



## NATIONAL FEDERATION OF FEDERAL EMPLOYEES, IAMAW, AFL-CIO



### NFFE-IAM Supports Appeals Rights for Federal Employees Working in Sensitive Positions (H.R. 5355)

**Position:** **The right to appeal adverse actions related to employment is a fundamental aspect of due process. Meaningful due process in federal employment is critical to protecting the workforce against political corruption and extortion. It is also vital to sustaining a legitimate whistleblower process. Misrepresented as an individual right not available in the private sector, there is a consistent effort by some in Congress to eliminate or reduce appeals rights and due process for federal employees. By falsely claiming that federal employees are impossible to terminate—disproven by thousands of terminations each year—these members of Congress attempt to pave the way for more undue political influence and corruption of the Executive Branch. H.R. 5355 returns appeals rights and due process to a portion of federal employees who unnecessarily lost full appeals rights by being lumped in with employees who hold security clearances. This is a technical fix in the law. NFFE-IAM strongly supports H.R. 5355.**

The enemies of meaningful due process often mischaracterized it as an individual right that delays discipline of federal employees and prevents the termination of poor performers. Both claims are false, easily disproven by the tens of thousands of disciplinary actions and terminations executed each year in the federal workforce.

Opponents of due process will then argue that the termination rate for federal employees is far below the termination rate of the private sector. This is true, as it should be, considering the great lengths the federal government takes to carefully vet the qualifications of each applicant, necessary for the higher level of trust federal employment requires versus the private sector. If the termination rates were the same, then logic would dictate the government was failing to properly vet applicants.

H.R. 5355 is a technical fix in the law that returns appeal rights to federal employees in sensitive but not classified (i.e., security clearance) positions. In 2013, the Federal Circuit Court of Appeals in the case of *Kaplan v. Conyers and Northover*, the court decided that the MSPB's ability to review a federal agency decision on an employee's eligibility to hold a sensitive position is limited, even when it does not involve access to classified information.

H.R. 5355 will reverse the federal circuit court ruling by allowing federal employees working in “sensitive” positions to appeal adverse action decisions to the MSPB. It does not issue any new authorities or expand due process or appeals rights, it only returns what was unnecessarily lost because of an overreach of the law. NFFE supports the passage of H.R. 5355 to protect whistleblowers and ward off political corruption and extortion in the Executive Branch.