

**STATEMENT OF ANTHONY M. REARDON
NATIONAL PRESIDENT
NATIONAL TREASURY EMPLOYEES UNION**

to the

**SUBCOMMITTEE ON GOVERNMENT OPERATIONS
COMMITTEE ON OVERSIGHT AND REFORM
U.S. HOUSE OF REPRESENTATIVES**

“The Future of Federal Work II”

July 21, 2022

Chairman Connolly, Ranking Member Hice and members of the House Subcommittee on Government Operations, thank you for the opportunity to share the thoughts of the National Treasury Employees Union (NTEU) on how the government can build and support an effective workforce for the future. As National President of NTEU, which represents 150,000 federal workers in 34 agencies and departments, I appreciate the chance to submit this statement for today’s hearing.

Telework

One of the keys to attracting and retaining the workforce of the future is to provide employees with telework and other work schedule flexibilities. Under your leadership, Chairman Connolly, as well as that of Representative Sarbanes and many other members of Congress on both sides of the aisle, telework has been brought to the forefront of discussion and federal employees have increasingly been offered the opportunity to participate in telework programs. In addition, the need to protect employees during the COVID-19 pandemic has shown that many federal employees can work just as productively from home or other locations outside of the office. Yet, today, as agencies plan to move forward post-pandemic, there are still significant opportunities to continue to expand the use of telework across government.

Experience has shown that telework has many advantages. The use of telework in the federal sector has been a win not just for employees but for management who can more effectively recruit workers without losing productivity, for taxpayers who save on federal building leasing costs, and for the environment, which benefits from reduced pollution from commuting. Telework saves energy, improves air quality, reduces congestion and stress on roads and bridges, and enhances work-life balance and the quality of family life.

In the thirty-four agencies represented by NTEU, agency implementation of telework programs are mixed. NTEU has contractual agreements regarding telework or, as some agencies describe it, flexiplace, with many agencies, including the IRS, Patent

and Trademark Office (PTO), Customs and Border Protection (CBP), the Securities and Exchange Commission (SEC), the Office of Comptroller of the Currency (OCC), the Federal Communications Commission (FCC), the Department of Energy (DOE) and the Food & Nutrition Service at the USDA, to name just a few. Let me quickly review the status of telework programs in several of these agencies prior to the pandemic.

NTEU represents the support staff and trademark attorneys at the U.S. Patent & Trademark Office (PTO). The Trademark Office serves as a model agency for telework, with over 85 percent of the trademark attorneys at this northern Virginia based agency participating in telework. Management supplies participating employees with all physical equipment needed and employees are on a strict production schedule. PTO management has not expressed any problems with accountability and only those employees with fully satisfactory performance are eligible to participate.

At the IRS, NTEU first negotiated a telework agreement in 1996. This program has been maintained in all subsequent contracts and has served as a model for the federal sector. The agreement makes clear both employee and employer responsibilities and criteria for participation in telework. Prior to the pandemic, approximately 24,000 bargaining unit employees and 6,500 non-bargaining unit employees participated in telework. Several thousand of them worked full-time from a telework location. This not only assists with employee morale and productivity but creates a considerable cost savings to the Treasury Department by saving on rent or office space expenses. The IRS program has worked well, in part, due to the intense discussions between management and employees and their representatives prior to its implementation. Yet, even with this level of participation, serious issues remain with management resistance to telework. Prior to the pandemic, there were cases where managers were not allowing telework in cases when the contract and IRS policy clearly permits it. NTEU filed numerous grievances on behalf of IRS employees denied the ability to telework. The filing of grievances is uneven across IRS offices, indicating the contractual criteria is applied differently depending on the office or bureau in which an employee works. Our experience at PTO and IRS, as well as at other agencies, prove that labor – management collaboration is essential to an effective telework program.

The pandemic has proven, once and for all, the value of a robust telework and remote work programs in the federal government. Maximum telework policies have protected the health and safety of federal workers around the country, and their families, without sacrificing productivity. During the pandemic, many agencies fully embraced telework by expanding it to more employees and investing in the technology needed to make them successful. Agencies with existing telework programs were best able to handle the pandemic while those who had resisted telework were unprepared, at a loss to government efficiency and service to the public. The success of telework and remote work during the pandemic is a justification for its continued use.

Throughout the challenges of the pandemic, federal employee productivity went up with telework. Job satisfaction went up. Not surprisingly, telework was successful where existing, well designed telework programs were expanded, but also in agencies

that were unprepared for expanded telework, employees and agencies often rose to the occasion and made it work. That, Mr. Chairman, is an example of the creativity and motivation of the federal workforce.

Unfortunately, during the last administration, some agencies tried to impose policies to roll back telework programs, in some cases to levels even more restrictive than pre-pandemic policies. These were extremely misguided attempts and, if implemented, would have hurt the ability of the federal workforce to have the resiliency and flexibility it needs to serve the American taxpayers both in normal and challenging times. That is why when the Administration issued its new guidance on telework and remote work, NTEU welcomed it as a solid start as agencies plan the future of work. We agree that any employee who has successfully teleworked through the pandemic – and there are tens of thousands of them – should be considered telework eligible from now on, post-pandemic. This is an important principle that will allow telework programs to be expanded wherever possible.

Mr. Chairman, in addition to being an elected labor union leader, I, like you, am also an American taxpayer. I want to remind the Subcommittee of the tremendous benefits in savings to the federal government with telework/remote work. At every NTEU represented agency with a robust telework program, there have been tens of millions of dollars in taxpayer savings. For example, at the NTEU represented Federal Communications Commission (FCC), the agency recently moved from its location at The Portals office complex in Southwest DC to a new location. Thanks to its telework program, the new office will be 30% smaller with reduced annual rent. The FCC has estimated it will save as much as \$119 million over the 15 years of the new lease. And at the U.S. Patent & Trademark Office (PTO), telework saves the agency at least \$12.5 million a year in leasing costs. Since PTO is fully funded by fees paid by applicants, without telework, American inventors and innovators could have seen increased fees to pay for the higher cost of office space.

There are several proposals NTEU supports that would improve telework in the federal government. Mr. Chairman, NTEU is proud to support the Telework Metrics and Cost Savings Act (HR 7951), introduced by you and Representative John Sarbanes (D-MD) and passed by the Committee last month, that seeks to strengthen and expand the federal government's telework programs, especially in light of the lessons learned during the recent pandemic. This new legislation builds on the Telework Enhancement Act that was passed by Congress over ten years ago and will develop standards for the collection of federal agency data on telework, help develop supervisor and manager training on telework, and track cost savings achieved through the expansion of telework. It also modifies a provision that made employees with AWOL issues permanently ineligible for telework, instead only making them ineligible for telework for five years.

NTEU also applauds the initiative in the Bipartisan Infrastructure bill passed by Congress and signed by President Biden to expand rural broadband. At one agency we represent, 50 employees with portable work were not able to work remotely because their homes were in rural areas lacking acceptable broadband. Many federal employees live in

rural America and expanded rural broadband would allow them to do their jobs in the rural communities where they live.

Now that many federal agencies have successfully implemented telework programs for 1-4 days per week, the next step should be the expansion of remote work programs – sometimes called full-time telework programs – where the nature of the work allows it. The NTEU-represented Trademark Office currently has such a program for fully successful employees with two years or more of service with the Office. And of course, almost every agency developed experience with full-time telework during the pandemic. However, there are several issues to address with increased use of remote work going forward, including:

- 5 CFR § 531.605 (d) requires employees to report to their post of duty once per biweekly pay period for locality pay and travel purposes. This has been an obstacle to employees who may occasionally work from a third location, such as a second home, or spending an extended time with their elderly parents while working. To determine the locality pay area of the employee's post of duty, a "six months and a day" rule could be adopted, as is done for determining residency for tax purposes.
- Employees who experience an office relocation outside their commuting area should be more frequently allowed to become full-time teleworkers rather than be subject to mandatory relocation. Unions have sometimes, but not always, been able to negotiate such provisions. Doing this would still respect management's ability to place new hires at the new location and offer incentives and relocation benefits to existing employees to relocate, but it would guarantee that no employee would lose their job or be faced with a difficult choice if their circumstances of life made it difficult or impossible to relocate.
- Full-time and near full-time teleworking employees should be able to more easily redesignate their assigned post of duty office. With enhanced full time telework, management can assign teams to supervisors without regard to geography or office assignment. This means that a physical field office evolves to mostly the administrative function of issuing security cards, training and rare in person meetings. An employee should be able to more easily re-locate to a post of duty from – for example – a Syracuse NY field office to a Dumfries, VA field office, rather than being required to apply for a vacant position in a lateral move.
- Sen. James Lankford (R-OK) recently raised the matter of making full time telework a tool to assist military spouses who often have to relocate frequently as their servicemember spouses are transferred. NTEU would strongly support such an initiative by expanding the number of full-time telework-eligible positions that would be available to these and other teleworking employees.

Additional Key Factors Impacting Recruitment and Retention Now and in the Future

While flexible work schedules and expanded telework and remote work programs will be key to recruiting and retaining employees, it is also critical for the federal government to provide employees better paying jobs and a strong benefits package—including strong retirement and health care benefits and paid family leave—as well as create and support a work environment that is based on merit, values its employees and engages with them and their representatives to solicit input and address workplace challenges in a cooperative way.

For example, lagging federal pay rates have taken their toll on federal employees and their families over the last few years, with their pay raises trailing increases to private sector wages. Like all American workers, federal employees face ever-increasing costs for their utilities, health care, food, housing and education. This has only been exacerbated by inflation, which increased to 9.1 percent in June, marking the largest 12-month increase since December 1981. As noted in the President's FY 2023 budget request, between 2009 and 2020, U.S. average worker pay rose by 38 percent while federal civilian pay increases amounted to only a 15 percent increase, creating a real risk of attrition within the existing workforce, reducing the competitiveness of federal jobs, and devaluing the contributions of the federal workforce to the Nation. The resulting 23 percent average pay disparity between the federal government and the private sector is far greater than the 5 percent goal set by the Federal Employee Pay Comparability Act of 1990 (FEPCA), which governs annual white-collar federal employee pay adjustments and sets those adjustments based on changes in the Employment Cost Index (ECI), i.e., changes in private sector wages and salaries.

Under FEPCA, federal workers should receive a 4.1 percent pay increase for 2023 before locality pay is added. NTEU appreciates that the President included an average a 4.6 percent pay increase for federal employees in his budget request. However, given the years of pay freezes and below-market pay adjustments combined with the steep rise in inflation, NTEU urges Congress and/or the White House to increase that amount and provide an average 5.1 percent pay increase, equal to that proposed in the Federal Adjustment of Income Rates (FAIR) Act (H.R. 6398/S. 3518) introduced by Chairman Connolly and Senator Schatz (D-HI). Under that legislation, federal employees would receive a 4.1 percent across-the-board adjustment and an average 1.0 percent increase for locality pay, which is particularly important for those living in high cost of living areas where the competition with the private sector must be more aggressive.

While many federal employees believe in government service and agency mission is often listed as the number one reason they work for the federal government, massive pay disparities with the private sector undermine efforts to recruit and retain skilled individuals who are drawn to public service. Competitive pay helps ensure a professional, skilled workforce is on board administering our nation's laws and programs and providing critical services for our nation and the American people. Adding to this challenge is the low unemployment rate, making efforts to recruit and retain skilled

workers even more competitive. For example, private sector employers such as Exxon, PricewaterhouseCoopers LLP, Microsoft, and T. Rowe Price are reportedly raising salaries or providing special bonuses to address the impact of inflation on their workers and a tough labor market. If the federal government wants to compete for top talent, then it needs to offer competitive pay and benefits. Increasing the proposed pay adjustment for 2023 is a great way to help do that.

In addition to pay, benefits such as retirement, leave and healthcare also have a significant impact on the federal government's ability to recruit and retain employees in the civil service. As the nation's largest employer, the federal government provides benefits to over 2 million federal employees, retirees and their families. For retirement, most federal employees are covered under the Federal Employees Retirement System (FERS), a carefully crafted retirement system that is a critical factor for successful recruitment and retention in the federal government. Unlike many state retirement systems, FERS is fully funded and financially sound with no unfunded liability. In fact, FERS is frequently pointed to as a model by a diverse group of retirement experts for its deliberately constructed three-legged stool structure (defined benefit, defined contribution [Thrift Savings Plan (TSP)], and Social Security). All three parts are necessary for a livable retirement. Federal employees contribute a portion of their pay toward their retirement to achieve a modest retirement income.

Since 2010, Congress has twice increased employee contributions to FERS, essentially cutting take-home pay for those hired after 2012 and contributing \$21 billion to deficit reduction. However, this did not stop the last administration from proposing massive changes to federal employee retirement benefits that would make workers pay more for a reduced benefit and make their retirement less secure. Federal pensions – a guaranteed income not dependent on the stock market—may not be as popular a benefit for employers in the private sector, but its fall from use is one of the leading contributors to the retirement insecurity in this country. Half of all Americans have less than \$10,000 saved for retirement. We should not substantially increase the number of retirees unable to support themselves in their senior years by diminishing or dismantling the federal retirement system.

We remain vigilant in our fight against proposals to reduce benefits as such action could impact recruitment and retention. According to the 2021 OPM Federal Benefits Survey, employees expressed that their TSP and FERS/CSRS benefits were extremely important to them (96% and 95% of respondents respectively). In fact, not only is the availability of a retirement annuity important to employees, the benefit has been shown to play a key role in recruiting and retaining them. In the 2021 survey, 78 percent of participants indicated that the availability of a retirement annuity through the FERS or CSRS influenced their decision to take a job with the federal government to a “great” or “moderate” extent. The trend is the same when looking at how FERS/CSRS impact retaining employees, with 88 percent of participants indicating that FERS/CSRS influenced their decision to remain with the federal government to a “great” or “moderate” extent.

The Federal Employees Health Benefits Program (FEHBP), the nation's largest employer-sponsored health insurance program, which provides coverage to approximately 8.2 million federal employees, retirees, and their family members, also has a significant impact on recruitment and retention. In 2021, 72 percent of survey respondents in the OPM Federal Employee Benefits Survey reported that the availability of health insurance through the FEHBP influenced their decision to take a federal job to a "moderate" or "great" extent, while 79 percent of respondents reported that the availability of health insurance through the FEHBP influences their decision to stay with their job to a "moderate" or "great extent."

However, federal workers continue to face rising health care costs under the FEHBP, and many are finding it increasingly difficult to continue to afford their health insurance coverage because of the continued rise in overall medical costs and limited federal employee pay raises in recent years. This year, FEHBP enrollee premiums increased an average of 3.8 %, with some participating health insurance plans increasing their premiums by even larger amounts. Like other Americans, federal workers and retirees continue to absorb higher out-of-pocket costs in the form of larger co-pays and co-insurance for office visits, procedures, and prescription drugs, while they already pay a higher share on average for premiums and higher overall deductibles than their private-sector counterparts covered by large, employer-sponsored plans. NTEU urges Congress to oppose further erosion of federal employee benefits that will increase the costs to federal workers and could adversely impact recruitment and retention.

If Congress is serious about efforts to hire the next generation of public servants, efforts should be made to protect current benefits and to provide additional benefits that will help the federal government compete with the private sector, such as paid family leave. There is a growing consensus across the country that paid family and medical leave is a necessity for today's families. Most of the top corporations in the U.S. offer paid family leave. Paid family leave is a win-win for employees and employers. Employees are allowed time to address health and care-giving issues, while agencies get an employee who returns to the workplace instead of having the expense of hiring and training a new employee. NTEU fully supports expanding federal employee leave benefits and supports the Comprehensive Paid Leave for Federal Employees Act, H.R. 564, led by Chairwoman Carolyn Maloney (D-NY) and passed by this Committee last year, which would build upon the paid parental leave program created in 2019 by providing 12 weeks of paid Family Medical Leave Act leave to care for oneself, a spouse, parent or child with a serious medical condition. We also strongly support the four weeks of partial wage replacement paid family leave included in the Build Back Better Act, H.R. 5376, passed by the House in November. Few employees can go weeks without pay and no one should be forced to choose between caring for a loved one and a paycheck.

Another issue of immediate importance is re-authorizing paid leave for federal workers dealing with COVID-19. While things may be getting better nationally, we are still in a global pandemic. Federal employees must have flexibility to meet emergency needs that could arise from becoming infected with COVID-19 or having a family member become ill with the virus. NTEU has endorsed legislation from Representative

Sean Patrick Maloney, H.R. 7723, which would extend the COVID-related paid leave provisions from the American Rescue Plan through December 31, 2022. As you know, this important provision was allowed to expire last September and since that time federal workers struggling with COVID-19 have been forced to exhaust their existing leave balances. Passing H.R. 7723 would give much needed relief to federal employees as we continue to navigate the constantly changing environment of this pandemic.

Working conditions also play a huge role in determining whether to apply for and accept a job. This includes merit-based personnel policies that prevent politicization and favoritism and provide fair processes to address workplace disputes. A merit-based, non-partisan civil service is the backbone of our federal government. It is imperative that our career civil servants who are charged with implementing complex federal programs on behalf of the American people can continue to do their work with dedication and skill, regardless of changes in elected leadership. Proposals that eliminate or restrict collective bargaining and due process rights for these employees would return the civil service to the dysfunctional spoils system of the past, driven by patronage and political favoritism rather than ability and merit. Federal law clearly states that the right of employees to organize, bargain collectively, and participate through labor organizations in decisions which affect them safeguards the public interest and contributes to the effective conduct of public business. Front-line employees and their union representatives have ideas and information that are essential to improving the delivery of quality government services to the public and through the collective bargaining process and the use of pre-decisional involvement, employees can have meaningful input resulting in better quality decision-making, more support for decisions, timelier implementation, and better results for the American people. It is important that these rights are maintained, and that employees continue to have a voice in their workplace and are not afraid to blow the whistle when they see waste or wrongdoing.

It is important to remember that in the federal sector, there is no requirement that an individual join and pay dues to a union. However, federal unions are required to represent every individual in a bargaining unit, whether or not they choose to pay dues. Federal unions are not allowed to go on strike and have much narrower collective bargaining rights than their private sector counterparts. Federal workers deserve a voice in their workplace and NTEU opposes efforts to eliminate current rights as well as other indirect efforts that aim to undermine our ability to effectively represent our members.

For example, during the last administration, many agencies failed to bargain in good faith—rushing contracts through the statutory impasse process to have their proposals imposed, in some instances without first even attempting to negotiate as federal law requires. This left important employee benefits like telework essentially discretionary where supervisors could allow or disallow it without any consistency or justification, leaving employees nearly powerless to object when they are treated unfairly. Agencies also worked to erode the ability of the union to assist employees when they are mistreated by limiting the time that union leaders are given to represent employees. These actions weakened the employees' voice in the workplace and undermine collective bargaining altogether.

The Biden administration has taken quick action to address these matters and restore productive labor-management relations and enhance them. For example, in April 2021 President Biden issued EO 14025 establishing the White House Task Force on Worker Organizing and Empowerment. The goal of the Task Force was to lead by example by ensuring that the federal government is a model employer with respect to encouraging worker organizing and collective bargaining among its workforce. In October, the Task Force announced initiatives that will give employees a stronger voice in the federal workplace and OPM issued guidance urging agencies to inform prospective employees, new hires, and current employees about the collective bargaining status and union affiliation and make information available on how they can become dues-paying members of their unions. The report issued by the Task Force in February also recommended that the Administration institutionalize labor-management forums and pre-decisional involvement across the executive branch. Legislation has been introduced in the past to codify these efforts and we urge Congress to reintroduce and pass these critical measures and act to ensure that future administrations cannot undermine federal employee rights and protections and that agencies fulfill their statutorily mandated responsibilities to bargain in good faith.

Speaking of which, I want to thank you, Mr. Chairman, for your efforts to fight President Trump's Schedule F executive order and the House for including in the National Defense Authorization Act (NDAA) for FY 2023 your amendment, based on H.R. 302, the Preventing a Patronage System Act, H.R. 302. As you know, the last administration established a new category of excepted service employees, known as Schedule F, which, if fully implemented, could have affected tens of thousands of non-political career federal employees, stripping them of their civil service protections and allowing them to be hired and fired at will. Your bipartisan amendment would help prevent future attempts to undermine the civil service in this way by stopping any position in the competitive service from being reclassified to an excepted service schedule created after September 30, 2020 and limiting federal employee reclassifications to the five excepted service schedules in use prior to fiscal year 2021. We must ensure that this assault on the merit-based civil service cannot happen again.

In addition to workplace rights and protections, ensuring that the government follows the Merit System Principles is also important. This ensures that individuals are hired to work for the federal government based on merit, without regard to their race, age, gender, political views, or relationship with the hiring official. NTEU also fully supports the application of veteran's preference in hiring decisions as part of our obligation to help those who have worked so hard to defend our nation and our freedom.

Government must act to fill vacancies quickly to help agencies meet their missions. This means a renewed effort to significantly decrease the time to hire new employees. In our experience, some of the things that make the process onerous are the complicated extra steps that agencies include in their hiring process due to long-standing practice or fear of future litigation rather than requirements directly tied to the statute. And new hiring authorities rarely help the situation as it is common knowledge that

agencies only use a few of the multiple hiring tools available to them. Rather, agencies should invest in training their Human Resources (HR) workforce. Sustained and comprehensive training for all agency HR professionals and opportunities for HR professionals in various agencies, not just the Chief Human Capital Officers, to meet with each other and experts at OPM and share best practices and challenges they are facing can help speed up the process. Also, ensuring that hiring managers and subject-matter experts are part of the hiring process from the beginning and requiring part of a supervisor's performance evaluation to be based on personnel management, recruiting, hiring, and human capital responsibilities can help in reducing the time to hire.

However, NTEU remains concerned with proposals to expand noncompetitive eligibility. History has shown that agencies have abused such flexibility; using these programs as the only method of hiring, which undermined veterans' preference and civil service protections. Sweeping exemptions to hiring rules and regulations are extremely concerning as it could undermine the very principles that ensures that the civil service is non-partisan, based on merit, and reflects the citizenry it serves. We also have concerns with providing agencies flexibility to hire part-time and project-based workers, which moves the career non-partisan workforce closer to a temporary workforce.

While we agree that there are some problems with implementing the current authorities granted to federal agencies to recruit and hire skilled workers, Title 5 does not need to be overhauled to reach those goals and NTEU opposes efforts to grant agencies additional broad authority.

CLOSING

Thank you again for the opportunity to share my views with you. Ensuring that the federal government is able to recruit and retain the best and brightest is essential for all Americans. To do so, the federal government must ensure that it is providing employees with flexible work arrangements, providing competitive pay and benefits and promoting a collaborative approach to working with employees and their representatives to ensure that every federal employee is treated with dignity and respect. Thank you.