

## CENTRAL PERSONNEL AGENCIES: MANAGING THE BUREAUCRACY

Donald Devine,  
Dennis Dean Kirk,  
and Paul Dans

### OVERVIEW

From the very first *Mandate for Leadership*, the “personnel is policy” theme has been the fundamental principle guiding the government’s personnel management. As the U.S. Constitution makes clear, the President’s appointment, direction, and removal authorities are the central elements of his executive power.<sup>1</sup> In implementing that power, the people and the President deserve the most talented and responsible workforce possible.

Who the President assigns to design and implement his political policy agenda will determine whether he can carry out the responsibility given to him by the American people. The President must recognize that whoever holds a government position sets its policy. To fulfill an electoral mandate, he must therefore give personnel management his highest priority, including Cabinet-level precedence.

The federal government’s immense bureaucracy spreads into hundreds of agencies and thousands of units and is centered and overseen at the top by key central personnel agencies and their governing laws and regulations. The major separate personnel agencies in the national government today are:

- The Office of Personnel Management (OPM);
- The Merit Systems Protection Board (MSPB);
- The Federal Labor Relations Authority (FLRA); and
- The Office of Special Counsel (OSC).

## Mandate for Leadership: The Conservative Promise

Title 5 of the U.S. Code charges the OPM with executing, administering, and enforcing the rules, regulations, and laws governing the civil service.<sup>2</sup> It grants the OPM direct responsibility for activities like retirement, pay, health, training, federal unionization, suitability, and classification functions not specifically granted to other agencies by statute. The agency's Director is charged with aiding the President, as the President may request, in preparing such civil service rules as the President prescribes and otherwise advising the President on actions that may be taken to promote an efficient civil service and a systematic application of the merit system principles, including recommending policies relating to the selection, promotion, transfer, performance, pay, conditions of service, tenure, and separation of employees.

The MSPB is the lead adjudicator for hearing and resolving cases and controversies for 2.2 million federal employees.<sup>3</sup> It is required to conduct fair and neutral case adjudications, regulatory reviews, and actions and studies to improve the workforce. Its court-like adjudications investigate and hear appeals from agency actions such as furloughs, suspensions, demotions, and terminations and are appealable to the U.S. Court of Appeals.

The FLRA hears appeals of agency personnel cases involving federal labor grievance procedures to provide judicial review with binding decisions appealable to appeals courts.<sup>4</sup> It interprets the rights and duties of agencies and employee labor organizations—on management rights, OPM interpretations, recognition of labor organizations, and unfair labor practices—under the general principle of bargaining in good faith and compelling need.

The OSC serves as the investigator, mediator, publisher, and prosecutor before the MSPB with respect to agency and employees regarding prohibited personnel practices, Hatch Act<sup>5</sup> politicization, Uniformed Services Employment and Reemployment Rights Act<sup>6</sup> issues, and whistleblower complaints.<sup>7</sup>

The Equal Employment Opportunity Commission (EEOC) has general responsibility for reviewing charges of employee discrimination against all civil rights breaches. However, it also administers a government employee section that investigates and adjudicates federal employee complaints concerning equal employment violations as with the private sector.<sup>8</sup> This makes the agency an additional de facto factor in government personnel management.

While not a personnel agency per se, the General Services Administration (GSA) is charged with general supervision of contracting.<sup>9</sup> Today, there are many more contractors in government than there are civil service employees. The GSA must therefore be a part of any personnel management discussion.

## ANALYSIS AND RECOMMENDATIONS

**OPM: Managing the Federal Bureaucracy.** At the very pinnacle of the modern progressive program to make government competent stands the ideal of professionalized, career civil service. Since the turn of the 20th century,

## Central Personnel Agencies: Managing the Bureaucracy

progressives have sought a system that could effectively select, train, reward, and guard from partisan influence the neutral scientific experts they believe are required to staff the national government and run the administrative state. Their U.S. system was initiated by the Pendleton Act of 1883<sup>10</sup> and institutionalized by the 1930s New Deal to set principles and practices that were meant to ensure that expert merit rather than partisan favors or personal favoritism ruled within the federal bureaucracy. Yet, as public frustration with the civil service has grown, generating calls to “drain the swamp,” it has become clear that their project has had serious unintended consequences.

The civil service was devised to replace the amateurism and presumed corruption of the old spoils system, wherein government jobs rewarded loyal partisans who might or might not have professional backgrounds. Although the system appeared to be sufficient for the nation’s first century, progressive intellectuals and activists demanded a more professionalized, scientific, and politically neutral Administration. Progressives designed a merit system to promote expertise and shield bureaucrats from partisan political pressure, but it soon began to insulate civil servants from accountability. The modern merit system increasingly made it almost impossible to fire all but the most incompetent civil servants. Complying with arcane rules regarding recruiting, rating, hiring, and firing simply replaced the goal of cultivating competence and expertise.

In the 1970s, Georgia Democratic Governor Jimmy Carter, then a political unknown, ran for President supporting New Deal programs and their Great Society expansion but opposing the way they were being administered. The policies were not actually reducing poverty, increasing prosperity, or improving the environment, he argued, and to make them work required fundamental bureaucratic reform. He correctly charged that almost all government employees were rated as “successful,” all received the same pay regardless of performance, and even the worst were impossible to fire—and he won the presidency.

President Carter fulfilled his campaign promise by hiring Syracuse University Dean Alan Campbell, who served first as Chairman of the U.S. Civil Service Commission and then as Director of the OPM and helped him devise and pass the Civil Service Reform Act of 1978 (CSRA)<sup>11</sup> to reset the basic structure of today’s bureaucracy. A new performance appraisal system was devised with a five rather than three distribution of rating categories and individual goals more related to agency missions and more related to employee promotion for all. Pay and benefits were based directly on improved performance appraisals (including sizable bonuses) for mid-level managers and senior executives. But time ran out on President Carter before the act could be fully executed, so it was left to President Ronald Reagan and his new OPM and agency leadership to implement.

Overall, the new law seemed to work for a few years under Reagan, but the Carter-Reagan reforms were dissipated within a decade. Today, employee evaluation is back

## Mandate for Leadership: The Conservative Promise

to pre-reform levels with almost all rated successful or above, frustrating any relation between pay and performance. An “outstanding” rating should be required for Senior Executive Service (SES) chiefs to win big bonuses, but a few years ago, when it was disclosed that the Veterans Administration executives who encouraged false reporting of waiting lists for hospital admission were rated outstanding, the Senior Executive Association justified it, telling Congress that only outstanding performers would be promoted to the SES in the first place and that precise ratings were unnecessary.<sup>12</sup> The Government Accountability Office (GAO), however, has reported that pay raises, within-grade pay increases, and locality pay for regular employees and executives have become automatic rather than based on performance—as a result of most employees being rated at similar appraisal levels.<sup>13</sup>

**OPM: Merit Hiring in a Merit System.** It should not be impossible even for a large national government to hire good people through merit selection. The government did so for years, but it has proven difficult in recent times to select personnel based on their knowledge, skills, and abilities (KSA) as the law dictates. Yet for the past 34 years, the U.S. civil service has been unable to distinguish consistently between strong and unqualified applicants for employment.

As the Carter presidency was winding down, the U.S. Department of Justice and top lawyers at the OPM contrived with plaintiffs to end civil service IQ examinations because of concern about their possible impact on minorities. The OPM had used the Professional and Administrative Career Examination (PACE) general intelligence exam to select college graduates for top agency employment, but Carter Administration officials—probably without the President’s informed concurrence—abolished the PACE through a legal consent court decree capitulating to demands by civil rights petitioners who contended that it was discriminatory. The judicial decree was to last only five years but still controls federal hiring and is applied to all KSA tests even today.

General ability tests like the PACE have been used successfully to assess the usefulness and cost-effectiveness of broad intellectual qualities across many separate occupations. Courts have ruled that even without evidence of overt, intentional discrimination, such results might suggest discrimination. This doctrine of disparate impact could be ended legislatively or at least narrowed through the regulatory process by a future Administration. In any event, the federal government has been denied the use of a rigorous entry examination for three decades, relying instead on self-evaluations that have forced managers to resort to subterfuge such as preselecting friends or associates that they believe are competent to obtain qualified employees.

In 2015, President Barack Obama’s OPM began to introduce an improved merit examination called USAHire, which it had been testing quietly since 2012 in a few agencies for a dozen job descriptions. The tests had multiple-choice questions with only one correct answer. Some questions even required essay replies: questions

that would change regularly to depress cheating. President Donald Trump's OPM planned to implement such changes but was delayed because of legal concerns over possible disparate impact.

Courts have agreed to review the consent decree if the Uniform Guidelines on Employee Selection Procedures setting the technical requirements for sound exams are reformed. A government that is unable to select employees based on KSA-like test qualifications cannot work, and the OPM must move forward on this very basic personnel management obligation.

**The Centrality of Performance Appraisal.** In the meantime, the OPM must manage the workforce it has. Before they can reward or discipline federal employees, managers must first identify who their top performers are and who is performing less than adequately. In fact, as Ludwig von Mises proved in his classic *Bureaucracy*,<sup>14</sup> unlike the profit-and-loss evaluation tool used in the private sector, government performance measurement depends totally on a functioning appraisal system. If they cannot be identified in the first place within a functioning appraisal system, it is impossible to reward good performance or correct poor performance. The problem is that the collegial atmosphere of a bureaucracy in a multifaceted appraisal system that is open to appeals makes this a very challenging ideal to implement successfully.

The GAO reported more recently that overly high and widely spread performance ratings were again plaguing the government, with more than 99 percent of employees rated fully successful or above by their managers, a mere 0.3 percent rated as minimally successful, and 0.1 percent actually rated unacceptable.<sup>15</sup> Why? It is human nature that no one appreciates being told that he or she is less than outstanding in every way. Informing subordinates in a closely knit bureaucracy that they are not performing well is difficult. Rating compatriots is even considered rude and unprofessional. Moreover, managers can be and often are accused of racial or sexual discrimination for a poor rating, and this discourages honesty.

In 2018, President Trump issued Executive Order 13839<sup>16</sup> requiring agencies to reduce the time for employees to improve performance before corrective action could be taken; to initiate disciplinary actions against poorly performing employees more expeditiously; to reiterate that agencies are obligated to make employees improve; to reduce the time for employees to respond to allegations of poor performance; to mandate that agencies remind supervisors of expiring employee probationary periods; to prohibit agencies from entering into settlement agreements that modify an employee's personnel record; and to reevaluate procedures for agencies to discipline supervisors who retaliate against whistleblowers. Unfortunately, the order was overturned by the Biden Administration,<sup>17</sup> so it will need to be reintroduced in 2025.

The fact remains that meaningfully evaluating employees' performance is a critical part of a manager's job. In the Reagan appraisal process, managers were evaluated on how they themselves rated their subordinates. This is critical to

## Mandate for Leadership: The Conservative Promise

responsibility and improved management. It is essential that political executives build policy goals directly into employee appraisals both for mission success and for employees to know what is expected. Indistinguishable from their coworkers on paper, hard-working federal employees often go unrewarded for their efforts and are often the system's greatest critics. Federal workers who are performing inadequately get neither the benefit of an honest appraisal nor clear guidance on how to improve. Political executives should take an active role in supervising performance appraisals of career staff, not unduly delegate this responsibility to senior career managers, and be willing to reward and support good performers.

**Merit Pay.** Performance appraisal means little to daily operations if it is not tied directly to real consequences for success as well as failure. According to a survey of major U.S. private companies—which, unlike the federal government, also have a profit-and-loss evaluation—90 percent use a system of merit pay for performance based on some type of appraisal system. Despite early efforts to institute merit pay throughout the federal government, however, compensation is still based primarily on seniority rather than merit.

Merit pay for executives and managers was part of the Carter reforms and was implemented early in the Reagan presidency. Beginning in the summer of 1982, the Reagan OPM entered 18 months of negotiations with House and Senate staff on extending merit pay to the entire workforce. Long and detailed talks between the OPM and both Democrats and Republicans in Congress ensued, and a final agreement was reached in 1983 that supposedly ensured the passage of legislation creating a new Performance Management and Recognition System (PMRS) for all, (not just management) GS-13 through GS-15 employees.

Meanwhile, the OPM issued regulations to expand the role of performance related to pay throughout the entire workforce, but congressional allies of the employee unions, led by Representative Steny Hoyer (D) of government employee-rich Maryland, stoutly resisted this extension of pay-for-performance and, with strong union support, used the congressional appropriations process to block OPM administrative pay reforms. Bonuses for SES career employees survived, but performance appraisals became so high and widely distributed that there was little relationship between performance and remuneration.

Ever since the original merit pay system for federal managers (GM-13 through GM-15 grade levels, just below the SES) was allowed to expire in September 1993, little to nothing has been done either to reinstate the federal merit pay program for managers or to distribute performance rating evaluations for the SES, much less to extend the program to the remainder of the workforce. A reform-friendly President and Congress might just provide the opportunity to create a more comprehensive performance plan; in the meantime, however, political executives should use existing pay and especially fiscal awards strategically to reward good performance to the degree allowed by law.

**Making the Appeals Process Work.** The nonmilitary government dismissal rate is well below 1 percent, and no private-sector industry employee enjoys the job security that a federal employee enjoys. Both safety and justice demand that managers learn to act strategically to hire good and fire poor performers legally. The initial paperwork required to separate poor or abusive performers (when they are infrequently identified) is not overwhelming, and managers might be motivated to act if it were not for the appeals and enforcement processes. Formal appeal in the private sector is mostly a rather simple two-step process, but government unions and associations have been able to convince politicians to support a multiple and extensive appeals and enforcement process.

As noted, there are multiple administrative appeals bodies. The FLRA, OSC, and EEOC have relatively narrow jurisdictions. Claims that an employee's removal or disciplinary actions violate the terms of a collective bargaining agreement between an agency and a union are handled by the FLRA, employees who claim their removal was the result of discrimination can appeal to the EEOC, and employees who believe their firing was retribution for being a whistleblower can go to the OSC. While the MSPB specializes in abuses of direct merit system issues, it can and does hear and review almost any of the matters heard by the other agencies.

Cases involving race, gender, religion, age, pregnancy, disability, or national origin can be appealed to the EEOC or the MSPB—and in some cases to both—and to the OSC. This gives employees multiple opportunities to prove their cases, and while the EEOC, MSPB, FLRA, and OSC may all apply essentially the same burden of proof, the odds of success may be substantially different in each forum. In fact, forum shopping among them for a friendlier venue is a common practice, but frequent filers face no consequences for frivolous complaints. As a result, meritorious cases are frequently delayed, denying relief and justice to truly aggrieved individuals.

The MSPB can and does handle all such matters, but it faces a backlog of an estimated 3,000 cases of people who were potentially wrongfully terminated or disciplined as far back as 2013. From 2017–2022 the MSPB lacked the quorum required to decide appeals. On the other hand, as of January 2023, the EEOC had a backlog of 42,000 cases.

While federal employees win appeals relatively infrequently—MSPB administrative judges have upheld agency decisions as much as 80 percent of the time—the real problem is the time and paperwork involved in the elaborate process that managers must undergo during appeals. This keeps even the best managers from bringing cases in all but the most egregious cases of poor performance or misconduct. As a result, the MSPB, EEOC, FLRA, and OSC likely see very few cases compared to the number of occurrences, and nonperformers continue to be paid and often are placed in nonwork positions.

Having a choice of appeals is especially unique to the government. If lower-priority issues were addressed in-house, serious adverse actions would be less subject



to delay. With the proper limitation of labor union actions, the FLRA should have limited reason for appeals. The EEOC's federal employee section should be transferred to the MSPB, and many of the OCS's investigatory functions should be returned to the OPM. The MSPB could then become the main reviewer of adverse actions, greatly simplifying the burdensome appeal process.

**Making Civil Service Benefits Economically and Administratively Rational.** In recent years, the combined wages and benefits of the executive branch civilian workforce totaled \$300 billion according to official data. But even that amount does not properly account for billions in unfunded liability for retirement and other government reporting distortions. Official data also report employment as approximately 2 million, but this ignores approximately 20 million contractors who, while not eligible for government pay and benefits, do receive them indirectly through contracting (even if they are less generous). Official data also claim that national government employees are paid less than private-sector employees are paid for similar work, but several more neutral sources demonstrate that public-sector workers make more on average than their private-sector counterparts. All of this extravagance deserves close scrutiny.

**Market-Based Pay and Benefits.** According to current law, federal workers are to be paid wages comparable to equivalent private-sector workers rather than compared to all private-sector employees. While the official studies claim that federal employees are underpaid relative to the private sector by 20 percent or more, a 2016 Heritage Foundation study found that federal employees received wages that were 22 percent higher than wages for similar private-sector workers; if the value of employee benefits was included, the total compensation premium for federal employees over their private-sector equivalents increased to between 30 percent and 40 percent.<sup>18</sup> The American Enterprise Institute found a 14 percent pay premium and a 61 percent total compensation premium.<sup>19</sup>

Base salary is only one component of a federal employee's total compensation. In addition to high starting wages, federal employees normally receive an annual cost-of-living adjustment (available to all employees) and generous scheduled raises known as step increases. Moreover, a large proportion of federal employees are stationed in the Washington, D.C., area and other large cities and are entitled to steep locality pay enhancement to account for the high cost of living in these areas.

A federal employee with five years' experience receives 20 vacation days, 13 paid sick days, and all 10 federal holidays compared to an employee at a large private company who receives 13 days of vacation and eight paid sick days. Federal health benefits are more comparable to those provided by *Fortune* 500 employers with the government paying 72 percent of the weighted average premiums, but this is much higher than for most private plans. Almost half of private firms do not offer any employer contributions at all.



## Central Personnel Agencies: Managing the Bureaucracy

The obvious solution to these discrepancies is to move closer to a market model for federal pay and benefits. One need is for a neutral agency to oversee pay hiring decisions, especially for high-demand occupations. The OPM is independent of agency operations, so it can assess requirements more neutrally. For many years, with its Special Pay Rates program, the OPM evaluated claims that federal rates in an area were too low to attract competent employees and allowed agencies to offer higher pay when needed rather than increased rates for all. Ideally, the OPM should establish an initial pay schedule for every occupation and region, monitor turnover rates and applicant-to-position ratios, and adjust pay and recruitment on that basis. Most of this requires legislation, but the OPM should be an advocate for a true equality of benefits between the public and private sectors.

**Reforming Federal Retirement Benefits.** Career civil servants enjoy retirement benefits that are nearly unheard of in the private sector. Federal employees retire earlier (normally at age 55 after 30 years), enjoy richer pension annuities, and receive automatic cost-of-living adjustments based on the areas in which they retire. Defined-benefit federal pensions are fully indexed for inflation—a practice that is extremely rare in the private sector. A federal employee with a preretirement income of \$25,000 under the older of the two federal retirement plans will receive at least \$200,000 more over a 20-year period than will private-sector workers with the same preretirement salary under historic inflation levels.

During the early Reagan years, the OPM reformed many specific provisions of the federal pension program to save billions administratively. Under OPM pressure, Reagan and Congress ultimately ended the old Civil Service Retirement System (CSRS) entirely for new employees, which (counting disbursements for the unfunded liability) accounted for 51.3 percent of the federal government's total payroll. The retirement system that replaced it—the Federal Employees Retirement System (FERS)—reduced the cost of federal employee retirement disbursements to 28.5 percent of payroll (including contributions to Social Security and the employer match to the Thrift Savings Plan). More of the pension cost was shifted to the employee, but the new system was much more equitable for the 40 percent who received few or no benefits under the old system.

By 1999, more than half of the federal workforce was covered by the new system, and the government's per capita share of the cost (as the employer) was less than half the cost of the old system: 20.2 percent of FERS payroll vs. 44.3 percent of CSRS payroll, representing one of the largest examples of government savings anywhere. Although the government pension system has become more like private pension systems, it still remains much more generous, and other means might be considered in the future to move it even closer to private plans.

**GSA: Landlord and Contractor Management.** The General Services Administration is best known as the federal government's landlord—designing, constructing, managing, and preserving government buildings and leasing and

## Mandate for Leadership: The Conservative Promise

managing outside commercial real estate contracting with 376.9 million square feet of space. Obviously, as its prime function, real estate expertise is key to the GSA's success. However, the GSA is also the government's purchasing agent, connecting federal purchasers with commercial products and services in the private sector and their personnel management functions. With contractors performing so many functions today, the GSA therefore becomes a de facto part of governmentwide personnel management. The GSA also manages the Presidential Transition Act (PTA) process, which also directly involves the OPM. A recent proposal would have incorporated the OPM and GSA (and OMB). Fortunately, this did not take place in that form, but it would make sense for GSA and OPM leadership and staff to hold regular meetings to work through matters of common interest such as moderating PTA personnel restrictions and the relationships between contract and civil service employees.

**Reductions-in-Force.** Reducing the number of federal employees seems an obvious way to reduce the overall expense of the civil service, and many prior Administrations have attempted to do just this. Presidents Bill Clinton and Barack Obama began their terms, as did Ronald Reagan and Donald Trump, by mandating a freeze on the hiring of new federal employees, but these efforts did not lead to permanent and substantive reductions in the number of nondefense federal employees.

First, it is a challenge even to know which workers to cut. As mentioned, there are 2 million federal employees, but since budgets have exploded, so has the total number of personnel with nearly 10 times more federal contractors than federal employees. Contractors are less expensive because they are not entitled to high government pensions or benefits and are easier to fire and discipline. In addition, millions of state government employees work under federal grants, in effect administering federal programs; these cannot be cut directly. Cutting federal employment can be helpful and can provide a simple story to average citizens, but cutting functions, levels, funds, and grants is much more important than setting simple employment size.

Simply reducing numbers can actually increase costs. OMB instructions following President Trump's employment freeze told agencies to consider buyout programs, encouraging early retirements in order to shift costs from current budgets in agencies to the retirement system and minimize the number of personnel fired. The Environmental Protection Agency immediately implemented such a program, and OMB urged the passage of legislation to increase payout maximums from \$25,000 to \$40,000 to further increase spending under the "cuts." President Clinton's OMB had introduced a similar buyout that cost the Treasury \$2.8 billion, mostly for those who were going to retire anyway. Moreover, when a new employee is hired to fill a job recently vacated in a buyout, the government for a time is paying two people to fill one job.

## Central Personnel Agencies: Managing the Bureaucracy

What is needed at the beginning is a freeze on all top career-position hiring to prevent “burrowing-in” by outgoing political appointees. Moreover, four factors determine the order in which employees are protected during layoffs: tenure, veterans’ preference, seniority, and performance in that order of importance. Despite several attempts in the House of Representatives during the Trump years to enact legislation that would modestly increase the weight given to performance over time-of-service, the fierce opposition by federal managers associations and unions representing long-serving but not necessarily well-performing constituents explains why the bills failed to advance. A determined President should insist that performance be first and be wary of costly types of reductions-in-force.

**Impenetrable Bureaucracy.** The GAO has identified almost a hundred actions that the executive branch or Congress could take to improve efficiency and effectiveness across 37 areas that span a broad range of government missions and functions. It identified 33 actions to address mission fragmentation, overlap, and duplication in the 12 areas of defense, economic development, health, homeland security, and information technology. It also identified 59 other opportunities for executive agencies or Congress to reduce the cost of government operations or enhance revenue collection across 25 areas of government.<sup>20</sup>

A logical place to begin would be to identify and eliminate functions and programs that are duplicated across Cabinet departments or spread across multiple agencies. Congress hoped to help this effort by passing the Government Performance and Results Act of 1993,<sup>21</sup> which required all federal agencies to define their missions, establish goals and objectives, and measure and report their performance to Congress. Three decades of endless time-consuming reports later, the government continues to grow but with more paper and little change either in performance or in the number of levels between government and the people.

The Brookings Institution’s Paul Light emphasizes the importance of the increasing number of levels between the top heads of departments and the people at the bottom who receive the products of government decision-making. He estimates that there are perhaps 50 or more levels of impenetrable bureaucracy and no way other than imperfect performance appraisals to communicate between them.<sup>22</sup>

The Trump Administration proposed some possible consolidations, but these were not received favorably in Congress, whose approval is necessary for most such proposals. The best solution is to cut functions and budgets and devolve responsibilities. That is a challenge primarily for Presidents, Congress, and the entire government, but the OPM still needs to lead the way governmentwide in managing personnel properly even in any future smaller government.

**Creating a Responsible Career Management Service.** The people elect a President who is charged by Article 2, Section 3 of the Constitution<sup>23</sup> with seeing that the laws are “faithfully executed” with his political appointees democratically linked to that legitimizing responsibility. An autonomous bureaucracy has neither

## Mandate for Leadership: The Conservative Promise

independent constitutional status nor separate moral legitimacy. Therefore, career civil servants by themselves should not lead major policy changes and reforms.

The creation of the Senior Executive Service was the top career change introduced by the 1978 Carter–Campbell Civil Service Reform Act. Its aim was to professionalize the career service and make it more responsible to the democratically elected commander in chief and his political appointees while respecting the rights due to career employees, very much including those in the top positions. The new SES would allow management to be more flexible in filling and reassigning executive positions and locations beyond narrow specialties for more efficient mission accomplishment and would provide pay and large bonuses to motivate career performance.

The desire to infiltrate political appointees improperly into the high career civil service has been widespread in every Administration, whether Democrat or Republican. Democratic Administrations, however, are typically more successful because they require the cooperation of careerists, who generally lean heavily to the Left. Such burrowing-in requires career job descriptions for new positions that closely mirror the functions of a political appointee; a special hiring authority that allows the bypassing of veterans' preference as well as other preference categories; and the ability to frustrate career candidates from taking the desired position.

President Reagan's OPM began by limiting such SES burrowing-in, arguing that the proper course was to create and fill political positions. This simultaneously promotes the CSRA principle of political leadership of the bureaucracy and respects the professional autonomy of the career service. But this requires that career SES employees should respect political rights too. Actions such as career staff reserving excessive numbers of key policy positions as "career reserved" to deny them to noncareer SES employees frustrate CSRA intent. Another evasion is the general domination by career staff on SES personnel evaluation boards, the opposite of noncareer executives dominating these critical meeting discussions as expected in the SES. Career training also often underplays the political role in leadership and inculcates career-first policy and value viewpoints.

Frustrated with these activities by top career executives, the Trump Administration issued Executive Order 13957<sup>24</sup> to make career professionals in positions that are not normally subject to change as a result of a presidential transition but who discharge significant duties and exercise significant discretion in formulating and implementing executive branch policy and programs an exception to the competitive hiring rules and examinations for career positions under a new Schedule F. It ordered the Director of OPM and agency heads to set procedures to prepare lists of such confidential, policy-determining, policymaking, or policy-advocating positions and prepare procedures to create exceptions from civil service rules when careerists hold such positions, from which they can relocate back to the regular civil service after such service. The order was subsequently reversed by President

## Central Personnel Agencies: Managing the Bureaucracy

Biden<sup>25</sup> at the demand of the civil service associations and unions. It should be reinstated, but SES responsibility should come first.

**Managing Personnel in a Union Environment.** Historically, unions were thought to be incompatible with government management. There is a natural limit to the bargaining power of private-sector unions, but the financial bottom line of public-sector unions is not similarly constrained. If private-sector unions push too hard a bargain, they can so harm a company or so reduce efficiency that their employer is forced to go out of business and eliminate union jobs altogether. There is no such limit in government, which cannot go out of business, so demands can be excessive without negatively affecting employee and union bottom lines.

Even Democratic President Franklin Roosevelt considered union representation in the federal government to be incompatible with democracy. Striking and even threats of bargaining and delay were considered acts against the people and thus improper. It was not until President John Kennedy that union representation in the federal government was recognized—and then merely by executive order. Labor bargaining was not set in statute until the Carter Administration was forced by Congress to do so in order to pass the CSRA, although all bargaining was placed under OPM review.

The CSRA was able to maintain strong management rights for the OPM and agencies and forbade collective bargaining on pay and benefits as well as management prerogatives. Over time, OPM, FLRA, and agencies' personnel offices and courts, especially in Democratic Administrations, narrowed management rights so that labor bargaining expanded as management rights contracted. But the management rights are still in statute, have been enforced by some Administrations, and should be enforced again by any future OPM and agency managements, which should not be intimidated by union power.

Rather than being daunted, President Trump issued three executive orders:

- Executive Order 13836, encouraging agencies to renegotiate all union collective bargaining agreements to ensure consistency with the law and respect for management rights;<sup>26</sup>
- Executive Order 13837, encouraging agencies to prevent union representatives from using official time preparing or pursuing grievances or from engaging in other union activity on government time;<sup>27</sup> and
- Executive Order 13839, encouraging agencies both to limit labor grievances on removals from service or on challenging performance appraisals and to prioritize performance over seniority when deciding who should be retained following reductions-in-force.<sup>28</sup>

## Mandate for Leadership: The Conservative Promise

All were revoked by the Biden Administration<sup>29</sup> and should be reinstated by the next Administration, to include the immediate appointment of the FLRA General Counsel and reactivation of the Impasses Panel.

Congress should also consider whether public-sector unions are appropriate in the first place. The bipartisan consensus up until the middle of the 20th century held that these unions were not compatible with constitutional government.<sup>30</sup> After more than half a century of experience with public-sector union frustrations of good government management, it is hard to avoid reaching the same conclusion.

**Fully Staffing the Ranks of Political Appointees.** The President must rely legally on his top department and agency officials to run the government and on top White House staff employees to coordinate operations through regular Cabinet and other meetings and communications. Without this political leadership, the career civil service becomes empowered to lead the executive branch without democratic legitimacy. While many obstacles stand in his way, a President is constitutionally and statutorily required to fill the top political positions in the executive branch both to assist him and to provide overall legitimacy.

Most Presidents have had some difficulty obtaining congressional approval of their appointees, but this has worsened recently. After the 2016 election, President Trump faced special hostility from the opposition party and the media in getting his appointees confirmed or even considered by the Senate. His early Office of Presidential Personnel (PPO) did not generally remove political appointees from the previous Administration but instead relied mostly on prior political appointees and career civil servants to run the government. Such a reliance on holdovers and bureaucrats led to a lack of agency control and the absolute refusal of the Acting Attorney General from the Obama Administration to obey a direct order from the President.

Under the early PPO, the Trump Administration appointed fewer political appointees in its first few months in office than had been appointed in any recent presidency, partly because of historically high partisan congressional obstructions but also because several officials announced that they preferred fewer political appointees in the agencies as a way to cut federal spending. Whatever the reasoning, this had the effect of permanently hampering the rollout of the new President's agenda. Thus, in those critical early years, much of the government relied on senior careerists and holdover Obama appointees to carry out the sensitive responsibilities that would otherwise belong to the new President's appointees.

Fortunately, the later PPO, OPM, and Senate leadership began to cooperate to build a strong team to implement the President's personnel appointment agenda. Any new Administration would be wise to learn that it will need a full cadre of sound political appointees from the beginning if it expects to direct this enormous federal bureaucracy. A close relationship between the PPO at the White House and the OPM, coordinating with agency assistant secretaries of administration

## Central Personnel Agencies: Managing the Bureaucracy

and PPO's chosen White House Liaisons and their staff at each agency, is essential to the management of this large, multilevel, resistant, and bureaucratic challenge. If "personnel is policy" is to be our general guide, it would make sense to give the President direct supervision of the bureaucracy with the OPM Director available in his Cabinet.

### A REFORMED BUREAUCRACY

Today, the federal government's bureaucracy cannot even meet its own civil service ideals. The merit criteria of ability, knowledge, and skills are no longer the basis for recruitment, selection, or advancement, while pay and benefits for comparable work are substantially above those in the private sector. Retention is not based primarily on performance, and for the most part, inadequate performance is not appraised, corrected, or punished.

The authors have made many suggestions here that, if implemented, could bring that bureaucracy more under control and enable it to work more efficiently and responsibly, which is especially required for the half of civilian government that administers its undeniable responsibilities for defense and foreign affairs. While a better administered central bureaucracy is crucial for both those and domestic responsibilities, the problem of properly running the government goes beyond simple bureaucratic administration. The specific deficiencies of the federal bureaucracy—size, levels of organization, inefficiency, expense, and lack of responsiveness to political leadership—are rooted in the progressive ideology that unelected experts can and should be trusted to promote the general welfare in just about every area of social life.

The Constitution, however, reserved a few enumerated powers to the federal government while leaving the great majority of domestic activities to state, local, and private governance. As James Madison explained: "The powers reserved to the several States will extend to all the objects, which, in the ordinary course of affairs, concern the lives, liberties and properties of the people; and the internal order, improvement and prosperity of the state."<sup>31</sup> Modern progressive politics has simply given the national government more to do than the complex separation-of-powers Constitution allows.

That progressive system has broken down in our time, and the only real solution is for the national government to do less: to decentralize and privatize as much as possible and then ensure that the remaining bureaucracy is managed effectively along the lines of the enduring principles set out in detail here.

---

**AUTHORS' NOTE:** The authors are grateful for the collaborative work of the individuals listed as contributors to this chapter for the 2025 Presidential Transition Project. The authors alone assume responsibility for the content of this chapter, and no views expressed herein should be attributed to any other individual.



## Mandate for Leadership: The Conservative Promise

### ENDNOTES

1. U.S. Constitution, Article II, Section 2, <https://www.law.cornell.edu/constitution/articleii#section1> (accessed February 1, 2023).
2. 5 U.S. Code §§ 1101 et seq. and 1103(a)(5), <https://www.law.cornell.edu/uscode/text/5/part-II/chapter-11> (accessed February 1, 2023).
3. 5 U.S. Code § 1201, <https://www.law.cornell.edu/uscode/text/5/1201> (accessed February 1, 2023).
4. 5 U.S. Code § 7101, <https://www.law.cornell.edu/uscode/text/5/7101> (accessed February 1, 2023), and § 7117, <https://www.law.cornell.edu/uscode/text/5/7117> (accessed February 1, 2023).
5. S. 1871, An Act to Prevent Pernicious Political Activities, Public Law No. 76-252, August 2, 1939, <https://govtrackus.s3.amazonaws.com/legislink/pdf/stat/53/STATUTE-53-Pg1147.pdf> (accessed February 1, 2023).
6. H.R. 995, Uniformed Services Employment and Reemployment Rights Act of 1994, Public Law No. 103-353, 101st Congress, October 13, 1994, <https://www.congress.gov/103/statute/STATUTE-108/STATUTE-108-Pg3149.pdf> (accessed February 1, 2023).
7. 5 U.S. Code § 1206, <https://www.law.cornell.edu/uscode/text/5/1206> (accessed February 1, 2023).
8. 42 U.S. Code § 2000e, <https://www.law.cornell.edu/uscode/text/42/2000e> (accessed February 1, 2023).
9. 40 U.S. Code § 581, <https://www.law.cornell.edu/uscode/text/40/581> (accessed February 1, 2023).
10. U.S. National Archives, “Milestone Documents: Pendleton Act (1883),” last reviewed February 8, 2022, <https://www.archives.gov/milestone-documents/pendleton-act> (accessed February 2, 2023).
11. S. 2640, Civil Service Reform Act of 1978, Public Law No. 95-454, 95th Congress, October 13, 1978, <https://www.congress.gov/95/statute/STATUTE-92/STATUTE-92-Pg1111.pdf> (accessed February 2, 2023).
12. Donovan Sack and Bill Theobald, “Veterans Affairs Pays \$140 Million in Bonuses Amid Scandals,” *USA Today*, November 11, 2015, <https://www.usatoday.com/story/news/politics/2015/11/11/veterans-affairs-pays-142-million-bonuses-amid-scandals/75537586/> (accessed March 15, 2023).
13. U.S. Government Accountability Office, “Federal Workforce: Distribution of Performance Ratings Across the Federal Government, 2013,” GAO-16-520R, May 9, 2016, <https://www.gao.gov/assets/gao-16-520r.pdf> (accessed March 15, 2023); U.S. Government Accountability Office, *Results-Oriented Management: OPM Needs to Do More to Ensure Meaningful Distinctions Are Made in SES Ratings and Performance Awards*, GAO-15-189, January 2015, <https://www.gao.gov/assets/gao-15-189.pdf> (accessed March 15, 2023); U.S. Government Accountability Office, “Measuring Federal Employee Performance,” WatchBlog, posted October 18, 2016, <https://www.gao.gov/blog/2016/10/18/measuring-federal-employee-performance> (accessed March 15, 2023); Lisa Rein, “The Federal Workforce, Where Everyone’s Performance Gets Rave Reviews,” *The Washington Post*, June 13, 2016, <https://www.washingtonpost.com/news/powerpost/wp/2016/06/13/heres-the-news-from-the-federal-government-where-everyone-is-above-average-way-above/> (accessed March 15, 2023).
14. Ludwig von Mises, *Bureaucracy* (New Haven, CT: Yale University Press, 1944), [https://ia902300.us.archive.org/17/items/mises-pdfs/1944-01-01\\_LudwigVonMises\\_Bureaucracy.pdf](https://ia902300.us.archive.org/17/items/mises-pdfs/1944-01-01_LudwigVonMises_Bureaucracy.pdf) (accessed February 2, 2023).
15. Figure 1, “Permanent, Non-Senior Executive Service Employee Performance Rating Outcomes (All Rating Systems, Calendar Year 2013),” in U.S. Government Accountability Office, “Federal Workforce: Distribution of Performance Ratings Across the Federal Government, 2013,” p. 6.
16. President Donald J. Trump, Executive Order 13839, “Promoting Accountability and Streamlining Removal Procedures Consistent with Merit System Principles,” May 25, 2018, in *Federal Register*, Vol. 83, No. 106 (June 1, 2018), pp. 25343–25347, <https://www.govinfo.gov/content/pkg/FR-2018-06-01/pdf/2018-11939.pdf> (accessed February 2, 2023).
17. President Joseph R. Biden Jr., Executive Order 14003, “Protecting the Federal Workforce,” January 22, 2021, in *Federal Register*, Vol. 86, No. 16 (January 27, 2021), pp. 7231–7233, <https://www.govinfo.gov/content/pkg/FR-2021-01-27/pdf/2021-01924.pdf> (accessed February 2, 2023).
18. Rachel Greszler and James Sherk, “Why It Is Time to Reform Compensation for Federal Employees,” The Heritage Foundation, July 27, 2016, <https://www.heritage.org/jobs-and-labor/report/why-it-time-reform-compensation-federal-employees>.
19. Andrew G. Biggs and Jason Richwine, “Comparing Federal and Private Sector Compensation,” American Enterprise Institute *Working Paper* No. 2011-02, revised June 2011, <https://www.aei.org/wp-content/uploads/2011/10/AEI-Working-Paper-on-Federal-Pay-May-2011.pdf?x91208> (accessed February 2, 2023).

## Central Personnel Agencies: Managing the Bureaucracy

20. See Gene L. Dodaro, Comptroller General of the United States, “Government Efficiency and Effectiveness: Opportunities to Reduce Fragmentation, Overlap, and Duplication and Achieve Billions in Financial Benefits,” testimony before the Subcommittee on Emerging Threats and Spending Oversight, Committee on Homeland Security and Governmental Affairs, U.S. Senate, GAO-21-544T, May 12, 2021, <https://www.gao.gov/assets/gao-21-544t.pdf> (accessed February 2, 2023).
21. S. 20, Government Performance and Results Act of 1993, Public Law No. 103-62, 103rd Congress, August 3, 1993, <https://www.congress.gov/103/statute/STATUTE-107/STATUTE-107-Pg285.pdf> (accessed February 2, 2023).
22. Paul Light, “The Real Crisis in Government,” *The Capital Times* (Madison, Wisconsin), January 22, 2010, [https://captimes.com/news/opinion/column/paul-c-light-the-real-crisis-in-government/article\\_9e139318-3d00-5898-908d-4c7aee1e105d.html](https://captimes.com/news/opinion/column/paul-c-light-the-real-crisis-in-government/article_9e139318-3d00-5898-908d-4c7aee1e105d.html) (accessed March 15, 2023).
23. U.S. Constitution, Article II, Section 3, <https://www.law.cornell.edu/constitution/articleii#section3> (accessed February 2, 2023).
24. President Donald J. Trump, Executive Order 13957, “Creating Schedule F in the Excepted Service,” October 21, 2020, in *Federal Register*, Vol. 85, No. 207 (October 26, 2020), pp. 67631–67635, <https://www.govinfo.gov/content/pkg/FR-2020-10-26/pdf/2020-23780.pdf> (accessed February 2, 2023).
25. See note 17, *supra*.
26. President Donald J. Trump, Executive Order 13836, “Developing Efficient, Effective, and Cost-Reducing Approaches to Federal Sector Collective Bargaining,” May 25, 2018, in *Federal Register*, Vol. 83, No. 106 (June 1, 2018), pp. 25329–25334, <https://www.govinfo.gov/content/pkg/FR-2018-06-01/pdf/2018-11913.pdf> (accessed February 2, 2023).
27. President Donald J. Trump, Executive Order 13837, “Ensuring Transparency, Accountability, and Efficiency in Taxpayer-Funded Union Time Use,” May 25, 2018, in *Federal Register*, Vol. 83, No. 106 (June 1, 2018), pp. 25335–25340, <https://www.govinfo.gov/content/pkg/FR-2018-06-01/pdf/2018-11916.pdf> (accessed February 2, 2023).
28. See note 16, *supra*.
29. See note 17, *supra*.
30. Philip K. Howard, *Not Accountable: Rethinking the Constitutionality of Public Employee Unions* (Garden City, NY: Rodin Books, 2023).
31. James Madison, *The Federalist Papers* No. 45, January 26, 1788, <https://founders.archives.gov/documents/Madison/01-10-02-0254> (accessed February 1, 2023).

