard title 5 reduction in force procedures.

In sum, the perspective of Department of Defense leadership has consistently been one of seeking and obtaining exemptions from the government-wide processes administered by the Office of Personnel Management that are intended to ensure an apolitical civil service. The Department of Defense has sought these authorities purportedly in the quest for greater management flexibility, often to the detriment of the long-term job security of employees being hired into the Department.

In fact, the mis-use of these authorities arguably has been one of the primary factors leading to these persistent skills gaps in the workforce. There has not been a recognition of the inherent contradiction between unfettered management “flexibility” to set the terms and conditions of employment to deviate from standard title 5 civil service procedures to preserve an apolitical workforce and the very idea of human capital planning that views employees as possessing both existing skills and potential talent that can be developed only through a long-term commitment to those employees as a valuable part of a team. The perception that an employee only has a single skill that cannot be adapted and developed as the Department’s missions change is exemplified in the way personnel caps have been used in some cases to discard skills through the egregious mis-use of term and temporary appointments.

For an example of an egregious mis-use of term or temporary hiring authorities, the Defense Language Institute Foreign Language Center (DLIFLC) at Monterey, California stands out as a classic illustration of the incompatibility of personnel caps with the strategic human capital planning that is necessary for an agile response to future mission requirements. Understandably, the Department now needs to increase the size of its Russian and Chinese faculty, but under the mechanical operation of personnel caps, when an increased workload triggers increased hiring in one language program, it also triggers a corresponding arbitrary reduction in other language faculties. In 2007, the shortfall in military personnel trained in Middle Eastern languages skills adversely affected our military’s operational missions. As a result, DoD decided to actively recruit native speakers as teachers. Today, DLIFLC has chosen to employ the majority of its foreign language teachers on successive, limited-term appointments, which often are only 12 months in length, effectively ignoring the strategic human-capital planning on which the entire Defense Language mission has been built. Over the past year, DLIFLC has begun the downsizing of its Hebrew, Urdu, Modern Standard Arabic, Japanese and French language programs. Its Hindi, Dari and Turkish programs are already closed. Inexplicably, its Turkish program began to close just as President Erdogan came to power in Turkey.

The Government Accountability Office recently documented that “[d]uring fiscal years 2016 through 2019, DoD increased term personnel by 40 percent, . . . [and] extended the duration limit for term appointments from 4 years to 8 years, with further extensions considered on a case by case basis,” all done without “assess[ing] employee perceptions [of these practices] as required by statute.” See GAO-20-532, “Defense Workforce: DoD Needs to Assess Its Use of Term and Temporary Appointments (Aug 6, 2020). The GAO documented the Army accounted for 72 percent of Term and Temporary appointments, primarily in the Tank and Automotive Command (and its depots) and the U.S. Army Corps of Engineers. The lost capabilities and talents that are not developed as a result of this short-sighted approach to management contributes to the persistent skills gap problems of the Department.

Another contributing factor to these management problems in the Department has been lax oversight by the Office of Personnel Management of the delegated examining authority provided to the Department, a delegation that has persisted over a couple of decades. As a result of this lax oversight, there has been a proliferation of separate career programs within each military department for the same kinds of skills. For anyone concerned with civilian control of the military, the likely genesis of this proliferation of separate civilian career program silos for the same sets of skills in the Department resides in the preference of military supervisors for managing a civilian workforce in the kind of framework they are accustomed to for the military. Sometimes, this cultural propensity manifests itself in lack of recognition that the Americans with Disabilities Act or other civil rights laws applicable to the federal government workforce must be applied to the civilian workforce in DoD. Sometimes this results in each Military Department creating separate developmental paths and certification requirements for similar sets of skills, a practice that creates significant barriers for promotion for internal candidates or lateral entry for external candidates. Moreover, management practices and culture more often than not erect barriers to hiring more than the lack of authorities. A prime example is the Department’s reported failure by the National Security Commission on Artificial Intelligence to recognize experience as a substitute for educational credentials when determining appropriate compensation for persons with Cyber skills, something that is already within the ability of the Department to address under the existing framework of title 5 and does not require legislative action.

Finally, “reforms” from Congress generated from recommendations by the Department, or Commissions influenced by the Department, often lead to recommendations to emulate the highly expensive accession methods used by the military, such as the recent recommendation by the National Security Commission on Artificial Intelligence for a Digital Academy – based on the military academy model. There are less expensive alternatives to fill the skills gaps of the Department, if only the Department, through the assistance of a reinvigorated Office of Personnel Management were to revive the objective assessment tools that had been successfully used before to generate larger lists of qualified and diverse candidates. For example, larger numbers of diverse candidates at less cost than the Digital Academy could be generated by

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expanding the existing 3 year Cyber Scholarship programs for federal government employees to make them as generous as ROTC commissioning programs which pay for four years of college and even for graduate and professional school, with a comparable service commitment. Additionally, a larger population of qualified and diverse candidates could be generated by expanding the use of cohort hiring or standing registers, a method that can only practically be used through objective assessment tools for screening candidates, in lieu of the burdensome practice of requiring job candidates to separately apply for similar jobs on the website USAJOBS. The paucity of qualified and diverse candidates on referral lists is in large part due to the failure to generate standing registers of qualified candidates from objective assessment tools that require applicants to apply only once rather than separately to each job opening.

Should your staff have any questions, our subject matter experts on these issues are John Anderson, john.anderson@afge.org at 703-943-9438 or Richard Loeb, Richard.Loeb@afge.org at 202-639-6466.

Sincerely yours,


Everett B. Kelley
National President

cc: OPM,
SASC, HASC, SAC-D, HAC-D