

Kaufman, Debbie -FS

From: Baumann, Melissa G -FS on behalf of Berry, Chris -FS
Sent: Thursday, March 31, 2016 11:50 AM
To: Tidwell, Tom -FS
Cc: FS-pdl wo chief nlc; FS-pdl nffe fsc executive board; FS-pdl nffe fsc locals
Subject: An Open Letter to the Chief Regarding Failure to Implement the LMWFA



National Federation of Federal Employees

International Association of Machinists and Aerospace Workers
Forest Service Council



James C. "Chris" Berry, President

Melissa Baumann, Secretary-Treasurer

March 31, 2016

Thomas Tidwell
Chief
USDA Forest Service
1400 Independence Avenue, SW
Washington, DC 20250

Dear Chief Tidwell,

I am writing to you today to address the Forest Service's continued disregard of its long term temporary seasonal workforce. To be clear, I am referring to the Forest Service's continued refusal to implement the Land Management Workforce Flexibility Act (LMWFA), signed into law August 7 of last year.

Let me repeat: The LMWFA, Public Law 114-47, has been in effect since August 7, 2015, but the Forest Service has *still* not implemented it.

The NFFE Forest Service Council (Union) began work on this bill in 2009. We have fought tirelessly to create a path for the Forest Service to have access to our valuable, experienced – yet temporary – workforce. The Union succeeded in working with lawmakers to get the bill introduced in 3 sessions of Congress, leading to its ultimate passage last year.

The Union believed the passage of the LMWFA would mean that Agencies, including the Forest Service, would begin accepting applications from eligible temporary employees. As noted by the Supreme Court (*Gozlon-Peretz v. United States*, 498 U.S. 395, 404 (1991)), "It is well established that, absent a clear direction by Congress to the contrary, a law takes effect on the date of its enactment." The LMWFA included no date delaying implementation, and thus, should have been implemented in August 2015.

Even so, when it became apparent that Agencies were waiting for OPM to issue guidance, the Union [asked President Obama](#) to direct OPM to issue any needed guidance quickly. Although it took another 3 months for OPM to [issue guidance](#) on December 29, 2015 – which although flawed, still provides guidance for implementation – the Forest Service persisted in refusing to implement.

As part of the Union's continued effort to force implementation of the law, the Union filed both a grievance and a negotiations proposal. The proposal urged the Forest Service management to implement immediately; that the

Union would agree to post-implementation negotiations; and that the most important aspect of this was to open these job opportunities up to this deserving population of long term Forest Service employees. The Agency responded to the Union's proposal on Feb. 26, but still failed to implement.

The Union then engaged the Agency in negotiations as quickly as we could, so the Agency would have no other remaining perceived barriers to implementation. We began negotiations on March 7, completed them on March 15, and had the agreement approved by USDA on March 18.

Yet the Forest Service STILL will NOT implement this 8 month old law until *APRIL 18, 2016*. Has the Agency and the Human Resources processes it uses become so cumbersome that it takes months upon months to implement a law that is largely similar to other hiring authorities that already exist?

Why is it that as of this day, other agencies have been able to implement this eligibility? We see vacancy announcements offered by the [Natural Resources Conservation Service](#), [Rural Housing Service](#), [Food Safety and Inspection Service](#), [Department of Labor](#), [Department of Homeland Security](#), and [Park Service](#). But NOT the Forest Service – the Agency with the largest population of these employees. The Forest Service does nothing more than stonewall their “most valuable assets” by not implementing this law while others have clearly been able to do so.

There is no reason we should not have been the very FIRST to implement this important piece of legislation. We are asking you to rectify this situation immediately, thus allowing the law to be implemented so that the Agency can benefit from eligible temporary employees being permitted to apply for permanent Merit vacancies.

Sincerely,

/s/ Chris Berry

Chris Berry
President
NFFE-Forest Service Council

Cc: Forest Service NLC
NFFE Forest Service Council Executive Board
NFFE Forest Service Council Local Presidents