



July 16, 2018

Dear Representative:

As National President of the National Treasury Employees Union, representing over 150,000 federal employees in 32 different agencies, I am writing with regard to three measures currently under consideration by the Committee on Oversight and Government Reform.

H.R. 5300, introduced by Rep. Gary Palmer (R-AL), amends title 44 for the purpose of eliminating collective bargaining on any IT issues. As individuals who suffered a devastating loss of personal information in the wake of the Office of Personnel Management (OPM) cyber-attacks, NTEU members desire a safe and secure federal IT environment. In our view, H.R. 5300, the *Federal Information System Safeguard Act*, is wholly unnecessary given that current Title 44 provisions prescribe detailed agency head responsibility to “ensure that all personnel are held accountable for complying with the agency-wide information security program” (See 44 USC 3554 (a) (7)). Further, it should be noted that under the current title 5 statute, federal employee labor organizations cannot bargain over an agency’s IT actions or decisions, but rather chapter 71 of title 5 limits our role to bargaining over any resulting adverse impacts to employees. And, importantly, current chapter 71 statute already allows such limited bargaining to occur post-implementation (see 5 USC 7106 (a)(2)(D)) when agency heads “take whatever actions may be necessary to carry out the agency mission during emergencies.” This bill is unnecessary as agency heads already have the authority needed to secure their IT environment without requiring a loss in limited collective bargaining rights.

H.R. ___, introduced by Rep. Jody Hice (R-GA), titled the *Merit Systems Protection Board Reauthorization Act of 2018*, includes concerning provisions that would upend the role of the Merit Systems Protection Board (MSPB) in its work to oversee employee appeals and “to promote an effective federal workforce free from prohibited personnel practices.” Under Section 3 of the bill, the MSPB would establish a filing fee, which could result in some cases not being brought owing to an individual’s inability to pay, which could disproportionately affect lower grade workers. Arguments made that such a fee is needed to protect the MSPB from a flood of frivolous cases do not withstand scrutiny when reviews find only three cases dismissed by MSPB administrative law judges since 2012 involving appellants who were considered “vexatious” litigants. Section 4 of the measure seeks to dramatically break with current law and past intent, and would eliminate the guaranteed right to a hearing for every appellant who has established jurisdiction. Further, this section would also substantially narrow the Board’s ability to mitigate personnel actions and would lower the evidentiary standards for misconduct cases to substantial evidence. A core function of the Board is to ensure that agencies are not doling out disproportionate discipline resulting in unequal justice, and this language would fundamentally eliminate any true appeals process in the federal sector if the MSPB could unilaterally decide not to grant an employee the opportunity for an oral hearing.

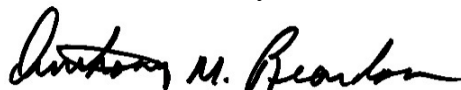
H.R. 559, introduced by Representative Barry Loudermilk (R-GA), and its revised language, amends title 5 in such a manner that would hinder effective performance management at federal agencies by both eliminating agency dispute resolution processes and the due process rights of federal employees. Section 2 of the revised measure would eliminate agencies ability to remove or discipline employees for performance reasons under Chapter 43 of title 5 USC, and under Sections 3 and 4 would

amend chapter Chapters 71 and 75 of title 5 USC to eliminate the right of frontline employees to grieve agency decisions to remove or otherwise discipline employees for either performance or misconduct reasons. Further, Section 10 of the bill would drastically extend the probationary period for individuals hired into the competitive service from one year to two years, and with respect to any position that requires formal training, the two-year time period would begin after the required formal training. Subjecting frontline federal employees- who are not tasked with managing agencies and long-term strategic responsibilities- to longer durations of assessment that preclude due process and collective bargaining rights is unfair and unnecessary. We also have significant outstanding questions about what constitutes “formal training” under the bill as training programs differ greatly by agency. NTEU represents a variety of employees who undergo long periods of significant training that occurs at multiple points in time (non-consecutive in nature) and where the employee is already executing the actual job in between training sessions. It is also important to recognize that the end of a probationary period does not mean that an employee cannot be disciplined or removed. It merely allows the employee to challenge such actions that are done without merit.

Overall, H.R. 559 seeks to eliminate any meaningful due process rights of frontline employees by eliminating their ability to challenge removals and other forms of discipline such as demotions and suspensions. It also significantly diminishes the collective bargaining rights of employees by prohibiting the grievance process, which is a faster, cheaper, and more effective way for agencies to manage day-to-day workplace conflicts with employees than in court. It is important to note that the ability to seek a hearing or to appeal an agency’s decision does not equate to management not having the ability to fire or otherwise penalize an employee. Rather than seeking to eliminate any ability to question senior political or career managers’ decisions, what is needed is increased and improved supervisor training in the federal sector. NTEU has long supported and advocated Congress enacting federal supervisor training. Lack of key due process rights for frontline employees will only serve to allow discrimination, sexual harassment, whistleblower retaliation, and other forms of management retaliation to go unchecked at federal agencies, allowing increased politicization in federal personnel actions, further eroding the public’s trust in federal agencies. Similar legislation was enacted in mid-2017 for the Department of Veterans’ Affairs, and early indications of improper management actions taken against lower grade employees warrant Congress further reviewing the impact at the VA and acting to secure due process and collective bargaining rights for bargaining unit employees, rather than risking such a scenario across all agencies.

Taken together, these measures threaten decades of successful federal labor management efforts as well as damage the ability of labor to represent bargaining unit employees and to work with agency managers to provide the best service to the American public.

Sincerely,

A handwritten signature in black ink, reading "Anthony M. Reardon". The signature is fluid and cursive, with the first name being the most prominent.

Anthony M. Reardon
National President