



NATIONAL FEDERATION OF FEDERAL EMPLOYEES

Affiliated with the International Association of Machinists & Aerospace Workers, AFL-CIO

April 12, 2016

The Honorable Jason Chaffetz
Chairman
Committee on Oversight and Government Reform
United States House of Representatives
2157 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Elijah Cummings
Ranking Member
Committee on Oversight and Government Reform
United States House of Representatives
2157 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Chaffetz and Ranking Member Cummings:

We thank the Committee for the opportunity to review and comment on Representative Connolly's technical fix bill which amends the Land Management Workforce Flexibility Act (Public Law 114-47) to ensure that its implementation is aligned with Congressional intent. As stated in numerous places in the Congressional Record, that intent is that eligible employees in time-limited appointments be afforded "the same opportunity to compete for career advancement opportunities available to other federal employees." We believe the technical fix bill makes this intent abundantly clear – we hope and expect unmistakably so.

The original Act authorized Act-eligible employees to compete under the "internal merit promotion procedures" of any agency. Under Part 335 of Title 5 of the Code of Federal Regulations, each agency develops its own merit promotion plan, subject to criteria laid out in the Code. Merit promotion procedures are internal to each agency. Among the authorities afforded each agency under Part 335 is the authority to designate different areas of consideration, such as whether a given vacancy is open exclusively to members of its own workforce or to all federal employees. In discussing the Act during its development, it was always our expectation that the ability of Act-eligible employees to compete would be subject to the proper exercise of the hiring agency's authority under its internal procedures to set the area of consideration for any given vacancy announcement – just as it would be subject to other aspects of the agency's internal procedures. In other words, Act-eligibles would be treated just like other employees. It was never the intent for the Act to trump agencies' authority under Part 335 to set areas of consideration with respect to Act-eligible employees.

Unfortunately, the Office of Personnel Management, in its implementation guidance, interpreted the term “internal merit promotion procedures” to “refer to a situation where the hiring agency... is accepting applications only from individuals inside its own workforce.” This interpretation prevents agencies from considering Act-eligible employees when positions are otherwise open to all federal employees and forces agencies to consider Act-eligible employees from outside its internal workforce when positions are otherwise only open to internal candidates. It was not the intent of the Act to overrule the discretion of agencies to set the areas of consideration for their vacancies in such a fashion.

Our reading of the technical fix bill is that it mandates (1) if an Act-eligible’s employing agency limits applicants exclusively to its own employees, Act-eligibles may apply; and (2) if an agency accepts applicants from federal employees outside its own workforce, Act-eligibles (regardless of their employing agency) may apply. In other words, it codifies that application of the area of consideration to Act-eligibles shall mirror exactly its application with respect to other federal employees. This comports precisely with Congressional intent as we understand it and as is expressed in the Congressional Record.

On behalf of the thousands of long-serving wildland firefighters and other temporary workers to whom this reform means opportunity, please accept our deepest thanks for your work on the original Act and your tenacity in working through these implementation problems. We would also like to thank Representative Connolly and his staff who have been tireless advocates of this important, good-government reform.

Sincerely,



William R. Dougan
National President

Cc: The Honorable Gerald Connolly
United States House of Representatives