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Director's Perspective

Civil Service Reform: Things to Consider for the Next President

Thirty-eight years ago, the Civil Service Reform Act (CSRA) became law. The CSRA was the product of extensive study by experts, and it laid down new structures, processes, and substantive rules touching on most major aspects of personnel management throughout the executive branch. Today, many policymakers and managers express dissatisfaction with the Federal personnel system, to the extent that this will likely be on the management agenda for the next U.S. President. As policymakers and executive branch officials advocate for changes to the personnel rules, they should keep the following considerations in mind.

Is the change being contemplated constitutional? In 2014, Congress passed the Veterans Access, Choice & Accountability Act (VACA). Section 707 of VACA streamlined the procedures for removing senior executives at the Department of Veterans Affairs (VA) and conferred on administrative judges of the Merit Systems Protection Board (MSPB) the authority to make a final decision in the event that the executive appealed a removal. Hence, the three presidentially-appointed members of the Board would not be permitted to review an administrative judge's decision in such a case. Despite warnings by the members of MSPB that this provision violated the Appointments Clause of the Constitution, the President signed the bill into law. Earlier this year, though, the Attorney General announced that the Department of Justice agreed with the argument of a senior executive who was challenging her removal from VA that the prohibition against review by the members of the Board is unconstitutional. As a result, VA announced it would no longer use the expedited removal authority granted by VACA.

Is there really a problem? In early 2016, the Administration proposed a bill to improve the discipline and appeals process for senior executives at VA. The bill provides, among other things, that a senior executive who is removed from VA shall no longer receive pay and benefits. However, as has been previously pointed out in MSPB research, there is no legal authority to continue to pay an individual who has been already removed from Federal employment, and there is no indication that such payments have been made.

Can a problem be solved by administrative action? Not long ago the Administrator of the Drug Enforcement Administration (DEA) asserted in testimony before Congress—which was investigating reports that DEA employees who were known to have committed very serious misconduct had been not fired—that her authority to discipline employees was extremely limited. She asked that the laws be amended to give her more authority. But then other parts of her testimony indicated that DEA was able to find other ways to address these limitations as a matter of internal DEA policy that DEA itself was free to change.

What is an appropriate vehicle for change? Recently, we have seen reform proposals that are narrowly focused or specific to one agency. This is not necessarily a bad thing—broad-based reforms to

whole systems are not always preferable to targeted modifications—but it may not always be the best approach.

S. 2943, the version of the 2017 National Defense Authorization Act reported out by the Senate Armed Services Committee on May 12, 2016, provides that veterans' preference in appointment to the Federal civil service may be exercised just once. Under current law, a veteran who is employed by the Federal Government may continue to claim preference under any open competitive job announcement. Not surprisingly, this provision has become quite controversial. This would be one of the most significant changes in Federal hiring in recent decades. However, it does not appear that it was ever the subject of a public hearing. Moreover, the provision, which is part of a 1,600-page appropriations bill for the Department of Defense (DoD), would apply to hiring in all executive agencies, not just DoD. Perhaps such an important Governmentwide change ought to be considered publicly by a committee whose formal mandate includes the civil service.

Since the passage of the CSRA almost 40 years ago, numerous changes have been made to the Federal personnel system. We can learn much from how these changes occurred. The lessons could prove invaluable to the next Administration as it embarks on a new management agenda for the coming years. □

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