“Schedule F” EO and other civil service problems: A public administration perspective

By FEND Staff

THE MODERN FEDERAL civil service—increasingly protected by and large from political tampering since Pendleton Act became law in the late 19th century—has in recent years come under strain from political forces, and in particular the current White House, seeking to make more public servants follow the ideological bent of the president. The current occupant of 1600 Pennsylvania Avenue has been more critical of the civil service and made more effort in this regard than any president in the previous century. His most recent move, an Executive Order to create a new class of at-will public employees under “Schedule F.” He would do this by reclassifying current GS-13, GS-14 and perhaps other policy leadership-role feds into this new category of effectively at-will employees—they would have no recourse to appeal disciplinary actions and even removal from federal employment. Labor unions and other federal employee advocacy organizations have already pushed back, with some filing legal action to nullify the president’s EO. And...

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many experts are saying the move is undesirable, and legally untenable, no matter which presidential candidate prevails in the 2020 election—at least for now. Nathan Abse this week talked to James L. Perry—a professor emeritus of public administration at the University of Indiana and recognized expert on government and the civil service—about the tensions between White House and the civil service, the morale issues raised by any further weakening of employee protections., and the prospects for better days ahead.

Q&A WITH JAMES L. PERRY

Many civil servants and their advocates are pushing back hard against the most recent White House Executive Order—to make many high-ranking feds fireable, at-will employees! Your take?

Perry: The Schedule F executive order is very troubling. I think it’s a sign of things to come under this White House. It really could be a sign of things to come, breaking down the rules and walls between civil servants. The specific role of politicians in the federal bureaucracy as we have known it, versus the role of federal civil servants. There has been a good barrier between the politics and the civil service there. The Schedule F order, or any other move to something like it, would be to destroy one of our most fundamental institutions that creates effective government, government we can trust. If the president intended to drain the swamp, then he’s going in the wrong direction with Schedule F. Of course, we do not know that this order will survive court challenge. Still, as a sign of a direction, it’s very troubling.

Opinion polls and both traditional parties are long against politics leaking into the civil service. Does the lack of outcry about this EO by elected officials of the president’s party represent more extreme ideology or just fear of the president’s negative tweets and other punishments?

Perry: I think it’s just fear. I think it’s just fear of this president. He has taken a great deal of control, for instance, of this Senate, that his party is the majority in the Senate—yeah, but it’s his Senate. It’s fear.

How though? How can you explain that level of fear—and in just a few years, you’re suggesting?

Perry: I think it’s like the phenomenon of the frog in water that starts out cold, but then is heated little by little. By the time you get to the end of that process, the frog has been boiled, and he never knew what hit him. This is the situation with anyone in the president’s party now who had any principles, but who is willing to let this happen without objecting—and not just about this issue, to my mind. But on this very important issue of keeping the civil service a professional service, not political hacks. No, this is pretty new, this level of encroachment.

In your long career of watching politics and public administration, are you surprised by how much politics is pushing into the legally and traditionally non-political functions of government?

Perry: I am surprised—I don’t know if it is something about demographics of people largely still in power. But this may be the last gasp of the people who say they want to “make America great again.” It could be, as has been suggested by a fair bit of research, that it’s a group identity thing as well as a fear of this president by his fellows. Now to be clear, we can see real problems in our democracy developing over the Electoral College system. Let’s face it that it’s a problem. Today one media pundit’s talking point has been “this is the closest 10-point race I’ve ever seen.” And it is true that when you have our system, the Founding Fathers made some mechanisms that are maybe not frankly anti-democratic, but these are a strong constraint on some of our most democratic influences and forces. The system accords greater weight to certain states. The Electoral College will get a hard look in the coming years.

Are these strains and pressures going to lead to even more fundamental distortions—or, more optimistically, reforms—in our federal government?

Perry: This is one of the important issues I wrote about from my interviews and research—and interviews with Paul Light, NYU professor of public service—in my recently published book (co-authored with former Fed chairman Paul Volker) Public Service and Good Governance in the Twenty-First Century. This is a crucial point. There have been a number of critical failures made by the federal government and its bureaucracy over the past couple of decades.

Yes, the Army Corps’ failure to protect New Orleans in 2005, the EPA’s failure with toxic water in Flint, etc. But a fundamental threat to the federal civil service as a major protection in our lives?

Perry: These failures have been increasing. In the federal civil service’s current form and power, it likely will not continue on. As a matter of fact, it is under threat. Not only as a basic institution—what made it so influential as a positive and great part of American life in the latter half of the last century. Not just in those way, but also we are now breaking down the institutions, and we are losing capacity within these agencies over time. We are losing the recruiting ability we once had, for the talent that we need to get these complicated jobs done. We cannot take any of it for granted anymore. The pandemic and the mismanagement of it is a great example—so, we now have much more capable states than, say, back in 1970. But it can’t just be the states, we need to maintain a very strong national response. But that isn’t what is happening right now. Given the lack of good federal leadership, we haven’t been able to do that.
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BILL WOULD BLOCK CIVIL SERVICE EXECUTIVE ORDER

A GROUP OF House Democrats introduced legislation to block President Donald Trump’s recent executive order to reclassify elements of the civil service to make it easier to hire and fire federal employees.

The Saving the Civil Service Act from Rep. Gerry Connolly (D-Va.), Rep. Carolyn Maloney (D-N.Y.) and House Majority Leader Steny Hoyer (D-Md.), blocks last week’s executive order creating “schedule F,” a new classification of career federal employees in certain key roles.

Critics, including the sponsors of the legislation, say the executive order is an assault on longstanding civil service protections.

Jobs eligible for reclassification under Schedule F include, but aren’t limited to, roles determining policy or regulations, posts involving the supervising of attorneys and roles in agency executive directorates.

“The executive order is a last ditch attempt by the Trump administration to make it easier to remove federal employees who they deem aren’t ‘loyal enough’ to the President and return us to patronage politics,” said Connolly in an emailed statement about the new bill.

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In addition to blocking the use of funds for implementation, the new legislation would require any converted positions or appointments to be moved back to the competitive service. It would also reinstate with backpay anyone who was fired after being converted to Schedule F.

The release about the bill cited an OPM congressional briefing last week. There is currently no appeals process for employment decisions made after a position is converted to the new Schedule F. The executive order also allows the administration to fill policy positions without Title 5 competency protections.

Under the executive order, agencies have until January 19, one day before inauguration, to complete initial review of their position descriptions and submit recommendations for reclassification to OPM.

DOD AIDS TO WORK ON MORE ‘ENDURING’ TELEWORK SECURITY PLATFORM

THE DEFENSE DEPARTMENT wants to convert its key telework tool, the Commercial Virtual Remote (CVR) environment, to a permanent capability by next summer, according to John Sherman, DOD’s principal deputy CIO.

CVR, which is the Defense Department’s version of Microsoft Teams, has been extended for use until June 2021, Sherman said Oct. 28 during C4ISRNET’s CyberCon event, with the goal is to move to a more enduring capability.

“We are currently working on a more enduring [Microsoft] Office 365 base capability,” with higher security capabilities, he said.

The Defense Department rolled out CVR earlier this year to accommodate teleworking in response to the pandemic. But a permanent version of the capability has different security needs, Sherman said.

CVR currently holds a cloud security level of Impact Level 2, which is sufficient to support telework, he said. The new capability would need an Impact Level 5 that keeps the “same functionality” as CVR, which allows communication between access levels and with users outside of the Department of Defense Information Network, and permits users to bring their own approved devices.

“We’re working to bake that into an enduring solution in the run up to June 2021 when we hand the baton off [from] CVR,” Sherman said.

The pivot to telework-friendly tools seems to be spreading in the national security arena. The National Security Agency’s CIO, Gregory Smithberger, indicated in August that the agency wanted to increase its use of Microsoft Office 365 across all classification levels.

But that broad adoption, especially with higher rates of telework, means cybersecurity becomes more important. Attempts to compromise DOD’s network and users spiked practically as soon as the Defense Department directed personnel to use maximum telework in March. Sherman said that trend has continued with new threats increasing.

“Education has been critical,” he said, “to get the word out to these users on these telework platforms that they do need to be extra cautious here — and that we don’t want to down-classify things or do something that’s not proper and talk around things.”

WHAT CHANGES CAME FROM COVID IN IT WORKFORCE?

WHAT BEGAN FOR almost all of us as a month-long work from home event looks like it will last a year or longer. When we return to the office, it will be a completely different experience, with most employees working staggered schedules, teams divided into groups and even more reliance on technology to keep employees and customers connected and engaged.

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In recent weeks we have seen announcements from major technology companies, financial firms and others that support the forever-changed nature of the way we work. Understanding that, it’s time to start talking about the next steps we need to take to ensure that our IT infrastructure and tools can continue to support the remote workers, while providing state-of-the-art, timely customer service.

The U.S. Department of Defense, prior to COVID probably one of the agencies in all of government most reluctant to support a remote workforce, has been without question one of the leaders in adapting to our “new normal.” DOD, through the adoption of work from home tools and improvements to its overall IT infrastructure, has moved nearly one million employees from a traditional office environment to a work-from-home posture. Despite its quick success, DOD is also a perfect example of the work that remains.

The Defense Information Systems Agency (DISA) reports that to support its newly remote workforce, they increased network capacity (by nearly 1,000%), dramatically increased robust VPN access, enhanced overall storage capacity, leveraging cloud and other technologies, and has begun to change the mindsets of its employees and leadership to support these new requirements. In order to support a remote workforce now and for the long-haul, federal, state and local governments alike need to commit to making an investment in the necessary infrastructure. This investment must go beyond issuing a laptop to employees and hoping they can remain productive in a work-from-home environment.

In August, Rep. James Langevin (D-RI), along with other members of the Cyberspace Solarium Commission introduced the State and Local IT Modernization and Cybersecurity Act, which addresses a recommendation from the commission’s pandemic white paper that calls for helping state and local governments migrate legacy IT infrastructure to modern, resilient platforms, including cloud-based services. The legislation would establish multiple grant-based programs through which state and local governments could begin to make down payments on the IT upgrades needed to keep our IT resilient and trustworthy and enable these governmental entities to provide critical services at a critical time. If enacted, this would go a long way toward helping states and local governments upgrade their IT.

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 Likewise, the federal government needs a long-term vision for supporting remote workers and ensuring that the wheels of government continue to turn regardless of where an employee or a citizen seeking service may reside. The COVID pandemic has reinforced the need for IT modernization and put front and center the benefits of hybrid cloud-based infrastructure and applications, which address security, continuity of operations, flexibility and portability. Federal policymakers must act to support these needs. Here’s what we propose:

- Support the deployment of commercial technology across government, while requiring every federal executive agency to develop a 3-year “post-COVID” IT investment roadmap that recognizes the realities of new work requirements, including plans to secure networks in a work-from-home-first posture. As a key step in developing this road map, OMB should initiate and maintain inventory of “obsolete or obsolete” IT systems that fit the MGT Act definition. Currently, such assessments are not meaningfully focused on the real challenge at hand.

- Provide full funding to the Technology Modernization Fund and agencies to support IT modernization needs, consistent with the needs identified in the IT investment roadmap.

- Double down on the federal government’s investment in hybrid cloud, focused on emerging commercial technology approaches (e.g. containers, microservices) that provide the ability for data and applications to be migrated to a cloud provider in a way that allows them to be migrated again in the future, when necessary.

- With these actions, the U.S. government can target its IT investments effectively to support the needs of remote workers. It will also enable IT modernization that promotes long-term transformation to cloud and related technologies and continuity of critical mission support activities regardless of location or circumstance.

UNION, MEDIA STORIES DECRY DAMAGE TO CIVIL SERVICE

PRESIDENT TRUMP IN recent days has taken a giant leap—backwards. That is to say, you have to go way back in history to find a White House trying so hard to taint the civil service with politics.

That’s the critical tenor of most news coverage—along with union outrage—that’s come in the wake of the president’s latest Executive Order—penned on Oct. 21. The order in effect permits agencies to reclassify anywhere from tens of thousands to hundreds of thousands of currently non-political federal civil service
jobs—likely GS-13 and above, those that involve employees in “policy-determining, policy-making, or policy-advocating positions.” These would be placed under a new “Schedule F” status, making them completely open to White House control—politicizing far more of the civil service than has ever been attempted before, at least not in more than a century.

“Agencies should have a greater degree of appointment flexibility with respect to these employees than is afforded by the existing competitive service process,” the EO states as part of the justification for the move.

Federal employee unions and advocacy organizations are up at arms over the EO.

“This is the most profound undermining of the civil service in our lifetimes,” Everett Kelley, president of the American Federation of Government Employees, said. “The president has doubled down on his effort to politicize and corrupt the professional service.”

“This executive order strips due process rights and protections from perhaps hundreds of thousands of federal employees and will enable political appointees and other officials to hire and fire these workers at will,” Kelley continued.

Another major union also fired off choice words against the action.

“We are disgusted at President Trump’s executive order designed to invite corruption into the federal government,” said Randy Erwin, president of the National Federation of Federal Employees, in an emailed release. “Our President does not get the concept of an independent civil service that serves the American people, and that is a scary thought.”

“If there was ever a case to strengthen civil service laws, President Trump just made it,” he continued.

“The new ‘Schedule F’ federal employee category created through [the] Executive Order threatens the centuries-long integrity of nonpartisan professionals by forming a broad exception to the competitive civil service,” Ken Thomas, president of the National Active and Retired Federal Employees, said in a statement.

“The new exception demolishes the rule that civil servants are hired and fired based on merit, not political affiliation, a tradition that has served our country well since the late 1800s.”

“In one fell swoop, this order renders political fodder of senior career experts who, thanks to their training, experience and judgment have risen to the top of their professions and whose work benefits all Americans,” Thomas added. Indeed, the reclassification would apply to thousands of scientists, engineers and other crucial public trust jobs—

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The report went in to greater detail, noting the issues arose last summer, soon after DeJoy began his tenure in May.

The Washington Post was so surprised/impressed that it persuaded the editor of the Ohio newspaper to write a weekly column. He is in what must be strange company for him, writing and appearing alongside some of the nation’s best known columnists who, since November of 2016, have been writing pretty much the same columns denouncing Trump and those who gave him victory. In one of his first columns, editor-publisher Gary Abernathy talks about how surprised he was about how surprised we were.

During the contest between Sens. Obama and McCain, the nation’s newspapers split almost evenly in their endorsements. That happens more often than not. But this time only six of thousands of papers backed the winning candidate. What did and do they know that we on the Left Coast and Right Coast don’t know.

In the past few weeks dozens of news organizations, political scientists and pollsters have been coming to the U.S. but skipping New York, D.C. and San Francisco and Hollywood where, until last November, we knew it all. The object of this search for an American political Rosetta Stone, is to figure out what quaint, rustic, non-elite Americans think. What makes them tick.

I must confess that some of in D.C., regardless of what you may think of our elitism, are enjoying the exercise. For decades it’s been our day in the barrel. Every day. We’ve been the petri-dish (or swamp to some) crawling with critters who, regardless of what you may think of our elitism, are enjoying the exercise. For decades it’s been our day in the barrel. Every day. We’ve been the petri-dish (or swamp to some) crawling with critters who, regardless of what you may think of our elitism, are enjoying the exercise.

So keep acting up flyover land folks. Maybe we were a little (or a lot) more like you.
report concludes. “However, we have not yet had the opportunity to review Mr. DeJoy’s … accounts and that process is ongoing.”

The IG audit comes after a wave of reports throughout last summer of significantly delayed, and even lost, mail triggered by DeJoy’s rapid deployment of what he referred to as “changes to secure the success of this organization and its long-term sustainability.” To justify his hurry, DeJoy publicly focuses on multibillion-dollar financial shortfalls in USPS operations—red ink postal unions and outside analysts attribute mostly to onerous, congressionally-imposed requirements that USPS excessively prefund retiree healthcare costs. In any case, DeJoy’s rapid changes included reorganizing HQ management—but, more consequentially, suddenly retiring sorting equipment and collection boxes, slashing overtime and holding vehicles to strict schedules. These disrupted and actually slowed the flow of mail in many parts of the country.

On Aug. 18, amid a firestorm of consumer and postal union criticism, DeJoy issued a statement defending his directives, still refusing to acknowledge the magnitude of harm done or the possible political implications. He repeatedly was called to answer questions before oversight panels led by both Democrats and Republicans on Capitol Hill. Additional congressional hearings followed. DeJoy’s answers to lawmakers and other critics—consistently defending his actions and stating delays were meant to be temporary—did little to allay critics’ suspicions his reforms were reckless—or worse.

Many in politics, media and academia are bluntly suggesting that DeJoy’s hastily applied “reforms” are actually designed to cause slowdowns and chaos in mail processing. Delays and chaos in mail delivery have the effect of buttressing the president’s repeated claims that the Postal Service and mail-in ballots cannot be trusted, and hence the federal courts or House of Representatives, not voters, might have to decide Election 2020. This dark view of DeJoy’s actions is not defined by party loyalty. Normally neutral political observers have given DeJoy a failing grade. Opinion polls and analysis just last month also shows many in the public are still skeptical and DeJoy remains a lightning rod—and a majority want him gone. DeJoy has had his defenders—certain members of the politically appointed Postal Board of Governors, as well as examples of leaders in the private sector who give him the benefit of the doubt.

Amid this rancor, whether DeJoy’s work at the USPS damaged the storied public trust on purpose—or for political ends—has not been legally established. Beyond party politics, some critics note, financial incentives may also be in play. Media reports based on public records and disclosures show that, at the very least, DeJoy is invested in companies that compete with the Postal Service, raising unprecedented conflict-of-interest questions about the leader of the nation’s centuries-old public delivery institution.

For now, DeJoy’s expedited stripping down of personnel and equipment is on hold. In the wake of the ongoing scandal and investigation, the report notes, the “Postal Service is now also subject to preliminary orders from at least four federal district courts imposing additional requirements on the handling of election mail.”

Bottom line: the IG has let DeJoy off the legal hook—but that may change. The report contains a couple of crucial caveats. First, that “applicable legal and policy requirements” for the postmaster general are “limited”—the legal bar he must meet here is low. But second—and potentially more important—the IG’s auditors are continuing to investigate possible lawbreaking. The IG report is only an interim document.